

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/STOP PRESS: APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

## **EDUCATION (**

### **STOP PRESS:**

The Apprenticeships, Skills, Children and Learning Act 2009 makes provision about apprenticeships, education, training and children's services, establishes and makes provision about the Young People's Learning Agency for England, the office of Chief Executive of Skills Funding, the Office of Qualifications and Examinations Regulation and the School Support Staff Negotiating Body, makes provision about the Qualifications and Curriculum Authority, about schools and institutions within the further education sector, and about student loans. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that day: ss 262-265, 267-270. Sections 58, 198-201, 205, Schs 14 and 16 (in part) came into force on 12 January 2010: SI 2009/3341. Sections 55, 56, 59, 112(1)-(3), 125, 126, 178(2), 193 (in part), 195, 202(1), (2), 203, 204, 225 (in part), 226, 227-241, 251-258, 261, 266 (in part), Schs 2 (in part), 8 (in part), 13, 15, 16 (in part) also came into force on 12 January 2010: SI 2009/3317. Section 194(1)-(3) came into force for certain purposes on 26 February 2010: SI 2010/303. Sections 41-44, 46, 47, 53, 54, 57, 60-90, 100-104, 106-111, 112 (so far as not already in force), 113-124, 125 (so far as not already in force), 193(2)(b), 194 (so far as not already in force), 196, 197, 225 (so far as not already in force), 256, Sch 2 para 1 (in part), Sch 2 paras 2-5, 7-9 (so far as not already in force), Schs 3-7, Sch 8 (so far as not already in force), and Sch 16 (in part) came into force on 1 April 2010: SI 2010/303. Section 40 and Sch 1 came into force for certain purposes on 6 April 2010: SI 2010/303. Sections 206-224 (for certain purposes), and Sch 16 Pt 7 came into force on 19 April 2010: SI 2010/303. Sections 48-50 (in relation to England for certain purposes), ss 51, 52 (in relation to England), ss 242-250 and Sch 2 (so far as not already in force) come into force on 1 September 2010: SI 2010/303. So far as not already in force, Section 40 and Sch 1 come into force on 6 April 2011: SI 2010/303. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

### ***Part 1 (ss 1-40) Apprenticeships, study and training***

#### ***Chapter 1 (ss 1-39) Apprenticeships***

Section 1 sets out the circumstances in which a person completes an English apprenticeship in the context of an apprenticeship framework and s 2 sets out the circumstances in which a person completes a Welsh apprenticeship in the context of an apprenticeship framework. Sections 3-6, in relation to England, and ss 7-10, in relation to Wales, make provision about apprenticeship certificates, and specify when an apprenticeship certificate must, or may, be issued to a person. The contents of apprenticeship certificates are set out in s 11. 'Apprenticeship framework' is defined by s 12. Provision is made as to the English issuing authority and the Welsh issuing authority (ss 13, 18), the submission of draft frameworks for issue and the issue of apprenticeship frameworks (ss 14, 16, 19, 21), the notification and publication of recognised frameworks (ss 15, 20), and for the treatment of an existing vocational specification as if it were an apprenticeship framework (ss 17, 22). Section 23

empowers the Secretary of State to direct the Chief Executive of Skills Funding to prepare a draft specification of apprenticeship standards, and s 28 empowers the Welsh Ministers to prepare a draft specification of apprenticeship standards. Provision as to the modification and contents of a specification of apprenticeship standards, and related matters, is made by ss 24-27, 29-31. Section 32 defines an 'apprenticeship agreement', which will be a contract entered into between the employer and the apprentice, and provision is made by ss 33-36 as to ineffective provisions, variation, the status of apprenticeship agreements, and relating to Crown servants and Parliamentary staff. A person may satisfy the duty to participate in education or training imposed by the Education and Skills Act 2008 s 2 by participating in training in accordance with an apprenticeship agreement: 2009 Act s 37. The Secretary of State must specify apprenticeship sectors: s 38. Section 39 is interpretational.

### *Chapter 2 (s 40) Study and training*

Section 40 amends the Employment Rights Act 1996 so as to introduce a right for qualifying employees to make a statutory application to their employer in relation to study or training, require employers to deal with such requests in line with regulations and provide for enforcement. Certain related statutory amendments are made by the 2009 Act Sch 1.

### **Part 2 (ss 41-59) LEA functions**

Section 41 requires local education authorities ('LEAs') to secure enough suitable full and part-time education and training opportunities to meet the reasonable needs of young people who are over compulsory school age but under 19 and certain other people in their area. Section 42 requires LEAs to encourage young people for whom they are responsible to participate in education and training, and to encourage employers to participate in the provision and delivery of post-16 education and training. By virtue of s 43, a LEA in England is empowered to direct a maintained school for which it is not the admissions authority to admit a particular child to its sixth form. Section 44 empowers LEAs to direct institutions within the further education sector in England which provide education suitable to the requirements of young people over compulsory school age but under 19, to provide specified young people of that age and within the LEA's area with such education. Section 46 enables LEAs, when securing suitable education and training provision for young people subject to a learning assessment, to also secure boarding accommodation for them. LEAs may secure the provision of work experience for people within their area who are over compulsory school age but under 19, and those aged 19 but under 25 for whom a learning difficulty assessment has been conducted: s 47. By virtue of s 48, LEAs with relevant youth accommodation in their area must secure that enough suitable education and training is provided to meet the reasonable needs of the children and young people in the youth justice system held in youth detention accommodation. Section 49 provides that the functions of LEAs, the Secretary of State, the Welsh Ministers and parents under the Education Act 1996 do not apply in relation to persons detained pursuant to a court order or an order of recall of the Secretary of State. The 2009 Act s 50 gives powers to and imposes responsibilities on LEAs concerning the education and training of persons detained in youth accommodation. Section 51 requires youth offending teams to notify the person's home and host LEA when they become aware that a child or young person has been detained in relevant youth accommodation, or has been transferred to a new place of detention. Provision is made by s 52 for the revival of a statement of special educational needs which had been maintained for a person prior to their detention in juvenile custody on their release. Sections 53-57 make provision relating to LEAs' responsibilities in their provision of transport for persons of sixth form age, and make provision as to complaints about such transport arrangements. Section 58 removes a prospective power of LEAs to make arrangements in relation to the provision of education at non-maintained schools. Section 59 introduces Sch 2, which provides for minor and consequential amendments.

### **Part 3 (ss 60-80) The Young Person's Learning Agency for England**

### *Chapter 1 (s 60) Establishment*

Section 60 establishes the Young People's Learning Agency for England ('YPLA') as a body corporate and Sch 3 makes detailed provision about the YPLA.

### *Chapter 2 (ss 61-74) Main functions*

Section 61 requires the YPLA to secure the provision of financial resources to certain persons who provide education and training to young persons and to LEAs, and s 62 enables the YPLA to set certain conditions on the financial resources it provides. Section 63 provides for the YPLA to make performance assessments, s 63 allows it to carry out means tests and s 65 provides for a general prohibition on charging for education or training provided for young people over compulsory school age funded by the YPLA. The YPLA is empowered to commission education or training for persons over compulsory school age but under 19, and certain other learners: s 66. The YPLA may, under s 67, give directions to a LEA which is failing, or likely to fail, in its duty to secure enough suitable education and training for young people aged over compulsory school age but under 19, and certain other learners. Section 68 empowers the YPLA to provide and receive payment for services to specified persons and bodies listed in connection with any of the recipient's functions relating to education and training. The YPLA may take part in arrangements for assisting person to select, train for, obtain and retain employment: ss 69, 70. By virtue of s 71, the YPLA may carry out research relating to any matter relevant to any of its functions. The YPLA must issue guidance to local education authorities about the performance of their duties to secure that all young people in their area over compulsory school age but under 19, and certain other persons, have access to enough suitable education and training provision: s 72. Under s 73, the YPLA must prepare and consult on a policy statement which sets out the detail of its policy on its powers of intervention. Section 74 allows the Secretary of State to confer supplementary functions on the YPLA.

### *Chapter 3 (ss 75, 76) YPLA's functions: supplementary*

Section 75 empowers the Secretary of State to give directions to the YPLA concerning its functions, objectives or management and s 76 requires the YPLA to have regard to any guidance provided to it by the Secretary of State in performing its functions.

### *Chapter 4 (ss 77-79) Academy arrangements*

Under s 77, the Secretary of State may require the YPLA to enter into arrangements with the Secretary of State, under which the YPLA may be required to carry out specified functions of the Secretary of State relating to Academies, city technology colleges and city colleges for the technology of the arts. The Secretary of State may pay grants to the YPLA for purposes of academy arrangements functions: s 78. Provision is made by s 79 about information sharing relating to academy arrangements.

### *Chapter 5 (s 80) General*

Section 80 provides for the interpretation of Pt 3.

## **Part 4 (ss 81-121) The Chief Executive of Skills Funding**

### *Chapter 1 (ss 81-99) Establishment and main duties*

Section 81 provides for there to be a Chief Executive of Skills Funding ('the Chief Executive'), who is to be appointed to the office by the Secretary of State and whose functions will be limited to England. Further provision as to the Chief Executive is made by Sch 4. The Secretary of State may direct the Chief Executive to designate a person to carry out apprenticeship functions on behalf of the Chief Executive: s 82. Section 83 empowers the Chief Executive to secure the provision of facilities for apprenticeship training of young people and s 84 enables

the Chief Executive to enter into arrangements with LEAs when securing such training. Section 85 sets out the general duty on the Chief Executive to promote apprenticeships for young people to employers, and encourage them to employ young people as apprentices. The Chief Executive has a general duty under s 86 to secure the provision of reasonable facilities for the education and training for persons aged 19 or over and those who are detained in a prison or an adult young offender institution. Sections 87-89 and Sch 5 requires the Chief Executive to secure the provision of proper facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications, and to ensure that learners will not be liable to pay fees for courses of study so provided. The Chief Executive's general duty to encourage participation in education and training amongst people aged 19 or over and others subject to adult detention is set out in s 90. The Chief Executive has a duty to secure sufficient apprenticeship places for every suitably qualified person within one of the categories of people eligible for the offer who wants one: ss 91, 93. Section 92 specifies the eligibility criteria for persons who may elect for the apprenticeship offer, and provides that a person who elects for the offer should select two apprenticeship sectors for the purposes of the offer. Section 94 makes further provision about the suitability and availability of apprenticeship places. Section 95 sets out the qualifications a person must have to elect for the apprenticeship offer at level 2 or level 3, and s 96 provides for interpretation. The Secretary of State may suspend the apprenticeship offer in a specified geographical area in relation to particular apprenticeship sector or at a particular level for up to two years (s 97), and may amend the age under which people other than care leavers are eligible for the apprenticeship offer (s 98). Section 99 provides for interpretation.

#### *Chapter 2 (ss 100-111) Other functions*

Section 100 gives the Chief Executive powers to fund other persons for the purpose of fulfilling the duties and exercising the powers vested in him or her and s 101 permits the Chief Executive to attach conditions to the financial resources which he or she makes available. The Chief Executive may adopt or develop schemes for the assessment of the performance of individual providers of education and training and may take this assessment into account when deciding which providers he or she will continue to fund under s 100: s 102. Section 103 allows the Chief Executive to carry out means tests or arrange for others to do so in order to establish how much financial support students may be eligible to receive in respect of the costs of education or training. Under s 104, the Chief Executive may provide or secure provision of services to assist people to find apprenticeships. The Chief Executive must promote the progression to a level 3 apprenticeship where a person has completed a level 2 apprenticeship: s 105. Section 106 allows the Secretary of State to require the Chief Executive to provide advice and assistance to enable the Secretary of State to discharge responsibilities for statutory apprenticeships, and s 107 empowers for the Chief Executive to provide services for individuals and to bodies exercising education and training functions in relation to those functions. Sections 108 and 109 empower the Chief Executive to assist persons to select, train for, obtain and retain employment. Section 110 sets out the role of the Chief Executive in relation to research and the provision of information and advice, and the establishment of systems for collecting information. The Secretary of State may confer on the Chief Executive additional functions connected to the functions of the Secretary of State and relevant to the provision of facilities for education or training within the remit of the Chief Executive: s 111.

#### *Chapter 3 (ss 112-120) Chief executive's functions: supplementary*

Section 112 allows the Secretary of State to specify an area of England outside Greater London as an area for which a specified body may formulate and keep under review a strategy for how education and training for those persons that the Chief Executive is responsible for is to be delivered. Similar provision is made in relation to Greater London by s 113. The Chief Executive has a duty under s 114 to implement any strategy formulated by a body set up under the powers contained in ss 112 and 113. In performing his or her functions, the Chief Executive must have regard to the needs of persons who are aged 19 or over who have learning



difficulties and persons with learning difficulties who are subject to adult detention: s 115. Section 116 provides that the Chief Executive must have regard to the needs of persons in prisons and adult young offender institutions in the performance of the functions of the office. The Chief Executive must have regard to any information which has been provided by a person designated by the Secretary of State: s 117. In performing the functions of the office, the Chief Executive must have regard to any guidance given by the Secretary of State: s 118. The Secretary of State may, under s 119, direct the Chief Executive to secure that funding he or she provides is not used to make payments in respect of certain specified qualifications and, under s 120, give directions to the Chief Executive about what overarching objectives he or she should be seeking to achieve in performing the functions of the office.

#### *Chapter 4 (s 121) General*

Section 121 provides for interpretation of Pt 4.

### ***Part 5 (ss 122-124) Parts 2 to 4: Supplementary***

Section 122 allows bodies and persons replacing the Learning and Skills Council to share information for education and training purposes to enable or facilitate the exercise of their functions. Section 123 provides for the dissolution of the Learning and Skills Council for England. Section 123 also introduces Sch 6, which provides for minor and consequential amendments, and s 124 introduces Sch 7, which gives the Secretary of State power to make schemes to enable the transfer of staff and property from the Learning and Skills Council to various bodies.

### ***Part 6 (ss 125, 126) The sixth form college sector***

Section 125 introduces Sch 8, which contains provisions for a new sixth form college sector. The power of LEAs to establish additional sixth form schools is removed by s 126.

### ***Part 7 (ss 127-174) The Office of Qualifications and Examinations Regulation***

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Section 127 establishes the Office of Qualifications and Examinations Regulation ('Ofqual') as a body corporate. Schedule 9 contains detailed provisions about Ofqual, its constitution and proceedings. Ofqual's objectives, which relate to 'regulated qualifications' (as defined in s 130) and 'regulated assessment arrangements' (as defined in s 131), in discharging its functions are (1) the qualifications standards objective; (2) the assessments standards objective; (3) the public confidence objective; (4) the awareness objective; and (5) the efficiency objective: s 128. Section 129 requires Ofqual, in carrying out its functions, so far as is reasonably practicable, to act in a way that is compatible with its objectives under s 128 and which it considers most appropriate for the purposes of meeting those objectives.

#### *Chapter 2 (ss 132-158) Functions in relation to qualifications*

Section 132 requires Ofqual to recognise awarding bodies in respect of specific qualifications or descriptions of qualification, or in respect of credits for components of qualifications, thereby confirming that the body is fit to award or authenticate the qualifications or qualifications of a description for which it is recognised. Ofqual has discretionary powers to set the criteria it will use to decide whether to recognise an awarding body (s 133), may impose general conditions on recognition (s 134), and may impose certain other conditions on recognition (s 135). Section 136 sets out the test that must be met before Ofqual can impose a fee capping condition, and the process that must be used where Ofqual proposes to do so. Section 137 places limits on what Ofqual may require under an entry and inspection condition. Ofqual may decide that a

certain qualification, or qualifications falling within a certain description, is or are subject to the accreditation requirement, so that a recognised body cannot award or authenticate any form of such a qualification unless the particular form is individually accredited: s 138. Provision is made by s 139 for the process of accrediting particular forms of qualifications, and provision is made by s 140 requiring Ofqual to publish the criteria for accreditation or any subsequent revisions of those criteria. The Secretary of State may make an order specifying the minimum requirements in respect of knowledge, skills or understanding that someone must be able to demonstrate to gain a particular qualification or a qualification of a particular description: s 141. Before making an order under s 141, the Secretary of State must consult with Ofqual and with others as appropriate (s 142) and, when such an order has been made, Ofqual must set recognition criteria, recognition conditions, and/or accreditation criteria for the qualification or description of qualification to secure that those minimum requirements are met (s 143). The Secretary of State may by order revoke an order specifying minimum requirements: s 144. A recognised body which is offering a form of a relevant qualification must assign to it a number of hours of guided learning, for the purposes of determining whether a person studying for the qualification is able to meet this requirement: s 145. Section 146 requires Ofqual to publish the criteria which recognised bodies must apply in order to determine whether they need to assign guided learning hours to a qualification, and if so the number of hours they should assign to a form of the qualification. A recognised body may, under s 147, surrender recognition by giving notice to Ofqual. Section 148 sets out Ofqual's obligation to maintain a register of recognised bodies, and the details of the qualifications in respect of which they are recognised and forms of those qualifications that they offer, and s 149 allows Ofqual to keep under review any connected activities of a recognised awarding body. Ofqual may investigate complaints in respect of the award or authentication of a regulated qualification, or arrange for an independent party to do so: s 150. Section 151 confers power on Ofqual, in certain circumstances, to direct a recognised body in order to secure compliance with a condition imposed on its recognition. Ofqual may withdraw recognition in respect of some or all of the qualifications in respect of which a body is recognised if the body has breached a condition of recognition: s 152. Under s 153, Ofqual must publish a statement on how it will perform its monitoring and enforcement functions and guidance to recognised bodies in relation to the award and authentication of qualifications. Ofqual may keep under review all aspects of qualifications to which Pt 7 applies (s 154), must keep under review any system used by the Secretary of State which is for allocating values to qualifications by reference to the level of attainment indicated by the qualifications and for the purposes of a qualifications-based performance management system (s 155). Section 156 allows Ofqual to co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of any of its functions in connection with qualifications, and s 157 allows Ofqual to provide information to qualifications regulators elsewhere in the United Kingdom to support the qualifications functions of the other regulator. Section 158 provides for interpretation.

### *Chapter 3 (ss 159-166) Functions in relation to assessment arrangements*

Sections 159, 160 require the Secretary of State to consult Ofqual before making an order specifying assessment arrangements in relation to each of the key stages of the national curriculum and the Early Years Foundation Stage ('EYFS'), s 161 requires Ofqual to keep all aspects of these assessments arrangements under review, and s 162 empowers them to require the Secretary of State, national curriculum responsible bodies and EYFS responsible bodies and Ofsted to provide it with the information it considers it needs to perform this role. Under s 163, Ofqual must notify the Secretary of State and any responsible body whose act or omission appears to Ofqual to have contributed to a significant failing if it considers that there is or is likely to be a significant failing in the assessment arrangements. Ofqual must publish and keep under regular review the 'NC assessments regulatory framework' and the 'EYFS assessments regulatory framework' documents: ss 164, 165. Section 166 provides for interpretation.

#### *Chapter 4 (ss 167-171) Other functions*

Section 167 empowers Ofqual to provide services to other persons in connection with any of its functions, s 168 requires Ofqual to provide the Secretary of State with information or advice relating to its functions where the Secretary of State requests it, and s 169 empowers Ofqual to carry out research in relation to qualifications that would be eligible for regulation or in relation to regulated assessment arrangements. Section 170 imposes a duty on Ofqual not to impose or maintain unnecessary regulatory burdens. Under s 171, Ofqual must publish an annual report and may also prepare and publish other reports.

#### *Chapter 5 (ss 172-174) General*

Section 172 provides for interpretation. Section 173 introduces Sch 10, which empowers the Secretary of State to transfer the staff and property of the Qualifications and Curriculum Agency to Ofqual. Schedule 12, which contains minor and consequential amendments, is introduced by s 174.

### ***Part 8 (ss 175-192) The Qualifications and Curriculum Development Agency***

#### *Chapter 1 (ss 175-177) The QCDA, objective and general duties*

Section 175 renames the Qualifications and Curriculum Agency as the Qualifications and Curriculum Development Agency ('QCDA') and introduces Sch 11, which contains detailed provisions with respect to the constitution and proceedings of the QCDA. Section 177 sets out the matters to which the QCDA must have regard in exercising its functions and pursuing its overall objective.

#### *Chapter 2 (ss 178-180) Functions in relation to qualifications*

Section 178 defines which qualifications fall within the QCDA's remit and allows the Secretary of State to exclude qualifications from the QCDA's remit. Section 179 sets out the QCDA's duties and powers in relation to qualifications within its remit and s 180 provides for the QCDA to assist Ofqual in relation to its qualifications functions.

#### *Chapter 3 (ss 181-183) Functions in relation to curriculum, early years foundation stage and assessment*

Section 181 sets out the QCDA's duties and powers with respect to the curriculum in maintained schools in England for pupils who are of compulsory school age, and pupils in maintained nursery schools. QCDA's duties and powers with respect to early learning goals and educational programmes are set out in s 182 and its duties and powers with respect to assessment arrangements within its remit are set out in s 183.

#### *Chapter 4 (ss 184-190) Other functions and supplementary provision*

Section 184 contains provision enabling the QCDA to provide services or other assistance in relation to specified matters, s 185 requires QCDA to advise the Secretary of State on any matters relating to education or training in England which the Secretary of State refers to it, and s 186 requires the QCDA to carry out such ancillary activities relating to its functions as the Secretary of State may direct. The QCDA to co-operate or work jointly with other public bodies, where it is appropriate for the efficient and effective performance of any of its functions: s 187. The Secretary of State may confer supplementary functions on the QCDA, may issue directions to the QCDA as to the performance of any of its functions: s 188, 189. Section 184 requires the QCDA, in performing its functions, to have regard to any guidance given by the Secretary of State.

#### *Chapter 5 (ss 191, 192) General*

Section 191 provides for interpretation and s 192 introduces Sch 12, which contains minor and consequential amendments resulting from the establishment of Ofqual and the revised regime for the QCDA.

### ***Part 9 (ss 193-202) Children's Services***

Section 193 specifies further persons who must co-operate with the local authority in the making of arrangements under provision concerning the promotion of co-operation to improve the well-being of children. Section 194 requires children's services authorities to set up Children's Trusts Boards ('CTBs'), and transfers to CTBs the duty currently imposed on children's services authorities to prepare and review a Children and Young People's Plan ('CYPP'). Section 195 provides for the Secretary of State to set statutory targets for children's services authorities in England for safeguarding and promoting the welfare of children, s 196 requires each Local Safeguarding Children Board in England to include two representatives of the local community, and s 197 requiring each Local Safeguarding Children Board in England to produce and publish a report at least once a year about safeguarding and promoting the welfare of children in its area. Local authorities in England must make appropriate arrangements for the provision of children's centres and Her Majesty's Chief Inspector of Education, Children's Services and Skills ('the Chief Inspector') must inspect children's centres and publish reports of his or her inspections: ss 198, 199. Section 200 provides for the Independent Barring Board to maintain lists of persons barred in relation to work with children or vulnerable adults, and to monitor persons who have applied to be subject to monitoring. Section 201 requires a local authority in England to make certain arrangements in respect of early childhood services and s 202 imposes certain duties on such an authority in relation to their funding for early years providers.

### ***Part 10 (ss 203-241) Schools***

#### ***Chapter 1 (ss 203-205) Schools causing concern***

Section 203 introduces Sch 13, which makes provision for the Secretary of State's reserve intervention powers in relation to schools in England causing concern, and s 204 makes provision relating to the Secretary of State's powers to require LEAs in England to obtain advisory services. Section 205 introduces Sch 14, which makes provision for the Welsh Ministers' reserve intervention powers in relation to schools in Wales causing concern.

#### ***Chapter 2 (ss 206-224) Complaints: England***

Section 206 specifies who may approach a Local Commissioner under the new parents' and young person's independent complaints service. Provision as to investigation of complaints about by a Local Commissioner, time-limits, procedure, powers of Local Commissioners in their investigations and statements about investigations is made by s 207-211. Further provision relating to complaints is made by ss 212-222. Section 223 provides for consequential amendments and s 224 provides for interpretation.

#### ***Chapter 3 (ss 225, 226) Inspections***

Section 225 makes provision in relation to the powers of the Chief Inspector and associated duties of schools and s 226 makes provision so as to entitle administrators supplied by inspection service providers to enter an institution being inspected and assist inspectors by performing administrative tasks during the course of that inspection.

#### ***Chapter 4 (ss 227-241) School support staff pay and conditions: England***

Section 227 establishes the School Support Staff Negotiating Body ('SSSNB') and introduces Sch 15, which makes further provision about the SSSNB. Section 228 specifies that the SSSNB's remit relates to the pay and conditions of employment relating to the duties and working time

of school support staff in England, and allows the Secretary of State to include or exclude matters by order. Section 229 enables the Secretary of State to refer a matter within the SSSNB's remit to the SSSNB for consideration and s 230 allows the SSSNB to consider certain other matters within its remit and to submit any agreement it reaches about the matter to the Secretary of State. Where the SSSNB submits an agreement to the Secretary of State, the Secretary of State may either ratify the agreement or refer the agreement back to the SSSNB for further consideration: s 231. Sections 232 and 233 provide for the reconsideration of agreement by the SSSNB, and s 234 provides for the powers of Secretary of State in absence of SSSNB agreement. Provision is made by ss 235-237 concerning orders by the Secretary of State ratifying an agreement submitted by the SSSNB. The Secretary of State and, with the Secretary of State's approval, the SSSNB may issue guidance relating to agreements: s 238. Section 239 provides for the establishment of the non-statutory School Support Staff Negotiating Body to be treated as the establishment of the SSSNB. Sections 240 and 241 provide for interpretation.

### ***Part 11 (ss 242-249) Learners***

Section 242 gives members of staff of a school in England power to search pupils for prohibited items and to seize any prohibited items or evidence in relation to an offence so found. Section 243 makes consequential amendments to ensure that the status quo is retained in relation to searches in a school in Wales. Section 244 extends the search powers of staff of further education institutions in England to cover controlled drugs, alcohol and stolen property and to seize such items found during the course of a search. Section 245 makes consequential amendments to ensure that the status quo is retained in relation to searches in further education institutions in school in Wales. The governing body of a school in England must ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a pupil and to take reasonable steps to ensure that the procedure is followed by staff at the school: s 246. Similar provision is made in relation to further education institutions in England by s 247. The governing body of a maintained secondary school in England, and the proprietor of an academy, city technology college or city college for the technology of the arts in England, must make arrangements to co-operate with at least one other relevant partner with a view to achieving specified objectives: s 248. Section 249 changes the name of pupil referral units in England to 'short stay schools'.

### ***Part 12 (ss 250-261) Miscellaneous***

Section 250 requires state secondary schools in England to ensure that the programme of careers education includes information on options available in respect of 16-18 education or training and, specifically, information on apprenticeships. Under s 251, the Secretary of State may direct a local authority to provide information about its planned and actual expenditure on its education and its children's social services functions and about 'accountable resources' held, received or expended by any person in relation to a school maintained by the authority. Further provision as to such information about expenditure is made by s 252 and consequential amendments are made by s 253. Sections 254 and 255 make provision concerning to support for participation in education and training. Provision is made as to the co-operation and promotion of well-being by further education corporations in England by s 256. By virtue of ss 257 and 258, a student loan made to a borrower who enters an individual voluntary arrangement will be treated in a similar way as it is currently treated under a bankruptcy. Section 259 enables the Privy Council to make orders granting further education institutions in Wales the power to award foundation degrees. Section 260 empowers the Welsh Ministers to make regulations which would set out a complaints procedure that will become compulsory for all governing bodies of maintained schools in Wales. A minor amendment is made by s 261.

### ***Part 13 (ss 262-270) General***

Section 262 provides for the making of orders and regulations and s 263 deals with the making of directions. Section 264 provides for interpretation. The Secretary of State may, under s 265, make supplementary, incidental, consequential, transitory, transitional or saving provisions. Section 266 introduces Sch 16, which provides for repeals and revocations, s 267 deals with financial provision, s 268 with extent, s 269 with commencement and s 270 with short title.

### ***Amendments, repeals and revocations***

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Further and Higher Education Act 1992 ss 19, 19A, 33A-33N, 51A, 56D-56J, 76, 85AA-85AD, 85D; Charities Act 1993 Sch 2; Employment Rights Act 1996 ss 13A, 17A-17D, 47F, Pt 6A (ss 63D-63K), 104E, 569A; Education Act 1996 ss 15ZA-15ZC, 18A, 312A, 408, 409, 508F-508I, 509, 509AB, 509AE, 514A, 550ZA-550ZD, 560A, 562, 562A-562J, Sch 1; Education Act 1997 ss 21-26A, 30, 32, 32ZA, 32A-32C, 36, 58, Schs 4, 7; Crime and Disorder Act 1998 s 39A; School Standards and Framework Act 1998, ss 45A, 47ZA, 53, 128, Sch 30 paras 64, 214; Learning and Skills Act 2000 ss 1-29, 98(2A), 99(2A), 103, 113A, Sch 9 para 69; Education Act 2002 ss 62A, 76, 87, 96, 208A, 216, Schs 17, 21; Children Act 2004 ss 9A, 10, 12A-12D, 13, 14A, 17, 17A; Public Audit (Wales) Act 2004 Sch 2; Education Act 2005 ss 10A, 14A, 16A; Education and Inspections Act 2006 ss 11, 60A, 67, 69, 69A, 69B, 75, 81, 93A, Schs 12, 14; Childcare Act 2006 ss 5A-5G, 42, 98A-98G, Sch 1; Further Education and Training Act 2007 ss 1, 2, 4-16; Education and Skills Act 2008 ss 9, 15, 76, 76A, 159-163.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/STOP PRESS: EDUCATION AND INSPECTIONS ACT 2006

## **STOP PRESS:**

The Education and Inspections Act 2006 makes provision in relation to primary, secondary and further education and training, and food or drink provided on school premises or in connection with the provision of education or childcare; provides for the establishment of an Office for Standards in Education, Children's Services and Skills and the appointment of Her Majesty's Chief Inspector of Education, Children's Services and Skills; makes provision for the functions of the Office and Chief Inspector; amends the Leasehold Reform Act 1967 s 29 in relation to university bodies; and makes provision for connected purposes. The Act received the royal assent on 8 November 2006 and the following provisions came into force on that day ss 86, 87, 109, 111, Pt 8 (in part), 161, 180, 181-183, 184 (in part), 185-191, Sch 16, Sch 18 (in part). Sections 112 (in part), 116 (in part), 117, 158 (in part), 159, 184 (in part), Sch 11 (in part), Sch 15 (in part) came into force on 12 December 2006: SI 2006/2990 (amended by SI 2008/54). The 2006 Act s 40, Sch 18 (in part) came into force in relation to England on 12 December 2006: SI 2006/2990 (amended by SI 2008/54). The 2006 Act ss 43, 45, 48-51, 54 (in part), 163, 173, 184 (in part), Sch 18 (in part) came into force on 8 January 2007: SI 2006/3400. The 2006 Act ss 5, 57, 184 (in part), Schs 5, 18 (in part) came into force on 8 February 2007: SI 2006/3400. The 2006 Act ss 4, 39, 41, 42, 44, 46, 47, 53, 184 (in part), Sch 18 (in part) came into force in relation to England on 27 February 2007: SI 2006/3400. The 2006 Act s 160 came into force on 28 March 2007 in relation to England: SI 2007/93. The 2006 Act ss 5 (in part), 18 (in part), 21-24, 25 (in part), 26, 27 (in part), 31, 32, 33 (in part), 35 (in part), 59-73, 74 (in part), 76, 77 (in part), 78-80, 83, 84 (in part), 85 (in part), 88-96, 112 (in part), 113-115, 116 (in part), 118-153, 155, 157, 158 (in part), 165, 166, 176, 184 (in part), Schs 2 (in part), 6, 7, 9, 10 (in part), 11-14, 15, 18 (in part) came into force on 1 April 2007: SI 2007/935. The 2006 Act ss 1-3, 7-17, 18 (in part), 19, 20, 25 (in part), 27 (in part), 28-30, 33-36, 38, 54, 56, 184 (in part), Schs 2 (in part), 3, 4, 18 (in part) came into force on 25 May 2007: SI 2007/935 (amended by SI 2007/1271). The 2006 Act s 55 (in part) came into force in relation to England on 25 June 2007: SI 2007/1801. The 2006 Act ss 5 (in part), 77 (in part), 82, 84 (in part), 85 (in part), 100, 101, 103-107, 109 (in part), 110, 184 (in part), Schs 8 (in part), 10 (in part), 18 (in part) and, in relation to England only, ss 38 (in part), 55 (in part), 97-99, 102, 108, 167, 184 (in part), and Sch 18 (in part) came into force on 1 September 2007: SI 2007/1801. The 2006 Act s 5 (in part) came into force on 1 January 2008 and 1 April 2008: SI 2007/3074. The 2006 Act ss 156, 175, 184 (in part), Schs 17, 18 (in part) and, in relation to Wales, ss 1, 37 (in part), 39, 43-45, 47, 53, 166, and Sch 18 (in part) came into force on 30 June 2008: SI 2008/1429. The 2006 Act ss 4, 38, 40, 77 (in part), 154, 184 (in part), Schs 8 and 18 (in part), in relation to Wales, and, in relation to England, s 37, came into force on 1 September 2008: SI 2008/1429, SI 2008/1971. The 2006 Act s 55 came into force on 9 February 2009 in relation to Wales: SI 2009/49. The 2006 Act ss 4, 164, 184 (in part) and Sch 18 (in part) came into force on 1 September 2009: SI 2009/1027. The 2006 Act ss 169-171 came into force on 12 October 2009, and ss 89 (in part), 96 (in part), 184 (in part) and Sch 18 (in part) came into force on 1 January 2010: SI 2009/2545. In relation to Wales, the 2006 Act s 57 (in part), Sch 5 paras 3-5 came into force for certain purposes on 15 March 2010, and Sch 5 (so far as not already in force) and Sch 18 (in part) came into force on 2 April 2010: SI 2010/736. The remaining provisions come into force on a day or days to be appointed.

### ***Part 1 (ss 1-6) Education functions of local authorities***

Section 1 places a general duty on local education authorities to promote high standards and requires them to exercise their functions with a view to promoting the fulfilment by every child of his educational potential. Local education authorities are required to exercise their functions on the provision of schools in their area with a view to securing diversity and increasing opportunities for parental choice: s 2. Local education authorities in England are required, under s 3, to respond to parental representations in relation to the exercise of the provision of primary and secondary schools. Section 4 requires all local education authorities to make arrangements to enable them to establish, so far as it is possible, the identities of children in their area who are not receiving a suitable education, with regard to statutory guidance. Local education authorities in England are required under s 5 to appoint school improvement partners to each of the maintained schools, excluding maintained nursery schools, in their area, who will act on behalf of the local education authority, providing challenge and support to a school in order to help improve the attainment and outcomes of pupils. Local education authorities have a duty to promote the well-being of persons aged 13-19, and of persons aged up to 25 with learning difficulties, by securing access for them to sufficient educational and recreational leisure-time activities and facilities, so far as is reasonably practicable, by providing activities and facilities, assisting others to do so, or by making other arrangements to facilitate access, which can include the provision of transport, financial assistance or information, and must supply and keep up to date information regarding those leisure-time activities and facilities that are available locally: s 6, Sch 1.

## ***Part 2 (ss 7-32) Establishment, discontinuance or alteration of schools***

Section 7 provides that a local education authority in England may publish a notice inviting proposals, other than from local education authorities, for the establishment of a new foundation, voluntary, or foundation special school, or Academy. Provision is made in relation to such proposals: Sch 2. The circumstances in which local education authorities are permitted to publish proposals for a community school or community special school are set out in s 8, and in general such proposals may be published only where prescribed conditions are met and only, subject to certain conditions, with the consent of the Secretary of State. Before publishing a notice local education authorities in England must consult such persons as they consider appropriate, and in discharging this duty they must have regard to any guidance given by the Secretary of State and regulations may require local education authorities to take further steps to promote public awareness of the proposals brought forward: s 9. Section 10 provides for the publishing of proposals with the consent of the Secretary of State for a new community, foundation, community special or foundation special school by local education authorities in England and other persons ('proposers'). Provision is made for local education authorities to publish proposals to establish a new maintained nursery school or a new 16-19 foundation school or foundation special school and for proposers to publish proposals to establish a new foundation school, voluntary school or foundation special school which is a 16-19 school, or is to replace an independent school, and for a new foundation special school to replace a non-maintained special school: s 11. Under s 12 a new maintained school may be a member of a federation from the outset. Regulations may be made where a school is proposed to be situated in an area different from that of the local education authority who published a notice or, if the proposals are published outside a competition, different from that of the local education authority who it is proposed should maintain the school: s 13. By virtue of s 14, the power of a local education authority to establish and maintain a school within the area of another local education authority does not apply if the other local education authority is situated in Wales. Provision is made for the publication of statutory proposals where a local education authority or school governing body wish to close a maintained school in England, including maintained mainstream schools, special schools and nursery schools: s 15, Sch 2. Consultation is provided for under s 16 where the local education authority or the governing body propose to close a rural primary school or special school. Section 17 provides for the Secretary of State to direct a local education authority to discontinue a community or



foundation special school on a date specified in the direction if he considers it expedient to do so in the interests of the health, safety or welfare of pupils at a school, and requires a local education authority to discontinue a school on the specific date given and provides that there is no requirement to publish statutory proposals for the school's closure. Provision is made under ss 18, 19 that where a local education authority or the governing body of a maintained school propose to make a prescribed alteration to a maintained school, and the proposals are ones that these bodies respectively may make, they must publish statutory proposals to do so, and that regulations may prescribe the alterations to maintained schools that require the publication of statutory proposals. Section 20 provides that certain schools may only publish certain proposals with the consent of the school's existing trustees, and of anyone by whom the foundation governors are appointed. Regulations may make provision about the publication and determination of such proposals: s 21. Such regulations in relation to proposals by a governing body of a community or voluntary controlled school to change category to a foundation school, must provide, under s 22, for the proposals to be determined by the governing body, and not be referred to the adjudicator, subject to certain conditions, and similar provision is made in respect of proposals for a change of category from community special school to foundation special school. Regulations made in relation to the publication and determination of proposals must make provision in connection with the referral of certain proposals to the adjudicator in certain circumstances: s 23. Regulations may, under s 24, make provision in connection with the implementation of approved proposals for the alteration of schools, including arrangements under which the duty to implement the proposals may be removed, or the proposals modified. Section 25 provides for the governing bodies of certain foundation schools with foundations to publish proposals to remove the foundation or to reduce the proportion of governors appointed by the foundation, while s 26 provides for procedure, and s 27 for implementation of such proposals. The opening or closing of maintained schools, or the making of prescribed alterations to them is prohibited without the publication and determination of statutory proposals: s 28. Under s 29, school organisation committees are abolished. Section 30 introduces Sch 3, which provides for amendments to legislation and reflects the replacement of the school organisation committee as decision maker by the local education authority, while s 31 provides for transitional provision and s 32 for interpretation.

### ***Part 3 (ss 33-58) Further provisions about maintained schools***

Section 33 provides for the foundations of certain foundation and foundation special schools, and the charity trustees of those foundations, to have specified characteristics and gives the Secretary of State the power in certain circumstances to remove and appoints charity trustees. Provision is made under s 34 for the requirement of the governing body of foundation schools in England with a foundation which appoint the majority of governors to the school's governing body to establish a parent council. The definition of 'capital expenditure' is modified to ensure that it reflects modern accounting practice and that optimal procurement arrangements are available to voluntary aided schools. Section 36 introduces Sch 4 which makes provision in relation to the disposal and change of use of land by maintained schools. Head teachers at foundation and voluntary controlled schools with a religious character are enabled to be teachers who are appointed specifically to teach religious education in accordance with the tenets of the school's designated religion: s 37. By virtue of s 38, the governing body of a maintained school has the duty to (1) promote the well-being of pupils at the school when discharging their functions relating to the conduct of the school; (2) promote community cohesion when discharging their functions relating to the conduct of the school; (3) have regard to any relevant Children and Young People's Plan in exercising their functions in relation to the conduct of the school; and (4) in relation to England, have regard to any views expressed by parents of registered pupils. Section 39 provides for the prohibition on selection on the basis of a pupil's ability in any maintained school, subject to certain exceptions. The status of school admissions code of practice is strengthened under s 40. In relation to England, the functions and role of admission forums are extended: s 41. Local education authorities, in relation to

England, are required under s 42 to provide advice and assistance to parents of children living in the area of the authority to help them in the formulation of their preference on a school for their child. Section 43 makes provision in relation to the duty of community and voluntary controlled schools in England to comply with any decision made by their local authority to admit a child, if it is the school's admission authority. Interviewing as part of the admission process, subject to certain conditions, is prohibited in any maintained school: s 44. By virtue of s 45, foundation and voluntary aided schools, designated by order as having a religious character, are required to consult a named body or person, to be prescribed by regulations, about their proposed admission arrangements. Section 46 makes provision in relation to the restriction of the alteration of admission arrangements in maintained schools in England. Provision is made in relation to objections to admission arrangements for maintained schools to be referred to the relevant authority: s 47. Local education authorities are required under s 48 to notify the governing body of a community or voluntary controlled school that a decision has been made to admit a looked after child who has been permanently excluded from two or more schools, and on receipt the governing body has seven days to refer the matter to the adjudicator where the admission of the child would cause serious prejudice to the provision of efficient education, or the efficient use of resources. Section 49 provides that, in relation to England, where a local authority directs a governing body for which they are not the admission authority to admit a child, where the child has been refused admission to or excluded from every school within a reasonable travelling distance, the governing body can refer the matter to the adjudicator. Provision is made in relation England for local authorities to direct an admission authority to admit a looked after child to a specified school: ss 50, 51. By virtue of s 52, the National Assembly for Wales has the power to make regulations about the admission of children looked after by local authorities in Wales to maintained schools in Wales. Section 53 provides that where a school with partially selective admission arrangements, which it would not now be lawful to introduce, has reduced the proportion of intake selected, it may not subsequently increase that proportion. Provision is made under s 54 for additional forms of banding to assess children's ability when applying for a place at school. Section 55 provides for a sixth-form pupil attending a maintained school to be able to withdraw himself from collective worship and, in the case of a non sixth-form pupil, that a parent may request that the pupil be excused. Regulations may prescribe the circumstances under which charges can be made for singing and musical instrument tuition: s 56. Section 57 introduces Sch 5, which contains provisions relating to the duties and powers of local education authorities in relation to the financing of maintained schools and the role of schools forums. In relation to England, the requirement for the Secretary of State to issue a code of practice on relationships between local education authorities and schools maintained by them is removed: s 58.

#### ***Part 4 (ss 59-73) Schools causing concern: England***

Section 59 provides for definitions of 'maintained school' and 'eligible for intervention'. Provision is made under s 60 as to the legal procedure where local education authorities may issue formal warning notices to schools. A maintained school is eligible for intervention if, following an inspection Her Majesty's Chief Inspector of Education, Children's Services and Skills has given a notice that the school requires significant improvement and, where there is a further inspection, a school is only eligible for intervention if, following the inspection, the notice to the Secretary of State has not been superseded by either a report that the school no longer requires significant improvement or an additional notice to the Secretary of State that the school requires special measures: s 61. Under s 62, a maintained school is eligible for intervention if, following an inspection the Chief Inspector has given a notice that the school requires special measures and, where there is a further inspection, a school is only eligible for intervention if, following the inspection, the notice to the Secretary of State has not been superseded by either a report that the school no longer requires special measures. Sections 63-66 provide for local education authorities' powers in relation to maintained schools subject to intervention or special measures and ss 67-69 provide for the powers of the Secretary of State

in relation to maintained schools subject to intervention or special measures. Section 70 introduces Sch 6, which provides for various matters relating to Interim Executive Boards appointed by the local education authority or the Secretary of State, and s 71 introduces Sch 7, which makes provision in relation to measures that need to be taken by a local education authority following the receipt of an inspection report stating that a school requires special measures or significant improvement. Local education authorities are required to have regard to guidance issued by the Secretary of State in relation to their discretionary powers: s 72. Section 73 provides for interpretation.

### ***Part 5 (ss 74-75) Curriculum and entitlements***

Section 74 provides for two new entitlements to the key stage 4 curriculum for pupils aged between 14 and 16 and s 75 provides for two new entitlements for young people who are over compulsory school age but who are not yet 19 years old.

### ***Part 6 (ss 76-87) School travel and school food***

Section 76 places a general duty on local education authorities in England to assess the school travel needs of their area, and to promote the use of sustainable modes of travel. Provision is made under s 77 and Sch 8 in relation to local education authorities in England's duty relating to travel arrangements for children. Section 78, Sch 9 make provision in relation to school travel schemes made by local education authorities in England covering home to school travel arrangements for pupils of compulsory school age or below. Such schemes must be piloted in accordance with regulations made by the Secretary of State: s 79. Under s 80 the Secretary of State is required to prepare and publish an evaluation of schemes before 1 January 2012 and he has the power to provide by order that the new provisions will cease to have effect. Provision is made in relation to adults who benefit from transport arrangements made by local education authorities: s 81. Section 82 clarifies the defences available to parents facing a prosecution by a local education authority for their child's non-attendance at school. Greater responsibility is transferred from the Secretary of State to the Learning and Skills Council for England in relation to the provision of transport by local education authorities and their partners for 16-19 year olds: s 83. Under s 84 local education authorities are required to have regard to the religion or belief of parents in exercising their travel functions. Section 85 and Sch 10 make provision for consequential amendments. The powers to make regulations in connection with nutritional standards for school lunches are extended to cover all food and drink provided on the premises of maintained schools, and apply to food or drink provided by a local education authority or governing body of a school to registered pupils at any place other than the school: s 86. Under s 87, local education authorities and governing bodies no longer have a duty to charge for food and drink provided by them.

### ***Part 7 (ss 88-111) Discipline, behaviour and exclusion***

#### ***Chapter 1 (ss 88-96) School Discipline***

Section 88 defines the responsibilities of the governing body for establishing the principles shaping a school's behaviour policy and s 89 defines the responsibilities of the head teacher for establishing and maintaining a behaviour policy for the school that promotes self-discipline, respect for others and proper regard for authority. 'Disciplinary penalty' is defined as a penalty imposed on a pupil by any school at which education is provided for him, where his conduct falls below the standard which could reasonably be expected of him: s 90. Provision is made under s 91 for the conditions that make lawful the imposition of a disciplinary penalty on a pupil at any school at which education is provided for him. Section 92 specifies the conditions that make the detention of a pupil outside school sessions lawful. A member of staff is enabled

to use reasonable force to prevent a pupil from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at the school: s 93. By virtue of s 94, staff are protected against civil or criminal liability where a lawfully confiscated item is retained or disposed of. Section 95 provides for interpretation, and s 96 for consequential amendment.

### *Chapter 2 (ss 97-111) Parental responsibility and excluded pupils*

Section 97 provides for voluntary parenting contracts between schools and local education authorities and parents to be used in cases of misbehaviour where the pupil has not been excluded. Parenting orders can be applied for by schools and in cases where a pupil has seriously misbehaved but not been excluded: s 98. Further provision is made under s 99 in relation to parenting contracts and parenting orders. Section 100 imposes a duty for schools to provide suitable full-time education to temporarily excluded pupils. Local education authorities are required to provide permanently excluded pupils with suitable full-time education: s 101. Under s 102 the Secretary of State, and the National Assembly may make regulations specifying the circumstances in which maintained schools, Academies, city technology colleges and city colleges for the technology of the arts must arrange reintegration interviews with the parents of temporarily excluded pupils, and the procedures and time limits connected with such an interview. Section 103 provides that it is an offence for a parent to fail to ensure that when their child is excluded, that the excluded pupil is not present in a public place during normal school hours on a day which is one of the first five school days to which the exclusion relates and is specified. Provision is made as to the notice the parent will receive from the school when their child is excluded: s 104. By virtue of s 105, a penalty notice may be given to a parent who appears to be guilty of an offence of failing to ensure their excluded child is not present in a public place. Section 106 provides for the Secretary of State to make regulations about the administration of penalty notices. Police Community Support Officers will be able to issue fixed penalty notices to parents of excluded pupils found in a public place during the first five days of exclusion: s 107. By virtue of s 108 police can remove excluded pupils from a public place to a designated place. Section 109 makes provision in relation to defences to offences that may be committed by a parent whose child fails to regularly attend a school at which he is a registered pupil. Local education authorities may use receipts from penalty notices for any of their functions specified in regulations, but any sums not so used must be paid to the Secretary of State. Definitions are provided for under s 111.

## ***Part 8 (ss 112-159) Inspection and review of local authorities in England***

### *Chapter 1 (ss 112-121) The Office and the Chief Inspector*

Sections 112-121, Schs 11, 12 provide for the establishment and functions of the Office for Standards in Education, Children's Services and Skills and a new office of the Chief Inspector of Education, Children Services and Skills, Her Majesty's Inspectors of Education, Children's Services and Skills, the Children's Rights Director, and an annual report by the Chief Inspector to be provided for the Secretary of State.

### *Chapter 2 (ss 122) General Transfer of Functions*

Section 122 provides for the general transfer to the Chief Inspector all functions of the existing Her Majesty's Chief Inspector of Schools in England, including inspections of schools, the inspection and regulation of child minding, day care and nursery education, inspection of independent schools and inspection of teacher training provision.

### *Chapter 3 (ss 123-134) Inspection of further education and training etc*

Sections 123-133 provide for the inspection of further education colleges and other education and training providers, and for area inspections, which are concerned with the provision of education or training, in a specified area in England, for persons who are aged 15 or over but

under 19. The Adult Learning Inspectorate is abolished as all of its inspection functions will in future be performed by the Chief Inspector: s 134.

*Chapter 4 (ss 135-142) Inspection and review of local authorities in England*

Sections 135-142 make provision for the Chief Inspector to undertake inspections and annual reviews of the performance of local authorities' functions, and sets out which of those functions are within the Chief Inspector's remit for these purposes.

*Chapter 5 (ss 143-145) Inspection of CAFCASS functions*

Sections 143-145 provide for powers of the Chief Inspector and that it is a duty for the Chief Inspector to inspect the performance of the Children and Family Court Advisory and Support Service ('CAFCASS') and is required to produce a written report of any inspection and send copies to the Secretary of State and CAFCASS.

*Chapter 6 (ss 146-153) Further provision relating to the functions of Chief Inspector*

Section 146 makes provision for the Secretary of State and the Chief Inspector to make arrangements for the inspection of secure training centres. The Secretary of State has the power to make regulations requiring the Chief Inspector to inspect adoption and fostering functions of a local authority on such occasions or at such intervals as the regulations specify: s 147. Functions of the Commission for Social Care Inspection as to the registration of children's homes, residential family centres, fostering agencies, voluntary adoption agencies, and adoption support agencies, are to be transferred, under s 148, to the Chief Inspector. Section 149, Sch 13 provide for the interaction between the Chief Inspector and other authorities. Any person who is authorised to exercise a power of entry or inspection on behalf of the Chief Inspector must, if required to do so, produce evidence of his authority to exercise the power: s 150. For the purposes of the law of defamation, under s 151, a report made by the Chief Inspector is privileged unless shown to have been made with malice. By virtue of s 152, the Chief Inspector may combine the reports of inspections carried out under two or more of his inspection functions, and to produce them as a combined report. Section 153 enables information obtained in connection with one of the Chief Inspector's functions to be used in connection with any other of his functions.

*Chapter 7 (ss 154-159) Miscellaneous and supplementary*

Section 154 provides new elements covering community cohesion which must be covered by inspection reports for schools. The Secretary of State may make regulations requiring a local authority in England to pay a fee to the Office in respect of its relevant functions and the Chief Inspector may make a scheme setting the fee level for periods when no regulations made by the Secretary of State are in force: s 155. Under s 156, the Chief Inspector no longer has the duty to inspect and report on the carrying out of the functions of the National Assembly in respect of family proceedings. Section 157 introduces Sch 14 which provides for minor and consequential amendments, and s 158 introduces Sch 15 which provides for transitional provision, while s 159 provides for interpretation.

***Part 9 (ss 160-177) Miscellaneous***

Section 160 makes provision in relation to the Chief Inspector's power to investigate complaints made by parents about schools. Provision is made in relation to innovation orders made by the Secretary of State or National Assembly: s 161, Sch 16. Under s 162 the Secretary of State and National Assembly, subject to specified conditions, have the power to repeal references in primary and secondary legislation to the terms 'local education authority' and 'children's services authority'. Section 163 makes provision in relation to the advice on such matters relating to the admission of pupils to relevant schools that an adjudicator is required to provide on request by the Secretary of State. The Department for Education and Skills is enabled to collect individual information about children receiving education funded by the local education

authority otherwise than at a school: s 164. Members of staff, under s 165, have the power to use reasonable force in order to prevent a student at the institution from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at the institution. Section 166 provides for regulations that enable the governing bodies of maintained schools to make collaboration arrangements with further education bodies, and further education bodies to make collaboration arrangements with schools and with other further education bodies. Local authorities and governing bodies of maintained nursery schools must have regard to guidance issued by the Secretary of State about consultation with pupils on decisions affecting them: s167. Under s 168, the Secretary of State or the National Assembly may issue a direction or make an order if the governing bodies of maintained nursery schools are unreasonably exercising, or are in default with regard to, their functions. Sections 169-171 make provision in relation to the prohibition or restriction of unsuitable persons from taking part in the management of independent schools. Provision is made in relation to offences committed in connection with independent schools: s 172. By virtue of s 173, the governing bodies of community, foundation or voluntary schools, as well as maintained nursery schools, have a duty to designate a member of the school staff as the person responsible for co-ordinating provision for children with special educational needs at the school, and the Secretary of State has the power to make regulations requiring governing bodies to ensure the special educational needs co-ordinators have certain experience or qualifications or both, and to confer other functions on these governing bodies relating to special educational needs co-ordinators. Section 174 makes further provision about the circumstances in which regulations may prescribe time-limits within which local education authorities must take certain steps in connection with assessments and statements of special educational needs. Provision is made for minor amendments relating to schools in Wales: s 175, Sch 17. The Learning and Skills Council, under s 175, has a power to manage and fund particular types of support for learners aged between 10 and 15, for the purpose of encouraging them to undergo education and training. Section 177 enables university bodies who are landlords, on the acquisition of the freehold by, or the granting of an extended lease to, a tenant, to impose with the consent of the Secretary of State or the National Assembly, restrictive covenants on tenants for the purpose of reserving the relevant land for possible development by that body or a related university body.

### ***Part 10 (ss 178-191) General***

Sections 178-180 makes provision in relation to the powers and functions of the National Assembly. General provision is made under s 181 for orders and regulations, under s182 for Parliamentary control of orders and regulations, under s 183 for consequential and transitional provisions, s 184 and Sch 18 for repeals, s 185 for financial provisions, s 186 for abbreviations of Acts, s 187 for interpretation, ss 188, 189 for commencement, s 190 for extent, and s 191 for short title.

### ***Amendments, repeals and revocations***

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Local Government Act 1972 s 177(1A)(b); Local Government Act 1974 s 25(5)(a); Children Act 1989 ss 26ZA, 79R(4); Employment Act 1989 s 26; Higher Education Act 1992 s 85C; Education Act 1996 ss 13A, 14(3A), 14A, 436A, 507A, 507B, 508A-508F, 509AD, 537B, 550A, 550B, 444; Education Act 1997 ss 4, 5; School Standards and Framework Act 1998 ss 15(7), 23A, 23B, 24,

27, 28, 28A, 31, 47A(6), 58(4), 61, 88A, 89D, 90(6), (7), (10), 90A, 95A-97D, 99(1), 114A, 127(5), (6), Sch 4; Care Standards Act 2000 s 45(4); Learning and Skills Act 2000 ss 3A-3D, 11A, 52-72, 90, 151(2), Schs 6, 10 Pt 3; Education Act 2002 s 2(7), (8), 85, 85A, 159(3), 162A(4), 162B(8), 167A-167D, 168A-168C, 178(3); Anti-social Behaviour Act 2003 s 21(4), 22A; Courts Act 2003 s 58(6); Health and Social Care (Community Health and Standards) Act 2003 ss 77(3), 79(7), 80(5), 110, 112, 116(1); Children Act 2004 ss 24, 38; Education Act 2005 ss 1-4, 11A-11C, 64-67, 69(a), 73, Schs 1, 10, 11; Childcare Act 2006 ss 14, 31, 50(4), 61(4), 80, 81.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/STOP PRESS: FURTHER EDUCATION AND TRAINING ACT 2007

## **STOP PRESS:**

The Further Education and Training Act 2007 makes provision in relation to the Learning and Skills Council for England, institutions within the further education sector, industrial training levies, and for the formation of, and investment in, companies and charitable incorporated organisations by higher education corporations. The Act received the royal assent on 23 October 2007 and the following provisions came into force on that date: ss 9, 21, 26, 28, 31-34. The following provisions came into force on 23 December 2007: ss 6-8, 11-13, 17 (in part), 18 (in part), 22 (in relation to England), 23 (in relation to England), 27, 29 (in part), 30 (in part), Schs 1 (in part), 2 (SI 2007/3505, SI 2007/3565). The following provisions came into force on 31 January 2008: ss 2 (in part), 29 (in part), Sch 1 (in part) (SI 2007/3505). The following provisions came into force on 21 February 2008: ss 1, 3-5, 29 (in part), 30 (in part), Schs 1 (in part), 2 (in part) (SI 2008/313). The following provisions came into force on 2 March 2008: ss 24, 25, 29 (in part), 30 (in part), Schs 1 (in part), 2 (in part) (SI 2007/3505). The following provision came into force on 18 April 2008: s 17 (so far as not already in force) (SI 2007/3505). The following provisions came into force on 1 May 2008: ss 19 and 20 (SI 2007/3505). Section 2 (so far as not already in force) comes into force on 1 September 2008 (SI 2008/313). The remaining provisions come into force on a day or days to be appointed.

### ***Part 1 (ss 1-13) The Learning and Skills Council for England***

Section 1 reduces, from 12 to 10 members, the size of the Learning and Skills Council for England ('LSC'). The LSC is under a duty to establish a regional learning and skills council for each area of England specified by the Secretary of State: s 2. The local learning and skills councils are abolished by s 3. Section 4 amends the Learning and Skills Act 2000 s 24 to allow the Secretary of State to specify a body to formulate a strategy in relation to specified functions of the LSC for either the whole of England or part of it, and to require the Secretary of State to provide for the establishment of a body to formulate a strategy setting out how the functions of the LSC are to be carried out in Greater London. Under the 2007 Act s 5, the LSC's duty to establish a young people's learning committee and an adult learning committee is removed. Section 6 provides that the LSC, when performing its duty to secure the provision of facilities for education and training in relation to persons aged 16 to 19, and 19 years and over, must act with a view to encouraging diversity in education and training, and to increasing opportunities for individuals to exercise choice. The 2000 Act s 14 is amended by the 2007 Act s 7 to require the LSC to have regard to guidance from the Secretary of State concerning consultations with persons receiving or proposing to receive post-16 education or training, with employers or with other persons as may be specified in such guidance on the funding and provision of learning. Section 8 amends the 2000 Act s 15 to provide that the LSC must make and publish a plan for each academic year. The LSC can form any type of company with the consent of the Secretary of State: 2007 Act s 9. Section 10 amends the 2000 Act s 25 so that the Secretary of State may exercise the power to direct the LSC in relation to the establishment and dissolution of further education corporations. The powers of the LSC to design, develop and operate support services for persons and bodies exercising education and training functions are extended by the 2007 Act s 11. Section 12 allows the LSC to take part in arrangements for assisting persons to select, train for, obtain and retain employment. Section 13 deals with Northern Ireland.



### ***Part 2 (ss 14-23) Further education institutions***

Section 14 transfers to the LSC the power under the Further and Higher Education Act 1992 s 16 to incorporate further education institutions in England. The Secretary of State's power under s 27 to dissolve further education corporations in England is transferred to the LSC by the 2007 Act s 15. Section 16 amends the 1992 Act s 51 to reflect the transfer, from the Secretary of State to the LSC, of the power to establish and dissolve further education corporations. The Secretary of State's intervention powers are transferred to the LSC: 2007 Act s 17. Section 18 provides that Welsh ministers must prepare a statement of their policy with respect to the exercise of their intervention powers, keep the statement under review and, if they consider it appropriate, prepare a revised statement. The 1992 Act s 76 is amended by the 2007 Act s 19 to enable the Privy Council to make orders granting further education institutions in England the power to award only foundation degrees. The Secretary of State is required, within a specified time period, to lay before Parliament a report on the effect of the grant of powers to award foundations degrees: s 20. Section 21 amends the 1992 Act s 19 to clarify the power of further education corporations to form or invest in all types of company. The 2007 Act s 22 imposes a duty on the governing bodies of further education institutions in England to have regard to guidance from the Secretary of State, and for the governing bodies in Wales to have regard to guidance from Welsh Ministers, in relation to consultations with persons who are, or who are likely to become, students of the institution, or with employers in connection with decisions which will affect them. Section 23 amends the Education Act 2002 s 137 to provide that a person appointed as the principal of a further education institution in England before the commencement of s 137 is not exempt from the requirement that he must have achieved, or be working towards, a specified leadership qualification.

### ***Part 3 (ss 24, 25) Industrial training levies***

The 2007 Act s 24 amends the Industrial Training Act 1982 s 11 to allow support for levy proposals to be demonstrated by consulting more widely with employers. Industrial training boards are required by the 2007 Act s 25 to submit proposals for three-year levy orders to the Secretary of State, specifying up to three levy periods for each three-year period.

### ***Part 4 (ss 26-34) Miscellaneous and general***

Section 26 clarifies the power of higher education corporations to form or invest in companies, and provides that higher education corporations can form or become members of charitable organisations. The Government of Wales Act 2006 Sch 5 Pt I is amended by the 2007 Act s 27 to confer enhanced legislative competence on the National Assembly for Wales in specific areas. Section 28 provides that any power to make an order or regulations under the 2007 Act is exercisable by statutory instrument. Section 29 gives effect to Sch 1, which makes various amendments, and s 30 gives effect to the repeals made in Sch 2. Section 31 deals with interpretation, s 32 with commencement, s 33 with extent and s 34 with the short title.

### ***Amendments, repeals and revocations***

Subscribers should note that the list below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter up booklet. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Learning and Skills Act 2000 ss 1, 2, 14, 15, 18-24, Sch 2; Industrial Training Act 1982 s 11; Education

Reform Act 1988 s 124; Further and Higher Education Act 1992 ss 19, 51, 57, 76; Education Act 2002 ss 137, 209; Children Act 2004 s 18(3)(c).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/1. INTRODUCTION AND GENERAL FRAMEWORK/(1) THE LEGAL FRAMEWORK/(i) The Legislation/1. Outline of the legislative framework.

## **1. INTRODUCTION AND GENERAL FRAMEWORK**

### **(1) THE LEGAL FRAMEWORK**

#### **(i) The Legislation**

##### **1. Outline of the legislative framework.**

Education law is contained largely in statute<sup>1</sup>, and includes a significant element of secondary legislative provision. For many years, the principal statute was the Education Act 1944, which contained many of the key elements of the modern law of education. It set out the basic statutory system of education based upon the three progressive stages of primary, secondary and further education<sup>2</sup>. It also established the main duties in relation to the provision of education including: (1) the duty of local education authorities<sup>3</sup> to ensure that they contribute to the spiritual, moral, mental and physical development of the community by providing efficient primary and secondary education<sup>4</sup>, and to ensure that sufficient schools<sup>5</sup> are provided for their areas<sup>6</sup>; (2) the duty of the Secretary of State<sup>7</sup> and the local education authorities to adhere to the general principle that pupils are to be educated in accordance with the wishes of their parents<sup>8</sup>; and (3) the general duty of parents to ensure that their children<sup>9</sup> who are of compulsory school age<sup>10</sup> receive efficient full-time education<sup>11</sup>. It also contained the system for registration of independent schools<sup>12</sup>. The Education Act 1944 remained largely untouched by reform but in 1996 it was consolidated with much of the then-existing legislation relating to education<sup>13</sup> and, although most of its key elements survived the consolidation, the 1944 Act is now of historical importance only.

Today, the Education Act 1996<sup>14</sup>, together with the Education Act 1997, the Education (Schools) Act 1997 and the School Standards and Framework Act 1998, as amended and supplemented by the Education Act 2002<sup>15</sup> and the Education Act 2005, establish the current framework for the law governing the provision of nursery education for pre-compulsory school age children<sup>16</sup>, and primary and secondary education for children and young persons. In particular, provision is made in relation to school organisation<sup>17</sup>, governance, staffing and funding<sup>18</sup>, as well as admissions<sup>19</sup>, registration and school attendance<sup>20</sup>. The inspection regime introduced by the School Inspections Act 1996, and the provisions regarding intervention in maintained schools, are superseded by the Education Act 2005 (the relevant provisions of which have not yet been brought into force in Wales)<sup>21</sup>.

Provision is made in relation to pupils with special educational needs<sup>22</sup>, and the Special Educational Needs and Disability Rights Act 2001 has, among other things, amended the provisions of the Education Act 1996 relating to special educational needs and extended provisions of the Disability Discrimination Act 1995 to schools<sup>23</sup>.

The consolidation of the earlier legislation in 1996<sup>24</sup> did not affect the provisions on further and higher education<sup>25</sup> in the Education Reform Act 1988 and the Further and Higher Education Act 1992. In relation to further education and training, the Further and Higher Education Act 1992 established a framework for the funding and governance of institutions, including sixth form colleges. This framework has been substantially reformed by the Learning and Skills Act 2000, which established the Learning and Skills Council for England<sup>26</sup> and the National Council for Education and Training in Wales<sup>27</sup>, and introduced provisions relating to support services<sup>28</sup>. The Education Reform Act 1988 and the Further and Higher Education Act 1992 are the principal

enactments relating to higher education; they established a single framework for higher education, by removing many of the distinctions between universities, polytechnics and higher education colleges. These Acts also introduced a single funding structure<sup>29</sup>. The Higher Education Act 2004, amongst other things<sup>30</sup>, sets out a mechanism imposing conditions for the charging of tuition fees and, if certain requirements relating to 'fair access' are complied with<sup>31</sup>, for authorising fees of more than the basic amount<sup>32</sup>. Despite these reforms, many universities have retained distinct structures of governance, and parts of some of the original statutes relating to the oldest established universities remain in force<sup>33</sup>.

The Teaching and Higher Education Act 1998, the Education Act 2002 and the Education Act 2005 provide a statutory regime for the registration and qualification requirements for teachers<sup>34</sup>, their training and discipline<sup>35</sup>, including the establishment of the Training and Development Agency for Schools<sup>36</sup> and the General Teaching Council for England and the General Teaching Council for Wales<sup>37</sup>. Provision is made for teachers' pay and conditions<sup>38</sup>, and in relation to teachers' pensions<sup>39</sup>.

Increasingly, separate provision is being made in legislation to reflect the different education policies operating in England and in Wales<sup>40</sup>. In this title, where separate provisions exist for England and for Wales they have generally been set out separately but unless otherwise indicated the provisions set out apply to both England and Wales.

Whilst the domestic legislation outlined above provides the main framework for the law of education, there are also important rights and principles that derive from international and European law<sup>41</sup>.

1 As to those aspects of education law upon which the common law bears an influence see PARA 2 post.

2 See the Education Act 1944 s 7 (repealed). This has been re-enacted in the Education Act 1996 s 1(1) (see PARA 14 post). For the meaning of 'primary education' see PARA 16 post. For the meaning of 'secondary education' see PARA 17 post. For the meaning of 'further education' see PARA 18 post.

3 As to local education authorities see PARA 20 post.

4 See the Education Act 1944 s 7 (repealed). This has been re-enacted in the Education Act 1996 s 13(1) (as amended) (see PARA 21 post).

5 For the meaning of 'school' see PARA 81 post.

6 See the Education Act 1944 s 8 (repealed). This has been re-enacted in the Education Act 1996 s 14(1) (see PARA 26 post).

7 As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

8 See the Education Act 1944 s 76 (repealed). This has been re-enacted in the Education Act 1996 s 9 (as amended) (see PARA 13 post). As to the meaning of 'parent' see PARA 510 note 1 post.

9 For the meaning of 'child' see PARA 16 note 2 post. As to children see further CHILDREN AND YOUNG PERSONS.

10 As to the meaning of 'compulsory school age' see PARA 15 post.

11 See the Education Act 1944 s 36 (repealed). This has been re-enacted in the Education Act 1996 s 7 (as amended) (see PARA 510 post).

12 See the Education Act 1944 ss 70-75 (repealed). As to the regulation of independent schools see now the Education Act 2002 Pt 10 (ss 157-174) (amended in relation to England; prospectively amended in relation to Wales); and PARA 478 et seq post. As to independent schools generally see PARA 465 et seq post.

13 The consolidation was recommended by the Law Commission in its report entitled *Education Bill: School Inspection Bill: Report on the Consolidation of Certain Enactments Relating to Education* (Law Com no 240) (Cm 3251) (1996). In response to this, the Education Act 1996 and the School Inspections Act 1996 were passed.

The Education Act 1996 consolidated the Education Act 1944, the Education Act 1946, the Education Act (Miscellaneous Provisions) Act 1948, the Education Act (Miscellaneous Provisions) Act 1953, the Education Act 1959, the Education Act 1964, the Education Act 1968, the Education (Handicapped Children) Act 1970, the Education (Work Experience) Act 1973, the Education Act 1975, the Education (School-leaving Dates) Act 1976, the Education Act 1976, the Education Act 1979, the Education Act 1981, the Education (Grants and Awards) Act 1984, and many provisions of various other Acts including the Education Act 1980, the Education (No 2) Act 1986, the Education Reform Act 1988, the Further and Higher Education Act 1992 and the Education Act 1993.

The School Inspections Act 1996 consolidated most of the Education (Schools) Act 1992 and the whole of the Education Act 1993 Pt V (ss 204-228), with amendments to give effect to recommendations of the Law Commission.

14 The Education Act 1996 with the following Acts are known together as 'the Education Acts': the Education Act 1967, the Education Act 1973, the Education Act 1980, the Education (Fees and Awards) Act 1983, the Further Education Act 1985 (except ss 4, 5 (as amended)), the Education Act 1986, the Education (No 2) Act 1986, the Education Reform Act 1988, the Further and Higher Education Act 1992, the Education Act 1994, the Nursery Education and Grant-Maintained Schools Act 1996, the School Inspections Act 1996, the Education Act 1997, the Education (Schools) Act 1997, the Teaching and Higher Education Act 1998, the School Standards and Framework Act 1998, the Education Act 2002, the Higher Education Act 2004 and the Education Act 2005: see the Education Act 1996 s 578 (amended by the Education Act 1997 s 57(1), Sch 7 para 42; the Education (Schools) Act 1997 s 6(2); the Education (Student Loans) Act 1998 s 6(1); the Teaching and Higher Education Act 1998 s 44, Sch 3 para 15, Sch 4; the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 182; the Education Act 2002 s 215, Sch 21 para 56, Sch 22; and the Education Act 2005 ss 61, 123, Sch 9 para 9, Sch 19 Pt 1); the Education Act 2002 s 217(2); the Higher Education Act 2004 s 54(2); and the Education Act 2005 s 128(2). Several of these Acts (eg the Education Act 1967, the Nursery Education and Grant-Maintained Schools Act 1996 and the School Inspections Act 1996) are repealed in relation to England and prospectively repealed in relation to Wales; the amendments removing references to these Acts from the definition of 'the Education Acts' are not yet fully in force.

The Audit Commission Act 1998 s 36 is to be construed as one with the Education Act 1996, and references in any enactment to the Education Acts include a reference to the Audit Commission Act 1998 s 36: s 36(6). As to the reading of Acts together see *Canada Southern Rly Co v International Bridge Co* (1883) 8 App Cas 723 at 727, PC, per Lord Selborne LC; and STATUTES vol 44(1) (Reissue) PARA 1485.

15 Amongst other things, the Education Act 2002 has sought to lighten the touch of the legislative regime for successful schools: see Pt 1 (ss 1-13) (ss 1-5, 11-13 in force in relation to England only); and PARA 76 et seq post.

16 As to nursery education see PARAS 85-94 post. As to childcare see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1070 et seq.

17 As to school organisation see PARAS 118-202 post.

18 As to the government of maintained schools see PARA 203 et seq post. As to the staffing of maintained schools see PARAS 354-391 post. As to the funding of maintained schools see PARAS 302-311 post.

19 As to admission arrangements for maintained schools see PARAS 392-442 post.

20 As to registration and school attendance see PARAS 510-537 post.

21 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (3)(a). In relation to England, the appointed day is 1 September 2005 but no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq post. As to the inspection of schools in England under the Education Act 2005 see Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63); and PARA 1167 et seq post. In relation to Wales, see Pt 1 Chs 3-7 (ss 19-63) (not yet in force); and PARA 1226 et seq post. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

22 As to special educational needs see PARA 984 et seq post.

23 See DISCRIMINATION.

24 See note 13 supra.

25 For the meaning of 'higher education' see PARA 19 post. As to further education generally see PARA 579 et seq post; and as to higher education generally see PARA 646 et seq post.

26 As to the Learning and Skills Council for England see PARA 1072 et seq post.

- 27 As to the National Council for Education and Training in Wales see PARA 1113 et seq post.
- 28 As to support services for young people see PARAS 1149 et seq post.
- 29 As to the funding of higher education see PARA 733 et seq post.
- 30 The Higher Education Act 2004 also established a student complaints scheme (see PARA 1040 et seq post) while limiting the jurisdiction of visitors (see PARAS 657, 1040 post).
- 31 To this end, a Director of Fair Access to Higher Education has been created for England: see the Higher Education Act 2004 s 31; and PARA 760 post. As to the power to designate an authority for Wales see s 30; and PARA 763 post.
- 32 See PARA 760 et seq post.
- 33 See eg the Oxford and Cambridge Act 1571, the Oxford University Act 1854, the Cambridge University Act 1856, the Oxford University Act 1857, the Oxford University Act 1860, the Oxford University Act 1862, the Oxford University, Vinerian Foundation, Act 1865, the Universities Tests Act 1871, the College Charter Act 1871, the Universities of Oxford and Cambridge Act 1877, and the Universities of Oxford and Cambridge Act 1923.
- 34 See PARA 769 et seq post.
- 35 See PARA 784 et seq post.
- 36 The Training and Development Agency for Schools was renamed from the Teacher Training Agency to reflect its extended role in relation to training and development for the whole school workforce: see PARA 784 et seq post.
- 37 As to the General Teaching Council for England see PARA 809 et seq post; and as to the General Teaching Council for Wales see PARA 834 et seq post.
- 38 See the Education Act 2002 ss 119-130 (which repealed the School Teachers' Pay and Conditions Act 1991 and re-enacted the provisions with little change); and PARA 861 et seq post.
- 39 See the Elementary School Teachers (Superannuation) Act 1898; the Elementary School Teachers (Superannuation) (Jersey) Act 1900; the Elementary School Teachers (Superannuation) Act 1912; the Superannuation Act 1972; and PARA 867 et seq post.
- 40 See eg the Education Act 2002 Pt 6 (ss 76-96) (as amended) (the curriculum in England) (see PARA 913 et seq post), Pt 7 (ss 97-118) (as amended) (the curriculum in Wales) (see PARA 926 et seq post); and the Education Act 2005 Pt 1 Chs 1-2 (ss 1-18) (school inspectors and school inspections: England) (see PARA 1167 et seq post), Pt 1 Chs 3-4 (ss 19-43) (not yet in force) (school inspectors and school inspections: Wales) (see PARA 1226 et seq post).
- 41 See PARAS 3-13 post.

## **UPDATE**

### **1 Outline of the legislative framework**

TEXT AND NOTES--See also Education and Skills Act 2008 (partly in force: SI 2008/3077, SI 2009/387) which makes provision about education and training.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 14--Repeal of School Inspections Act 1996 also in force in relation to Wales: SI 2006/1338. Also included in 'the Education Acts' are Education and Inspections Act 2006, Learner Travel (Wales) Measure 2008, and Apprenticeships, Skills, Children and Learning Act 2009: Education Act 1996 s 578 (amended by Education and Inspections Act 2006 s 191(2); Learner Travel (Wales) Measure 2008 s 29(2); and Apprenticeships, Skills, Children and Learning Act 2009 s 270).



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## **(ii) The Common Law**

### **2. Common law.**

The law relating to education is substantially statutory<sup>1</sup>, but the common law still bears upon some areas of educational practice<sup>2</sup>, notably the common law duty of care owed by local education authorities and their employees in relation to the care and supervision of pupils<sup>3</sup>. In particular, the standard of care expected of a teacher in supervising pupils at school and protecting them from harm has been extensively considered by the courts<sup>4</sup>. Judicial consideration has also been given to the extent of a teacher's disciplinary authority under statute<sup>5</sup>, including the degree to which a teacher may legally detain<sup>6</sup> or restrain a pupil, or administer corporal punishment<sup>7</sup>. The question of vicarious liability (including liability for intentional assaults) has received detailed consideration<sup>8</sup>.

The definition of statutory duties and powers by the courts has become increasingly important as a very wide range of such powers and duties underscores educational provision and administration. There have been successful attempts to extend common law negligence to the performance of the statutory duties of teachers, educational psychologists and other professionals employed in the sphere of education<sup>9</sup>.

The extent to which decisions made within the education system have a public law dimension has also been considered by the courts. As such decisions have important consequences for parents, children and other interested parties, education has become one of the most active areas of public law, with numerous judicial review judgments, accumulating into a large body of case law<sup>10</sup>. Most such decisions do fall within the realm of public law, but there are exceptions. For example, decisions of independent schools, being bodies whose authority is derived solely from contract or consent of the parties, are not subject to judicial review<sup>11</sup> (save in very limited circumstances<sup>12</sup>).

1 For an outline of the legislative framework see PARA 1 ante.

2 Many cases are in amplification of particular statutory provisions and, accordingly, are cited in the paragraphs containing the relevant legislation.

3 See PARAS 872-873 post. Certain statutory duties imposed on teachers are also discussed in PARAS 872-873 post.

4 See eg the cases relating to teachers' duties cited in PARAS 872-873 post.

5 As to the statutory responsibility of the governing body and head teacher for discipline and the statutory power of the head teacher to exclude pupils see PARAS 559, 562 post.

6 See eg the cases considering the legality of detention cited in PARA 578 post.

7 See eg the cases on the legality of corporal punishment cited in PARAS 3, 577 post.

8 See PARA 472 post.

9 This has most notably been considered in the context of the identification of children with special educational needs and the provision of suitable education for them (see PARA 1025 post), but could equally extend to other areas of education (see PARA 39 post).



For cases considering various aspects of the provision of education for children with special educational needs see [PARA 984 et seq post](#).

10 As to judicial review generally see **JUDICIAL REVIEW** vol 61 (2010) [PARA 601 et seq](#).

11 See [PARA 495 post](#).

12 For example, it has been held that the decisions of city technology colleges are potentially subject to judicial review (see [PARA 496 post](#)). See also decisions relating to a pupil whose attendance at an independent school depends on the assisted places scheme (now repealed) (see [PARA 475 post](#)).

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### **(iii) Rights and Freedoms**

#### **3. Convention for the Protection of Human Rights and Fundamental Freedoms.**

The Convention for the Protection of Human Rights and Fundamental Freedoms<sup>1</sup> which guarantees basic rights and freedoms is given effect in the United Kingdom by the Human Rights Act 1998<sup>2</sup>.

Under the First Protocol to the Convention<sup>3</sup>, no one may be denied the right to education<sup>4</sup>. However, the right to education calls for regulation by the state, and such regulation will vary in time and place according to particular circumstances<sup>5</sup>. In the exercise of any functions which it assumes in relation to education and to teaching, the state must respect the right of parents to ensure that such education and teaching conforms with their own religious and philosophical convictions<sup>6</sup>. The United Kingdom only accepts this right in so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure<sup>7</sup>.

The Convention contains other rights and freedoms which may be capable of application in relation to education. The prohibition of torture or inhuman or degrading treatment or punishment<sup>8</sup> has been held not to outlaw the use of corporal punishment<sup>9</sup>. The right to a fair and public hearing in the determination of civil rights and obligations<sup>10</sup> has been held inapplicable to certain decisions relating to education, on the basis that no civil right is in issue<sup>11</sup>. The right to respect for a person's private and family life, his home and his correspondence<sup>12</sup> may also be applicable to certain areas of educational decision-making and practice, but has not been successfully invoked in cases concerning corporal punishment<sup>13</sup>, compulsory sex education<sup>14</sup>, choice of school<sup>15</sup>, exclusion from school<sup>16</sup> or teaching in the language of a parent's choice<sup>17</sup>. Since religious education is part of the curriculum of maintained schools<sup>18</sup>, the right to freedom of thought, conscience and religion<sup>19</sup> may be relevant<sup>20</sup>. The right to freedom of expression is also of relevance in relation to education<sup>21</sup>.

The rights and fundamental freedoms enshrined in the Convention must be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status<sup>22</sup>.

1 The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969). See generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.

2 See the Human Rights Act 1998 s 1(2). See also CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 The Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221).

4 Ibid art 2. See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 166. Although the right to education in art 2 is positive, its negative formulation indicates that the contracting states did not see themselves as required to establish at their own expense, or to subsidise, education of any particular type or at any particular level: *Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252, ECtHR. However, in domestic law, there is no doubt that, at least in theory, the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 2 applies to tertiary education because education is a continuing process and any

divisions between primary, secondary, and tertiary are, in a sense, artificial: *R (on the application of Douglas) v North Tyneside Metropolitan Borough Council* [2003] EWCA Civ 1847, [2004] 1 All ER 709, [2004] 1 WLR 2363.

The right to education includes the right to draw the full benefit from the education received: *Belgian Linguistics Case (No 2)* supra. However, the European Commission on Human Rights has commented that it would not be contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 2 for pupils to be suspended or expelled, provided that the national regulations did not prevent them from enrolling in another establishment to pursue their studies: Application 14524/89 *Yanasik v Turkey* 74 DR 14 (1993) at 27, EComHR. See also *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [9], [2002] ELR 556 at [9]. In domestic law, the unlawful exclusion of a pupil from school may give rise to a claim for damages for denial of a Convention right: *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382, [2004] QB 1231, [2004] 4 All ER 628 (child's indefinite exclusion from school, without due regard to the statutory safeguards and without provision of some adequate or appropriate substitute education, was an unequivocal denial of his right to education under the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 2).

The general right to education has been held to consist of separate rights (none of which is absolute) which include: (1) right of access to such educational establishments as exist; (2) a right to effective education; and (3) a right to official recognition of academic qualifications: *R (on the application of Holub) v Secretary of State for the Home Department* [2001] 1 WLR 1359 at 1367, sub nom *Holub v Secretary of State for the Home Department* [2001] ELR 401 at 408-409, CA, per Tuckey LJ. Effective education need not be the most effective possible but must reach a minimum standard: *R (on the application of Holub) v Secretary of State for the Home Department* supra. The right to education does not guarantee the right to an assisted place at an independent school where public education is available: *R v Secretary of State for Education and Employment, ex p Begbie* [2000] 1 WLR 1115, [2000] ELR 445, CA. See also *Valsamis v Greece* [1998] ELR 430, ECtHR.

5 *Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252 at 281, ECtHR. Provided such regulation does not injure the substance of the right to education and is 'reasonable', it will not breach the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 2: *Belgian Linguistics Case (No 2)* supra; *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293 at 307, ECtHR. This carries the necessary corollary that any question as to whether there has been a violation of the right has to be answered initially in terms of the applicable domestic law: *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382 at [45], [2004] QB 1231 at [45], [2004] 4 All ER 628 at [45] per Sedley LJ. Where the breach of domestic law is sufficiently serious, the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 2 will be contravened regardless of the quality of provision put in place by the school or by the local education authority (see the Education Act 1996 s 19; and PARA 457 post): *A v Head Teacher and Governors of Lord Grey School* supra.

6 Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 2. The views of parents of children with special educational needs should be taken into account, but such children have no absolute right to parity of access with other pupils: Application 14135/88 *PD and LD v United Kingdom* 62 DR 292 (1989), EComHR; Application 14688/89 *Simpson v United Kingdom* 64 DR 188 (1989), EComHR; Application 13887/88 *Graeme v United Kingdom* 64 DR 158 (1990), EComHR. There is no requirement to provide special facilities to accommodate a particular conviction, although the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol art 2 may affect the use of existing facilities: Application 25212/94 *Klerks v Netherlands* 82 DR 129 (1995), EComHR. See also Application 10476/83 *W and KL v Sweden* 45 DR 143 (1983), EComHR; Application 14688/89 *Simpson v United Kingdom* supra; Application 25959/94 *Cohen v United Kingdom* (1996) 21 EHRR CD 104; *L v Hereford and Worcester County Council and Hughes* [2000] ELR 375. The duty to uphold religious and philosophical convictions does not extend to upholding linguistic preferences (*Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252, ECtHR) or to the exemption of pupils from sex education (*Kjeldsen, Busk Masden and Pedersen* (1976) 1 EHRR 711, ECtHR). Philosophical convictions can include the conviction that corporal punishment should not be used with respect to a child: see *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293, ECtHR; and PARA 577 post.

7 See the Human Rights Act 1998 s 15, Sch 3 Pt II. This mirrors the conditions attached to the duty under the Education Act 1996 to educate pupils in accordance with the wishes of their parents: see s 9 (as amended); and PARA 13 post.

8 See the Convention for the Protection of Human Rights and Fundamental Freedoms art 3. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 124.

9 If provided the corporal punishment is administered within strict limitations concerned with factors such as the nature and context of the punishment, the manner and method of its execution, its duration, its physical and mental effects, and the pupil's age, sex and state of health: see *Costello-Roberts v United Kingdom* [1994] ELR 1, ECtHR; *Tyrer v United Kingdom* (1978) 2 EHRR 1, ECtHR.

10 See the Convention for the Protection of Human Rights and Fundamental Freedoms art 6. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 134-148.

11 See Application 14688/89 *Simpson v United Kingdom* 64 DR 188 (1989), EComHR. See also *R v Richmond upon Thames London Borough Council, ex p JC* [2001] ELR 21, CA; *Hanuman v United Kingdom* [2000] ELR 685, ECtHR. Neither admission appeal panels nor exclusion appeal panels were considered to be subject to the Convention for the Protection of Human Rights and Fundamental Freedoms art 6 in *R (on the application of B) v Head Teacher of Alperton Community School, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of C) v Governing Body of Cardinal Newman High School* [2001] EWHC Admin 229, [2001] ELR 359. However, on appeal, sub nom *R (on the application of S) v Brent London Borough Council, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693, [2002] ELR 556, it was considered tenable to assume (at [30]) that domestic human rights law would regard permanent exclusion (without good reason) as breach of a civil right for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms art 6. See further PARA 567 post.

12 See the Convention for the Protection of Human Rights and Fundamental Freedoms art 8. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 149-155.

13 *Costello-Roberts v United Kingdom* [1994] ELR 1, ECtHR.

14 *Kjeldsen, Busk Masden and Pedersen v Denmark* (1976) 1 EHRR 711, ECtHR.

15 *R v Richmond upon Thames London Borough Council, ex p JC* [2001] ELR 21, CA.

16 *R (on the application of B) v Head Teacher of Alperton Community School, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of C) v Governing Body of Cardinal Newman High School* [2001] EWHC Admin 229, [2001] ELR 359, where it was argued that the exclusion of a child from a mainstream school gave rise to a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms art 8, as the child was deprived of the right to develop a personality in conjunction with others. However, the court did not recognise the existence of such a right in the field of education, and held that a child was not denied the opportunity to develop his personality in conjunction with others simply because he was not in a mainstream school. The point was not pursued on appeal sub nom *R (on the application of S) v Brent London Borough Council, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693, [2002] ELR 556.

17 See *Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252, ECtHR.

18 See *Valsamis v Greece* [1998] ELR 430, ECtHR. If a court's determination of any question arising under the Human Rights Act 1998 might affect the exercise by a religious organisation (itself or its members collectively) of the right to freedom of thought, conscience and religion, the court must have particular regard to the importance of that right: s 13(1). For these purposes, 'court' includes a tribunal: s 13(2). As to maintained schools see PARA 94 et seq post.

19 See the Convention for the Protection of Human Rights and Fundamental Freedoms art 9; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 156-157.

20 As to the court's role in identifying a religious belief calling for protection under ibid art 9 see *R (on the application of Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2 AC 246, [2005] 2 All ER 1 (cited in PARA 577 note 9 post). Where a school policy potentially conflicts with a pupil's right to manifest his religion or beliefs, the school must consider firstly whether the pupil has a right under the Convention for the Protection of Human Rights and Fundamental Freedoms art 9(1), and then must consider whether interference with that right is justified under art 9(2): *R (on the application of SB) v Governors of Denbigh High School* [2005] EWCA Civ 199, [2005] 2 All ER 396, [2005] 1 FCR 530 (compliance with school uniform code). A local education authority must take into account the religious convictions of parents when formulating its admissions policy (see PARA 396 post): *R (on the application of K) v Newham London Borough Council* [2002] EWHC 405 (Admin), (2002) Times, 28 February.

21 See the Convention for the Protection of Human Rights and Fundamental Freedoms art 10; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 158-159. See Application 8010/77 *X v United Kingdom* 16 DR 101 (1979), EComHR, where a teacher forbidden from wearing religious and anti-abortion stickers to work failed in arguing that his rights under the Convention for the Protection of Human Rights and Fundamental Freedoms art 10 had been violated, and it was held that the school was justified in its ban in view of the need for non-denominational schools to have regard to parents' rights to have their religious and philosophical convictions upheld. See also *Vogt v Germany* [1996] ELR 232, ECtHR.

22 See the Convention for the Protection of Human Rights and Fundamental Freedoms art 14. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 164. Decisions on art 14 arising in the context of

education include: *Belgian Linguistics Case (No 2)* (1968) 1 EHRR 252, ECtHR; Application 7782/77 *X v United Kingdom* 14 DR 179 (1978), EComHR; Application 23419/94 *Verein Gemeinsam Lernen v Austria* 82 DR 41 (1995), EComHR.

## **UPDATE**

### **3 Convention for the Protection of Human Rights and Fundamental Freedoms**

NOTE 4--*A v Head Teacher* reversed, at [2006] UKHL 14, [2006] 2 AC 363 (if suitable and alternative arrangements are available to a pupil but the parent's decide not to use them, neither the school or the education authority act inconsistently with art 2).

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#### **4. Development of quality education under European Community law.**

The European Community must contribute to the development of quality education by encouraging co-operation between member states and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the member states for the content of teaching and the organisation of education systems and their cultural and linguistic diversity<sup>1</sup>. European Community action must be aimed at: (1) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the member states; (2) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study; (3) promoting co-operation between educational establishments; (4) developing exchanges of information and experience on issues common to the education systems of the member states; (5) encouraging the development of youth exchanges and of exchanges of socio-educational instructors; and (6) encouraging the development of distance education<sup>2</sup>. The European Community and the member states must foster co-operation with other countries and the competent international organisations in the field of education, in particular the Council of Europe<sup>3</sup>.

The European Community must implement a vocational training policy which supports and supplements the action of the member states, while fully respecting the responsibility of the member states for the content and organisation of vocational training<sup>4</sup>. European Community action must aim to: (a) facilitate adaptation to industrial changes, in particular through vocational training and retraining; (b) improve initial and continuing vocational training in order to facilitate vocational integration and re-integration into the labour market; (c) facilitate access to vocational training and encourage mobility of instructors and trainees and, in particular, of young people; (d) stimulate co-operation on training between educational or training establishments and firms; and (e) develop exchanges of information and experience on issues common to the training systems of the member states<sup>5</sup>. The European Community and the member states must foster co-operation with other countries and the competent international organisations in the sphere of vocational training<sup>6</sup>.

There are other provisions which have application to education. A person exercising the right under European Community law to freedom of movement for workers must have access to training in vocational schools and retraining centres, and the resident children of such a person have a right to be admitted to the host state's general educational and vocational training courses, under the same conditions as nationals<sup>7</sup>. Under the Charter of Fundamental Rights of the European Union, everyone has the right to education and the right of access to vocational and continuing training<sup>8</sup>. This includes the possibility to receive free compulsory education<sup>9</sup>. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions must be respected in accordance with the national laws governing the exercise of that freedom and right<sup>10</sup>.

1 Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 149(1) (formerly art 126; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ).

In order to contribute to the achievement of the objectives referred to in the EC Treaty art 149 (as renumbered), the Council of Europe: (1) acting in accordance with the procedure referred to in art 251 (formerly art 189b; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC)

646, ECJ), after consulting the Economic and Social Committee and the Committee of the Regions, must adopt incentive measures, excluding any harmonisation of the laws and regulations of the member states; and (2) acting by a qualified majority on a proposal from the European Commission, may adopt recommendations: EC Treaty art 149(4) (as so renumbered). As to the Council of Europe see INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 534.

2 Ibid art 149(2) (as renumbered: see note 1 supra).

3 Ibid art 149(3) (as renumbered: see note 1 supra).

4 Ibid art 150(1) (formerly art 127; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ). The Council, acting in accordance with the procedure referred to in the EC Treaty art 251 (as renumbered: see note 1 supra) and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt measures to contribute to the achievement of the objectives referred to in art 150 (as renumbered), excluding any harmonisation of the laws and regulations of the member states: art 150(4) (as so renumbered).

5 Ibid art 150(2) (as renumbered: see note 4 supra).

6 Ibid art 150(3) (as renumbered: see note 4 supra).

7 See EC Council Regulation 1612/68 (OJ L257, 19.10.68, p 2) on freedom of movement for workers within the Community arts 7, 12.

8 European Union Charter of Fundamental Rights (OJ C364, 18.12.2000, p 1) art 14(1).

9 Ibid art 14(2).

10 Ibid art 14(3).

## UPDATE

### 4 Development of quality education under European Community law

NOTE 2--See Cases C-11/06, C-12/06 *Morgan v Bezirksregierung Köln* [2009] 1 CMLR 1, ECJ (condition of grant that required students to have attended education or training course for at least one year in home member state and to continue that same education or training in another member state was liable to discourage students pursuing in another members state different course of education or training).

NOTE 7--A national law that precludes tax relief on the payment of school fees to schools in other member states only is contrary to the right to freedom of movement under EC law: Cases C-76/05 *Schwarz v Finanzamt Bergisch Gladbach*; C-318/05 *EC Commission v Germany* [2008] All ER (EC) 556, ECJ.

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## **5. Rights under international treaties.**

There are various international treaties which are of relevance to education. These include the United Nations' Universal Declaration of Human Rights<sup>1</sup>, the United Nations' Convention on the Rights of the Child<sup>2</sup>, the United Nations' International Covenant on Economic, Social and Political Rights<sup>3</sup> and the Council of Europe's European Social Charter<sup>4</sup>.

Under the Universal Declaration of Human Rights, everyone has the right to education<sup>5</sup>, and education must be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms<sup>6</sup>. It must promote understanding, tolerance and friendship among all nations and racial or religious groups, and it must further the activities of the United Nations for the maintenance of peace<sup>7</sup>. Parents have a right to choose the kind of education that is given to their children<sup>8</sup>.

Under the Convention on the Rights of the Child, the right of the child to education is recognised, and with a view to achieving this right progressively and on the basis of equal opportunity, states must: (1) make primary education compulsory and available to all; (2) encourage the development of different forms of secondary education (including general and vocational education), make them available and accessible to every child, and take appropriate measures such as introducing free education and offering financial assistance in case of need; (3) make higher education accessible to all on the basis of capacity by every appropriate means; (4) make educational and vocational guidance available and accessible to all children; and (5) take measures to encourage regular attendance at schools and the reduction of drop-out rates<sup>9</sup>. The education of the child must be directed towards: (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, for his or her own cultural identity, language and values, for the national values of the country in which the child is living and of the country from which he or she may originate, and for civilisations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples and ethnic, national and religious groups and persons of indigenous origin; and (e) the development of respect for the natural environment<sup>10</sup>.

The International Covenant on Economic, Social and Political Rights recognises the right of everyone to education<sup>11</sup>. The parties to the Covenant agree that education must be directed to the full development of the human personality and the sense of its dignity, and must strengthen the respect for human rights and fundamental freedoms<sup>12</sup>. They further agree that education must enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace<sup>13</sup>. With a view to achieving the full realisation of that right: (i) primary education must be compulsory and available free to all; (ii) secondary education in its different forms, including technical and vocational secondary education, must be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (iii) higher education must be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (iv) fundamental education must be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; and (v) the



development of a system of schools at all levels must be actively pursued, an adequate fellowship system must be established and the material conditions of teaching staff must be continuously improved<sup>14</sup>.

The European Social Charter provides for the right to protection against poverty and social exclusion<sup>15</sup>. With a view to ensuring the effective exercise of this right, the parties, being members of the Council of Europe, undertake: (A) to take measures within the framework of an overall and co-ordinated approach to promote effective access to employment, housing, training, education, culture, and social and medical assistance for persons who live or risk living in a situation of social exclusion or poverty, as well as their families; and (B) to review these measures with a view to their adaptation if necessary<sup>16</sup>.

1    I.e. the Universal Declaration of Human Rights (Paris, 10 December 1948; UN 2 (1949); Cmd 7662): see the text and notes 5-8 *infra*.

2    I.e. the Convention on the Rights of the Child (20 November 1989; TS 44 (1992); Cm 1976): see the text and notes 9-10 *infra*.

3    I.e. the International Covenant on Economic, Social and Cultural Rights 1966 (16 December 1966; UN TS 993, p 3): see the text and notes 11-14 *infra*.

4    I.e. the European Social Charter (Strasbourg, 3 May 1996; ETS 163): see the text to note 15 *infra*.

5    Universal Declaration of Human Rights art 26(1). The Universal Declaration of Human Rights also provides that: (1) education must be free, at least in the elementary and fundamental stages; (2) elementary education must be compulsory; (3) technical and professional education must be made generally available; and (4) higher education must be accessible to all on the basis of merit: art 26(1).

6    Ibid art 26(2).

7    Ibid art 26(2).

8    Ibid art 26(3).

9    Convention on the Rights of the Child art 28(1). As to the administration of discipline see art 28(2). As to the promotion of international co-operation see art 28(3).

10   Ibid art 29(1). No part of art 29 or art 28 (see the text and note 9 *supra*) may be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set out in art 29(1) and to the requirements that the education given in such institutions must conform to such minimum standards as may be laid down by the state: art 29(2).

11   International Covenant on Economic, Social and Political Rights art 13(1).

12   Ibid art 13(1).

13   Ibid art 13(1).

14   Ibid art 13(2). Universal free and compulsory primary education is to be progressively implemented if not currently available: see art 14.

The parties undertake to have respect for the liberty of parents and, where applicable, legal guardians to choose for their children schools other than those established by public authorities, which conform to such minimum educational standards as may be laid down or approved by the state, and to ensure the religious and moral education of their children in conformity with their own convictions: see art 13(3).

No part of art 13 is to be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set out in art 13(1) (see the text and notes 11-13 *supra*) and to the requirement that the education given in such institutions must conform to such minimum standards as may be laid down by the state: art 13(4).

15   I.e. the European Social Charter art 30. The Charter also provides for a right to vocational guidance (art 9) and training (art 10), which is to be without discrimination on the grounds of sex (art 20). All rights guaranteed by the Charter are to be enjoyed without discrimination on any ground (art E). There is also a programme to encourage co-operation between member states to combat social exclusion which pays particular attention to

relevant policy developments on education (amongst other things): see European Parliament and EC Council Decision 50/2002 (OJ L10, 12.1.2002, p 1).

16 European Social Charter art 30.

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## **6. Facilities for education to be provided without sex discrimination.**

It is unlawful, in relation to certain educational establishments, for a responsible body to discriminate<sup>1</sup> against a woman<sup>2</sup>: (1) in the terms on which it offers to admit her to the establishment as a pupil<sup>3</sup>; or (2) by refusing or deliberately omitting to accept an application for her admission to the establishment as a pupil<sup>4</sup>; or (3) where she is a pupil of the establishment, in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them<sup>5</sup>, or by excluding her from the establishment or subjecting her to any other detriment<sup>6</sup>. Where the educational establishment is maintained by a local education authority<sup>7</sup>, the responsible body is the local education authority or governing body, according to which of them has the function in question<sup>8</sup>. The proprietor<sup>9</sup> is the responsible body in relation to educational establishments which are independent schools<sup>10</sup> not being special schools, and special schools not maintained by a local education authority<sup>11</sup>. The governing body is the responsible body in relation to educational establishments which are institutions within the further education sector<sup>12</sup>, universities<sup>13</sup>, institutions (other than universities) within the higher education sector<sup>14</sup> and other establishments<sup>15</sup> providing full-time or part-time education, being designated<sup>16</sup> establishments<sup>17</sup>.

It is unlawful for a local education authority, in carrying out such of its functions under the Education Acts<sup>18</sup> as do not fall under the above provisions<sup>19</sup>, to do any act which constitutes sex discrimination<sup>20</sup>. It is also unlawful for the Learning and Skills Council for England<sup>21</sup>, the National Council for Education and Training for Wales<sup>22</sup>, the Higher Education Funding Council for England or the Higher Education Funding Council for Wales<sup>23</sup> in carrying out their functions under the Education Acts and the Learning and Skills Act 2000 to do any act which constitutes sex discrimination<sup>24</sup>. It is similarly unlawful for the Training and Development Agency for Schools<sup>25</sup> in carrying out its functions under any enactment to do any act which constitutes sex discrimination<sup>26</sup>.

In addition, there is a general duty on local education authorities and other educational bodies in the public sector to secure that facilities provided for education, and any ancillary benefits or services, are provided without sex discrimination<sup>27</sup>. The Learning and Skills Council for England and the National Council for Education and Training for Wales are under a general duty to secure that facilities for education, training and organised leisure-time occupation connected with such education or training, and any ancillary benefits or services, are provided without sex discrimination<sup>28</sup>.

The provisions relating to the prevention of sex discrimination in education<sup>29</sup> do not apply to any course in physical education which is a further education course<sup>30</sup> or a higher education course<sup>31</sup>. There is an exemption for discrimination in connection with certain educational appointments<sup>32</sup>, and in relation to educational charities<sup>33</sup>.

1 For these purposes, references to discrimination refer to any discrimination falling within the Sex Discrimination Act 1975 s 1 (as substituted), s 2, s 2A (as added), s 3 (as substituted) or s 4 (as amended); and related expressions are to be construed accordingly: see s 5(1)(a); and DISCRIMINATION vol 13 (2007 Reissue) PARA 344 et seq.

2 'Woman' includes a female of any age: *ibid* ss 5(2), 82(1). The provisions of s 1 (direct and indirect discrimination against women: see DISCRIMINATION vol 13 (2007 Reissue) PARA 344 et seq), Pt II (ss 6-20A) (as amended) (sex discrimination against women in the employment field: see DISCRIMINATION vol 13 (2007 Reissue)

PARA 360 et seq) and Pt III (ss 22-36) (as amended) (education and goods, facilities, services and premises: see DISCRIMINATION vol 13 (2007 Reissue) PARA 378 et seq) are to be read as applying equally to the treatment of men, with the requisite modifications: see s 2(1); and DISCRIMINATION vol 13 (2007 Reissue) PARA 357.

3 Ibid s 22(a). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 378. For these purposes, 'pupil' includes any person who receives education at a school or institution to which s 22 applies: s 22A (added by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II paras 75, 77). 'Education' includes any form of training or instruction: Sex Discrimination Act 1975 s 82(1). For the meaning of 'school' see PARA 81 post; definition applied by s 82(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 36).

As to the exception from the duty under the Sex Discrimination Act 1975 s 22(a) in the case of single-sex establishments, and exceptions for single-sex establishments turning co-educational, see ss 26, 27 (both as amended); para 404 post; and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

Nothing in the statutes or charter of any university may be deemed to preclude the authorities of the university from making such provision as they think fit for the admission of women to membership of the university, or to any of its degrees, rights, or privileges (see the Sex Disqualification (Removal) Act 1919 s 3); and any enactment, Order in Council, Royal Charter, or provision, so far as inconsistent with this requirement, ceases to have effect (see s 4(2) (amended by the Statute Law Revision Act 1927; and the Criminal Justice Act 1972 s 64(2), Sch 6 Pt I)). See further PARA 659 post.

4 Sex Discrimination Act 1975 s 22(b). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 378.

5 As to the affording of access to benefits, facilities or services see DISCRIMINATION vol 13 (2007 Reissue) PARA 361.

6 Sex Discrimination Act 1975 s 22(c). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 378. In *R v South Bank University, ex p Coggeran* [2001] ELR 42, [2000] ICR 1342, CA, the decision of a university leading to the exclusion of a pregnant student on academic grounds could not be equated with the dismissal of a pregnant employee for the purposes of the Sex Discrimination Act 1975.

7 As to local education authorities see PARA 20 post.

8 Sex Discrimination Act 1975 s 22, Table para 1 (amended by the Education Act 1980 s 1(3), Sch 1 para 27; and the School Standards and Framework Act 1998 s 140(1), Sch 30 para 5).

9 For the meaning of 'proprietor' see PARA 60 note 7 post; definition applied by the Sex Discrimination Act 1975 s 82(1) (definition amended by the Education Act 1996 Sch 37 para 36(d)).

10 For the meaning of 'independent school' see PARA 465 post; definition applied by the Sex Discrimination Act 1975 s 82(1) (definition amended by the Education Act 1996 Sch 37 para 36(c)). As to independent schools see PARAS 465-509 post.

11 Sex Discrimination Act 1975 s 22, Table paras 2, 3.

12 Ibid s 22, Table para 3B (added by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 76). The reference in the text to institutions within the further education sector is a reference to institutions within the meaning of the Further and Higher Education Act 1992 s 91(3) (see PARA 579 post): Sex Discrimination Act 1975 s 22, Table para 3B (as so added).

13 Ibid s 22, Table para 4. 'University' includes a university college and the college, school or hall of a university: s 82(1).

14 Ibid s 22, Table para 4A (added by the Education Reform Act 1988 s 237, Sch 12 Pt III para 72; and substituted by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 76). The reference in the text to institutions within the higher education sector is a reference to institutions within the meaning of the Further and Higher Education Act 1992 s 91(5) (see PARA 646 post): Sex Discrimination Act 1975 s 22, Table para 4A (as so added and substituted).

15 Ie establishments not falling within ibid s 22, Table para 1 (as amended), 2, 3, 3B (as added), 4 or 4A (as added): see the text and notes 7-14 supra.

16 Ie an establishment designated under ibid s 24(1) (as amended). The Secretary of State may by order designate for the purpose of s 22, Table para 5 (as amended) such establishments of the description mentioned in that provision as he thinks fit: s 24(1). An establishment must not be so designated unless: (1) it is an establishment in respect of which grants are payable out of money provided by Parliament; or (2) it is assisted by a local education authority for the purposes of the Education Act 1996; or (3) it provides full-time education for persons who have attained the upper limit of compulsory school age construed in accordance with s 8 (as amended) (see PARA 15 post) but not the age of 19: Sex Discrimination Act 1975 s 24(2) (amended by the

Education Reform Act 1988 Sch 12 Pt III para 73, Sch 13 Pt II; and the Education Act 1996 Sch 37 paras 34, 137). Such a designation remains in force until revoked notwithstanding that the establishment ceases to be within the Sex Discrimination Act 1975 s 24(2) (as amended): s 24(3).

17 Ibid s 22, Table para 5 (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 76).

18 For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by the Sex Discrimination Act 1975 s 82(1) (definition added by the Education Act 1996 Sch 37 para 36(a)).

19 Ie under the Sex Discrimination Act 1975 s 22 (as amended): see the text and notes 1-17 supra.

20 See *ibid* s 23(1) (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 378. For these purposes, references to sex discrimination refer to any discrimination falling within s 1 (as substituted) or s 2; and related expressions are to be construed accordingly: see s 5(1)(b); and DISCRIMINATION vol 13 (2007 Reissue) PARA 344 et seq.

The local education authority's duty under the Education Act 1996 s 14 (as amended) (see PARA 26 post) to provide sufficient schools for its area must be carried out in a way that does not bring it into conflict with the Sex Discrimination Act 1975 s 23 (as amended): see PARA 26 note 5 post.

21 As to the Learning and Skills Council for England see PARA 1072 et seq post.

22 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

23 As to the Higher Education Funding Councils see PARA 733 et seq post.

24 See the Sex Discrimination Act 1975 s 23A (as added and amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 378.

In exercising their functions, the Learning and Skills Council for England and the National Council for Education and Training for Wales must have due regard to the need to promote equality of opportunity between men and women: see the Learning and Skills Act 2000 ss 14, 42; and PARAS 11, 1087, 1128 post.

25 As to the Training and Development Agency for Schools see PARA 784 et seq post.

26 See the Sex Discrimination Act 1975 s 23D (as added and amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 378.

27 See *ibid* s 25 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 379. As to the bodies to which s 25 (as amended) applies see s 25(6) (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 378. The purpose of s 25 (as amended) is not to outlaw sex discrimination as such, but to place on public bodies, including local education authorities, a positive role in relation to the elimination of sex discrimination: see *Birmingham City Council v Equal Opportunities Commission* [1989] AC 1155, sub nom *Equal Opportunities Commission v Birmingham City Council* [1989] 1 All ER 769, HL. As to the exception from the duty under the Sex Discrimination Act 1975 s 25 (as amended) in the case of single-sex establishments, and exceptions for single-sex establishments turning co-educational see ss 26, 27 (both as amended); para 404 post; and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

28 See *ibid* s 25A (as added); and DISCRIMINATION. As to the exception from the duty under s 25A (as added) in the case of single-sex establishments, and exceptions for single-sex establishments turning co-educational, see ss 26, 27 (both as amended); para 404 post; and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

29 Ie *ibid* ss 22, 23, 25 (all as amended), and s 25A (as added): see DISCRIMINATION vol 13 (2007 Reissue) PARA 378 et seq.

30 For the meaning of 'further education' see PARA 18 post; definition applied by *ibid* s 82(1) (definition amended by the Education Act 1996 Sch 37 para 36(b)).

31 See the Sex Discrimination Act 1975 s 28 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 378. As to higher education courses within the meaning of the Education Reform Act 1988 see PARA 726 post. The Sex Discrimination Act 1975 ss 22, 23, 25 (all as amended) do not apply to benefits, facilities or services outside Great Britain except: (1) travel on a ship registered at a port of registry in Great Britain; and (2) benefits, facilities or services provided on a ship so registered: see s 36(5); and DISCRIMINATION vol 13 (2007 Reissue) PARA 381. For the meaning of 'Great Britain' see PARA 63 note 3 post.

32 See the Employment Act 1989 s 5 (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

33 See the Sex Discrimination Act 1975 s 78; and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

**UPDATE****6 Facilities for education to be provided without sex discrimination**

TEXT AND NOTES 1-17--Sex Discrimination Act 1975 s 22 now s 22(1), s 22(2)-(4) added: Employment Equality (Sex Discrimination) Regulations 2005, SI 2005/2467. It is also unlawful for the governing body of an institution of further or higher education to (1) discriminate against a woman in the arrangements it makes for the purpose of selecting people for admission to the institution; and (2) to subject a woman to harassment if that woman is a student at the institution or has applied for admission to the institution: 1975 Act s 22(2), (3) (as so added). 'Institution of further or higher education' means an establishment falling within s 22(1) Table para 3B, 4 or 4A: s 22(4) (as so added). As to harassment, including sexual harassment, see s 4A; and DISCRIMINATION vol 13 (2007 Reissue) PARA 347.

NOTES 1, 20--References to discrimination and sex discrimination also refer to any discrimination falling within the 1975 Act ss 3A, 3B (see DISCRIMINATION vol 13 (2007 Reissue) PARA 350): s 5(1) (amended by SI 2005/2467, SI 2008/963).

NOTES 22, 24, 28--The National Council for Education and Training for Wales was abolished on 1 April 2006 and its functions, property and staff transferred to the National Assembly for Wales: see the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238; and PARA 1113 et seq. 1975 Act ss 23A, 25A further amended: SI 2005/3238.

TEXT AND NOTES 29-31--1975 Act s 28 repealed: SI 2005/2467.

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**7. Unlawful discrimination or harassment on grounds of sexual orientation by the governing bodies of institutions within the higher and further education sectors or by providers of vocational training.**

It is unlawful, in relation to specified educational establishments<sup>1</sup>, for the governing body<sup>2</sup> of that establishment to discriminate on grounds of sexual orientation or by way of victimisation<sup>3</sup> against a person<sup>4</sup>:

- 1 (1) in the terms on which it offers to admit him to the establishment as a student<sup>5</sup>;
- 2 (2) by refusing or deliberately not accepting an application for his admission to the establishment as a student<sup>6</sup>; or
- 3 (3) where he is a student of the establishment<sup>7</sup>:
- 1
  1. (a) in the way it affords him access to any benefits<sup>8</sup>;
  2. (b) by refusing or deliberately not affording him access to them<sup>9</sup>; or
  3. (c) by excluding him from the establishment or subjecting him to any other detriment<sup>10</sup>.
- 2

It is unlawful also for the governing body of such an establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student<sup>11</sup>.

It is unlawful, in relation to a person seeking or undergoing training<sup>12</sup> which would help fit him for any employment, for any training provider<sup>13</sup> to discriminate against him<sup>14</sup>:

- 4 (i) in the terms on which the training provider affords him access to any training<sup>15</sup>;
- 5 (ii) by refusing or deliberately not affording him such access<sup>16</sup>;
- 6 (iii) by terminating his training<sup>17</sup>; or
- 7 (iv) by subjecting him to any other detriment during his training<sup>18</sup>.

It is unlawful also for a training provider, in relation to such a person, to subject him to harassment<sup>19</sup>.

The Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 20 applies to the following educational establishments, namely: (1) an institution within the further education sector within the meaning of the Further and Higher Education Act 1992 s 91(3) (see PARA 579 post); (2) a university; and (3) an institution, other than a university, within the higher education sector within the meaning of the Further and Higher Education Act 1992 s 91(5) (see PARA 646 post): Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 20(4).

For these purposes, 'university' includes a university college and the college, school or hall of a university: reg 20(6). For the purposes of reg 16 (which prohibits discrimination by qualifications bodies), the definition of 'qualifications body' does not include: (a) an educational establishment to which reg 20 applies, or would apply

but for the operation of any other provision of the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661; or (b) a school: see reg 16(4).

2 For the meaning of 'governing body', in relation to an educational institution, see PARA 584 note 5 post; and, in relation to institutions within the higher education sector, see PARA 704 note 4 post; and see also PARAS 609 note 1, 764 note 6 post.

3 For these purposes, references to discrimination are references to any discrimination falling within the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 3 (discrimination on grounds of sexual orientation: see DISCRIMINATION vol 13 (2007 Reissue) PARA 722) or reg 4 (discrimination by way of victimisation: see DISCRIMINATION vol 13 (2007 Reissue) PARA 723); and related expressions must be construed accordingly: reg 2(2).

4 Ibid reg 20(1). Regulation 20(1) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of reg 7 (exception for genuine occupational requirement etc: see DISCRIMINATION vol 13 (2007 Reissue) PARA 725), the employer could lawfully refuse to offer the person in question: reg 20(3).

5 Ibid reg 20(1)(a). For these purposes, 'student' means any person who receives education at an educational establishment to which reg 20 applies (see note 1 supra): reg 20(6).

6 Ibid reg 20(1)(b).

7 Ibid reg 20(1)(c).

8 Ibid reg 20(1)(c)(i). For these purposes, 'benefits' includes facilities and services: reg 2(3) (definition substituted by SI 2003/2827).

9 Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 20(1)(c)(ii).

10 Ibid reg 20(1)(c)(iii). For these purposes, 'detriment' does not include harassment within the meaning of reg 5 (see note 19 infra): reg 2(3).

11 Ibid reg 20(2).

12 For these purposes, 'training' includes: (1) facilities for training; and (2) practical work experience provided by an employer to a person whom he does not employ: ibid reg 17(4).

13 For these purposes, 'training provider' means any person who provides, or makes arrangements for the provision of, training which would help fit another person for any employment, but it does not include: (1) an employer in relation to training for persons employed by him; (2) an educational establishment to which ibid reg 20 (see the text and notes 1-11 supra) applies, or would apply but for the operation of any other provision of the Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661; or (3) a school: reg 17(4).

For these purposes, 'school' has the meaning given by the Education Act 1996 s 4 (see PARA 81 post); and references to a school are references to an institution in so far as it is engaged in the provision of education under s 4: Employment Equality (Sexual Orientation) Regulations 2003, SI 2003/1661, reg 2(3).

14 Ibid reg 17(1). Regulation 17(1) does not apply if the discrimination only concerns training for employment which, by virtue of reg 7 (exception for genuine occupational requirement etc: see DISCRIMINATION vol 13 (2007 Reissue) PARA 725), the employer could lawfully refuse to offer the person seeking training: reg 17(3).

15 Ibid reg 17(1)(a).

16 Ibid reg 17(1)(b).

17 Ibid reg 17(1)(c).

18 Ibid reg 17(1)(d).

19 Ibid reg 17(2). For these purposes, references to harassment must be construed in accordance with reg 5 (harassment on grounds of sexual orientation: see DISCRIMINATION vol 13 (2007 Reissue) PARA 722): reg 2(2).

## UPDATE



**7 Unlawful discrimination or harassment on grounds of sexual orientation by the governing bodies of institutions within the higher and further education sectors or by providers of vocational training**

NOTE 1--As to the definition of 'qualifications body' heads (a) refers to the governing body of an educational establishment, and (b) refers to a proprietor of a school: SI 2003/1661 reg 16(4) (amended by SI 2007/2269).

NOTE 12--Now 'training' means all types and all levels of training which would help fit a person for any employment, vocational guidance, facilities for training, practical work experience provided by an employer to a person whom he does not employ, and any assessment related to the award of any professional or trade qualification: SI 2003/1661 reg 17(4) (definition substituted by SI 2007/2269).

NOTE 13--Now heads (2) a governing body of an educational establishment to which SI 2003/1661 reg 20 applies, or would apply but for the operation of any other provision of the 2003 Regulations, except in relation to a person who is undertaking practical work experience at the educational establishment and is not a student at, or employed by, that establishment; or (3) a proprietor of a school in relation to a pupil registered at that or another school, except where that pupil is undertaking practical work experience provided by a school at which he is not registered and he is not employed by that school: reg 17(4) (amended by SI 2007/2269).

TEXT AND NOTE 18--Also, head (v) in the arrangements he makes for the purpose of determining to whom he should offer training: SI 2003/1661 reg 17(1)(aa) (added by SI 2007/2269).

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## **8. Facilities for education to be provided without racial discrimination or harassment.**

It is unlawful, in relation to certain educational establishments, for a responsible body to discriminate<sup>1</sup> against a person: (1) in the terms on which it offers to admit him to the establishment as a pupil<sup>2</sup>; or (2) by refusing or deliberately omitting to accept an application for his admission to the establishment as a pupil<sup>3</sup>; or (3) where he is a pupil of the establishment, in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them<sup>4</sup>, or by excluding him from the establishment or subjecting him to any other detriment<sup>5</sup>. Where the educational establishment is maintained by a local education authority<sup>6</sup>, the responsible body is the local education authority or governing body, according to which of them has the function in question<sup>7</sup>. The proprietor<sup>8</sup> is the responsible body in relation to independent schools<sup>9</sup> not being special schools<sup>10</sup>, and special schools not maintained by a local education authority<sup>11</sup>. The governing body is the responsible body for institutions within the further education sector<sup>12</sup>, universities<sup>13</sup>, institutions (other than universities) within the higher education sector<sup>14</sup>, and other establishments<sup>15</sup> providing full-time or part-time education, being designated<sup>16</sup> establishments<sup>17</sup>. It is unlawful also for any such responsible body in relation to any such specified educational establishment to subject to harassment either a pupil at the establishment or a person who applies for admission to the establishment as a pupil<sup>18</sup>.

It is unlawful for a local education authority, in carrying out such of its functions under the Education Acts<sup>19</sup> as do not fall under the above provisions<sup>20</sup>, to do any act which constitutes racial discrimination or harassment<sup>21</sup>. It is also unlawful for the Learning and Skills Council for England<sup>22</sup>, the National Council for Education and Training for Wales<sup>23</sup>, the Higher Education Funding Council for England or the Higher Education Funding Council for Wales<sup>24</sup> in carrying out their functions under the Education Acts and the Learning and Skills Act 2000 to do any act which constitutes racial discrimination or harassment<sup>25</sup>. It is similarly unlawful for the Training and Development Agency for Schools<sup>26</sup> in carrying out its functions under any enactment to do any act which constitutes racial discrimination or harassment<sup>27</sup>.

It is unlawful for a public authority in carrying out any of its functions to do any act which constitutes racial discrimination or, in the course of carrying out any of its functions which consist of the provision of any form of social advantage, to subject a person to harassment<sup>28</sup>.

Nothing in the provisions described above is to render unlawful any act done in affording persons of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, training or welfare, or any ancillary benefits<sup>29</sup>.

Specified authorities, including educational bodies, are under a general statutory duty to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups<sup>30</sup>. Certain of those specified authorities<sup>31</sup> must publish a scheme (a 'race equality scheme') showing how it intends to fulfil this duty<sup>32</sup>. Specified governing bodies<sup>33</sup> must publish a written statement of their policy for promoting race equality (a 'race equality policy'), and have in place arrangements for assessing the impact of their policies, including the race equality policy, on pupils, students, staff and parents of different racial groups and for monitoring, by reference to those racial groups, the operation and effect of such policies<sup>34</sup>. Certain other specified educational bodies<sup>35</sup>

must have in place arrangements for monitoring, by reference to the racial groups to which they belong, the numbers of staff from each such group at all educational establishments in respect of which they exercise their functions<sup>36</sup>.

- 1 References to discrimination are references to any discrimination falling within the Race Relations Act 1976 s 1 (as amended) or s 2: see s 3(3)(a); and DISCRIMINATION vol 13 (2007 Reissue) PARA 439 et seq. See *R v Cleveland County Council, ex p Commission for Racial Equality* [1993] 1 FCR 597, 91 LGR 139, [1994] ELR 44, CA.
- 2 Race Relations Act 1976 s 17(1)(a) (s 17(1) renumbered by the Race Relations Act 1976 (Amendment) Regulations 2003, SI 2003/1626, reg 18(2)). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460. For these purposes, 'pupil' includes any person who receives education at a school or institution to which the Race Relations Act 1976 s 17 (as amended) applies: s 17A (added by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 86). 'Education' includes any form of training or instruction: Race Relations Act 1976 s 78(1). For the meaning of 'school' see PARA 81 post; definition applied by s 78(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 43).
- 3 Race Relations Act 1976 s 17(1)(b) (as renumbered: see note 2 supra). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460.
- 4 As to the affording of access to benefits, facilities and services see DISCRIMINATION vol 13 (2007 Reissue) PARA 446.
- 5 Race Relations Act 1976 s 17(1)(c) (as renumbered: see note 2 supra). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460.
- 6 As to local education authorities see PARA 20 post.
- 7 Race Relations Act 1976 s 17(1) (as renumbered: see note 2 supra), Table para 1 (amended by the Education Act 1980 s 1(3), Sch 1 para 28; and the School Standards and Framework Act 1998 s 140(1), Sch 30 para 7).
- 8 For the meaning of 'proprietor' see PARA 60 note 7 post; definition applied by the Race Relations Act 1976 s 78(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 43).
- 9 For the meaning of 'independent school' see PARA 465 post; definition applied by the Race Relations Act 1976 s 78(1) (definition amended by the Education Act 1996 Sch 37 para 43). As to independent schools see PARA 465 et seq post.
- 10 As to special schools see PARA 1027 et seq post.
- 11 Race Relations Act 1976 s 17(1) (as renumbered: see note 2 supra), Table paras 2, 3.
- 12 Ibid s 17(1) (as renumbered: see note 2 supra), Table para 3B (added by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 85). The reference in the text to institutions within the further education sector is a reference to institutions within the meaning of the Further and Higher Education Act 1992 s 91(3) (see PARA 579 post): Race Relations Act 1976 s 17(1) (as so renumbered), Table para 3B (as so added).
- 13 Ibid s 17(1) (as renumbered: see note 2 supra), Table para 4. 'University' includes a university college and the college, school or hall of a university: s 78(1).
- 14 Ibid s 17(1) (as renumbered: see note 2 supra), Table para 4A (added by the Education Reform Act 1988 s 237, Sch 12 Pt III para 78; and substituted by the Further and Higher Education Act 1992 s 93, Sch 8 para 85). The reference in the text to institutions within the higher education sector is a reference to institutions within the meaning of the Further and Higher Education Act 1992 s 91(5) (see PARA 646 post): Race Relations Act 1976 s 17(1) (as so renumbered), Table para 4A (as so added).
- 15 Ie establishments not falling within ibid s 17(1) (as renumbered), Table para 1 (as amended), 2, 3, 3B (as added), 4, or 4A (as added): see the text and notes 6-14 supra.
- 16 Ie under the Sex Discrimination Act 1975 s 24(1) for the purposes of s 22, Table para 5 (as amended): see PARA 6 note 17 ante.
- 17 Race Relations Act 1976 s 17(1) (as renumbered: see note 2 supra), Table para 5 (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 85).

18 See the Race Relations Act 1976 s 17(2) (added by the Race Relations Act 1976 (Amendment) Regulations 2003, SI 2003/1626, reg 18(2)). For the meaning of 'harassment' see the Race Relations Act 1976 s 3A (as added); and DISCRIMINATION vol 13 (2007 Reissue) PARA 444.

19 For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by the Race Relations Act 1976 s 78(1) (definition added by the Education Act 1996 Sch 37 para 43).

20 Ie under the Race Relations Act 1976 s 17 (as amended): see the text and notes 1-18 supra.

21 Ibid s 18(1) (amended by the Education Act 1996 s 582(1), Sch 37 para 39; and the Race Relations Act 1976 (Amendment) Regulations 2003, SI 2003/1626, reg 19(3)). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460.

22 As to the Learning and Skills Council for England see PARA 1072 et seq post.

23 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

24 As to the Higher Education Funding Councils see PARA 733 et seq post.

25 Race Relations Act 1976 s 18A (added by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 87; amended by the Education Act 1996 s 582(1), Sch 37 para 40; the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 9; and the Race Relations Act 1976 (Amendment) Regulations 2003, SI 2003/1626, reg 19(3)). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460.

In exercising their functions, the Learning and Skills Council for England and the National Council for Education and Training for Wales must have due regard to the need to promote equality of opportunity between persons of different racial groups: see the Learning and Skills Act 2000 ss 14, 42; and PARAS 1087, 1128 post.

26 As to the Training and Development Agency for Schools see PARA 784 et seq post.

27 Race Relations Act 1976 s 18D (added by the Education Act 1994 s 24, Sch 2 para 6(3); amended by the Education Act 2005 s 98, Sch 14 para 7; and by the Race Relations Act 1976 (Amendment) Regulations 2003, SI 2003/1626, reg 19(3)). See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460.

28 See the Race Relations Act 1976 s 19B (as added and amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 470. As to exceptions or further exceptions from s 19B (as added and amended) for judicial or legislative acts, for certain acts in immigration and nationality cases, and for decisions not to prosecute see ss 19C, 19D, 19F (all as added); and DISCRIMINATION vol 13 (2007 Reissue) PARA 470. As to the monitoring of the exception in relation to immigration and nationality cases see s 19E (as added); and DISCRIMINATION vol 13 (2007 Reissue) PARA 470.

29 See ibid s 35; and DISCRIMINATION vol 13 (2007 Reissue) PARA 482.

30 See ibid s 71 (as substituted); and DISCRIMINATION vol 13 (2007 Reissue) PARA 469. As to the bodies and other persons subject to the general statutory duty see s 71 (as substituted), s 71A (as added and amended), s 71E (as added), Sch 1A (as added and amended); and DISCRIMINATION. As to special cases, codes of practice, compliance notices and enforcement of compliance notices in relation to the general statutory duty see s 71A (as added and amended), ss 71C, 71D, 71E (all as added); and DISCRIMINATION. As to the general statutory duty in relation to Wales see s 71B (as added); and DISCRIMINATION.

31 Ie those specified in the Race Relations Act 1976 (Statutory Duties) Order 2001, SI 2001/3458, art 2, Sch 1. This includes the Higher Education Funding Council for England, the Higher Education Funding Council for Wales, the Learning and Skills Council for England and the National Council for Education and Training for Wales. See further DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

32 See ibid art 2; and DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

33 Ie those specified in ibid art 3, Sch 2 Pts I, II. See further DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

34 See ibid art 3; and DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

35 Ie those specified in ibid art 4, Sch 2 Pts III-V. See further DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

36 See ibid art 4; and DISCRIMINATION vol 13 (2007 Reissue) PARA 469. A local education authority must also monitor, by reference to the racial groups to which they belong, the numbers at all maintained schools in its area of applicants for employment, training and promotion from each such group and the numbers of staff from each such group who receive training, benefit or suffer detriment as a result of its performance assessment procedures, are involved in grievance procedures, are the subject of disciplinary procedures, or cease employment with such schools: see art 4(2); and DISCRIMINATION vol 13 (2007 Reissue) PARA 469.

## **UPDATE**

### **8 Facilities for education to be provided without racial discrimination or harassment**

NOTES 23, 25--The National Council for Education and Training for Wales was abolished on 1 April 2006 and its functions, property and staff transferred to the National Assembly for Wales: see the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238; and PARA 1113 et seq. 1976 Act s 18A further amended: SI 2005/3238.

NOTE 31--Reference to National Council for Education and Training for Wales omitted: SI 2001/3458 Sch 1 (amended by SI 2005/3238). SI 2001/3458 further amended: SI 2007/2602, SI 2008/912, SI 2008/960.

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**9. Unlawful discrimination or harassment on grounds of religion or belief by the governing bodies of institutions within the higher and further education sectors or by providers of vocational training.**

It is unlawful, in relation to specified educational establishments<sup>1</sup>, for the governing body<sup>2</sup> of that establishment to discriminate on grounds of religion or belief or by way of victimisation<sup>3</sup> against a person<sup>4</sup>:

- 8 (1) in the terms on which it offers to admit him to the establishment as a student<sup>5</sup>;
- 9 (2) by refusing or deliberately not accepting an application for his admission to the establishment as a student<sup>6</sup>; or
- 10 (3) where he is a student of the establishment<sup>7</sup>:
- 3
- 4. (a) in the way it affords him access to any benefits<sup>8</sup>;
- 5. (b) by refusing or deliberately not affording him access to them<sup>9</sup>; or
- 6. (c) by excluding him from the establishment or subjecting him to any other detriment<sup>10</sup>.
- 4

It is unlawful also for the governing body of such an establishment to subject to harassment a person who is a student at the establishment, or who has applied for admission to the establishment as a student<sup>11</sup>.

It is unlawful, in relation to a person seeking or undergoing training<sup>12</sup> which would help fit him for any employment, for any training provider<sup>13</sup> to discriminate against him<sup>14</sup>:

- 11 (i) in the terms on which the training provider affords him access to any training<sup>15</sup>;
- 12 (ii) by refusing or deliberately not affording him such access<sup>16</sup>;
- 13 (iii) by terminating his training<sup>17</sup>; or
- 14 (iv) by subjecting him to any other detriment during his training<sup>18</sup>.

It is unlawful also for a training provider, in relation to such a person, to subject him to harassment<sup>19</sup>.

1 The Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 20 (as amended) applies to the following educational establishments, namely: (1) an institution within the further education sector within the meaning of the Further and Higher Education Act 1992 s 91(3) (see PARA 579 post); (2) a university; and (3) an institution, other than a university, within the higher education sector within the meaning of the Further and Higher Education Act 1992 s 91(5) (see PARA 646 post), except in relation to an institution specified in the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, Sch 1B (as added), when reg 20 (as amended) applies with a modification (see note 6 infra): reg 20(4), (4A) (reg 20(4) amended, and reg 20(4A) added, by SI 2004/437). For these purposes, 'university' includes a university college and the college, school or hall of a university: Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 20(6). It is also unlawful for a qualifications body to discriminate against a person: see reg 16; and DISCRIMINATION vol 13 (2007 Reissue) PARA 671; EMPLOYMENT vol 39 (2009) PARA 540. For the purposes of reg 16, the definition of

'qualifications body' does not include: (a) an educational establishment to which reg 20 applies, or would apply but for the operation of any other provision of the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660 (as amended); or (b) a school: see reg 16(3).

2 For the meaning of 'governing body', in relation to an educational institution, see PARA 584 note 5 post; and, in relation to institutions within the higher education sector, see PARA 704 note 4 post; and see also PARAS 609 note 1, 764 note 6 post.

3 For these purposes, references to discrimination are references to any discrimination falling within the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 3 (discrimination on grounds of religion or belief: see DISCRIMINATION vol 13 (2007 Reissue) PARA 660) or reg 4 (discrimination by way of victimisation: see DISCRIMINATION vol 13 (2007 Reissue) PARA 661); and related expressions must be construed accordingly: reg 2(2).

4 Ibid reg 20(1). Regulation 20(1) does not apply if the discrimination only concerns training which would help fit a person for employment which, by virtue of reg 7 (exception for genuine occupational requirement etc: see DISCRIMINATION vol 13 (2007 Reissue) PARA 663), the employer could lawfully refuse to offer the person in question: reg 20(3).

5 Ibid reg 20(1)(a). For these purposes, 'student' means any person who receives education at an educational establishment to which reg 20 applies (see note 1 supra): reg 20(6).

6 Ibid reg 20(1)(b). Except in relation to any admission to a course of vocational training, reg 20(1)(b) does not apply to the institutions specified in Sch 1B para 1 (as added) in so far as it is necessary for an institution to give preference in its admissions to persons of a particular religion or belief in order to preserve that institution's religious ethos: reg 20(4A), Sch 1B paras 2, 3 (Sch 1B added by SI 2004/437).

7 Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 20(1)(c).

8 Ibid reg 20(1)(c)(i). For these purposes, 'benefits' includes facilities and services: reg 2(3) (definition substituted by SI 2003/2828).

9 Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 20(1)(c)(ii).

10 Ibid reg 20(1)(c)(iii). For these purposes, 'detriment' does not include harassment within the meaning of reg 5 (see note 19 infra): reg 2(3).

11 Ibid reg 20(2).

12 For these purposes, 'training' includes: (1) facilities for training; and (2) practical work experience provided by an employer to a person whom he does not employ: ibid reg 17(4).

13 For these purposes, 'training provider' means any person who provides, or makes arrangements for the provision of, training which would help fit another person for any employment, but it does not include: (1) an employer in relation to training for persons employed by him; (2) an educational establishment to which ibid reg 20 (see the text and notes 1-11 supra) applies, or would apply but for the operation of any other provision of the Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660 (as amended); or (3) a school: reg 17(4). For these purposes, 'school' has the meaning given by the Education Act 1996 s 4 (see PARA 81 post); and references to a school are references to an institution in so far as it is engaged in the provision of education under s 4: Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660, reg 2(3).

14 Ibid reg 17(1). Regulation 17(1) does not apply if the discrimination only concerns training for employment which, by virtue of reg 7 (exception for genuine occupational requirement etc: see DISCRIMINATION vol 13 (2007 Reissue) PARA 663), the employer could lawfully refuse to offer the person seeking training: reg 17(3).

15 Ibid reg 17(1)(a).

16 Ibid reg 17(1)(b).

17 Ibid reg 17(1)(c).

18 Ibid reg 17(1)(d).

19 Ibid reg 17(2). For these purposes, references to harassment must be construed in accordance with reg 5 (harassment on grounds of religion or belief: see DISCRIMINATION vol 13 (2007 Reissue) PARA 662): reg 2(2).

## UPDATE

**9 Unlawful discrimination or harassment on grounds of religion or belief by the governing bodies of institutions within the higher and further education sectors or by providers of vocational training**

NOTE 1--As to the definition of 'qualifications body' heads (a) refers to the governing body of an educational establishment, and (b) refers to a proprietor of a school: SI 2003/1660 reg 16(3) (amended by SI 2007/2269).

NOTE 12--Now 'training' means all types and all levels of training which would help fit a person for any employment, vocational guidance, facilities for training, practical work experience provided by an employer to a person whom he does not employ, and any assessment related to the award of any professional or trade qualification: SI 2003/1660 reg 17(4) (definition substituted by SI 2007/2269).

NOTE 13--Now heads (2) a governing body of an educational establishment to which SI 2003/1660 reg 20 applies, or would apply but for the operation of any other provision of the 2003 Regulations, except in relation to a person who is undertaking practical work experience at the educational establishment and is not a student at, or employed by, that establishment; or (3) a proprietor of a school in relation to a pupil registered at that or another school, except where that pupil is undertaking practical work experience provided by a school at which he is not registered and he is not employed by that school: reg 17(4) (amended by SI 2007/2269).

TEXT AND NOTE 18--Also, head (v) in the arrangements he makes for the purpose of determining to whom he should offer training: SI 2003/1660 reg 17(1)(aa) (added by SI 2007/2269).



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## **10. Facilities for education to be provided without disability discrimination.**

Provision is made in relation to disability discrimination rights for disabled people in education, including in relation to premises, so that duties are placed on responsible bodies in relation to schools<sup>1</sup> and further<sup>2</sup> and higher education institutions<sup>3</sup>. Provision is also made for the enforcement of those duties<sup>4</sup>.

1 As to schools see PARA 81 et seq post.

2 As to further education generally see PARA 579 et seq post.

3 As to higher education generally see PARA 646 et seq post.

4 See the Disability Discrimination Act 1995; and DISCRIMINATION.

### **UPDATE**

#### **10-11 Facilities for education to be provided without disability discrimination, Equality of opportunity**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## **11. Equality of opportunity.**

In exercising their functions the Learning and Skills Council for England<sup>1</sup> and the National Council for Education and Training for Wales<sup>2</sup> must have due regard to the need to promote equality of opportunity between persons of different racial groups<sup>3</sup>, between men and women, and between persons who are disabled<sup>4</sup> and persons who are not<sup>5</sup>, and must make annual reports on what arrangements have been made, how effective they were and their plans for the following year<sup>6</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq post.

2 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

3 'Racial group' has the same meaning as in the Race Relations Act 1976 s 3(1) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 441); Learning and Skills Act 2000 ss 14(5), 42(5).

4 The persons who are disabled for the purposes of the Disability Discrimination Act 1995 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 511); Learning and Skills Act 2000 ss 14(6), 42(6).

5 See ibid ss 14(1), 42(1); and PARAS 1087, 1128 post.

6 See ibid ss 14(2), (3), 42(2), (3); and PARAS 1087, 1128 post.

## **UPDATE**

### **10-11 Facilities for education to be provided without disability discrimination ... Equality of opportunity**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## **12. Freedom of speech.**

Every individual and body of persons concerned in the government of: (1) any university<sup>1</sup>; (2) any institution other than a university within the higher education sector<sup>2</sup>; (3) any establishment of higher or further education<sup>3</sup> which is maintained by a local education authority<sup>4</sup>; and (4) any institution within the further education sector<sup>5</sup>, must take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers<sup>6</sup>. Such a duty includes in particular the duty to ensure, so far as is reasonably practicable, that the use of any of the establishment's premises is not denied to any individual or body of persons on any ground connected with the beliefs or views of that individual or of any member of that body or that body's policy or objectives<sup>7</sup>.

With a view to facilitating the discharge of the duty to secure freedom of speech in relation to an establishment, its governing body<sup>8</sup> must issue and keep up to date a code of practice setting out:

- 15 (a) the procedures to be followed by members, students and employees of the establishment in connection with the organisation of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code, and other activities which are to take place on those premises and which fall within any class of activity so specified<sup>9</sup>; and
- 16 (b) the conduct required of such persons in connection with any such meeting or activity<sup>10</sup>,

and dealing with such other matters as the governing body considers appropriate<sup>11</sup>. Every individual and body of persons concerned in the government of any such establishment must take such steps as are reasonably practicable, including where appropriate the initiation of disciplinary measures, to secure that the requirements of the establishment's code of practice are complied with<sup>12</sup>.

The governing body<sup>13</sup> of every establishment to which the statutory provisions relating both to students' unions<sup>14</sup> and to the freedom of speech in universities and colleges<sup>15</sup> apply<sup>16</sup> must, as regards any students' union for students at the establishment, bring to the attention of all students<sup>17</sup>, at least once a year, the statutory provisions relating to freedom of speech in universities and colleges and any code of practice issued thereunder, relevant to the activities or conduct of the union<sup>18</sup>.

1 Education (No 2) Act 1986 s 43(5)(a). 'University' includes a university college and any college, or institution in the nature of a college, in a university: s 43(6).

2 Ibid s 43(5)(aa) (added by the Education Reform Act 1988 s 237, Sch 12 Pt III para 100; and substituted by the Further and Higher Education Act 1992 s 93, Sch 8 para 22). As to references to institutions within the higher education sector see PARA 646 post.

3 'Establishment of higher or further education' means an institution which provides higher education or further education, or both: Education (No 2) Act 1986 s 65(1) (definition added by the Education Reform Act 1988 Sch 12 Pt III para 105). For the meaning of 'further education' see PARA 18 post; definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (amended by the Education Act 1996 s 582(1), Sch 37 para 66(3), (4)).

For the meaning of 'higher education' see PARA 19 post; definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (as so amended).

4 Ibid s 43(5)(b) (substituted by the Education Reform Act 1988 Sch 12 Pt III para 100). Where any establishment falls within the Education (No 2) Act 1986 s 43(5)(b) (as substituted) the local education authority, for the purposes of s 43 (as amended), is to be taken to be concerned in its government: s 43(7) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I para 22(b), Sch 9). As to local education authorities see PARA 20 post.

5 Education (No 2) Act 1986 s 43(5)(ba) (added by the Further and Higher Education Act 1992 Sch 8 Pt I para 22). As to references to institutions within the further education sector see PARA 579 post.

6 Education (No 2) Act 1986 s 43(1). As to the right to freedom of expression see also the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 10; para 5 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 158-159.

7 Education (No 2) Act 1986 s 43(2). It has been held that s 43 (as amended) may be justiciable by judicial review, but does not give rise to private law rights: see *R v University College London, ex p Riniker* [1995] ELR 213 (in this case, the university did not breach the Education (No 2) Act 1986 s 43 (as amended) by making it a condition of the contract of a teacher of German that on ceasing to be involved in matters concerning the running of the language centre she should not enter the centre without permission). See also *R v University of Liverpool, ex p Caesar-Gordon* [1991] 1 QB 124, [1990] 3 All ER 821 (where it was held that the university's ban on speeches on campus by members of the South African embassy, on the ground that there was a risk of unrest and disturbance outside its precincts, was unlawful under the Education (No 2) Act 1986 s 43 (as amended)); *R v Thames Valley University Students Union, ex p Ogilvy* [1997] CLY 2149 (where it was held that the exclusion of a student counsellor from the university premises for alleged misconduct did not give rise to a breach of his freedom of speech for the purposes of the Education (No 2) Act 1986 s 43 (as amended)).

8 'Governing body', in relation to any university, means the executive governing body having responsibility for the management and administration of its revenue and property and the conduct of its affairs (ie the body commonly called the council of the university): Education (No 2) Act 1986 s 43(6).

9 Ibid s 43(3)(a). Where a student's union occupies premises which are not premises of the establishment in connection with which the union is constituted, any reference in s 43 (as amended) to premises of the establishment is to be taken to include a reference to the premises occupied by the students' union: s 43(8).

10 Ibid s 43(3)(b).

11 Ibid s 43(3).

12 Ibid s 43(4).

13 References in the Education Act 1994 Pt II (ss 20-22) (see PARAS 1060-1071 post) to the governing body of an establishment are references to the executive governing body which has responsibility for the conduct of affairs of the establishment and the management and administration of its revenue and property: s 21(5).

14 Ie ibid Pt II (see PARAS 1060-1071 post). For the meaning of 'students' union' see PARA 1060 post.

15 Ie the Education (No 2) Act 1986 s 43 (as amended) (see the text and notes 1-12 supra).

16 As to the establishments to which the provisions relating to freedom of speech in universities apply see the text and notes 1-7 supra; and as to the establishments to which the provisions relating to student's unions apply see PARA 1061 post.

17 As to the meaning of 'all students' for this purpose see PARA 1064 note 2 post.

18 Education Act 1994 s 22(4)(c).

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### **13. Pupils to be educated in accordance with parents' wishes.**

In exercising or performing all their respective powers and duties under the Education Acts<sup>1</sup>, the Secretary of State<sup>2</sup> and local education authorities<sup>3</sup> must have regard to the general principle that pupils<sup>4</sup> are to be educated in accordance with the wishes of their parents<sup>5</sup>, so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure<sup>6</sup>. Parents also have a right under the Universal Declaration of Human Rights<sup>7</sup> to choose the kind of education that is given to their children<sup>8</sup>.

Under the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>9</sup>, parents have a right to ensure any education and training is in conformity with their own religious and philosophical convictions<sup>10</sup>. The United Kingdom affirmed this principle only so far as it is compatible with the provision of efficient instruction and training, and the avoidance of unreasonable public expenditure<sup>11</sup>.

Further, parents may request that a pupil of a community, foundation or voluntary school<sup>12</sup> is wholly or partly excused from receiving religious education given in the school in accordance with the school's basic curriculum<sup>13</sup>, from attendance at religious worship in the school<sup>14</sup>, or both from receiving such education and from such attendance<sup>15</sup>. Special arrangements may also be made if a parent of a pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time the pupil is so excused<sup>16</sup>.

If the parent of any pupil in attendance at a maintained school<sup>17</sup> requests that he may be wholly or partly excused from receiving sex education<sup>18</sup> at the school, the pupil must, except so far as such education is comprised in the National Curriculum<sup>19</sup>, be so excused accordingly until the request is withdrawn<sup>20</sup>.

1 For the meaning of 'the Education Acts' see PARA 1 note 14 ante.

2 As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

3 As to local education authorities see PARA 20 post.

4 For the meaning of 'pupil' see PARA 16 note 4 post.

5 As to the meaning of 'parent' see PARA 510 note 1 post. In cases where there is a dispute between parents as to the choice of school and there is no parental agreement, the court should reach a decision: *Re P (A Child) (Parental Dispute)* [2002] EWCA Civ 1627, [2003] 1 FLR 286.

6 Education Act 1996 s 9 (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 61). For this purpose, 'public expenditure', on its true construction, refers not to the expenditure of the local authority as a whole, but is restricted to the expenditure of the local education authority: *S v Somerset County Council* [2002] EWHC 1808 (Admin), [2003] ELR 78 (social services costs of placement not to be taken into account). Expenditure relating to the education of a child which would arise regardless of where that child is educated is not relevant when considering the cost of educating a child in accordance with parental wishes: *R (on the application of Oxfordshire County Council) v GB* [2001] EWCA Civ 1358, [2002] LGR 279, [2002] ELR 8.

The principle that pupils are to be educated in accordance with parents' wishes is a general principle only and, while the relevant persons must have regard to the principle when exercising or performing their powers and duties, they are not precluded from taking account of other factors as well, and also may make exceptions to the general principle if they think fit to do so: *Watt v Kesteven County Council* [1955] 1 QB 408, [1955] 1 All ER 473, CA (where Denning LJ held at 424 and 476 that: 'It cannot therefore be said that a county council is at fault

simply because it does not see fit to comply with the parent's wishes'). See also *Darling v Ministry of Education, Jones v Ministry of Education* (1962) Times, 7 April; *Wood v Ealing London Borough Council* [1967] Ch 364, [1966] 3 All ER 514; *Cumings v Birkenhead Corp'n* [1972] Ch 12, [1971] 2 All ER 881, CA; *Harvey v Strathclyde Regional Council* 1989 SLT 612, HL (decided under the equivalent provision in Scotland); *R v Lambeth London Borough Council, ex p G* [1994] ELR 207. These cases were mostly decided under the Education Act 1944 s 76 whose terms were very similar to the Education Act 1996 s 9 (as amended) which replaced it. The line of authority they represent has continuing effect despite the fact that they predate the substantial reforms introduced by the 1996 Act (as to which see PARA 1 ante): *T v Special Educational Needs Tribunal and Wiltshire County Council* [2002] EWHC 1474 (Admin) at [38](ii), [2002] ELR 704 at [38](ii) per Richards J, citing *Watt v Kesteven County Council* supra and *Cumings v Birkenhead Corp'n* supra.

The principle in the Education Act 1996 s 9 (as amended) may be a particular factor to be considered in conjunction with parental choice of special educational provision and school placement: see *B v Harrow London Borough Council* [2000] 1 All ER 876, [2000] 1 WLR 223, [2000] ELR 109, HL; *S v Dudley Metropolitan Borough Council* [2000] ELR 330; *R v West Sussex County Council, ex p S* [1999] ELR 40. See also *B v Gloucestershire County Council and the Special Educational Needs Tribunal* [1998] ELR 539; *S and S v Bracknell Forest Borough Council and the Special Educational Needs Tribunal* [1999] ELR 51; *W-R v Solihull Metropolitan Borough Council and Wall (Chairman of the Special Educational Needs Tribunal)* [1999] ELR 528; *C v Buckinghamshire County Council and the Special Educational Needs Tribunal* [1999] LGR 321, [1999] ELR 179, CA; *T v Special Educational Needs Tribunal and Wiltshire County Council* supra.

As to parental preferences in relation to admissions to maintained schools see further PARA 396 post. In relation to special educational needs, the Education Act 1996 s 9 (as amended) does not apply if Sch 27 para 3 (as amended) applies: see PARA 1006 post. As to the duty of parents to secure the education of children of compulsory school age see s 7; and PARA 510 post. Where an education supervision order is in force in relation to a child, the provisions of s 9 (as amended) do not apply to the child: see the Children Act 1989 s 36, Sch 3 para 13(2)(b) (as amended); and PARA 527 post. As to education supervision orders see PARAS 526-531 post.

7     Ie the Universal Declaration of Human Rights (Paris, 10 December 1948; UN 2 (1949); Cmd 7662).

8     See *ibid* art 26(3); and PARA 5 ante.

9     Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969).

10    See *ibid* First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2; para 3 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 166.

11    See the Human Rights Act 1998 s 15, Sch 3; para 3 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. The conditions mirror those attached to the duty under the Education Act 1996 s 9 (as amended) (see the text and notes 1-6 supra).

12    As to community, foundation and voluntary schools see PARA 102 et seq post.

13    As to references to religious education given in the school in accordance with the school's basic curriculum see the School Standards and Framework Act 1998 s 71(2)(a) (as amended); and PARA 961 note 4 post.

14    As to references to religious worship in a school see *ibid* s 71(2)(b); and PARA 961 note 5 post.

15    See *ibid* s 71(1); and PARA 961 post. Similar provision has been made by regulations under s 71(7) in relation to pupils attending community or foundation special schools: see PARA 961 post. As to community and foundation special schools see PARA 102 et seq post. As to special schools see PARA 1027 et seq post.

16    See *ibid* s 71(3)-(6); and PARA 961 post.

17    For the meaning of 'maintained school', in relation to the curriculum in England, see PARA 913 note 7 post; and, in relation to the curriculum in Wales, see PARA 926 note 7 post.

18    As to the meaning of 'sex education' see PARA 914 note 8 post.

19    'The National Curriculum' (without more) means: (1) in relation to England, the National Curriculum for England; and (2) in relation to Wales, the National Curriculum for Wales: Education Act 1996 s 579(1) (definition added by the Education Act 2002 s 215(1), Sch 21 para 57(b)). For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post. As to the National Curriculum for England see PARA 916 et seq post; and as to the National Curriculum for Wales see PARA 929 et seq post.

20    Education Act 1996 s 405. See also PARA 944 post.

## **UPDATE**

### **13 Pupils to be educated in accordance with parents' wishes**

NOTE 6--See also *Coventry City Council v Special Educational Needs and Disability Tribunal* [2007] EWHC 2278 (Admin), [2008] ELR 1.

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## **(2) THE STATUTORY SYSTEM OF EDUCATION**

### **14. The stages of education.**

The statutory system of public education consists of three progressive stages: primary education<sup>1</sup>, secondary education<sup>2</sup> and further education<sup>3</sup>. Part I of the Education Act 1996<sup>4</sup> confers functions<sup>5</sup> on the Secretary of State<sup>6</sup> and local education authorities<sup>7</sup> with respect to primary, secondary and further education<sup>8</sup>. Additional provision is made in respect of further education by Part I of the Further and Higher Education Act 1992<sup>9</sup>. Apart from the general duty of the Secretary of State to promote the education of the people of England and Wales<sup>10</sup>, nothing in the Education Act 1996 confers any functions with respect to higher education<sup>11</sup>. Part V of the School Standards and Framework Act 1998<sup>12</sup> makes separate provision in relation to nursery education<sup>13</sup>.

1 For the meaning of 'primary education' see PARA 16 post.

2 For the meaning of 'secondary education' see PARA 17 post.

3 Education Act 1996 s 1(1). For the meaning of 'further education' see PARA 18 post. As to further education see PARA 579 et seq post.

4 *Ibid* Pt I (ss 1-29) (as amended).

5 'Functions' includes powers and duties: *ibid* s 579(1).

6 As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

7 As to local education authorities see PARA 20 post.

8 Education Act 1996 s 1(2)(a).

9 *Ibid* s 1(3) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 51). As to the Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended) see PARA 579 et seq post.

10 *Ie* under the Education Act 1996 s 10: see PARA 54 post. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

11 *Ibid* s 1(4). However, the Education Act 2002 s 28A (as added in relation to England; prospectively added in relation to Wales) gives power to the governing body of a maintained school to provide higher education to pupils at the school: see PARA 229 post. For the meaning of 'higher education' see PARA 19 post. As to higher education see PARA 646 et seq post. As to the governing bodies of maintained schools see PARA 203 et seq post.

12 *Ie* the School Standards and Framework Act 1998 Pt V (ss 117-124) (as amended): see PARA 85 et seq post.

13 As to nursery education see PARAS 85-93 post.

## **UPDATE**

### **14 The stages of education**



TEXT AND NOTES--See Education and Skills Act 2008 Pt 1 (ss 1-67) (not yet in force) which places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). See further PARA 1148A.

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## **15. Compulsory education and meaning of 'compulsory school age'.**

The parent<sup>1</sup> of every child<sup>2</sup> of compulsory school age must cause him to receive efficient full-time education suitable to his age, ability and aptitude, and to any special educational needs<sup>3</sup> he may have, either by regular attendance at school<sup>4</sup> or otherwise<sup>5</sup>.

A person begins to be of compulsory school age when he attains the age of five, if he attains that age on a prescribed day<sup>6</sup>, and otherwise at the beginning of the prescribed day next following his attaining that age<sup>7</sup>.

A person ceases to be of compulsory school age at the end of the day which is the school leaving date for any calendar year<sup>8</sup>: (1) if he attains the age of 16 after that day but before the beginning of the school year<sup>9</sup> next following<sup>10</sup>; (2) if he attains that age on that day<sup>11</sup>; or (3) (unless head (1) above applies) if that day is the school leaving date next following his attaining that age<sup>12</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 post.

2 For the meaning of 'child' see PARA 16 note 2 post.

3 For the meaning of 'special educational needs' see PARA 984 post.

4 For the meaning of 'school' see PARA 81 post.

5 Education Act 1996 s 7. See also PARA 510 post. As to work experience in the last year of compulsory schooling see s 560 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 744.

6 The Secretary of State may by order provide that such days in the year as are specified in the order are, for each calendar year, prescribed days for the purposes of *ibid* s 8(2) (as substituted): s 8(4)(a) (s 8(4) substituted by the Education Act 1997 s 52(1), (3)). The prescribed days are 31 March, 31 August and 31 December: Education (Start of Compulsory School Age) Order 1998, SI 1998/1607, art 2.

Any power of the Secretary of State to make orders under the Education Act 1996, other than an order under s 349 (see PARAS 956, 1028-1031 post), s 489(3) (see PARA 74 post), s 497 (as amended) (see PARA 58 post), s 545 (as amended) (see PARA 1412 post), must be exercised by statutory instrument: s 568(1), (2) (s 568(2) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 175(a); and amended by the Education Act 2002 s 215(2), Sch 22 Pt 3). A statutory instrument containing any order made by the Secretary of State under the Education Act 1996, other than an order under s 554 (as amended) (see PARA 1435 post), s 583(3), (4) (power to make commencement orders for certain provisions; and power to make incidental, supplemental, saving or transitional provision), or Sch 40 (repealed), is subject to annulment in pursuance of a resolution of either House of Parliament: s 568(3) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 175(b); and the Education Act 2002 s 215(2), Sch 22 Pt 3). Any order made by the Secretary of State under the Education Act 1996 by statutory instrument may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit (s 568(5) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 175(c), Sch 31)); and, without prejudice to the generality of the Education Act 1996 s 568(5) (as amended), an order made by the Secretary of State under the Education Act 1996 by statutory instrument may make in relation to Wales provision different from that made in relation to England (s 568(6)). As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

Any order or directions made or given under the Education Act 1996 by the Secretary of State or a local education authority, other than an order to which s 568(1) (as amended) applies, may be varied or revoked by a further order or directions made or given by the Secretary of State or the local education authority, as the case may be: s 570(1), (2) (s 570(1), (2) amended by the School Standards and Framework Act 1998 s 140(1), (3),

Sch 30 para 177(a), (b), Sch 31). Where the power to make or give any such order or directions is only exercisable: (1) on the application or with the consent of any person or body of persons; or (2) after consultation with any person or body of persons; or (3) subject to any other conditions, no order or directions made or given under that power may be varied or revoked under the Education Act 1996 s 570(2) (as amended) unless the same conditions are complied with: s 570(3).

7 Ibid s 8(2) (substituted by the Education Act 1997 s 52(1), (2)). The provisions of the Education Act 1996 s 8(2), (3) (s 8(2) as substituted) apply to determine for the purposes of any enactment whether a person is of compulsory school age: s 8(1).

Where the age of any person is required to be proved for the purposes the Education Act 1996 or of any enactment relating to the employment of children or young persons, provision is made for certificates issued by the registrar to be provided at a reduced fee: see the Education Act 1996 s 564; and REGISTRATION CONCERNING THE INDIVIDUAL vol 39(2) (Reissue) PARAS 522, 616. Where in any proceedings under the Education Act 1996 the person by whom the proceedings are brought alleges that any person whose age is material to the proceedings is under, of, or over, any age and satisfies the court that, having used all reasonable diligence to obtain evidence as to the age of that person, he has been unable to do so, the court may, unless the contrary is proved, presume that person to be under, of, or, as the case may be, over, the age alleged: s 565(1). This has effect subject to s 445(3), which provides that where a court is obliged by virtue of s 445(2) (see PARA 524 post) to presume a child to have been of compulsory school age s 565(1) does not apply: see ss 445(3), 565(2).

8 Ibid s 8(3). See note 6 supra. The Secretary of State may by order determine the day in any calendar year which is to be the school leaving date for that year: s 8(4)(b) (as substituted: see note 6 supra). The school leaving date is the last Friday in June: Education (School Leaving Date) Order 1997, SI 1997/1970, art 2.

9 'School year' in relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first such term to begin after the following July: Education Act 1996 s 579(1) (definition added by the Education Act 1997 s 57(1), Sch 7 para 43).

10 Education Act 1996 s 8(3)(a).

11 Ibid s 8(3)(b).

12 Ibid s 8(3)(c).

## **UPDATE**

### **15 Compulsory education and meaning of 'compulsory school age'**

TEXT AND NOTES--See Education and Skills Act 2008 Pt 1 (ss 1-67) (not yet in force) which places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). See further PARA 1148A.

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## 16. Meaning of 'primary education'.

'Primary education' means: (1) full-time or part-time education<sup>1</sup> suitable to the requirements of children<sup>2</sup> who have attained the age of two but are under compulsory school age<sup>3</sup>; (2) full-time education suitable to the requirements of junior pupils<sup>4</sup> of compulsory school age who have not attained the age of 10 years and six months<sup>5</sup>; and (3) full-time education suitable to the requirements of junior pupils who have attained that age and whom it is expedient to educate together with junior pupils within head (2) above<sup>6</sup>.

1 References to education in the Education Act 1996 s 2 (as amended) (see the text and notes 2-5 infra; and PARAS 17-18 post) do not include references to higher education: s 2(7). For the meaning of 'higher education' see PARA 19 post.

2 For these purposes, 'child' means a person who is not over compulsory school age: *ibid* s 579(1). As to the meaning of 'compulsory school age' see PARA 15 ante.

3 *Ibid* s 2(1)(a) (s 2(1) substituted by the Education Act 2002 s 156(2)).

4 'Junior pupil' means a child who has not attained the age of 12: Education Act 1996 s 3(2). 'Pupil' means a person for whom education is being provided at a school, other than:

1 (1) a person who has attained the age of 19 for whom further education is being provided; or

2 (2) a person for whom part-time education suitable to the requirements of persons of any age over compulsory school age is being provided,

and references to pupils in the context of the admission of pupils to, or the exclusion of pupils from, a school are references to persons who following their admission will be, or, as the case may be, before their exclusion were, pupils as defined by this provision: s 3(1) (amended by the Education Act 1997 s 57(1), Sch 7 para 9). However, a person is not for the purposes of the Education Act 1996 to be treated as a pupil at a school merely because any education is provided for him at the school in the exercise of the powers conferred by the Education Act 2002 s 27 (power of governing body of maintained school to provide community facilities etc: see PARA 232 post); Education Act 1996 s 3(1A) (added by the Education Act 2002 s 215(1), Sch 21 para 34(1), (2)). The Education Act 1996 s 3(1) (as amended), s 3(1A) (as added) also apply, unless the context otherwise requires, for the purposes of any instrument made or having effect as if made under the Education Acts: Education Act 1996 s 3(3) (amended by the Education Act 2002 Sch 21 para 34(1), (3)). Any child for whom education is provided otherwise than at school in pursuance of the Education Act 1996 s 19 (as amended) (exceptional provision of education in pupil referral units or elsewhere: see PARA 457 post) and any young person for whom full-time education is so provided in pursuance of s 19 (as amended), is to be treated for the purposes of the Education Act 1996 as a pupil: s 19(5). For the meaning of 'further education' see PARA 18 post; for the meaning of 'school' see PARA 81 post; for the meaning of 'the Education Acts' see PARA 1 note 14 ante; and for the meaning of 'young person' see PARA 38 note 4 post.

5 *Ibid* s 2(1)(b) (as substituted: see note 3 supra).

6 *Ibid* s 2(1)(c) (as substituted: see note 3 supra).

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## 17. Meaning of 'secondary education'.

'Secondary education' means: (1) full-time education<sup>1</sup> suitable to the requirements of pupils<sup>2</sup> of compulsory school age<sup>3</sup> who are either senior pupils<sup>4</sup>, or junior pupils<sup>5</sup> who have attained the age of 10 years and six months and whom it is expedient to educate together with senior pupils of compulsory school age<sup>6</sup>; and (2) full-time education suitable to the requirements of pupils who are over compulsory school age but under the age of 19 which is provided at a school<sup>7</sup> at which education within head (1) above is also provided<sup>8</sup>.

Education is also secondary education for the purposes of the Education Act 1996<sup>9</sup> if it is provided by an institution which: (a) is maintained by a local education authority or is an academy<sup>10</sup>; and (b) is principally concerned with the provision of full-time education suitable to the requirements of pupils who are over compulsory school age but under the age of 19<sup>11</sup>.

Where: (i) a person is in full-time education<sup>12</sup>; (ii) he receives his education partly at a school and, by virtue of arrangements made by the school, partly at another institution or any other establishment<sup>13</sup>; and (iii) the education which he receives at the school would be secondary education if it was full-time education at the school, the person's education<sup>14</sup>, both at the school and at the other institution or establishment, is secondary education for the purposes of the Education Act 1996<sup>15</sup>.

1 In the context of the definition of 'secondary education', references in the Education Act 1996 s 2 (as amended) (see the text and notes 2-12 infra; and PARAS 16 ante, 18 post) to education include vocational, social, physical and recreational training (s 2(6A) (added by the Education Act 2002 s 177(1), (3))) but do not include references to higher education (Education Act 1996 s 2(7)). For the meaning of 'higher education' see PARA 19 post.

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

3 As to the meaning of 'compulsory school age' see PARA 15 ante.

4 For these purposes, 'senior pupil' means a person who has attained the age of 12 but not the age of 19: Education Act 1996 s 3(2).

5 For the meaning of 'junior pupil' see PARA 16 note 4 ante.

6 Education Act 1996 s 2(2)(a).

7 For the meaning of 'school' see PARA 81 post.

8 Education Act 1996 s 2(2)(b). For the purposes of the Education Act 1996, education provided for persons who have attained the age of 19 is further education not secondary education; but where a person: (1) has begun a particular course of secondary education before attaining the age of 18; and (2) continues to attend that course, the education does not cease to be secondary education by reason of his having attained the age of 19: s 2(5).

9 *Ie* subject to *ibid* s 2(5): see note 8 *supra*.

10 *Ibid* s 2(2A)(a) (added by the Learning and Skills Act 2000 s 110(1); and amended by the Education Act 2002 s 65(3), Sch 7 Pt 2 para 6(1), (2)). As to local education authorities see PARA 20 post; and as to academies see PARA 496 *et seq* post.

11 Education Act 1996 s 2(2A)(b) (added by the Learning and Skills Act 2000 s 110(1)). As to the provision of secondary education by the further education sector see PARA 620 post.

12 Education Act 1996 s 2(2B)(a) (s 2(2B) added by the Learning and Skills Act 2000 s 110(1)). The Education Act 1996 s 2(2B) (as added) is subject to s 2(5); see note 8 *supra*. The Education Acts have effect in their application to persons receiving secondary education within s 2(2B) (as added) with such modifications as may be specified in an order under the Education Act 2002 s 177(4); s 177(4). The power to make such an order is exercisable: (1) in relation to England, by the Secretary of State; and (2) in relation to Wales, by the National Assembly for Wales: s 177(5). At the date at which this volume states the law, no such order had been made. For the meaning of 'the Education Acts' see PARA 1 note 14 *ante*. As to the meaning of 'modifications' see PARA 43 note 7 *post*; definition applied by virtue of s 212(2), (3). For the meaning of 'England' see PARA 52 note 11 *post*; and for the meaning of 'Wales' see PARA 52 note 13 *post*. As to the Secretary of State see PARA 52 *post*; and as to the National Assembly for Wales see PARA 53 *post*.

13 Education Act 1996 s 2(2B)(b) (as added (see note 12 *supra*); and amended by the Education Act 2002 s 177(1), (2)(a)). See also note 12 *supra*.

14 Education Act 1996 s 2(2B)(c) (as added: see note 12 *supra*). See also note 12 *supra*.

15 *Ibid* s 2(2B) (as added (see note 12 *supra*); and amended by the Education Act 2002 s 177(1), (2)(b)). See also note 12 *supra*.

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## **18. Meaning of 'further education'.**

'Further education' means<sup>1</sup>: (1) full-time and part-time education<sup>2</sup> suitable to the requirements of persons who are over compulsory school age<sup>3</sup>; and (2) organised leisure-time occupation<sup>4</sup> provided in connection with the provision of such education<sup>5</sup>. However, it does not include secondary education<sup>6</sup> or<sup>7</sup> higher education<sup>8</sup>.

1    Ie subject to the Education Act 1996 s 2(5): see PARA 17 note 8 ante.

2    In the context of the definition of 'further education', references in *ibid* s 2 (as amended) (see the text and notes 3-8 *infra*; and PARAS 16-17 ante) to education include vocational, social, physical and recreational training (s 2(6A) (added by the Education Act 2002 s 177(1), (3))) but do not include references to higher education (Education Act 1996 s 2(7)). For the meaning of 'higher education' see PARA 19 post.

3    Ibid s 2(3)(a) (amended by the Education Act 2002 s 215(2), Sch 22 Pt 3). See also note 1 *supra*. As to the meaning of 'compulsory school age' see PARA 15 ante.

4    For this purpose, 'organised leisure-time occupation' means leisure-time occupation, in such organised cultural training and recreative activities as are suited to their requirements, for any persons over compulsory school age who are able and willing to profit by facilities provided for that purpose: Education Act 1996 s 2(6).

5    Ibid s 2(3)(b). See also note 1 *supra*.

6    For the meaning of 'secondary education' see PARA 17 ante.

7    Ie in accordance with the Education Act 1996 s 2(7): see note 2 *supra*.

8    Ibid s 2(3). See also note 1 *supra*. Accordingly, unless it is education within s 2(2)(b) or s 2(2A) (as added) (see PARA 17 ante), full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19 is further education for the purposes of the Education Act 1996 and not secondary education: s 2(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 33).

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## 19. Higher education.

'Higher education' means education provided by means of any of the following courses<sup>1</sup>:

- 17 (1) a course for the further training of teachers or youth and community workers<sup>2</sup>;
- 18 (2) a post-graduate course (including a higher degree course)<sup>3</sup>;
- 19 (3) a first degree course<sup>4</sup>;
- 20 (4) a course for the Diploma of Higher Education<sup>5</sup>;
- 21 (5) a course for the Higher National Diploma or Higher National Certificate of the Business and Technician Education Council, or the Diploma in Management Studies<sup>6</sup>;
- 22 (6) a course for the Certificate in Education<sup>7</sup>;
- 23 (7) a course in preparation for a professional examination at higher level<sup>8</sup>;
- 24 (8) a course providing education at a higher level (whether or not in preparation for an examination)<sup>9</sup>.

1 Education Reform Act 1988 s 120, s 235(1), Sch 6 (s 120 amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I para 30, Sch 9; and the Education Act 1996 s 582(2), Sch 38 Pt I); Education Act 1996 s 579(1). The Secretary of State may by order amend the Education Reform Act 1988 Sch 6, which contains the list of courses of higher education: s 120(10). Any power of the Secretary of State to make orders or regulations under the Education Reform Act 1988 must be exercised by statutory instrument: s 232(1). A statutory instrument containing any order or regulations made by the Secretary of State under that Act is subject to annulment in pursuance of a resolution of either House of Parliament: s 232(4). Orders or regulations under that Act may make different provision for different cases or circumstances and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit: s 232(5). Without prejudice to s 232(5), orders under that Act, and regulations under any provision of that Act, may make in relation to Wales provision different from that made in relation to England: s 232(6) (amended by the Teaching and Higher Education Act 1998 s 44(1), (2), Sch 3 para 4, Sch 4). As to the power to make incidental, consequential, transitional and supplementary provisions see the Education Reform Act 1988 s 231. At the date at which this volume states the law, no order had been made under s 120(10).

2 Ibid Sch 6 para 1(a); Education Act 1996 s 579(1).

3 Education Reform Act 1988 Sch 6 para 1(b); Education Act 1996 s 579(1).

4 Education Reform Act 1988 Sch 6 para 1(c); Education Act 1996 s 579(1).

5 Education Reform Act 1988 Sch 6 para 1(d); Education Act 1996 s 579(1).

6 Education Reform Act 1988 Sch 6 para 1(e); Education Act 1996 s 579(1).

7 Education Reform Act 1988 Sch 6 para 1(f); Education Act 1996 s 579(1).

8 Education Reform Act 1988 Sch 6 para 1(g); Education Act 1996 s 579(1). For these purposes, a professional examination is at higher level if its standard is higher than the standard of examinations at advanced level for the General Certificate of Education or the examination for the National Certificate or the National Diploma of the Business and Technician Education Council: Education Reform Act 1988 Sch 6 para 2.

9 Ibid Sch 6 para 1(h); Education Act 1996 s 579(1). For these purposes, a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses providing education in preparation for any of the examinations mentioned in the Education Reform Act 1988 Sch 6 para 2 (see note 8 supra): Sch 6 para 3.



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### **(3) LOCAL EDUCATION AUTHORITIES**

#### **(i) General Duties and Functions of Local Education Authorities**

##### **A. PROVISION OF EDUCATION**

##### **20. Local education authorities.**

The local education authority<sup>1</sup> (often referred to as the 'LEA') for a county in England<sup>2</sup> having a county council is the county council<sup>3</sup>. The local education authority for a district in England which is not in a county having a county council is the district council<sup>4</sup>. The local education authority for a London borough is the borough council<sup>5</sup>. The local education authority for the City of London<sup>6</sup> is the Common Council of the City of London (in its capacity as a local authority)<sup>7</sup>. As respects Wales, the local education authority for a county is the county council, and the local education authority for a county borough is the county borough council<sup>8</sup>.

The Inner London Education Authority (the 'ILEA') was established by the Local Government Act 1985<sup>9</sup> as the local education authority for the Inner London Education Area. On 1 April 1990, the ILEA, any education committee established by the ILEA and the Inner London Education Area ceased to exist<sup>10</sup>. On that abolition date each inner London council<sup>11</sup> became the local education authority for its area, and references to a local education authority in the Education Act 1996 or in any other enactment are to be construed accordingly<sup>12</sup>.

1 The definition of 'local education authority' in the Education Act 1996 applies for the purposes of the National Health Service Act 1977, the Education (Fees and Awards) Act 1983, the Further Education Act 1985, the Education (No 2) Act 1986, the Education Reform Act 1988, the Children Act 1989, the Further and Higher Education Act 1992, the Nursery Education and Grant-Maintained Schools Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales), the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales), the Education Act 1997, the School Standards and Framework Act 1998, the Adoption and Children Act 2002 ss 4, 8, the Education Act 2002, the Anti-social Behaviour Act 2003 ss 19-21 (as amended in relation to England; prospectively amended in relation to Wales), and the Education Act 2005: see the National Health Service Act 1977 s 128(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 45); the Education (Fees and Awards) Act 1983 s 1(4) (amended by the Education Reform Act 1988 s 237, Sch 12 Part III para 91; and the Education Act 1996 Sch 37 para 57); the Further Education Act 1985 s 8(3) (amended by the Education Act 1996 Sch 37 para 61); the Education (No 2) Act 1986 s 67(3) (amended by the Education Act 1996 Sch 37 para 66(3), (4)); the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 Sch 37 para 81(4)); the Children Act 1989 s 105(1) (definition substituted by the Education Act 1996 Sch 37 para 91); the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 Sch 37 para 115(3)); the Nursery Education and Grant-Maintained Schools Act 1996 s 11(2) (substituted by the Education Act 1996 Sch 37 Pt I para 132) (repealed in relation to England; prospectively repealed in relation to Wales); the School Inspections Act 1996 s 46(4) (repealed in relation to England; prospectively repealed in relation to Wales); the Education Act 1997 s 56(2); the School Standards and Framework Act 1998 s 142(8); the Adoption and Children Act 2002 ss 4(9), 8(2)(c); the Education Act 2002 s 212(2), (3); the Anti-social Behaviour Act 2003 s 24; and the Education Act 2005 s 122(2), (3).

2 For the meaning of 'England' see PARA 52 note 11 post.

3 Education Act 1996 s 12(1). Any reference in the Education Act 1996 to the area of a local education authority is to be construed in accordance with the provisions of s 12(1)-(5) (see the text and notes 4-8 infra): s 12(6). As to areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. For the purposes of the Education Act 1996, a person is treated as belonging, or as not belonging, to the area of a particular local education authority in accordance with regulations; and any question under the regulations, in

the case of a dispute, is to be determined by the Secretary of State: s 579(4). The power for regulations to make different provision in relation to Wales from that made in relation to England does not apply to regulations made under s 579(4): see s 569(5), (6); and PARA 40 note 5 post. At the date at which this volume states the law, no regulations had been made under s 579(4) but, by virtue of s 582(3), Sch 39 Pt I para 1, the Education (Areas to which Pupils and Students Belong) Regulations 1996, SI 1996/615 (amended by SI 1997/597) have effect as if so made. For the meaning of 'Wales' see PARA 52 note 13 post.

Where, in the School Standards and Framework Act 1998, reference is made to a school maintained, or proposed to be maintained, by a local education authority, 'the local education authority' means that authority (s 22(8)(a)); and, in the Education Act 2002, 'the local education authority', in relation to a school maintained, or proposed to be maintained, by a local education authority, means that authority (s 212(1)).

4 Education Act 1996 s 12(2).

5 Ibid s 12(3). As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq.

6 For the purposes of the Education Act 1996, the City of London is to be treated as including the Inner Temple and the Middle Temple: s 12(4). As to the City of London, and as to the Temples, see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 31-32.

7 Ibid s 12(4). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55. For the meaning of 'local authority' see PARA 50 note 1 post.

8 Ibid s 12(5). As to areas and authorities in Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

9 See the Local Government Act 1985 Pt III (ss 18-22) (repealed).

10 See the Education Reform Act 1988 s 162 (repealed).

11 For these purposes, 'inner London council' means the council of an inner London borough or, in its capacity as a local authority, the Common Council of the City of London: ibid s 163(2). As to inner London boroughs see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30.

12 Ibid s 163(1) (amended by the Education Act 1996 Sch 37 para 72).

## UPDATE

### 20 Local education authorities

TEXT AND NOTES--The Secretary of State and the National Assembly for Wales have a general power to replace a reference in any statutory provision to a local education authority with a reference to a local authority: see the Education and Inspections Act 2006 s 162 (amended by Learner Travel (Wales) Measure 2008 s 23(2)).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--National Health Service Act 1977 now as consolidated: see National Health Service Act 2006, National Health Service (Wales) Act 2006; and HEALTH SERVICES. Education Act 1996 Sch 37 para 45 repealed: National Health Service (Consequential Provisions) Act 2006 Sch 4.

NOTE 3--See *R (on the application of L) v Waltham Forest LBC* [2007] EWHC 2060 (Admin), [2008] LGR 495; *R (on the application of JK) v Haringey LBC* [2009] EWHC 1393 (Admin), [2009] ELR 421, [2009] All ER (D) 178 (Jun) (duty to maintain statement of special educational needs under SI 2006/615). SI 1996/615 further amended, in relation to England, by SI 2009/1301, and in relation to Wales, by SI 2009/1338.

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## **21. General responsibility for education.**

A local education authority<sup>1</sup> must, so far as its powers enable it to do so, contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient primary education<sup>2</sup> and secondary education<sup>3</sup> are available to meet the needs of the population of its area<sup>4</sup>. Such a duty does not extend to matters in respect of which any duty is imposed on the Learning and Skills Council for England<sup>5</sup>, the National Council for Education and Training for Wales<sup>6</sup> or the Higher Education Funding Councils established under the Further and Higher Education Act 1992<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'primary education' see PARA 16 ante.

3 For the meaning of 'secondary education' see PARA 17 ante.

4 Education Act 1996 s 13(1) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 52(1), (3)). It would be inappropriate to seek to enforce the duty under the Education Act 1996 s 13(1) (as amended) by way of a declaration by judicial review: *R (on the application of Rhodes) v Kingston upon Hull* [2001] ELR 230.

5 As to the Learning and Skills Council for England see PARA 1072 et seq post.

6 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

7 Education Act 1996 s 13(2) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 52). The Higher Education Funding Councils are established under the Further and Higher Education Act 1992 s 62 (as amended): see PARA 733 et seq post.

## **UPDATE**

## **21 General responsibility for education**

TEXT AND NOTES--Education Act 1996 s 13(1) amended, s 13(3)-(6) added: Apprenticeships, Skills, Children and Learning Act 2009 Sch 2 para 2.

TEXT AND NOTE 5--Reference to the Learning and Skills Council for England is now to the Chief Executive of Skills Funding: 1996 Act s 13(2) (amended by the Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 13).

TEXT AND NOTE 6--Reference to National Council for Education and Training for Wales is now to the National Assembly for Wales under the Learning and Skills Act 2000 Pt 2 (ss 30-51): 1996 Act s 13(2) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

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## **22. Duties in relation to the welfare of children.**

A local education authority<sup>1</sup> must make arrangements for ensuring that the functions<sup>2</sup> conferred on it in its capacity as a local education authority are exercised with a view to safeguarding and promoting the welfare of children<sup>3</sup>. Such an authority must, in considering what arrangements are required to be made by it, have regard to any guidance given from time to time, in relation to England, by the Secretary of State<sup>4</sup> or, in relation to Wales<sup>5</sup>, by the National Assembly for Wales<sup>6</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 Ibid s 175(1). For this purpose, 'child' means a person under the age of 18: s 175(5). The duty contained in s 175 is imposed also on the governing body of a maintained school (see PARA 286 post) and on the governing body of an institution within the further education sector (see PARA 621 post).

Section 175 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2004 (see the Education Act 2002 (Commencement No 8) Order 2004, SI 2004/1318, art 2); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

4 As to the Secretary of State see PARA 52 post.

5 See note 3 supra.

6 Education Act 2002 s 175(4). See note 3 supra. As to the National Assembly for Wales see PARA 53 post. As to the publication of guidance as mentioned in the text see PARA 54 post; applied by virtue of s 212(2), (3).

### **UPDATE**

## **22 Duties in relation to the welfare of children**

NOTE 3--Day now appointed in relation to Wales: SI 2006/172.

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### **23. Consultation with pupils.**

It is the duty of a local education authority<sup>1</sup>, in the exercise of any of its schools functions<sup>2</sup>, to have regard to any guidance given from time to time, in relation to England<sup>3</sup>, by the Secretary of State<sup>4</sup> or, in relation to Wales<sup>5</sup>, by the National Assembly for Wales<sup>6</sup>, about consultation with pupils<sup>7</sup> in connection with the taking of decisions affecting them<sup>8</sup>. Any such guidance must provide for a pupil's views to be considered in the light of his age and understanding<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 2002 s 176(1)(a). For this purpose, 'schools functions', in relation to a local education authority, means functions relating to: (1) maintained schools; (2) pupil referral units; or (3) the provision of education for children of compulsory school age otherwise than at school: s 176(3). 'Maintained school' means a community, foundation or voluntary school or a community or foundation special school: s 176(3). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 post; and as to pupil referral units see PARAS 457-464 post. For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 post; definition applied by virtue of s 212(2), (3).

3 For the meaning of 'England' see PARA 52 note 11 post.

4 As to the Secretary of State see PARA 52 post.

5 For the meaning of 'Wales' see PARA 52 note 13 post.

6 As to the National Assembly for Wales see PARA 53 post.

7 'Pupil' does not include a child who is being provided with nursery education, whether at a school or elsewhere: Education Act 2002 s 176(3).

8 Ibid s 176(1). The duty contained in s 176(1) is also imposed on the governing body of a maintained school: see PARA 286 post.

9 Ibid s 176(2).

### **UPDATE**

### **23 Consultation with pupils**

NOTES 2, 7--'Maintained school' also means a maintained nursery school; definition of 'pupil' omitted: 2002 Act s 176(3) (amended by the Education and Inspections Act 2006 s 167, Sch 18 Pt 6 (in force in England: SI 2007/1801)).

TEXT AND NOTE 8--Education Act 2002 s 176(1) amended and repealed in part: Education and Skills Act 2008 s 158, Sch 2 (not yet in force).

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## **24. Provision of nursery education.**

A local education authority<sup>1</sup> may: (1) establish nursery schools<sup>2</sup>; (2) maintain nursery schools established by it or by an authority which was a local education authority<sup>3</sup>; and (3) assist<sup>4</sup> any nursery school not so established<sup>5</sup>.

A local education authority must secure that the provision of nursery education<sup>6</sup>, whether or not by it, for children who have not attained compulsory school age but have attained such age as may be prescribed<sup>7</sup>, is sufficient for its area<sup>8</sup>.

Every local education authority must establish for its area a body known as an early years development and childcare partnership to work with the authority in reviewing the sufficiency of the provision of nursery education for the authority's area and preparing early years development and childcare plans<sup>9</sup>. In relation to Wales<sup>10</sup>, such plans must include a statement of the authority's proposals for complying with its duty to provide sufficient nursery education<sup>11</sup>, and the plans are subject to approval, modification and review<sup>12</sup>.

Any local education authority providing relevant nursery education<sup>13</sup>, and any person employed<sup>14</sup> by such an authority, is under a duty to have regard to the provisions of the code of practice<sup>15</sup> giving practical guidance in respect of the discharge of functions under the provisions<sup>16</sup> relating to children with special educational needs<sup>17</sup>.

A local education authority may also assist with travel arrangements for children receiving nursery education otherwise than at school<sup>18</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 1996 s 17(1)(a). As to the meaning of 'nursery school' see PARA 81 post.

3 Ibid s 17(1)(b). The text refers to an authority which was a local education authority within the meaning of any enactment repealed by the Education Act 1944 or an earlier Act: s 17(1)(b). As to the Education Act 1944 see PARA 1 ante.

4 As to the meaning of 'assist' see PARA 45 post.

5 Education Act 1996 s 17(1)(c). Section 14(4) (as amended) (local education authority not under any duty to provide sufficient schools in respect of children under compulsory school age: see PARA 26 post) does not affect a local education authority's power under s 16(1) (prospectively amended) (see PARA 32 post) to establish, maintain and assist schools at which education is provided both for children under compulsory school age and for older pupils (including schools at which there are nursery classes for children under compulsory school age: s 17(2) (amended by the Education Act 1997 s 57(1), Sch 7 para 13). For the meaning of 'child' see PARA 16 note 2 ante. For the meaning of 'pupil' see PARA 16 note 4 ante. As to the meaning of 'compulsory school age' see PARA 15 ante.

As from a day to be appointed, the Education Act 1996 s 17(2) (as amended) is further amended so that the reference to the local education authority's power to establish, maintain and assist schools is substituted by a reference to the local education authority's power to establish and maintain schools: s 17(2) (as so amended; and prospectively amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 65). At the date at which this volume states the law, no such day had been appointed.

6 For the meaning of 'nursery education' see PARA 85 post.

7 I.e. prescribed by regulations made by the Secretary of State: School Standards and Framework Act 1998 s 142(1). See PARA 86 note 4 post. As to the Secretary of State see PARA 52 post. As to the transfer of certain

functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

8 See *ibid* s 118; and PARA 86 post. As to the duties of a local education authority in respect of childcare see PARA 25 post.

9 See *ibid* s 119; and PARA 87 post.

10 For the meaning of 'Wales' see PARA 52 note 13 post.

11 See the School Standards and Framework Act 1998 s 120 (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 88 post.

12 See *ibid* s 121 (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 89 post.

13 For the meaning of 'relevant nursery education', in relation to the inspection of nursery education in England, see PARA 1291 note 3 post; and, in relation to the inspection of nursery education in Wales, see PARA 1295 note 3 post.

14 For the meaning of 'employed' see PARA 355 note 14 post.

15 *Ie* under the Education Act 1996 s 313 (as amended): see PARA 1036 post. The duty referred to in the text does not apply where a duty is already imposed by s 313(2): see PARA 1036 post.

16 *Ie* under *ibid* Pt IV (ss 312-349) (as amended): see PARA 984 *et seq* post.

17 See the School Standards and Framework Act 1998 s 123 (as amended); and PARA 1019 post.

18 See the Education Act 1996 s 509A (as added and amended); and PARA 537 post.

## **UPDATE**

### **24 Provision of nursery [schools]**

TEXT AND NOTES 1-5--Heading to 1996 Act s 17 amended: Childcare Act 2006 Sch 2 para 20 (in force in relation to England: SI 2008/2261).

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## **25. Functions in respect of provision of childcare.**

A local education authority<sup>1</sup> must review annually the sufficiency of childcare provision for its area<sup>2</sup>. In carrying out such a review, a local education authority:

- 25 (1) may have regard to any facilities which it expects to be available outside its area for providing childcare<sup>3</sup>; and
- 26 (2) must have regard to any guidance given from time to time by the Secretary of State<sup>4</sup>.

A local education authority must also establish and maintain a service providing information to the public relating to the provision of childcare and related services in its area<sup>5</sup>; and in relation to the function, form and content of a service so established and maintained, a local education authority must have regard to any guidance given from time to time by the Secretary of State<sup>6</sup>.

1 As to local education authorities see PARA 20 ante.

2 School Standards and Framework Act 1998 s 118A(1) (s 118A added by the Education Act 2002 s 149(1)). As to child minding and day care for young children generally see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1070 et seq. As to a local education authority's duty in respect of the availability of nursery education see PARA 86 post.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 118A (as added) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (bba) (added by SI 2003/2704). For the meaning of 'England' see PARA 52 note 11 post.

3 School Standards and Framework Act 1998 s 118A(2)(a) (as added: see note 2 supra).

4 Ibid s 118A(2)(b) (as added: see note 2 supra). As to the Secretary of State see PARA 52 post.

5 Ibid s 118A(3) (as added: see note 2 supra).

6 Ibid s 118A(4) (as added: see note 2 supra).

## **UPDATE**

### **25 Functions in respect of provision of childcare**

TEXT AND NOTES--School Standards and Framework Act 1998 s 118A repealed: Childcare Act 2006 Sch 2 para 31, Sch 3 Pt 2 (in force in relation to England: SI 2007/1019). For transitional provision see SI 2007/1019. See further CHILDREN AND YOUNG PERSONS.



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## **26. Functions in respect of provision of primary and secondary schools.**

A local education authority<sup>1</sup> must secure that sufficient schools<sup>2</sup> for providing:

- 27 (1) primary education<sup>3</sup>; and
- 28 (2) education that is secondary education<sup>4</sup>,

are available for its area<sup>5</sup>. The schools available for an area are not to be regarded as sufficient for such purposes unless they are sufficient in number, character and equipment to provide for all pupils<sup>6</sup> the opportunity of appropriate education<sup>7</sup>.

A local education authority for an area in Wales<sup>8</sup> may secure that regional schools<sup>9</sup> for providing primary education, and education that is secondary education<sup>10</sup>, are available for Wales or any part of Wales that includes the area of the authority<sup>11</sup>.

In exercising these functions<sup>12</sup>, a local education authority must in particular have regard to:

- 29 (a) the need for securing that primary and secondary education are provided in separate schools<sup>13</sup>;
- 30 (b) the need for securing that special educational provision<sup>14</sup> is made for pupils who have special educational needs<sup>15</sup>; and
- 31 (c) the expediency of securing the provision of boarding accommodation, in boarding schools or otherwise, for pupils for whom education as boarders<sup>16</sup> is considered by their parents<sup>17</sup> and the authority to be desirable<sup>18</sup>.

The duty imposed by head (a) above does not apply in relation to middle schools<sup>19</sup> or special schools<sup>20</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'school' see PARA 81 post.

3 Education Act 1996 s 14(1)(a). For the meaning of 'primary education' see PARA 16 ante. A local education authority is not, by virtue of s 14(1)(a), under any duty in respect of children under compulsory school age: s 14(4) (amended by the Education Act 1997 s 57(1), Sch 7 para 12). For the meaning of 'child' see PARA 16 note 2 ante. As to the meaning of 'compulsory school age' see PARA 15 ante.

4 Education Act 1996 s 14(1)(b). The reference in the text to secondary education is a reference to education that is secondary education by virtue of s 2(2)(a): see PARA 17 ante. For the meaning of 'secondary education' see PARA 17 ante.

5 Ibid s 14(1). The case law associated with the local education authority's duty to ensure the provision of sufficient schools (see also note 7 infra) has been decided under the Education Act 1944 s 8, whose terms were very similar to the Education Act 1996 s 14 (as amended) which replaced it.

The duty to secure the provision of sufficient schools is a target duty rather than an absolute duty and does not give an individual a cause of action, although a complaint of non-performance may be pursued via the Secretary of State's default powers (see PARA 58 post): *R v Inner London Education Authority, ex p Ali* (1990) 2 Admin LR 822, 154 LG Rev 852. See also *Watt v Kesteven County Council* [1955] 1 QB 408, [1955] 1 All ER 473, CA; *Bradbury v Enfield London Borough Council* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA; *Meade v Haringey*

*London Borough Council* [1979] 2 All ER 1016, [1979] 1 WLR 637, CA. Local education authorities have a broad discretion as to the manner of performance of the duty (*Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, [1976] 3 All ER 665, HL) and they may have regard to financial constraints (see *R v Hereford and Worcester Local Education Authority, ex p Jones* [1981] 1 WLR 768, 79 LGR 490). As to discretion generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 692.

When acting in furtherance of its duty, a local authority may not differentiate between applicants living inside and those living outside the area of the authority: *R v Bromley London Borough Council, ex p C* [1992] 1 FLR 174, 156 LG Rev 282; and see PARA 396 post. In the performance of its duty, the local education authority must act in a way that does not bring it into conflict with the Sex Discrimination Act 1975 s 23 (as amended), which makes it unlawful for an authority in carrying out such of its functions as do not fall under s 22 (as amended) (see PARA 6 ante) to do any act which constitutes sex discrimination: see *Birmingham City Council v Equal Opportunities Commission* [1989] AC 1155, sub nom *Equal Opportunities Commission v Birmingham City Council* [1989] 1 All ER 769, HL (where, in aggregate, fewer single sex places for girls were available in the area than there were equivalent places for boys); *R v Secretary of State for Education and Science, ex p Keating* (1985) 84 LGR 469 (where a local education authority proposed to close the only single sex school for boys in its area while continuing to maintain two single sex schools for girls); *R v Secretary of State for Education and Science, ex p Malik* [1992] COD 31; *R v Northamptonshire County Council and Secretary of State for Education, ex p K* [1994] ELR 397, CA (where a local education authority proposed to close a single sex school for boys which was no longer viable, while maintaining a single sex school for girls). See also *R v Birmingham City Council, ex p Equal Opportunities Commission (No 2)* (1992) 91 LGR 14, [1994] ELR 282, sub nom *Equal Opportunities Commission v Birmingham City Council* [1993] 1 FCR 753, CA (where it was held that, in considering the availability of places for boys and girls, a local education authority must take account of other maintained schools in the area, not merely those which it actually maintains). As to discrimination see PARAS 6-8 ante; and as to the principle of non-discrimination in the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), which is given effect in the United Kingdom by the Human Rights Act 1998, see PARA 3 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 164.

6 For the meaning of 'pupil' see PARA 16 note 4 ante.

7 Education Act 1996 s 14(2). For this purpose, 'appropriate education' means education which offers such variety of instruction and training as may be desirable in view of the pupils' different ages, abilities and aptitudes, and the different periods for which they may be expected to remain at school, including practical instruction and training appropriate to their different needs: s 14(3). The duty to secure the provision of sufficient schools extends to the adequate provision of staff: *R v Liverpool City Corpn, ex p Ferguson* [1985] IRLR 501. See also *R v Northamptonshire County Council and Secretary of State for Education, ex p K* [1994] ELR 397, CA (local education authority could not meet its obligation by keeping open a school whose pupil numbers had declined significantly). As to the admission of children as pupils otherwise than at the beginning of a school term see the Education Act 1996 s 433(1); and PARA 392 post.

8 For the meaning of 'Wales' see PARA 52 note 13 post.

9 For this purpose, a 'regional school', in relation to a local education authority, is a school maintained by that authority which provides education to meet both: (1) the needs of pupils with particular special educational needs in its area; and (2) the needs of such pupils in the rest, or any other part, of Wales, whether or not the institution also provides education suitable to the requirements of other pupils: Education Act 1996 s 14(4B) (added by the Education Act 2002 s 194(1)). For the meaning of 'school maintained by a local education authority' see PARA 94 post; and for the meaning of 'special educational needs' see PARA 984 post.

10 Ie by virtue of the Education Act 1996 s 2(2)(a): see PARA 17 ante.

11 Ibid s 14(4A) (added by the Education Act 2002 s 194(1)). As to the power of the National Assembly for Wales to make regional provision for special educational needs see PARAS 1014-1015 post.

12 Ie under the Education Act 1996 s 14 (as amended). As to the meaning of 'functions' generally see PARA 14 note 5 ante.

13 Ibid s 14(6)(a).

14 For the meaning of 'special educational provision' see PARA 984 post.

15 Education Act 1996 s 14(6)(b).

16 'Boarder' includes a pupil who boards during the week but not at weekends: *ibid* s 579(1).

17 As to the meaning of 'parent' see PARA 510 note 1 post.

18 Education Act 1996 s 14(6)(c).

19 For the meaning of 'middle school' see PARA 81 post.

20 Education Act 1996 s 14(7). For the meaning of 'special school' see PARA 1027 post.

## **UPDATE**

### **26 Functions in respect of provision of primary and secondary schools**

TEXT AND NOTES 1-7--A local education authority in England must exercise its functions under the 1996 Act s 14 with a view to securing diversity in the provision of schools and increasing opportunities for parental choice: s 14(3A) (added by the Education and Inspections Act 2006 s 2). Where such a local education authority receives any representation from a parent as to the authority's exercise of its functions under the 1996 Act s 14, the authority must consider the representation and what action, if any, to take in response to it and, within a reasonable time, provide the parent with a statement setting out any action which it proposes to take in response to the representation or, where the authority is of the opinion that no such action is necessary, its reasons for being of that opinion: see s 14A (added by the 2006 Act s 3).

NOTE 5--See *R (on the application of O) v Hackney LBC* [2006] EWHC 3405 (Admin), [2007] ELR 405 (local authority found to have complied with duty of providing schooling for special educational needs pupil, even though offers of schools were rejected).

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## **27. Functions in respect of full-time education for 16 to 18-year-olds.**

A local education authority<sup>1</sup> may secure the provision for its area of full-time or part-time education suitable to the requirements of persons over compulsory school age<sup>2</sup> who have not attained the age of 19, including provision for persons from other areas<sup>3</sup>. Such a power includes the power to secure the provision of: (1) training, including vocational, social, physical and recreational training<sup>4</sup>; and (2) organised leisure-time occupation<sup>5</sup> which is provided in connection with the provision of education or of training within head (1) above<sup>6</sup>.

In exercising these functions<sup>7</sup> in respect of secondary education<sup>8</sup>, a local education authority must in particular have regard to:

- 32 (a) the need for securing that primary and secondary education<sup>9</sup> are provided in separate schools<sup>10</sup>;
- 33 (b) the need for securing that special educational provision<sup>11</sup> is made for pupils<sup>12</sup> who have special educational needs<sup>13</sup>; and
- 34 (c) the expediency of securing the provision of boarding accommodation, in boarding schools or otherwise, for pupils for whom education as boarders<sup>14</sup> is considered by their parents<sup>15</sup> and the authority to be desirable<sup>16</sup>.

The duty imposed by head (a) above does not apply in relation to middle schools<sup>17</sup> or special schools<sup>18</sup>.

In exercising these functions in respect of further education<sup>19</sup>, a local education authority must in particular have regard to the needs of persons with learning difficulties<sup>20</sup>.

A local education authority may do anything which appears to it to be necessary or expedient for the purposes of or in connection with the exercise of these functions<sup>21</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'compulsory school age' see PARA 15 ante.

3 Education Act 1996 s 15A(1) (s 15A added by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 63; and the Education Act 1996 s 15A(1) amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 54(1), (2)).

A local education authority may not continue to maintain an institution which would have become a school on the coming into force of the Learning and Skills Act 2000 s 110(1) (by virtue of the Education Act 1996 s 4(1) (as substituted)) in pursuance of s 15A (as added and amended) (see the text and notes 4-21 infra): Learning and Skills Act 2000 s 110(2), (4). Section 110(1) came into force in relation to Wales on 1 April 2001 (see the Learning and Skills Act 2000 (Commencement No 3 and Transitional Provisions) (Wales) Order 2001, SI 2001/1274), and in relation to England for certain purposes on 1 September 2000 (see the Learning and Skills Act 2000 (Commencement No 1) Order 2000, SI 2000/2114) and for the remaining purposes on 1 April 2001 (see the Learning and Skills Act 2000 (Commencement No 3 and Savings and Transitional Provisions) Order 2001, SI 2001/654). For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

4 Education Act 1996 s 15A(1A)(a) (s 15A as added (see note 3 supra); and s 15A(1A) added by the Learning and Skills Act 2000 Sch 9 paras 1, 54(1), (3)).

- 5 le within the meaning of the Education Act 1996 s 2(6): see PARA 18 note 4 ante.
- 6 Ibid s 15A(1A)(b) (as added: see note 3 supra).
- 7 le under ibid s 15A (as added). As to the meaning of 'functions' generally see PARA 14 note 5 ante.
- 8 For the meaning of 'secondary education' see PARA 17 ante.
- 9 For the meaning of 'primary education' see PARA 16 ante.
- 10 Education Act 1996 ss 14(6)(a), 15A(2) (s 15A as added (see note 3 supra); and s 15A(2) amended by the Learning and Skills Act 2000 Sch 9 paras 1, 54(1), (4)).
- 11 For the meaning of 'special educational provision' see PARA 984 post.
- 12 For the meaning of 'pupil' see PARA 16 note 4 ante.
- 13 Education Act 1996 ss 14(6)(b), 15A(2) (s 15A as added (see note 3 supra); and s 15A(2) as amended (see note 10 supra)). For the meaning of 'special educational needs' see PARA 984 post.
- 14 As to the meaning of 'boarder' see PARA 26 note 16 ante.
- 15 As to the meaning of 'parent' see PARA 510 note 1 post.
- 16 Education Act 1996 ss 14(6)(c), 15A(2) (s 15A as added (see note 3 supra); and s 15A(2) as amended (see note 10 supra)).
- 17 For the meaning of 'middle school' see PARA 81 post.
- 18 Education Act 1996 ss 14(7), 15A(2) (s 15A as added (see note 3 supra); and s 15A(2) as amended (see note 10 supra)). For the meaning of 'special school' see PARA 1027 post.
- 19 For the meaning of 'further education' see PARA 18 ante.
- 20 Education Act 1996 s 15A(3) (s 15A as added (see note 3 supra); and s 15A(3) added by the Learning and Skills Act 2000 Sch 9 paras 1, 54(1), (5)). The reference in the text to learning difficulties is a reference to learning difficulties within the meaning of the Learning and Skills Act 2000 s 13(5), (6) (see PARA 1091 note 6 post): Education Act 1996 s 15A(3) (as so added).
- 21 Ibid s 15A(4) (s 15A as added (see note 3 supra); and s 15A(4) added by the Learning and Skills Act 2000 Sch 9 paras 1, 54(1), (5)).

## UPDATE

### 27 Functions in respect of full-time education for 16 to 18-year-olds

TEXT AND NOTES--See Education and Skills Act 2008 Pt 1 Ch 2 (ss 10-18) (not yet in force) which establishes a duty on local education authorities in England to promote participation in education or training of young people in their area. See further PARA 1148A. Local education authorities must secure enough suitable full and part-time education and training opportunities to meet the reasonable needs of (1) persons in their area who are over compulsory school age but under 19; and (2) persons in their area who are aged 19 or over but under 25 and are subject to learning difficulty assessment: see Education Act 1996 ss 15ZA, 15ZB (added by Apprenticeships, Skills, Children and Learning Act 2009 s 41). The Young People's Learning Agency for England has been established to provide the funding to enable local education authorities to fulfill their duty under ss 15ZA, 15ZB: see PARA 27A. Local education authorities must encourage participation in education and training by persons within heads (1) and (2) and encourage employers to participate in the provision and delivery of education and training for such persons: see Education Act 1996 s 15ZC (added by Apprenticeships, Skills, Children and Learning Act 2009 s 42).

Education Act 1996 s 15A(1), (1A), (3) amended, s 15A(1ZA) added: Apprenticeships,  
Skills, Children and Learning Act 2009 Sch 2 para 4.

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## **27A. The Young People's Learning Agency for England.**

The Young People's Learning Agency for England ('YPLA') has been established as a body corporate: see Apprenticeships, Skills, Children and Learning Act 2009 s 60, Sch 3.

The YPLA must secure the provision of financial resources to certain persons who provide education and training to young persons and to local education authorities: s 61. The YPLA may set certain conditions on the financial resources it provides (s 62), make performance assessments (s 63), and carry out means tests (s 64). Charging for education or training provided for young people over compulsory school age funded by the YPLA is prohibited: s 65. The YPLA is empowered to commission education or training for persons over compulsory school age but under 19, and certain other learners: s 66. The YPLA may give directions to a local education authority that is failing, or likely to fail, in its duty to secure enough suitable education and training for young people aged over compulsory school age but under 19, and certain other learners: s 67. The YPLA may also provide and receive payment for services to specified persons and bodies in connection with any of the recipient's functions relating to education and training (s 68), take part in arrangements for assisting persons to select, train for, obtain and retain employment (s 69), and carry out research relating to any matter relevant to any of its functions (s 71). The YPLA must issue guidance to local education authorities about the performance of their duties to secure that all young people in their area over compulsory school age but under 19, and certain other persons, have access to enough suitable education and training provision: s 72. The YPLA must also prepare and consult on a statement which sets out its policy on its powers of intervention: s 73. The Secretary of State may confer supplementary functions on the YPLA (s 74) and give it directions concerning its functions, objectives and management (s 75). The YPLA must have regard to any guidance provided to it by the Secretary of State in performing its functions: s 76. The Secretary of State may also require the YPLA to enter into arrangements with the Secretary of State under which the YPLA may be required to carry out specified functions of the Secretary of State relating to academies, city technology colleges and city colleges for the technology of the arts: s 77. The Secretary of State may pay grants to the YPLA for the purposes of academy arrangements functions (s 78), and provision is made for information sharing in relation to academy arrangements (s 79) and for education and training purposes (s 122).

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## **28. Functions in respect of education for persons over 19.**

A local education authority<sup>1</sup> may secure the provision for its area of full-time or part-time education suitable to the requirements of persons who have attained the age of 19, including provision for persons from other areas<sup>2</sup>. Such a power includes power to secure the provision of: (1) training, including vocational, social, physical and recreational training<sup>3</sup>; and (2) organised leisure-time occupation<sup>4</sup> which is provided in connection with the provision of education or of training within head (1) above<sup>5</sup>. In exercising these functions<sup>6</sup>, a local education authority must in particular have regard to the needs of persons with learning difficulties<sup>7</sup>.

A local education authority may do anything which appears to it to be necessary or expedient for the purposes of or in connection with the exercise of these functions<sup>8</sup>.

None of the provisions described above applies to higher education<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 1996 s 15B(1) (s 15B added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 55).

3 Education Act 1996 s 15B(2)(a) (as added: see note 2 supra).

4 Ie within the meaning of ibid s 2(6): see PARA 18 note 4 ante.

5 Ibid s 15B(2)(b) (as added: see note 2 supra).

6 Ie under ibid s 15B (as added). As to the meaning of 'functions' generally see PARA 14 note 5 ante.

7 Ibid s 15B(3) (as added: see note 2 supra). The reference in the text to learning difficulties is a reference to learning difficulties within the meaning of the Learning and Skills Act 2000 s 13(5), (6) (see PARA 1091 note 6 post): Education Act 1996 s 15B(3) (as so added).

8 Ibid s 15B(4) (as added: see note 2 supra).

9 Ibid s 15B(5) (as added: see note 2 supra). For the meaning of 'higher education' see PARA 19 ante.

### **UPDATE**

## **28 Functions in respect of education for persons over 19**

TEXT AND NOTE 7--Education Act 1996 s 15B(3) amended: Apprenticeships, Skills, Children and Learning Act 2009 Sch 2 para 5.



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## **29. Functions in respect of provision of education in pupil referral units and elsewhere.**

Each local education authority<sup>1</sup> must make arrangements for the provision of suitable education<sup>2</sup> at school<sup>3</sup> or otherwise than at school for those children<sup>4</sup> of compulsory school age<sup>5</sup> who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them<sup>6</sup>. Any school established<sup>7</sup> and maintained by a local education authority<sup>8</sup> which is specially organised to provide education for such children, and is not a community school<sup>9</sup> or a special school<sup>10</sup>, is known as a pupil referral unit<sup>11</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'suitable education' see PARA 457 note 2 post.

3 For the meaning of 'school' see PARA 81 post.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 As to the meaning of 'compulsory school age' see PARA 15 ante.

6 See the Education Act 1996 s 19(1) (as amended); and PARA 457 et seq post.

7 ie whether before or after 1 November 1996 (ie the date of commencement of the Education Act 1996).

8 For the meaning of 'school maintained by a local education authority' see PARA 94 post.

9 Community schools were formerly known as county schools: see PARA 102 et seq post. As to community schools see PARA 102 et seq post.

10 As to special schools see PARA 1027 et seq post.

11 See the Education Act 1996 s 19(2). As to pupil referral units see PARAS 457-464 post.

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### **30. Functions of local education authorities with respect to higher education.**

A local education authority<sup>1</sup> is no longer under a duty to secure the provision for its area of facilities for higher education<sup>2</sup>. However, a local education authority does have power to secure the provision for its area of such facilities for higher education as appear to it to be appropriate for meeting the needs of the population of its area and to secure the provision of higher education for persons from other areas, as well as to do anything which appears to it to be necessary or expedient for the purposes of or in connection with such provision<sup>3</sup>.

1 As to local education authorities see PARA 20 ante.

2 See the Education Reform Act 1988 s 120(1); and PARA 708 post. For the meaning of 'higher education' see PARA 19 ante.

3 See *ibid* s 120(3) (as amended); and PARA 708 post.

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### **31. Arrangements for the provision of education at non-maintained schools.**

Until a day to be appointed, a local education authority<sup>1</sup> has power under the Education Act 1996 to make arrangements for the provision of primary<sup>2</sup> and secondary education<sup>3</sup> for pupils<sup>4</sup> at schools<sup>5</sup> not maintained by it or another local education authority<sup>6</sup>.

As from a day to be appointed, a local education authority will instead have power to: (1) assist any primary or secondary non-maintained school<sup>7</sup>, whether inside or outside its area<sup>8</sup>; or (2) make arrangements for pupils to be provided with primary or secondary education at such schools<sup>9</sup>. However, except in accordance with regulations, a local education authority will not thereby be empowered<sup>10</sup> to make any grant or other payment, whether to the proprietor of a school or otherwise, in respect of: (a) fees or expenses, of whatever nature, which are payable in connection with the attendance of a pupil at a school<sup>11</sup>; or (b) such other matters as may be prescribed<sup>12</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'primary education' see PARA 16 ante.

3 For the meaning of 'secondary education' see PARA 17 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 For the meaning of 'school' see PARA 81 post.

6 Education Act 1996 s 18. Any function of a local education authority in England which is conferred by or under s 18 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (a). For the meaning of 'England' see PARA 52 note 11 post. The Education Act 1996 s 18 is substituted by the School Standards and Framework Act 1998 s 128(1) as from a day to be appointed under s 145(3). At the date at which this volume states the law, no such day had been appointed. See further the text and notes 7-12 infra. For the meaning of 'school maintained by a local education authority' see PARA 94 post.

As to the payment of fees where arrangements have been made under the Education Act 1996 s 18 see s 517 (amended by the Education Act 1996 (Modification of Section 517) Regulations 1999, SI 1999/2260, reg 2). Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 517 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (vv). The Education Act 1996 s 517 (as amended) is repealed by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 138, Sch 31 as from a day to be appointed under s 145(3). At the date at which this volume states the law, no such day had been appointed. With the repeal of the Education Act 1996 s 517 (as amended), a local education authority will be required to pay fees only in relation to the provision of special education at non-maintained schools (see s 348 (as amended); and PARA 1009 post); and the power to pay such fees will reside only in s 18 (prospectively substituted).

7 For these purposes, references to non-maintained schools are references to schools which are not maintained by any local education authority: *ibid* s 18(4) (prospectively substituted: see note 6 supra).

8 *Ibid* s 18(1)(a) (prospectively substituted: see note 6 supra).

9 *Ibid* s 18(1)(b) (prospectively substituted: see note 6 supra).

10 le under ibid s 18 (prospectively substituted).

11 Ibid s 18(2)(a) (prospectively substituted: see note 6 supra). Regulations made for the purposes of s 18(2)(a) (prospectively substituted) may provide that, in such circumstances as may be specified in or determined in accordance with the regulations, a local education authority:

- 3 (1) must exercise its power under s 18(1)(b) (prospectively substituted) (see the text and note 9 supra) in relation to a pupil at a non-maintained school so as to pay the whole of: (a) the fees payable in respect of the education provided for the pupil; and (b) if board and lodging are provided for him at the school, the fees payable in respect of the board and lodging; and (c) any expenses of a prescribed description which are payable in connection with his attendance at the school (s 18(3)(a) (as so prospectively substituted)); or
- 4 (2) may exercise that power in relation to such a pupil so as to pay the whole or part of any fees or expenses falling within all or any of heads (1)(a) to (1)(c) supra (s 18(3)(b) (as so prospectively substituted)).

12 Ibid s 18(2)(b) (prospectively substituted: see note 6 supra). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). At the date at which this volume states the law, no regulations had been made under s 18 (prospectively substituted). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 post. As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

## UPDATE

### 31 Arrangements for the provision of education at non-maintained schools

NOTE 6--School Standards and Framework Act 1998 s 128 repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 58(1), Sch 16 Pt 1. Accordingly, Education Act 1996 s 18 continues to have effect as if the School Standards and Framework Act 1998 s 128 had never been enacted: Apprenticeships, Skills, Children and Learning Act 2009 s 58(2).

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### **32. Power to establish primary and secondary schools.**

For the purpose of fulfilling its functions<sup>1</sup> under the Education Act 1996, a local education authority<sup>2</sup> may: (1) establish primary schools<sup>3</sup> and secondary schools<sup>4</sup>; (2) maintain primary and secondary schools, whether established by it or not<sup>5</sup>; and (3) assist<sup>6</sup> any primary or secondary school which is not maintained by it<sup>7</sup>. A local education authority may so establish, maintain and assist schools<sup>8</sup> outside as well as inside its area<sup>9</sup>. However, it may not so establish<sup>10</sup> a school to provide part-time education suitable to the requirements of persons of any age over compulsory school age<sup>11</sup> or full-time education suitable to the requirements of persons who have attained the age of 19<sup>12</sup>.

1 As to the meaning of 'functions' see PARA 14 note 5 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'primary school' see PARA 81 post.

4 Education Act 1996 s 16(1)(a). For the meaning of 'secondary school' see PARA 81 post.

5 Ibid s 16(1)(b).

6 As to the meaning of 'assist' see PARA 45 post.

7 Education Act 1996 s 16(1)(c). For the meaning of 'school maintained by a local education authority' see PARA 94 post. Section 16(1)(c) is repealed by the School Standards and Framework Act 1998 ss 128(2), 140(1), (3), Sch 30 para 64(2), Sch 31 as from a day to be appointed under s 145(3). At the date at which this volume states the law, no such day had been appointed.

As to the local education authority's power to make discretionary grants provided by the Scholarships and Other Benefits Regulations 1977, SI 1977/1443 (see PARA 539 post) pending the coming into force of the Education Act 1996 s 16 see *R (on the application of CES (A Minor)) v Oxfordshire County Council* [2004] EWHC 133 (Admin) at [36]-[37], [2004] ELR 489 at [36]-[37] per Andrew Nicol QC.

8 Ie under the Education Act 1996 s 16(1) (prospectively amended).

9 Ibid s 16(2). As from a day to be appointed, s 16(2) is amended so as to remove the power to assist schools: s 16(2) (prospectively amended by the School Standards and Framework Act 1998 Sch 30 para 64(3)). At the date at which this volume states the law, no such day had been appointed.

10 See note 8 supra.

11 Education Act 1996 s 16(3)(a). As to the meaning of 'compulsory school age' see PARA 15 ante.

12 Ibid s 16(3)(b).

### **UPDATE**

### **32 Power to establish primary and secondary schools**

TEXT AND NOTES 1-7--A local education authority in England may not under Education Act 1996 s 16(1) establish a school which is principally concerned with the provision of full-time education suitable to the requirements of pupils who are over compulsory school

age but under 19: Education Act 1996 s 16(3A) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 126(1)).

NOTES 7, 9--School Standards and Framework Act 1998 s 128, Sch 30 para 64 repealed: Apprenticeships, Skills, Children and Learning Act 2009 ss 58(1), 266, Sch 16 Pt 1. Accordingly, Education Act 1996 s 16 continues to have effect as if the School Standards and Framework Act 1998 s 128, Sch 30 para 64 had never been enacted: Apprenticeships, Skills, Children and Learning Act 2009 s 58(2).

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### **33. Power to award or authenticate academic and vocational qualifications.**

A local education authority<sup>1</sup> may award or authenticate academic and vocational qualifications, and may in particular<sup>2</sup>: (1) devise and administer a qualification or a course leading to a qualification<sup>3</sup>; (2) register candidates<sup>4</sup>; (3) set, administer and moderate examinations or other assessments<sup>5</sup>; and (4) require the payment of fees in respect of the exercise of the power<sup>6</sup>. A local education authority may secure the exercise by any other person of such of the authority's powers<sup>7</sup> as the authority may specify<sup>8</sup>. A local education authority may exercise its powers under these provisions by forming, or participating in forming, or being a member of, a body corporate<sup>9</sup>.

The powers under the above provisions must be regarded as always having been within the powers of a local education authority; and the above provisions are without prejudice to the generality of the powers of a local education authority<sup>10</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 2002 s 190(1).

3 Ibid s 190(1)(a).

4 Ibid s 190(1)(b).

5 Ibid s 190(1)(c).

6 Ibid s 190(1)(d).

7 Ie the authority's powers under ibid s 190(1).

8 Ibid s 190(2).

9 Ibid s 190(3). As to bodies corporate generally see CORPORATIONS.

10 Ibid s 190(4).

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### **34. Duty to promote high standards in primary and secondary education.**

A local education authority<sup>1</sup> must ensure that its functions<sup>2</sup> relating to the provision of education<sup>3</sup>:

- 35 (1) for persons of compulsory school age<sup>4</sup>, whether at school<sup>5</sup> or otherwise<sup>6</sup>; and
- 36 (2) for persons of any age above or below that age who are registered<sup>7</sup> as pupils<sup>8</sup> at schools maintained by the authority<sup>9</sup>,

are, so far as they are capable of being so exercised, exercised by the authority with a view to promoting high standards<sup>10</sup>.

1 As to local education authorities see PARA 20 ante.

2 For these purposes, 'functions' means functions of whatever nature: Education Act 1996 s 13A(2) (s 13A added by the School Standards and Framework Act 1998 s 5). As to the meaning of 'functions' generally see PARA 14 note 5 ante.

3 Education Act 1996 s 13A(1) (as added: see note 2 supra).

4 As to the meaning of 'compulsory school age' see PARA 15 ante.

5 For the meaning of 'school' see PARA 81 post.

6 Education Act 1996 s 13A(2)(a) (as added: see note 2 supra).

7 For the meaning of 'registered' see PARA 512 post.

8 For the meaning of 'pupil' see PARA 16 note 4 ante.

9 Education Act 1996 s 13A(2)(b) (as added: see note 2 supra). For the meaning of 'school maintained by a local education authority' see PARA 94 post.

10 Ibid s 13A(1) (as added: see note 2 supra).

### **UPDATE**

### **34 Duty to promote high standards in primary and secondary education**

TEXT AND NOTES--1996 Act s 13A substituted: Apprenticeships, Skills, Children and Learning Act 2009 Sch 2 para 3. As to school improvement partners, who are to provide advice to the governing body and head teacher with a view to improving standards at the school, see PARA 34A.

TEXT AND NOTES 4, 7--References to persons are now to children: 1996 Act s 13A(2). 'Child' means a person under the age of 20: s 13A(3).

TEXT AND NOTE 10--A local education authority must also ensure that its functions relating to the provision of education are exercised with a view to promoting the fulfilment by every child concerned of his educational potential and, in the case of a



local education authority in England, ensuring fair access to educational opportunity:  
1996 Act s 13(1)(b), (c).

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### **34A. School improvement partners.**

A local education authority in England must appoint, in relation to each maintained school<sup>1</sup> which they maintain<sup>2</sup>, a person (to be known as a school improvement partner) to provide advice to the governing body and head teacher of the school with a view to improving standards at the school<sup>3</sup>. The Secretary of State may make regulations prescribing other requirements to be met by local education authorities in connection with the appointment of school improvement partners<sup>4</sup>.

1 'Maintained school' means a community, foundation or voluntary school, a community special school or foundation special school: Education and Inspections Act 2006 s 5(6) (s 5 in force in respect of certain schools in relation to specified local education authorities: see SI 2006/3400, SI 2007/935, SI 2007/3074). The Education and Inspections Act 2006 s 5 applies, subject to modifications, in relation to pupil referral units as it applies in relation to maintained schools: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 22.

2 'Maintain', in relation to a maintained school, has the same meaning as in the School Standards and Framework Act 1998 (see PARAS 303, 307, 308): Education and Inspections Act 2006 s 5(6).

3 Ibid s 5(1). A person may not be appointed as a school improvement partner unless he has been accredited by the Secretary of State or a person authorised by the Secretary of State: s 5(2).

4 Ibid s 5(3). Regulations may confer functions in relation to school improvement partners on local education authorities or on the governing bodies of maintained schools, and may provide that in prescribed circumstances a person employed or engaged by a local education authority before the commencement of s 5 is to be taken to have been appointed by them as a school improvement partner: s 5(4), (5). See Education (School Improvement Partner) (England) Regulations 2007, SI 2007/25.

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### **35. Code of practice for securing effective relationships between local education authorities and maintained schools.**

The Secretary of State<sup>1</sup> must issue, and may from time to time revise, a code of practice containing such practical guidance as he thinks appropriate with a view to securing effective relationships between local education authorities<sup>2</sup> and the schools maintained by them<sup>3</sup> in relation to promoting high standards of education in such schools, and in relation to the discharge of relevant functions<sup>4</sup> of such authorities in relation to such schools<sup>5</sup>. The Secretary of State must publish the code as for the time being in force<sup>6</sup>.

1 As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'school maintained by a local education authority' see PARA 94 post. For the meaning of 'school' see PARA 81 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 For the relevant functions see *ibid* s 127(6); and PARA 99 note 6 post.

5 See *ibid* s 127(1); and PARA 99 post.

6 See *ibid* s 127(4); and PARA 99 post.

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### **36. Complaints and enforcement.**

A local education authority<sup>1</sup> must, after consultation with governing bodies<sup>2</sup> of foundation and voluntary aided schools<sup>3</sup>, make arrangements for the consideration and disposal of any complaint<sup>4</sup> which is to the effect that the authority, or the governing body of any community, foundation or voluntary school maintained by the authority<sup>5</sup>, any maintained nursery school<sup>6</sup> so maintained, or any community or foundation special school<sup>7</sup> so maintained which is not established in a hospital<sup>8</sup>: (1) has acted or is proposing to act unreasonably in relation to the exercise of a power conferred on it by or under a relevant enactment<sup>9</sup>; or (2) has acted or is proposing to act unreasonably in relation to the performance of, or has failed to discharge, a duty imposed on it by or under a relevant enactment<sup>10</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq post.

3 As to foundation and voluntary schools see PARA 102 et seq post.

4 Education Act 1996 s 409(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 107(a); and the Education Act 2002 s 215, Sch 21 para 47(1), (2), Sch 22 Pt 3). Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 409 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (bb). For the meaning of 'England' see PARA 52 note 11 post.

5 For the meaning of 'school maintained by a local education authority' see PARA 94 post. As to community, foundation and voluntary schools see PARA 102 et seq post.

6 For these purposes, 'maintained nursery school' has the meaning given by the School Standards and Framework Act 1998 s 22(9) (see PARA 94 note 4 post): Education Act 1996 s 579(1) (definition added by the Education Act 2002 s 215(1), Sch 21 para 57(a)).

7 As to community and foundation special schools see PARA 102 et seq post. As to special schools see PARA 1027 post.

8 Education Act 1996 s 409(2) (amended by the School Standards and Framework Act 1998 Sch 30 para 107(b); and the Education Act 2002 Sch 21 para 47(1), (3)). The amendment made by the Education Act 2002 Sch 21 para 47(1), (3) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'Wales' see PARA 52 note 13 post.

9 Education Act 1996 s 409(2)(a). For these purposes, 'relevant enactment' means: (1) any provision which by virtue of s 408(4) (as amended) (see PARA 979 post) is a relevant provision of Pt V (ss 375-410) (as amended) (see PARA 942 et seq post) for the purposes of s 408(1) (as amended) (see PARA 979 post); (2) any provision which by virtue of s 408(4A) (as added) (see PARA 979 post) is a relevant provision of the Education Act 2002 for the purposes of the Education Act 1996 s 408(1) (as amended); and (3) any other enactment, whether contained in Pt V (as amended) or otherwise, so far as relating to the curriculum for, or religious worship in, maintained schools: s 409(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 107(c), Sch 31; and the Education Act 2002 Sch 21 para 47(1), (4)).

10 Education Act 1996 s 409(2)(b). The Secretary of State must not entertain under s 496 (as amended) (power to prevent unreasonable exercise of functions: see PARA 57 post), or s 497 (as amended) (powers where a local education authority or governing body fails to discharge its duties: see PARA 58 post) any complaint to

which s 409(2) (as amended) (see the text and notes 6-9 supra) applies, unless a complaint concerning the same matter has been made and disposed of in accordance with arrangements made under s 409(1) (as amended) (see the text and notes 1-5 supra): s 409(4). As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

## **UPDATE**

### **36 Complaints and enforcement**

TEXT AND NOTES--Education Act 1996 s 409 repealed and a new scheme for complaints created in which the role of the Secretary of State is replaced by a parents' and young persons independent complaints service involving a local commissioner: see Apprenticeships, Skills, Children and Learning Act 2009 ss 206-220, 222-224, Sch 16 Pt 7 (in force in part in relation to complaints against schools maintained by specified local authorities: see SI 2010/303, SI 2010/1151); Complaints against Schools (England) Regulations 2010, SI 2010/853.

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**37. Power to secure proper performance of local education authorities' functions.**

If the Secretary of State<sup>1</sup> is satisfied that a local education authority<sup>2</sup> is failing in any respect to perform its functions<sup>3</sup> which relate to the provision of education to an adequate standard or at all, he may exercise his powers to secure that the functions are properly performed<sup>4</sup>.

1 As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

2 As to local education authorities see PARA 20 ante.

3 As to the meaning of 'functions' see PARA 14 note 5 ante.

4 See the Education Act 1996 ss 497A-497B (as added and amended); and PARA 56 post. As to the general default powers of the Secretary of State see s 497 (as amended); and PARA 58 post.

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### **38. Persons not covered by the Education Act 1996.**

No power or duty conferred or imposed by the Education Act 1996 on local education authorities<sup>1</sup> is to be construed as relating to any person who is employed by or under the Crown in any service or capacity with respect to which the Secretary of State<sup>2</sup> certifies that, by reason of the arrangements made for the education of children<sup>3</sup> and young persons<sup>4</sup> so employed, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary<sup>5</sup>.

No power or duty conferred or imposed by or under the Education Act 1996 on local education authorities is to be construed as relating to any person who is detained in pursuance of an order made by a court or of an order of recall made by the Secretary of State, but a local education authority<sup>6</sup> may make arrangements for a person who is detained in pursuance of such an order to receive the benefit of educational facilities provided by the authority<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

3 For the meaning of 'child' see PARA 16 note 2 ante.

4 'Young person' means a person over compulsory school age but under the age of 18: Education Act 1996 s 579(1).

5 Ibid s 561.

6 As to local education authorities see PARA 20 ante.

7 Education Act 1996 s 562(1). A child or young person who is being educated as a boarder at a school is not to be regarded for these purposes as detained in pursuance of an order made by a court by reason of the fact that he is required to be at the school: (1) by virtue of an order made by a court under the Children and Young Persons Act 1933 or by virtue of anything done under such an order; or (2) by virtue of a requirement of a community order under the Criminal Justice Act 2003 s 177 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 163) or by virtue of anything done under such a requirement: Education Act 1996 s 562(2) (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 para 73). As to the meaning of 'boarder' see PARA 26 note 16 ante. For the meaning of 'school' see PARA 81 post.

### **UPDATE**

### **38 Persons not covered by the Education Act 1996**

NOTE 7--Education Act 1996 s 562(2) further amended: Criminal Justice and Immigration Act 2008 Sch 4 para 47.

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### **39. Liability of local education authorities in failing to provide adequately for children with special educational needs.**

The failure of local education authorities<sup>1</sup> to diagnose learning difficulties or to make suitable education provision for children with special educational needs<sup>2</sup> has been the subject of claims for breach of statutory duty and negligence<sup>3</sup> which have been considered by the House of Lords<sup>4</sup>. While concerned with special educational needs, the potential scope of these rulings may extend to other areas of education as well.

1 As to local education authorities see PARA 20 ante.

2 As to special educational needs see PARA 984 et seq post.

3 As to the nature of statutory duty see STATUTES vol 44(1) (Reissue) PARA 1322 et seq. As to breach of statutory duty see STATUTES vol 44(1) (Reissue) PARAS 1360-1361; TORT vol 97 (2010) PARA 495 et seq. As to the remedies for breach of statutory duty see STATUTES vol 44(1) (Reissue) PARAS 1353-1363. As to negligence in relation to statutory powers see TORT vol 97 (2010) PARA 720 et seq. As to negligence generally see NEGLIGENCE.

4 See eg *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Bromley London Borough Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619, [2000] 4 All ER 504, [2000] ELR 499, HL. See further PARA 1025 post.

#### **UPDATE**

### **39 Liability of local education authorities in failing to provide adequately for children with special educational needs**

NOTE 39--See also *Skipper v Calderdale MBC* [2006] EWCA Civ 238, [2006] ELR 322.



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## ***B. INFORMATION, PLANS AND PROPOSALS***

### **40. Provision of information by local education authorities.**

A local education authority<sup>1</sup> must make such reports and returns to the Secretary of State<sup>2</sup>, and give to the Secretary of State such information, as he may require for the purpose of the exercise of his functions<sup>3</sup> under the Education Act 1996<sup>4</sup>. A local education authority must also compile such information, and make such provision for conducting, or assisting the conduct of, research, as may be required for the purpose of providing the Secretary of State, in such form and at such times as may be prescribed<sup>5</sup>, with such information relating to the provision of primary or secondary education<sup>6</sup> in the area of the local education authority as may be prescribed<sup>7</sup>. The Secretary of State must exercise such powers so as to secure, in particular, the provision of information relating to the provision of education for children with special educational needs<sup>8</sup>.

A local education authority must also, at such time or times and in such manner as may be required by regulations, publish such information as may be so required with respect to its policy and arrangements in respect of any matter relating to primary or secondary education<sup>9</sup>.

<sup>1</sup> As to local education authorities see PARA 20 ante.

<sup>2</sup> As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

<sup>3</sup> As to the meaning of 'functions' see PARA 14 note 5 ante.

<sup>4</sup> Education Act 1996 s 29(1).

<sup>5</sup> 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: *ibid* s 579(1). See further note 7 *infra*. Any power of the Secretary of State to make regulations under the Education Act 1996 must be exercised by statutory instrument: s 569(1). A statutory instrument containing such regulations, other than regulations under s 492 (repealed), is subject to annulment in pursuance of a resolution of either House of Parliament: s 569(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 176(a)). Regulations under the Education Act 1996 may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit: s 569(4). Without prejudice to the generality of s 569(4), regulations under the Education Act 1996 may make in relation to Wales provision different from that made in relation to England, except in relation to regulations under s 579(4) (see PARA 20 note 3 ante): s 569(5), (6). For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

<sup>6</sup> For the meaning of 'primary education' see PARA 16 ante. For the meaning of 'secondary education' see PARA 17 ante.

<sup>7</sup> Education Act 1996 s 29(3) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 67 Sch 31). As to the regulations made under the Education Act 1996 s 29(3) see the Education (Information as to Provision of Education) (England) Regulations 1999, SI 1999/1066 (amended by SI 2003/190; SI 2005/346); the Education (School Performance Information) (England) Regulations 2001, SI 2001/3446 (amended by SI 2002/2017; SI 2002/3178; SI 2003/537; SI 2003/2135; SI 2004/2141; SI 2005/51; SI 2005/2338); the Education (School Performance Information) (Wales) Regulations 2004, SI 2004/1025 (amended by SI 2004/2914; SI 2005/1396); and the Education (Local Education Authority Performance Targets) (England) Regulations 2005, SI 2005/2450.

8 Education Act 1996 s 29(4). As to special educational needs generally see PARA 984 et seq post.

9 Ibid s 29(5). As to the regulations made under s 29(5) see the Special Educational Needs (Provision of Information by Local Education Authorities) (England) Regulations 2001, SI 2001/2218 (amended by SI 2002/2469); the Special Educational Needs (Provision of Information by Local Education Authorities) (Wales) Regulations 2002, SI 2002/157 (amended by SI 2005/2913); and the Education (School Information) (England) Regulations 2002, SI 2002/2897 (amended by SI 2005/845; SI 2005/2039; SI 2005/2152). See also the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 14, which apply, with modifications, the Education (School Information) (England) Regulations 2002, SI 2002/2897 (as amended) to pupil referral units. For the meaning of 'pupil referral unit' see PARA 457 post. By virtue of the Education Act 1996 s 582(3), Sch 39 para 1, the Education (School Hours and Policies) (Information) Regulations 1989, SI 1989/398 (revoked in relation to England by SI 1999/2255); the Education (School Curriculum and Related Information) Regulations 1989, SI 1989/954 (amended by SI 1989/1136; SI 1990/1109; SI 1991/1278; SI 1991/1582; SI 1992/1089; SI 2003/2694); and the Education (Pupils' Attendance Records) Regulations 1991, SI 1991/1582, have effect as if made under the Education Act 1996 s 29(5).

## **UPDATE**

### **40 Provision of information by local education authorities**

TEXT AND NOTES--As to the exercise of the Secretary of State's powers under the Education Act 1996 s 29, in relation to securing the provision of special needs information, see PARA 1021A.

NOTE 5--Words 'other than regulations under s 492' omitted: 1996 Act s 569(2) (amended by Education and Inspections Act 2006 Sch 18 Pt 2).

NOTE 7--SI 1999/1066 (as amended) replaced: Information as to Provision of Education (England) Regulations 2008, SI 2008/4 (amended by SI 2008/3089, SI 2009/1556). SI 2001/3446 replaced: Education (School Performance Information) (England) Regulations 2007, SI 2007/2324 (amended by SI 2008/364, SI 2008/1727, SI 2009/646; and modified by SI 2007/2979). SI 2004/1025 further amended: SI 2005/3239, SI 2007/3564. SI 2005/2450 amended: SI 2006/3150, SI 2007/2972, SI 2008/3086, SI 2009/1596.

NOTE 9--SI 2002/2897 replaced: School Information (England) Regulations 2008, SI 2008/3093. SI 2005/2039 replaced: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979. See also Single Education Plan (Wales) Regulations 2006, SI 2006/877.

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#### **41. Annual targets in respect of educational performance in England.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> require local education authorities<sup>3</sup> in England<sup>4</sup> to set annual targets in respect of the educational performance<sup>5</sup>: (1) of pupils<sup>6</sup> at schools<sup>7</sup> maintained by them<sup>8</sup>; and (2) of any persons of compulsory school age<sup>9</sup>, whether or not pupils at such schools, who are or have been looked after<sup>10</sup> by them<sup>11</sup>.

Such regulations may in particular:

- 37 (a) specify the matters in respect of which targets are required to be set<sup>12</sup>;
- 38 (b) require proposed targets to be notified to the Secretary of State by a prescribed<sup>13</sup> time<sup>14</sup>;
- 39 (c) authorise the Secretary of State to modify any proposed target notified to him, or to require a local education authority to modify the proposed targets and to notify him of the proposed targets as modified<sup>15</sup>;
- 40 (d) require the targets to be set by a prescribed time<sup>16</sup>;
- 41 (e) require local education authorities to publish, in such manner as may be specified in the regulations, any targets which they set<sup>17</sup>.

1 As to the Secretary of State see PARA 52 post.

2 As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 post. As to the regulations made under s 102 see the Education (Local Education Authority Performance Targets) (England) Regulations 2005, SI 2005/2450.

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'England' see PARA 52 note 11 post.

5 Education Act 2005 s 102(1). The School Standards and Framework Act 1998 ss 6-7 (repealed in relation to England; prospectively repealed in relation to Wales) contain a similar requirement relating to education development plans in relation to Wales: see PARAS 42-43 post.

6 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

7 For the meaning of 'school' see PARA 81 post; definition applied by virtue of ibid s 122(2), (3).

8 Ibid s 102(1)(a). For the meaning of 'school maintained by a local education authority' see PARA 94 post.

9 As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 122(2), (3).

10 For this purpose, 'looked after' is to be read in accordance with the Children Act 1989 s 22 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867); Education Act 2005 s 102(3).

11 Ibid s 102(1)(b).

12 Ibid s 102(2)(a).

13 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Act 2005 s 122(2), (3). See note 2 supra.

14 Ibid s 102(2)(b).

15 Ibid s 102(2)(c).

16 Ibid s 102(2)(d).

17 Ibid s 102(2)(e).

## **UPDATE**

### **41 Annual targets in respect of educational performance in England**

NOTE 2--SI 2005/2450 amended: SI 2006/3150, SI 2007/2972, SI 2008/3086, SI 2009/1596.

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#### **42. Preparation of education development plans in Wales.**

Every local education authority in Wales<sup>1</sup> must prepare an education development plan for its area, and must prepare further such plans at such intervals as may be determined by or in accordance with regulations<sup>2</sup>. An education development plan must consist of:

- 42 (1) a statement of proposals, which sets out proposals by the authority for developing its provision of education for children<sup>3</sup> in its area, whether by: (a) raising the standards of education provided for such children (whether at schools maintained by the authority or otherwise than at school)<sup>4</sup>; or (b) improving the performance of such schools, or otherwise<sup>5</sup>; and
- 43 (2) annexes to that statement<sup>6</sup>.

The statement of proposals must deal with such matters, and relate to such period, as may be determined by or in accordance with regulations, and be approved<sup>7</sup> by the National Assembly for Wales<sup>8</sup>. The annexes to the statement must contain such material as may be prescribed<sup>9</sup>, and may contain such other material as the authority considers relevant to its proposals as set out in the statement<sup>10</sup>.

In preparing an education development plan the authority must have regard, in particular, to the education of children who have special educational needs<sup>11</sup>.

In the course of preparing an education development plan the authority must consult:

- 44 (i) the governing body<sup>12</sup> and head teacher<sup>13</sup> of every school maintained by the authority<sup>14</sup>;
- 45 (ii) the appropriate diocesan authority<sup>15</sup> for any foundation or voluntary school<sup>16</sup> in its area which is a Church of England, Church in Wales or Roman Catholic Church school<sup>17</sup>; and
- 46 (iii) such other persons as it considers appropriate<sup>18</sup>.

In performing these functions<sup>19</sup> the authority must have regard to any guidance given from time to time by the National Assembly for Wales<sup>20</sup>.

1 As to local education authorities see PARA 20 ante. For the meaning of 'Wales' see PARA 52 note 13 post.

2 School Standards and Framework Act 1998 s 6(1). The School Standards and Framework Act 1998 s 6 is repealed by the Children Act 2004 s 64, Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. In relation to England, the appointed day is 1 March 2005 (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(1)(l)); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 post. As to the setting of annual targets in England see PARA 41 ante.

'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 post. At the date at which this volume states the law, no regulations had been made under s 6(1) (repealed in relation to England; prospectively repealed in relation to Wales).

3 For these purposes, 'children' means persons of compulsory school age, whether at school or otherwise, or persons of any age above or below that age who are registered as pupils at schools maintained by the authority: *ibid* s 6(3) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*). As to the meaning of 'compulsory school age' see *PARA 15 ante*. For the meaning of 'school' see *PARA 81 post*; definition applied by virtue of s 142(8). For the meaning of 'registered' see *PARA 512 post*; definition applied by virtue of s 142(8). For the meaning of 'pupil' see *PARA 16 note 4 ante*; definition applied by virtue of s 142(8). For the meaning of 'school maintained by a local education authority' see *PARA 94 post*.

4 *Ibid* s 6(2)(a)(i) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*).

5 *Ibid* s 6(2)(a)(ii) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*).

6 *Ibid* s 6(2)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*).

7 *Ie* under *ibid* s 7 (repealed in relation to England; prospectively repealed in relation to Wales): see *PARA 43 post*.

8 *Ibid* s 6(4) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*). As to the regulations made see the Education Development Plans (Wales) Regulations 2002, SI 2002/1187 (amended by SI 2005/434). See also note 2 *supra*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see *PARA 53 post*.

9 *Ie* prescribed by regulations: School Standards and Framework Act 1998 s 142(1). As to the regulations made see note 8 *supra*.

10 *Ibid* s 6(5) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*). See also note 8 *supra*.

11 *Ibid* s 6(6) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*). For the meaning of 'special educational needs' see *PARA 984 post*; definition applied by virtue of s 142(1). As to duty and discretion in the exercise of powers or duties see *ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 27*.

12 As to the governing bodies of maintained schools see *PARA 203 et seq post*.

13 As to the meaning of 'head teacher' see *PARA 93 note 13 post*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

14 *Ibid* s 6(7)(a) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 *supra*).

15 'Church of England school' means a foundation or voluntary school in the Province of Canterbury or York in relation to which the religion or religious denomination specified under *ibid* s 69(4) (see *PARA 951 post*) is 'Church of England'; and 'appropriate diocesan authority', in relation to such a school, means the diocesan board of education for the diocese of the Church of England in which the school is situated: s 142(1) (definition amended by the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, SI 2003/2037, regs 2, 4(1), (2)). As to diocesan boards of education see *ECCLESIASTICAL LAW*.

'Church in Wales school' means a foundation or voluntary school in the Province of Wales in relation to which the religion or religious denomination specified under the School Standards and Framework Act 1998 s 69(4) (see *PARA 951 post*) is 'Church in Wales'; and 'appropriate diocesan authority', in relation to such a school, means the diocesan board of finance for the diocese of the Church in Wales in which the school is situated or such other person as the National Assembly for Wales may by order designate in respect of that diocese: s 142(1) (definition amended by the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, SI 2003/2037, regs 2, 4(1), (2)). Such orders are not made by statutory instrument: see the School Standards and Framework Act 1998 s 138(2) (as amended); and *PARA 82 note 15 post*. Before making an order in respect of any diocese in Wales in exercise of the power conferred by the definition of 'appropriate diocesan authority', the National Assembly for Wales must consult the bishop for the diocese: s 142(2). As to diocesan boards of finance see *ECCLESIASTICAL LAW vol 14 paras 517-518*.

'Roman Catholic Church school' means a foundation or voluntary school in relation to which the religion or religious denomination specified under s 69(4) is 'Roman Catholic'; and 'appropriate diocesan authority', in relation to such a school, means the bishop of the Roman Catholic diocese in which the school is situated: s 142(1) (definition amended by the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, SI 2003/2037, regs 2, 4(1), (2)).

Any reference in the School Standards and Framework Act 1998 to the religion or religious denomination specified in relation to a school under s 69(4) or s 124B(2) (as added) (see PARA 473 post) is to be construed, in a case where more than one religion or religious denomination is so specified, as including a reference to any of those religions or religious denominations: s 142(3) (amended by the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, SI 2003/2037, regs 2, 4(1), (3)). As a result of the School Standards and Framework Act 1998 s 142(3) (as amended), s 142(1) has the effect that a school may, for example, be both a Church of England school and a Roman Catholic Church school and so have a different appropriate diocesan authority in each of those capacities: s 142(4). In the case of a school with two appropriate diocesan authorities, any reference in the School Standards and Framework Act 1998 to 'the appropriate diocesan authority' is:

- 5 (1) in relation to anything required to be done by or in relation to that authority, a reference to both of the authorities concerned (s 142(4)(a)); or
- 6 (2) in relation to anything authorised to be done by or in relation to that authority, a reference to either or both of the authorities concerned (or, in the context of s 16(6) (as amended) (see PARA 1268 post) or s 16(8) (as amended) (see PARA 1268 post), to both of them acting together) (s 142(4)(b)).

16 As to foundation and voluntary schools see PARA 102 et seq post.

17 School Standards and Framework Act 1998 s 6(7)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 supra).

18 Ibid s 6(7)(c) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 supra).

19 Ie under ibid s 6 (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 supra). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8).

20 Ibid s 6(9) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 supra). The preparation of education development plans, so far as they relate to schools maintained by the authority, is subject to the code of practice issued under s 127: see PARA 99 post.

## **UPDATE**

### **42 Preparation of education development plans in Wales**

NOTE 2--Day now appointed in relation to Wales: SI 2006/885.

NOTE 8--SI 2002/1187 (as amended) repealed: SI 2006/877.

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#### **43. Approval, modification and review of statement of proposals in Wales.**

Where a local education authority in Wales<sup>1</sup> has prepared an education development plan<sup>2</sup>, it must, by such date as may be determined by or in accordance with regulations<sup>3</sup>, submit the plan to the National Assembly for Wales<sup>4</sup> for it to approve the authority's statement of proposals<sup>5</sup>. The National Assembly for Wales may in the case of any statement so submitted to it:

- 47 (1) approve the statement in any of the following ways, namely, wholly or in part, for a limited period of time, or subject to conditions<sup>6</sup>;
- 48 (2) require the authority to make such modifications<sup>7</sup> to the statement as it may specify<sup>8</sup>; or
- 49 (3) reject the statement<sup>9</sup>.

If the National Assembly for Wales approves the statement it must notify the authority of its decision, and the authority must implement the proposals set out in the statement, so far as approved by the National Assembly for Wales, as from such date as it may determine<sup>10</sup>. If the National Assembly for Wales requires the authority to make modifications or rejects the statement, it must notify the authority of its decision and of its reasons for it, and the authority must prepare a revised statement<sup>11</sup> and submit it to the National Assembly for Wales for its approval by such date as it may determine<sup>12</sup>.

Once the National Assembly for Wales has approved an authority's statement of proposals it must keep under review the authority's proposals, as approved by it, and their implementation by the authority<sup>13</sup> and: (a) where it is of the opinion that the statement ought to be modified, or further modified, it may withdraw its approval and require the authority to make such modifications to the statement as it may specify<sup>14</sup>; and (b) where it is of the opinion that the authority's proposals are not being properly implemented, it may withdraw its approval for such period as it thinks fit<sup>15</sup>.

If the National Assembly for Wales does so withdraw its approval of a statement of proposals, it must notify the authority of its decision and of its reasons for it, and in a case falling within head (a) above, the authority must prepare a revised statement<sup>16</sup> and submit it to the National Assembly for Wales for its approval by such date as it may determine<sup>17</sup>.

At any time after the National Assembly for Wales has approved an authority's statement of proposals<sup>18</sup>:

- 50 (i) the authority may submit modifications to the statement to the National Assembly for Wales for its approval<sup>19</sup>;
- 51 (ii) the National Assembly for Wales may approve the modifications, whether in whole or in part, for a limited period of time, or subject to conditions<sup>20</sup>; and
- 52 (iii) if and to the extent that the National Assembly for Wales approves those modifications, it must notify the authority of its decision; and the statement has effect with the modifications, and the authority must implement its proposals as modified, as from such date as the National Assembly for Wales may determine<sup>21</sup>.



Once the National Assembly for Wales has approved an authority's statement of proposals<sup>22</sup> or the modification of an authority's statement of proposals<sup>23</sup>, the authority must publish its education development plan (or its plan as so modified) in such manner and by such date as may be prescribed<sup>24</sup>, and must provide such persons as may be prescribed with copies of that plan or of a summary version of that plan<sup>25</sup>.

1 As to local education authorities see PARA 20 ante. For the meaning of 'Wales' see PARA 52 note 13 post.

2 le in accordance with the School Standards and Framework Act 1998 s 6 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 42 ante).

3 As to the regulations made see the Education Development Plans (Wales) Regulations 2002, SI 2002/1187 (amended by SI 2005/434). As to the making of regulations under the School Standards and Framework Act 1998 see PARA 82 note 15 post.

4 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 52 post. See also note 5 infra.

5 School Standards and Framework Act 1998 s 7(1). See note 3 supra. The School Standards and Framework Act 1998 s 7 is repealed by the Children Act 2004 s 64, Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. In relation to England, the appointed day is 1 March 2005 (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(1)(l)); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 post. As to the approval, modification and publication of annual targets in England see PARA 41 ante.

The approval of proposals, so far as they relate to schools maintained by the authority, is subject to the code of practice issued under the School Standards and Framework Act 1998 s 127: see PARA 99 post.

6 Ibid s 7(2)(a) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

7 'Modifications' includes additions, alterations and omissions; and 'modify' is to be construed accordingly: Education Act 1996 s 579(1); definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ibid s 7(2)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

9 Ibid s 7(2)(c) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

10 Ibid s 7(3) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

11 The provisions of ibid s 6 (repealed in relation to England; prospectively repealed in relation to Wales) (preparation of education development plans: see PARA 42 ante) apply to the preparation of a revised statement, with such modifications, if any, as the Secretary of State may determine: s 7(7) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

12 Ibid s 7(4) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

13 Ibid s 7(5) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

14 Ibid s 7(5)(a) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

15 Ibid s 7(5)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

16 See note 11 supra.

17 School Standards and Framework Act 1998 s 7(6) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

18     Ie under ibid s 7(2) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra): see the text and notes 6-9 supra.

19     Ibid s 7(8)(a) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

20     Ibid s 7(8)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

21     Ibid s 7(8)(c) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

22     See note 18 supra.

23     Ie under ibid s 7(8) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra): see the text and notes 18-21 supra.

24     Ie prescribed by regulations made by the Secretary of State: ibid s 142(1). As to the regulations made see note 3 supra.

25     Ibid s 7(9) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 5 supra).

## **UPDATE**

### **43 Approval, modification and review of statement of proposals in Wales**

NOTE 3--SI 2002/1187 (as amended) repealed: SI 2006/877.

NOTE 5--Day now appointed in relation to Wales: SI 2006/885.

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#### **44. Documentary evidence.**

In any legal proceedings:

- 53 (1) a document purporting to be a document issued by a local education authority<sup>1</sup>, and to be signed by the clerk of that authority or by the chief education officer of that authority<sup>2</sup> or by any other officer of the authority authorised to sign it<sup>3</sup>; or
- 54 (2) a document purporting to be a certificate issued by a medical officer<sup>4</sup> of a local education authority, and to be signed by such an officer<sup>5</sup>,

is to be received in evidence and treated, without further proof, as the document which it purports to be and as having been signed by the person by whom it purports to have been signed, unless the contrary is proved<sup>6</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the appointment of the chief education officer see PARA 51 post.

3 Education Act 1996 s 566(1)(a). As from a day to be appointed, s 566(1)(a) is amended so as to refer to the director of children's services (in the case of an authority in England) or the chief education officer (in the case of an authority in Wales) instead of the chief education officer of that authority: s 566(1)(a) (prospectively amended by the Children Act 2004 s 18(9), (10), Sch 2 para 4(1), (3)). At the date at which this volume states the law, no such day had been appointed. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

4 'Medical officer', in relation to a local education authority, means a registered medical practitioner who is employed or engaged, whether regularly or for the purposes of any particular case, by the authority or whose services are made available to the authority by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

5 Ibid s 566(1)(d). In any legal proceedings, any such certificate as is mentioned in s 566(1)(d) is evidence of the matters stated in it: s 566(2).

6 Ibid s 566(1). As to rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

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### ***C. GRANTS AND ALLOWANCES***

#### **45. Assistance by local education authorities.**

For the purposes of the Education Act 1996, a school<sup>1</sup> is to be regarded as 'assisted' by a local education authority<sup>2</sup> which does not maintain it if the authority makes to its proprietor any grant in respect of the school or any payment in consideration of the provision of educational facilities there<sup>3</sup>.

An institution other than a school is to be regarded for the purposes of the Education Act 1996 as 'assisted' by a local education authority if the authority makes to the persons responsible for its maintenance any grant in respect of the institution or any payment in consideration of the provision of educational facilities there<sup>4</sup>. However, neither a university, nor any institution within the further education sector<sup>5</sup> or within the higher education sector<sup>6</sup> other than a university, is to be regarded for the purposes of the Education Act 1996 as 'assisted' by a local education authority by virtue of the making by the authority to the persons responsible for the maintenance of the university or institution of any grant in respect of the institution or payment in consideration of the provision of educational facilities there<sup>7</sup>.

1 For the meaning of 'school' see PARA 81 post.

2 As to local education authorities see PARA 20 ante.

3 Education Act 1996 s 579(1), (5).

4 Ibid s 579(1), (6).

5 As to references to institutions within the further education sector see PARA 579 post. For the meaning of 'further education' see PARA 18 ante. As to further education generally see PARA 579 et seq post.

6 As to references to institutions within the higher education sector see PARA 646 post. For the meaning of 'higher education' see PARA 19 ante. As to higher education generally see PARA 646 et seq post.

7 Education Act 1996 s 579(1), (6), (7).

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#### **46. Travelling and subsistence allowances for governors of schools and further or higher education institutions.**

A local education authority<sup>1</sup> may, in accordance with the provisions of a scheme made by it for these purposes, pay such allowances as may be prescribed<sup>2</sup> to governors of any community, foundation or voluntary school or community or foundation special school<sup>3</sup> which does not have a delegated budget<sup>4</sup> and any institution providing higher education<sup>5</sup> or further education<sup>6</sup>, or both, which is maintained by a local education authority<sup>7</sup>. Such a scheme may make different provision in relation to schools<sup>8</sup> or other institutions of different categories, including provision for allowances not to be paid in respect of certain categories, but must not make different provision in relation to different categories of governor of the same school or institution<sup>9</sup>.

A local education authority may pay such allowances as may be prescribed to any person appointed to represent it on the governing body of any institution providing higher education or further education, or both, which is not maintained by it, or any independent school<sup>10</sup> or special school which is not maintained by it<sup>11</sup>. However, a local education authority must not pay any such allowance for expenses in respect of which the person incurring them is entitled to reimbursement by any person other than the authority<sup>12</sup>. In addition, a local education authority must not pay any such allowance if it has not made any such scheme or if the arrangements under which the allowance would otherwise be payable: (1) provide for allowances which are to any extent more generous than the most generous payable by the authority under any such scheme<sup>13</sup>; or (2) contain any provision which the authority would not have power to include in any such scheme<sup>14</sup>.

Regulations may impose a limit on the amount which may be paid by way of any allowance under the provisions described above<sup>15</sup>.

1 As to local education authorities see PARA 20 ante.

2 I.e. prescribed by regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations made under s 519 (as amended) see, in relation to England, the Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, and in relation to Wales, the Governor Allowances (Wales) Regulations 2005, SI 2005/2915. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

3 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq post. As to special schools see PARA 1027 et seq post.

4 I.e. within the meaning of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended): see PARA 320 post.

5 For the meaning of 'higher education' see PARA 19 ante.

6 For the meaning of 'further education' see PARA 18 ante.

7 Education Act 1996 s 519(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 139(1), (2)). No allowance may be paid to any governor of such a school or institution, in respect of the discharge of his functions as such a governor, otherwise than under the Education Act 1996 s 519 (as amended): s 519(6). As to the meaning of 'functions' see PARA 14 note 5 ante.

8 For the meaning of 'school' see PARA 81 post.

9 Education Act 1996 s 519(2).

10 As to independent schools see PARA 465 et seq post.

11 Education Act 1996 s 519(3) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 139(1), (3)). For the meaning of 'school maintained by a local education authority' see PARA 94 post.

12 Education Act 1996 s 519(4).

13 Ibid s 519(5)(a).

14 Ibid s 519(5)(b).

15 Ibid s 519(7) (added by the School Standards and Framework Act 1998 Sch 30 paras 57, 139(1), (4)). As to the regulations made see note 2 supra.

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## ***D. EDUCATIONAL RESEARCH AND CONFERENCES***

### **47. Powers as to educational research and conferences.**

A local education authority<sup>1</sup> may make such provision for conducting, or assisting the conduct of, research as appears to it to be desirable for the purpose of improving the educational facilities provided for its area<sup>2</sup>.

A local education authority may also organise, or participate in the organisation of, conferences for the discussion of questions relating to education, and expend such sums as may be reasonable in paying, or contributing towards, any expenditure incurred in connection with conferences for the discussion of such questions, including the expenses of any person authorised by it to attend such a conference<sup>3</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 1996 s 526. Any function of a local education authority in England which is conferred by or under s 526 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (xx). For the meaning of 'England' see PARA 52 note 11 post.

3 Education Act 1996 s 527. Any function of a local education authority in England which is conferred by or under s 527 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (yy).

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## ***E. SUPPLY OF GOODS AND SERVICES***

### **48. Powers of local education authorities in relation to the supply of goods and services.**

Under the Further Education Act 1985, a local education authority<sup>1</sup> has power:

- 55 (1) to enter into an agreement for the supply of goods or services<sup>2</sup> (or both) through an institution which is maintained by it and which provides higher education<sup>3</sup> or further education<sup>4</sup> (or both)<sup>5</sup>;
- 56 (2) to lend money for the purposes of such an agreement to a body corporate<sup>6</sup> in which it has a holding of not less than 20 per cent of the issued shares comprised in the share capital of the body corporate and carrying rights to vote in all circumstances at general meetings of the body corporate<sup>7</sup>.

A local education authority may not under an agreement under head (1) above supply goods or services for less than their open market value<sup>8</sup>.

A local education authority also has power to lend money:

- 57 (a) to a higher education corporation<sup>9</sup> or further education corporation<sup>10</sup>;
- 58 (b) in the case of:
  - 5 (i) an institution within the higher education sector<sup>11</sup> which is not conducted by a higher education corporation<sup>12</sup>;
  - 8 (ii) an institution within the further education sector<sup>13</sup> which is not conducted by a further education corporation<sup>14</sup>; or
  - 9 (iii) an institution which provides higher education or further education and is assisted<sup>15</sup> by a local education authority<sup>16</sup>,
- 6 (c) to the governing body of the institution or, if it is conducted by a company, to the company<sup>17</sup>; or
- 60 (c) to a body corporate in which such a corporation or company as is mentioned in head (a) or head (b) above has a holding of not less than 20 per cent of the issued shares comprised in the share capital of the body corporate and carrying rights to vote in all circumstances at general meetings of the body corporate<sup>18</sup>,

if the loan is for the purposes of an agreement for the supply of goods or services, or both, through the institution conducted by the corporation, company or governing body<sup>19</sup>.

Money may be lent under the provisions described above for the purposes of an agreement either before the agreement is made or during its currency<sup>20</sup>.

Loans carry interest at a rate not less than such rate as may be determined by the Secretary of State with the consent of the Treasury<sup>21</sup>. Before determining a rate, the Secretary of State must



consult such bodies representing local education authorities as appear to him to be concerned and any local education authority with whom consultation appears to him to be desirable<sup>22</sup>.

A local education authority which exercises powers under the Further Education Act 1985 must, in respect of their exercise, keep a general revenue account and such other accounts as the Secretary of State may direct, and must prepare such statements of account as he may direct<sup>23</sup>. A local education authority must use its best endeavours to secure that at the end of every year<sup>24</sup> any such revenue account kept by it and relating to that year is in surplus<sup>25</sup>. If at the end of any year any such revenue account kept by a local education authority is in deficit, the amount of the deficit must be charged:

- 61 (A) to the extent that the deficit is attributable to a particular institution, to any fund set up by the authority for the sole purpose of meeting expenditure in relation to that institution in connection with the authority's functions under the Further Education Act 1985 or its other functions as a local education authority<sup>26</sup>;
- 62 (B) subject to head (A) above, to any general fund set up by the authority for the sole purpose of meeting expenditure in connection with its functions under the Further Education Act 1985 or its other functions as a local education authority<sup>27</sup>; and
- 63 (C) subject to heads (A) and (B) above, to its county fund or general fund<sup>28</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the supply of goods and services see SALE OF GOODS AND SUPPLY OF SERVICES. See also LOCAL GOVERNMENT vol 69 (2009) PARA 495.

3 For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of the Further Education Act 1985 s 8(3) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 61).

4 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Further Education Act 1985 s 8(3) (as amended: see note 3 supra).

5 Ibid s 2(1)(a) (amended by the Education Reform Act 1988 s 237(1), Sch 12 Pt III para 93(2)). Nothing in the Further Education Act 1985 s 2 (as amended) is to be construed as derogating from any powers exercisable by a local education authority apart from s 2 (as amended): s 2(10).

Goods are supplied through an institution which provides higher education or further education (or both) (s 1(1) (amended by the Education Reform Act 1988 Sch 12 Pt III para 92)):

- 7 (1) if they result from its educational activities (Further Education Act 1985 s 1(1)(a));
- 8 (2) if they result from the use of its facilities and the expertise of persons employed at it in the fields in which they are so employed (s 1(1)(b));
- 9 (3) if they result from ideas of a person employed at it, or of one of its students, arising out of its educational activities (s 1(1)(c)).

Services are supplied through such an institution (s 1(2) (amended by the Education Reform Act 1988 Sch 12 Pt III para 92)):

- 10 (a) if they are provided by making available: (i) its facilities; (ii) the expertise of persons employed at it in the fields in which they are so employed (Further Education Act 1985 s 1(2)(a));
- 11 (b) if they result: (i) from its educational activities; (ii) from ideas such as are mentioned in head (3) supra (s 1(2)(b)).

For these purposes, 'institution' does not include a school: s 1(4) (added by the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt I para 20). For the meaning of 'school' see PARA 81 post; definition applied by virtue of the Further Education Act 1985 s 8(3) (as amended: see note 3 supra). 'Educational activities' are: (A) the provision of teaching and industrial and vocational training (s 1(3)(a)); (B) the carrying out of research (s 1(3)(b)); and (C) any activity incidental or ancillary to any activity mentioned in head (A) or head (B) supra (s 1(3)(c)).

6 As to bodies corporate generally see CORPORATIONS.

7 Further Education Act 1985 s 2(1)(b), (8) (s 2(8) amended by the Education Reform Act 1988 Sch 12 Pt III para 94(5); and the Further and Higher Education Act 1992 Sch 8 Pt I para 21(2)).

8 Further Education Act 1985 s 2(3). For these purposes, the 'open market value' of goods or services is to be taken to be the amount of the consideration in money that would be payable for the supply by a person standing in no such relationship with any person as would affect that consideration: s 2(7).

Section 2(3) does not apply to the supply of goods or services:

- 12 (1) where the goods are produced, or the goods or services are supplied, in the normal course of any of the educational activities mentioned in s 1(3)(a) (see note 5 supra) (s 2(4)); or
- 13 (2) where the supply is for a body which is a research council for the purposes of the Science and Technology Act 1965 or for the Arts and Humanities Research Council (as defined by the Higher Education Act 2004 s 1: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 976) (Further Education Act 1985 s 2(4)(a) (amended by the Higher Education Act 2004 s 49, Sch 6 para 6)) or for a body specified in an order under the Further Education Act 1985 s 2(5) (s 2(4)(b)).

The Secretary of State may by order made by statutory instrument provide that any person who is specified in the order or is of a description so specified, being a person or description of persons appearing to the Secretary of State to be exercising functions of a public nature, is to be a public body for the purposes of the Further Education Act 1985: s 2(5). Any statutory instrument made by virtue of s 2(5) is subject to annulment in pursuance of a resolution of either House of Parliament: s 2(5). An order made under s 2(5) may contain such provisions as the Secretary of State considers appropriate: (a) for restricting the application of s 2(4)(b) (see head (2) supra) to agreements of a description specified in the order; (b) without prejudice to head (a) supra, for securing the inclusion of terms imposing restrictions in any agreement to which s 2(4)(b) (see head (2) supra) applies and which is made by a body to which the order applies: s 2(6). At the date at which this volume states the law, no order had been made under s 2(5). As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

9 For the meaning of 'higher education corporation' see PARA 646 note 3 post.

10 Further Education Act 1985 s 2(2)(a) (substituted by the Further and Higher Education Act 1992 Sch 8 Pt I para 21). For the meaning of 'further education corporation' see PARA 579 note 3 post.

11 As to references to institutions within the higher education sector see PARA 646 post.

12 Further Education Act 1985 s 2(2)(b)(i) (s 2(2)(b) substituted by the Further and Higher Education Act 1992 Sch 8 Pt I para 21).

13 As to references to institutions within the further education sector see PARA 579 post.

14 Further Education Act 1985 s 2(2)(b)(ii) (as substituted: see note 12 supra).

15 As to the meaning of 'assist' see PARA 45 ante; definition applied by virtue of *ibid* s 8(3) (as amended: see note 3 supra).

16 *Ibid* s 2(2)(b)(iii) (as substituted: see note 12 supra).

17 *Ibid* s 2(2)(b) (as substituted: see note 12 supra).

18 *Ibid* s 2(2)(c) (s 2(2)(c) substituted by the Further and Higher Education Act 1992 Sch 8 Pt I para 21), Further Education Act 1985 s 2(8) (as amended (see note 7 supra)).

19 *Ibid* s 2(2) (amended by the Education Reform Act 1988 Sch 12 Pt III para 93).

20 Further Education Act 1985 s 2(9).

21 *Ibid* s 3(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

Without prejudice to the generality of s 3(1), a rate may be determined in relation to all loans under the Further Education Act 1985 or loans under that Act of a particular category: s 3(2). A determination may be made by reference to a rate specified by or under any other statutory provision or a rate ascertainable by such other means as the Secretary of State may with the consent of the Treasury specify: s 3(2).

The powers conferred upon the Secretary of State by s 3 (as amended) may be exercised separately and differently as respects England and Wales: see s 3(9). For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

22 Ibid s 3(3).

23 See *ibid* s 3(4). This is in addition to any accounts or statements of account which the authority is required to keep by virtue of the Audit Commission Act 1998 s 27 (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 628) or the Public Audit (Wales) Act 2004 s 39 (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 514 et seq): Further Education Act 1985 s 3(4) (amended by the Audit Commission Act 1998 s 54(1), Sch 3 para 10; and the Public Audit (Wales) Act 2004 s 66, Sch 2 para 4).

Any such revenue account kept by an authority and any such statement of account prepared by an authority must show the full cost to the authority of goods or services which are supplied under the Further Education Act 1985 and which are relevant to that account or statement: s 3(5).

24 For these purposes, 'year' means a period of 12 months ending with 31 March: *ibid* s 3(10).

25 *Ibid* s 3(6). Income and expenditure attributable to the supply of goods or services in circumstances such as are mentioned in s 2(4) (see note 8 *supra*) are to be disregarded for the purposes of s 3(6), whether or not the goods or services are supplied for less than their open market value: s 3(7).

26 *Ibid* s 3(8)(a) (amended by the Education Reform Act 1988 Sch 12 Pt III para 94).

27 Further Education Act 1985 s 3(8)(b).

28 *Ibid* s 3(8)(c) (amended by the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990, SI 1990/776, art 8, Sch 3 para 25). As to county funds and general funds see LOCAL GOVERNMENT vol 29(1) (Reissue) PARAS 545, 550.

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## **(ii) Authorities, Committees etc**

### **49. Education functions of overview and scrutiny committees.**

Subject to any express provision contained in the Local Government Act 1972, or any subsequent Act, a local authority may arrange for the discharge of any of its functions by a committee, a sub-committee or an officer of the authority, or by any other local authority<sup>1</sup>. Where executive arrangements<sup>2</sup> are in operation, some functions may also be discharged by the executive or individual members of the executive<sup>3</sup>.

Executive arrangements by a local authority must include provision for the appointment by the authority of one or more committees of the authority (known as 'overview and scrutiny committees') and must ensure that its overview and scrutiny committee has, or its overview and scrutiny committees have between them, power to review or scrutinise decisions made or other action taken in connection with the discharge of certain functions, and power to make reports or recommendations to the authority or the executive with respect to the discharge of certain functions<sup>4</sup>.

Where, in relation to an overview and scrutiny committee of a relevant English authority<sup>5</sup>, or a sub-committee of such an overview and scrutiny committee, the committee's or sub-committee's functions<sup>6</sup> relate wholly or partly to any education functions which are the responsibility of the authority's executive<sup>7</sup>, then: (1) in the case of a relevant English authority which maintains one or more Church of England schools<sup>8</sup>, such an overview and scrutiny committee or sub-committee must include at least one qualifying person<sup>9</sup>; and (2) in the case of a relevant English authority which maintains one or more Roman Catholic Church schools<sup>10</sup>, such an overview and scrutiny committee or sub-committee must include at least one qualifying person<sup>11</sup>. A member of an overview and scrutiny committee or sub-committee so appointed is entitled to vote at a meeting of the committee or sub-committee on any question which relates to any education functions which are the responsibility of the executive of the authority concerned and which falls to be decided at the meeting<sup>12</sup>. The Secretary of State<sup>13</sup> may by directions to a relevant English authority require any of the authority's overview and scrutiny committees or sub-committees to which these provisions apply<sup>14</sup> to include persons who are appointed, in accordance with the directions, as representatives of the persons who appoint foundation governors<sup>15</sup> for the foundation or voluntary schools<sup>16</sup> maintained by the authority which are not Church of England schools or Roman Catholic Church schools but which are specified in the directions<sup>17</sup>. Such directions may make provision with respect to the voting rights of persons appointed in accordance with such directions<sup>18</sup>.

Where, in relation to an overview and scrutiny committee of a relevant Welsh authority<sup>19</sup>, or a sub-committee of such an overview and scrutiny committee, the committee's or sub-committee's functions<sup>20</sup> relate wholly or partly to any education functions which are the responsibility of the authority's executive<sup>21</sup>, then such an overview and scrutiny committee or sub-committee must include one or more persons appointed as representatives of the persons who appoint foundation governors for the maintained schools<sup>22</sup> which are maintained by the authority concerned and which are specified in directions made by the National Assembly for Wales<sup>23</sup> as schools which have a character connected with a particular religion, or particular religious denomination, specified in the directions<sup>24</sup>. A member of an overview and scrutiny committee or sub-committee so appointed is entitled to vote at a meeting of the committee or

sub-committee on any question which relates to any education functions which are the responsibility of the executive of the authority concerned, and which falls to be decided at the meeting<sup>25</sup>.

Where, in relation to an overview and scrutiny committee of a relevant authority<sup>26</sup>, or a sub-committee of such an overview and scrutiny committee, the committee's or sub-committee's functions<sup>27</sup> relate wholly or partly to any education functions which are the responsibility of the authority's executive<sup>28</sup>, the Secretary of State may by regulations<sup>29</sup> require such an overview and scrutiny committee or sub-committee to include one or more persons elected, in accordance with the regulations, as representatives of parent governors at maintained schools which are maintained by the relevant authority concerned<sup>30</sup>. Such regulations may make provision for:

- 64 (a) the number of persons who are to be elected in the case of any relevant authority<sup>31</sup>;
- 65 (b) the procedure to be followed in connection with the election of such persons and the persons who are entitled to vote at such an election<sup>32</sup>;
- 66 (c) the circumstances in which persons are qualified or disqualified for being so elected or for holding office once elected<sup>33</sup>;
- 67 (d) the term of office of persons so elected and their voting rights<sup>34</sup>;
- 68 (e) the application to any such committee or sub-committee, with or without any modification, of any enactment (whenever passed or made) relating to committees or, as the case may be, sub-committees of a local authority<sup>35</sup>;
- 69 (f) such other matters connected with such elections or persons so elected as the Secretary of State considers appropriate<sup>36</sup>.

1 See the Local Government Act 1972 s 101(1); and LOCAL GOVERNMENT vol 69 (2009) PARA 369 et seq.

2 As to executive arrangements see LOCAL GOVERNMENT vol 69 (2009) PARA 303 et seq.

3 As to the discharge of functions by local authority executives see LOCAL GOVERNMENT vol 69 (2009) PARA 357 et seq.

4 See the Local Government Act 2000 s 21 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 342 et seq.

5 For these purposes, 'relevant English authority' means a local authority in England which is a local education authority: *ibid* s 23, Sch 1 para 7(1). As to local education authorities see PARA 20 ante. For the meaning of 'England' see PARA 52 note 11 post.

6 *Ie* under *ibid* s 21 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 342 et seq.

7 *Ibid* Sch 1 para 7(2), (3). As to local authority executives see LOCAL GOVERNMENT vol 69 (2009) PARA 327 et seq.

The Education Act 1996 s 496 (as amended) (powers of the Secretary of State to require duties under the Education Act 1996 to be exercised reasonably) and s 497 (as amended) (powers of the Secretary of State where local education authorities are in default) (see PARAS 57-58 post) apply to the performance of any duty imposed on a local authority by virtue of the Local Government Act 2000 Sch 1 para 7, 8 or 9 as they apply to the performance by a local education authority of a duty imposed by the Education Act 1996: Local Government Act 2000 Sch 1 para 10.

8 For the meaning of 'Church of England school' see PARA 42 note 15 ante; definition applied by virtue of *ibid* Sch 1 para 11.

9 *Ibid* Sch 1 para 7(4). A person is a qualifying person for the purposes of Sch 1 para 7(4) if he is nominated by the diocesan board of education for any Church of England diocese which falls wholly or partly in the area of the authority concerned: Sch 1 para 7(5). As to diocesan boards of education see ECCLESIASTICAL LAW.

10 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante; definition applied by virtue of *ibid* Sch 1 para 11.

11 Ibid Sch 1 para 7(6). A person is a qualifying person for the purposes of Sch 1 para 7(6) if he is nominated by the bishop of any Roman Catholic diocese which falls wholly or partly in the area of the authority concerned: Sch 1 para 7(7).

12 Ibid Sch 1 para 7(8).

13 As to the Secretary of State see PARA 52 post.

14 le committees or sub-committees to which the Local Government Act 2000 Sch 1 para 7 applies: see the text and notes 5-7 supra.

15 As to foundation governors, in relation to England, see PARA 205 et seq post.

16 As to foundation or voluntary schools see PARA 102 et seq post.

17 Local Government Act 2000 Sch 1 para 7(9).

18 Ibid Sch 1 para 7(10).

19 For these purposes, 'relevant Welsh authority' means a local authority in Wales which is a local education authority: ibid Sch 1 para 8(1).

20 See note 6 supra.

21 Local Government Act 2000 Sch 1 para 8(2), (3). See note 7 supra.

22 For the meaning of 'maintained school' see PARA 94 post; definition applied by virtue of ibid Sch 1 para 11. As to foundation governors, in relation to Wales, see PARA 255 et seq post.

23 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

24 Local Government Act 2000 Sch 1 para 8(4). Schedule 1 para 8(4) does not apply if there are no maintained schools which are maintained by the authority concerned and which are specified in directions under that provision: Sch 1 para 8(5).

The National Assembly for Wales may by directions to a relevant Welsh authority require any of the authority's overview and scrutiny committees or sub-committees to which these provisions apply (see the text and notes 19-21 supra) to include persons who are appointed, in accordance with the directions, as representatives of the persons who appoint foundation governors for such of the maintained schools which are maintained by the authority concerned and which are not specified in directions under Sch 1 para 8(4) as may be specified in directions under Sch 1 para 8(7): Sch 1 para 8(7). Directions under Sch 1 para 8(7) may make provision with respect to the voting rights of persons appointed in accordance with such directions: Sch 1 para 8(8).

25 Ibid Sch 1 para 8(6).

26 For these purposes, 'relevant authority' means a local authority which is a local education authority: ibid Sch 1 para 9(1).

27 See note 6 supra.

28 Local Government Act 2000 Sch 1 para 9(2), (3). See note 7 supra.

29 As to the regulations which have been made under ibid Sch 1 para 9(4)-(6) see the Parent Governor Representatives (England) Regulations 2001, SI 2001/478 (amended by SI 2003/2045); and the Parent Governor Representatives and Church Representatives (Wales) Regulations 2001, SI 2001/3711 (amended by SI 2005/2913).

30 Local Government Act 2000 Sch 1 para 9(4). Such regulations may make provision: (1) enabling the Secretary of State to determine, where he considers it expedient to do so in view of the small number of maintained schools which are maintained by a relevant authority, that the requirement imposed on the committee or sub-committee by virtue of Sch 1 para 9(4) is to have effect as if it referred to representatives of parents of registered pupils (rather than representatives of parent governors) at those schools; and (2) for any regulations under Sch 1 para 9 to have effect, where the Secretary of State makes any such determination, with such modifications as may be prescribed: Sch 1 para 9(6). For the meaning of 'registered pupil' see PARA 512 post (definition applied by virtue of the School Standards and Framework Act 1998 s 142(8); and the Local Government Act 2000 Sch 1 para 11).

31 Local Government Act 2000 Sch 1 para 9(5)(a).

32 Ibid Sch 1 para 9(5)(b).

33 Ibid Sch 1 para 9(5)(c).

34 Ibid Sch 1 para 9(5)(d).

35 Ibid Sch 1 para 9(5)(e).

36 Ibid Sch 1 para 9(5)(f).

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## **50. Power to direct appointment of members of education committees.**

In relation to any local authorities<sup>1</sup> which have appointed any committees<sup>2</sup> wholly or partly for the purpose of discharging any functions<sup>3</sup> with respect to education which are conferred on them in their capacity as local education authorities<sup>4</sup>, the Secretary of State<sup>5</sup> may by directions to any such local authorities require every such committee, or any such committee of a description specified in the direction, to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors<sup>6</sup> for voluntary schools<sup>7</sup> in the area for which the committee acts<sup>8</sup>.

In relation to any two or more local authorities which have appointed any committees<sup>9</sup> wholly or partly for the purpose of discharging any functions with respect to education which are conferred on them in their capacity as local education authorities<sup>10</sup>, the Secretary of State may by directions to any such local authorities require every such committee, or any such committee of a description specified in the direction, to include persons appointed, in accordance with the directions, for securing the representation on the committee of persons who appoint foundation governors for voluntary schools in the area for which the committee acts or in such area as may be specified in the direction<sup>11</sup>.

Regulations<sup>12</sup> may require committees<sup>13</sup> to include one or more persons elected, in accordance with the regulations, as representatives of parent governors<sup>14</sup> at maintained schools<sup>15</sup> in relation to which the committee or sub-committee acts<sup>16</sup>. Regulations may also make provision for:

- 70 (1) the number of persons who are to be elected<sup>17</sup> in the case of any local education authority<sup>18</sup>;
- 71 (2) the procedure to be followed in connection with the election of such persons and the persons who are entitled to vote at such an election<sup>19</sup>;
- 72 (3) the circumstances in which persons are qualified or disqualified for being so elected or for holding office once elected<sup>20</sup>;
- 73 (4) the term of office of persons so elected and their voting rights<sup>21</sup>;
- 74 (5) the application to any such committee or sub-committee, with or without any modification, of any provision made by or under any other enactment and relating to committees or, as the case may be, sub-committees of a local authority<sup>22</sup>;
- 75 (6) such other matters connected with such elections or persons so elected as the Secretary of State considers appropriate<sup>23</sup>.

Regulations may also make provision:

- 76 (a) enabling the Secretary of State to determine, where he considers it expedient to do so in view of the small number of maintained schools in relation to which a committee or sub-committee acts, that the requirement imposed on the committee or sub-committee<sup>24</sup> is to have effect as if it referred to representatives of parents<sup>25</sup> of registered pupils<sup>26</sup> (rather than representatives of parent governors) at those schools<sup>27</sup>;
- 77 (b) for any regulations under heads (1) to (6) above<sup>28</sup> to have effect, where the Secretary of State makes any such determination, with such modifications as may be prescribed<sup>29</sup>.



1 'Local authority' means a county council, a county borough council, a district council, a London borough council or the Common Council of the City of London: Education Act 1996 s 579(1). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

2 le in accordance with the Local Government Act 1972 s 102(1) (as amended), which provides that, for the purpose of discharging any functions in pursuance of arrangements made under s 101 (as amended) (arrangements for discharge of functions by local authorities: see PARA 49 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 370) or the Children Act 1989 s 53 (as amended) (provision of community homes by local authorities: see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 967): (1) a local authority may appoint a committee of the authority; or (2) two or more local authorities may appoint a joint committee of those authorities; or (3) any such committee may appoint one or more sub-committees: see the Local Government Act 1972 s 102(1)(a), (b), (c) (s 102(1) amended by the Health and Social Services and Social Security Adjudications Act 1983 s 29, Sch 9 Pt I para 16; and the Children Act 1989 s 108(5), Sch 13 para 31). As from a day to be appointed, a local authority may appoint a sub-committee to discharge any functions: see the Local Government Act 1972 s 102(1)(a) (prospectively amended by the Local Government and Housing Act 1989 s 194, Sch 11 para 25(a)). At the date at which this volume states the law, no such day had been appointed. See also LOCAL GOVERNMENT vol 69 (2009) PARA 371.

3 As to the meaning of 'functions' see PARA 14 note 5 ante.

4 Education Act 1996 s 499(1). As to local education authorities see PARA 20 ante.

5 As to the Secretary of State see PARA 52 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 post.

6 As to schools having foundation governors see PARA 104 et seq post.

7 As to voluntary schools see PARA 102 et seq post.

8 Education Act 1996 s 499(2). The power of the Secretary of State to give directions under s 499(2) or s 499(4) (see notes 9-11 infra) is exercisable in relation to any sub-committees which: (1) are appointed by the authorities concerned or any such committee as is mentioned in s 499(2) or s 499(4); and (2) are so appointed wholly or partly for the purpose of discharging the authorities' functions with respect to education which are conferred on them in their capacity as local education authorities (see s 499(1), (3); and notes 1-4 supra, 9-10 infra), or the committee's functions with respect to education, as it is exercisable in relation to the committees themselves: s 499(5).

9 See note 2 supra.

10 Education Act 1996 s 499(3).

11 Ibid s 499(4). See note 8 supra.

12 'Regulations' means regulations made by the Secretary of State (or, in relation to Wales, the National Assembly for Wales): see *ibid* s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations made under s 499 (as amended) see the Parent Governor Representatives (England) Regulations 2001, SI 2001/478 (amended by SI 2003/2045); and the Parent Governor Representatives and Church Representatives (Wales) Regulations 2001, SI 2001/3711 (amended by SI 2005/2913).

13 The committees are: (1) any such committee as is mentioned in the Education Act 1996 s 499(1) or s 499(3) (see notes 1-4, 9-10 supra); and (2) any sub-committee appointed by any authorities within s 499(1) or s 499(3), or by any committee within head (1) supra, for the purpose of discharging the authorities' functions as mentioned in s 499(1), (3): s 499(6) (added by the School Standards and Framework Act 1998 s 9).

14 For these purposes, 'parent governor' means a governor elected or appointed as a parent governor under regulations made under the Education Act 2002 s 19 (see PARA 203 post): Education Act 1996 s 499(9)(b) (s 499(9) added by the School Standards and Framework Act 1998 s 9; and substituted by the Education Act 2002 s 215(1), Sch 21 para 50).

As to transitional provisions, which allow parent governors appointed or elected to a governing body constituted under the School Standards and Framework Act 1998 s 36 (repealed), as well as parent governors of governing bodies constituted under regulations made under the Education Act 2002 s 19, to be treated as parent governors for the purposes of the Education Act 1996 s 499(6), (8) (as added), see the Education Act 2002

(Commencement No 7 and Transitional Provision) Order 2003, SI 2003/2071, art 2(2). In relation to Wales, despite the substitution of the Education Act 1996 s 499(9)(b) made by the Education Act 2002 Sch 21 para 50, a parent governor appointed or elected to a governing body constituted under the School Standards and Framework Act 1998 s 36 (repealed) is also to be treated as a parent governor for the purposes of the Education Act 1996 s 499(6), (8) (as added): see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 9.

15 For these purposes, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: Education Act 1996 s 499(9)(a) (s 499(9) as added and substituted: see note 14 supra). As to community, foundation and voluntary schools and community or foundation special schools see PARA 102 et seq post. For the meaning of 'maintained nursery school' see PARA 36 note 6 ante.

16 Ibid s 499(6) (added by the School Standards and Framework Act 1998 s 9). Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 499(6)-(9) (as added) (see also notes 17-29 infra) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (nn).

17 Ie for the purposes of the Education Act 1996 s 499(6) (as added): see the text and notes 12-16 supra.

18 Ibid s 499(7)(a) (s 499(7) added by the School Standards and Framework Act 1998 s 9). See also note 16 supra.

19 Education Act 1996 s 499(7)(b) (as added: see note 18 supra). See also note 16 supra.

20 Ibid s 499(7)(c) (as added: see note 18 supra). See also note 16 supra.

21 Ibid s 499(7)(d) (as added: see note 18 supra). See also note 16 supra. As to the scope of parent governor voting rights under the Education Act 1996 s 499 (as amended) and regulations made thereunder see *R (on the application of Transport and General Workers Union) v Walsall Metropolitan Borough Council* [2001] EWHC 452 (Admin), [2002] ELR 329 (decided under the Education (Parent Governor Representatives) Regulations 1999, SI 1999/1949, reg 10 (revoked)).

22 Education Act 1996 s 499(7)(e) (as added: see note 18 supra). See also note 16 supra.

23 Ibid s 499(7)(f) (as added: see note 18 supra). See also note 16 supra.

24 Ie by virtue of ibid s 499(6) (as added): see the text and notes 12-16 supra.

25 As to the meaning of 'parent' see PARA 510 note 1 post.

26 For the meaning of 'registered pupil' see PARA 512 post.

27 Education Act 1996 s 499(8)(a) (s 499(8) added by the School Standards and Framework Act 1998 s 9). See also note 16 supra.

28 Ie under the Education Act 1996 s 499(7) (as added): see the text and notes 17-23 supra.

29 Ibid s 499(8)(b) (as added: see note 27 supra). See also note 16 supra. 'Prescribed' means prescribed by regulations: s 579(1). As to the regulations made see note 12 supra. As to the meaning of 'modifications' see PARA 43 note 7 ante.

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## **51. Appointment of chief education officer.**

The duties of a local education authority<sup>1</sup> under the Local Government Act 1972<sup>2</sup> with respect to the appointment of officers include<sup>3</sup> the duty of appointing a fit person to be the chief education officer of the authority<sup>4</sup>.

1 As to local education authorities see PARA 20 ante.

2 See generally LOCAL GOVERNMENT vol 69 (2009) PARA 22.

3 Ie without prejudice to the generality of the provisions of the Local Government Act 1972.

4 Education Act 1996 s 532. As from a day to be appointed, s 532 is amended so that it applies only to a local education authority in Wales: s 532 (prospectively amended by the Children Act 2004 s 18(9), (10), Sch 2 para 4(1), (2)). At the date at which this volume states the law, no such day had been appointed. In the case of an authority in England, the functions currently exercised by the chief education officer will be undertaken by the director of children's services: see the Children Act 2004 s 18 (not yet in force, except in so far as it gives a power of appointment). For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 post.

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## **(4) THE SECRETARY OF STATE AND THE NATIONAL ASSEMBLY FOR WALES**

### **(i) General Duties and Functions**

#### **52. The Secretary of State.**

A Minister of Education was appointed in 1944<sup>1</sup>, when the Ministry of Education was created in succession to the Board of Education<sup>2</sup>, which itself had taken over the functions of the Education Department<sup>3</sup>. In 1964, the functions of the Minister of Education were transferred to the Secretary of State and became the responsibility of the Secretary of State for Education and Science<sup>4</sup>. As a result of subsequent reorganisations and transfers of functions, the Secretary of State for Education and Science became the Secretary of State for Education<sup>5</sup>, later the Secretary of State for Education and Employment<sup>6</sup>, and then, in June 2001, the Secretary of State for Education and Skills<sup>7</sup>.

Some earlier legislation mentions the Education Department, the Board of Education or the minister<sup>8</sup>, but modern statutes generally refer simply to the 'Secretary of State'. In any enactment, 'Secretary of State' means one of Her Majesty's principal Secretaries of State<sup>9</sup>. The office of Secretary of State is a unified office, and generally in law each Secretary of State is capable of performing the functions of all or any of them<sup>10</sup>. In practice, however, functions relating to education in England<sup>11</sup> generally belong to the Secretary of State for Education and Skills<sup>12</sup>.

Certain functions, so far as they are exercisable in relation to Wales<sup>13</sup>, have been transferred to the National Assembly for Wales<sup>14</sup>.

1 See the Education Act 1944 s 1(1) (repealed); and the Education (Date of Appointment of Minister) Order 1944, SR & O 1944/937.

2 See the Education Act 1944 s 2(1) (repealed).

3 See the Board of Education Act 1899 ss 1, 2(1) (both repealed).

4 See the Secretary of State for Education and Science Order 1964, SI 1964/490.

5 See the Transfer of Functions (Science) Order 1992, SI 1992/1296.

6 See the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986.

7 See No 10 Downing Street Press Release: *Delivering Effective Government* (8 June 2001). All property, rights and liabilities to which the Secretary of State for Education and Employment was entitled or subject at 27 June 2002 in connection with the education functions were transferred to the Secretary of State for Education and Skills: see the Secretaries of State for Education and Skills and for Work and Pensions Order 2002, SI 2002/1397, art 6(2). The 'education functions' means the functions which were entrusted to the Secretary of State for Education and Employment immediately before 7 June 2001 and were, before the making of the Secretaries of State for Education and Skills and for Work and Pensions Order 2002, SI 2002/1397, entrusted to the Secretary of State for Education and Skills: see art 6(1). As to the preservation of things done by or in relation to the Secretary of State for Education and Employment see art 6(3)-(6). As to the incorporation of the Secretary of State for Education and Skills see art 3. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 448-451.

8 The Elementary School Teachers (Superannuation) Act 1898 refers to the Education Department and the minister: see eg s 1 (as amended); and PARA 870 post.

The Education Act 1918 removes the requirement for the approval of the Board of Education for the appointment of trustees in relation to educational charities: see s 47 (as amended); and PARA 1434 post.

The Physical Training and Recreation Act 1937 refers to the Board of Education: see PARA 555 post. Functions under the Physical Training and Recreation Act 1937 that devolved to the Secretary of State for Education and Science (see the text and notes 1-4 *supra*) were subsequently transferred to the Minister of Housing and Local Government (see the Transfer of Functions (Physical Training and Recreation) Order 1969, SI 1969/1497). The functions of the Minister of Housing and Local Government were transferred to the Secretary of State for the Environment in 1970 (see the Secretary of State for the Environment Order 1970, SI 1970/1681 (as amended)), whose functions were transferred in 1998 to the Secretary of State for the Environment, Transport and the Regions (see the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, arts 2, 3). In June 2001, the functions of the Secretary of State for the Environment, Transport and the Regions were divided between the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Transport, Local Government and the Regions and the Secretary of State for Trade and Industry: see the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568. In November 2002, the functions of the Secretary of State for Transport, Local Government and the Regions were transferred to the Secretary of State for Transport, the Secretary of State for Work and Pensions, the Lord Chancellor and the First Secretary of State: see the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626.

9 See the Interpretation Act 1978 s 5, Sch 1.

10 As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

11 'England' means, subject to any alteration of boundaries of local government areas, the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24), Greater London and the Isles of Scilly: Interpretation Act 1978 s 5, Sch 1. As to local government areas see LOCAL GOVERNMENT vol 69 (2009) PARA 22 *et seq*; and as to boundary changes see LOCAL GOVERNMENT vol 69 (2009) PARA 54 *et seq*. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

12 See the text and notes 1-7 *supra*.

13 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as originally enacted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse: see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9).

14 See PARA 53 post.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/1. INTRODUCTION AND GENERAL FRAMEWORK/(4) THE SECRETARY OF STATE AND THE NATIONAL ASSEMBLY FOR WALES/(i) General Duties and Functions/53. Functions exercisable by the National Assembly for Wales.

### **53. Functions exercisable by the National Assembly for Wales.**

Many statutory functions previously vested in Ministers of the Crown<sup>1</sup> are now exercisable in relation to Wales by the National Assembly for Wales<sup>2</sup>. Functions transferred to the National Assembly for Wales include certain functions under the School Sites Act 1841<sup>3</sup>, the Physical Training and Recreation Act 1937<sup>4</sup>, the Education Act 1967<sup>5</sup>, the Employment and Training Act 1973<sup>6</sup>, the Education Act 1980<sup>7</sup>, the Education (Fees and Awards) Act 1983<sup>8</sup>, the Further Education Act 1985<sup>9</sup>, the Education Act 1986<sup>10</sup>, the Education (No 2) Act 1986<sup>11</sup>, the Education Reform Act 1988<sup>12</sup>, the Further and Higher Education Act 1992<sup>13</sup>, the Nursery Education and Grant-maintained Schools Act 1996<sup>14</sup>, the Education Act 1996<sup>15</sup>, the School Inspections Act 1996<sup>16</sup>, the Education Act 1997<sup>17</sup>, the Education (Schools) Act 1997<sup>18</sup>, the Teaching and Higher Education Act 1998<sup>19</sup> and the School Standards and Framework Act 1998<sup>20</sup>. In general, Acts that have come into force since the establishment of the National Assembly for Wales have made specific provision for the exercise of functions in relation to Wales<sup>21</sup>. The growing divergence between the education policies operating in England and in Wales has led increasingly to separate provision for England and Wales being made in legislation<sup>22</sup>.

1 As to the Secretary of State see PARA 52 ante. As to Ministers of the Crown generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354 et seq.

2 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672; the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253; the National Assembly for Wales (Transfer of Functions) (No 2) Order 2000, SI 2000/1830; the National Assembly for Wales (Transfer of Functions) (Variation) Order 2000, SI 2000/1829; the National Assembly for Wales (Transfer of Functions) Order 2001, SI 2001/3679; and the National Assembly for Wales (Transfer of Functions) Order 2004, SI 2004/3044. As to the establishment, constitution and functions of the National Assembly for Wales see the Government of Wales Act 1998; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. For the meaning of 'Wales' see PARA 52 note 13 ante.

3 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the School Sites Act 1841 see PARA 1354 post.

4 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Physical Training and Recreation Act 1937 see PARA 555 post.

5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The Education Act 1967 is repealed in relation to England and prospectively repealed in relation to Wales: see PARA 802 post. For the meaning of 'England' see PARA 52 note 11 ante.

6 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Employment and Training Act 1973 see PARA 1160 et seq post; and EMPLOYMENT vol 40 (2009) PARA 567 et seq.

7 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Education Act 1980 see PARA 1057 post.

8 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Education (Fees and Awards) Act 1983 s 1 (as amended) (see PARAS 638, 1045, 1056 post) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Education (Fees and Awards) Act 1983 see PARAS 638, 1045, 1055-1056 post.

9 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Further Education Act 1985 see PARA 48 ante.

10 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Education Act 1986 see PARA 75 post.

11 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Education (No 2) Act 1986 see PARAS 12 ante, 609, 712 post.

12 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (item amended by SI 2000/1829). Functions under the Education Reform Act 1988 s 197 (as amended) (see PARA 1380 post), s 199 (as amended) (see PARA 677 post), s 209 (repealed with savings), s 226 (as amended) (see PARA 63 post), s 197(9), Sch 8 (as amended) (see PARA 1381 post) and Sch 11 (see PARA 658 post) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as so amended).

13 See *ibid* Sch 1. Functions under the Further and Higher Education Act 1992 s 62(8) (see PARA 733 post) and s 62(9), Sch 1 para 7(6), (7) (see PARA 737 post) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions of the Secretary of State under the Further and Higher Education Act 1992 s 62(8) (see PARA 733 post) and s 82 (as amended) (see PARA 756 post) are exercisable only after consultation with the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 5, Sch 2. As to the Further and Higher Education Act 1992 see PARA 579 et seq post.

14 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The Nursery Education and Grant-maintained Schools Act 1996 is repealed in relation to England and is prospectively repealed in relation to Wales: see PARA 91 post.

15 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Certain functions under the Education Act 1996 have not been transferred. These include: (1) functions under s 333(5), (6) (see PARA 1032 post), s 334(2) (see PARA 1032 post), s 335 (see PARA 1032 post) and s 336 (as amended) (see PARA 1034 post); (2) the regulation-making functions under s 493 (as amended) (see PARA 331 post) and s 494 (as substituted; and amended in relation to England; prospectively amended in relation to Wales) (see PARA 330 post); (3) functions under s 494(4) (as substituted) (see PARA 330 post) and s 495 (see PARA 59 post) so far as they relate to a dispute to which only one party is in Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The functions of the Secretary of State mentioned in head (1) *supra* are exercisable only with the agreement of the National Assembly for Wales: see Sch 2. The regulation-making functions of the Secretary of State mentioned in head (2) *supra* are exercisable only after consultation with the National Assembly for Wales: see Sch 2. The functions of the Secretary of State mentioned in head (3) *supra*, so far as they relate to a dispute to which only one party is in Wales, are exercisable only after consultation with the National Assembly for Wales: see Sch 2.

16 See *ibid* Sch 1; and the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2, Sch 1. Functions under the School Inspections Act 1996 s 1(6), Sch 1 paras 1, 2(3) (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 1189 post) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The School Inspections Act 1996 is repealed in relation to England and prospectively repealed in relation to Wales: see PARA 1187 et seq post.

17 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the Education Act 1997 s 21 (see PARA 875 post), s 26 (as amended) (see PARA 890 post), s 21(5), Sch 4 (see PARAS 876-885 post) and s 27(5), Sch 5 para 10(2) (see PARA 898 post) are excepted from the transfer: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The functions of the Secretary of State under the Education Act 1997 s 36 (see PARA 912 post) are transferred so far as relating to the Qualifications, Curriculum and Assessment Authority for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Qualifications, Curriculum and Assessment Authority for Wales see PARA 874 et seq post. As to the Education Act 1997 see PARA 875 et seq post.

18 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Education (Schools) Act 1997 see PARA 475 post.

19 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. The functions that are transferred are: (1) functions under the Teaching and Higher Education Act 1998 Pt I (ss 1-21) (as amended) (see PARAS 774, 776, 809 et seq post); (2) functions under s 25 so far as it relates to the power to make discretionary awards under the Education Act 1962 (repealed with savings); (3) functions under the Teaching and Higher Education Act 1998 s 26 (as amended; prospectively repealed) (see PARA 758 post); (4) functions under s 28(1)(e) (prospectively repealed) so far as it relates to ss 22, 26 (both as amended; s 26 prospectively repealed) (see PARAS 758, 1046 post); and (5) functions under Pt IV (ss 35-46) (as amended) (see PARA 1336 post): see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

20 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. Functions under the School Standards and Framework Act 1998 s 81 (prospectively amended) (see PARA 383 post), s 136 (see PARA 1380 post) and s 137 (as amended) (see PARA 1380 post) are excepted from the transfer: see the

National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1; and the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, Sch 1. As to the School Standards and Framework Act 1998 see PARA 81 et seq post.

21 Eg the Learning and Skills Act 2000 generally refers to the Secretary of State or to the National Assembly for Wales, as appropriate: see Pt I (ss 1-29) (as amended) (see PARA 1072 et seq post), Pt II (ss 30-51) (as amended) (see PARA 1113 et seq post), Pt III (ss 52-72) (as amended) (see PARA 1303 et seq post), Pt IV (ss 73-88) (as amended) (see PARA 1331 et seq post). The Learning and Skills Act 2000 provides that where Pt V (ss 89-156) (as amended) confers a function on the Secretary of State (whether by amendment of another Act or otherwise), the function is exercisable in relation to Wales by the National Assembly for Wales (s 150(1)(a)) and, for that purpose, any reference to the Secretary of State is to be taken as a reference to the National Assembly for Wales (s 150(1)(b)). Where:

14 (1) the provisions of Pt V (as amended) confer a function on the Secretary of State by amendment of an Act (s 150(2)(a)); and

15 (2) any functions of that Act have before 28 July 2000 (ie the date of the passing of the Learning and Skills Act 2000) been transferred to the National Assembly of Wales by Order in Council under the Government of Wales Act 1998 s 22 (transfer of ministerial functions: see CONSTITUTIONAL LAW AND HUMAN RIGHTS) (Learning and Skills Act 2000 s 150(2)(b)),

the order is to be treated for the purposes of any varying or revoking order as having transferred the function mentioned in head (1) supra to the National Assembly for Wales: s 150(2). The provisions of s 150(1)(a) have effect subject to any Order in Council made by virtue of s 150(2): s 150(3). However, s 150 does not apply in relation to:

16 (a) the provisions of s 90 (see PARA 1072 post), s 92 (see PARA 1073 post), s 104 (see PARA 981 post), s 134 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS) or s 154 (commencement) (s 150(4)(a));

17 (b) the amendment of the Education (Fees and Awards) Act 1983 s 1(3) (as amended) (fees at institutions: see PARA 1056 post) made by the Learning and Skills Act 2000 Sch 9 paras 1, 11 (s 150(4)(b));

18 (c) the amendment of the Employment Act 1988 s 26 (as amended) (status of trainees etc: see EMPLOYMENT vol 40 (2009) PARA 565) made by the Learning and Skills Act 2000 Sch 9 paras 1, 14 (s 150(4)(c)); or

19 (d) the amendment of the Disability Discrimination Act 1995 s 19 (as amended) (discrimination in relation to goods, facilities and services: see PARA 1413 post) made by the Learning and Skills Act 2000 Sch 9 paras 1, 49 (repealed) (s 150(4)(d)).

Where:

20 (i) the Education Act 2002 confers a function ('the new function') on the Secretary of State by amendment of another Act (s 211(1)(a)); and

21 (ii) any functions under that Act have, before 24 July 2002 (ie the date of the passing of the Education Act 2002), been transferred to the National Assembly for Wales by an Order in Council under the Government of Wales Act 1998 s 22 (Education Act 2002 s 211(1)(b)),

the new function, so far as exercisable in relation to Wales, is to be treated as having been transferred to the National Assembly for Wales by an Order in Council under the Government of Wales Act 1998 s 22 and, accordingly, the transfer may be varied or revoked by an Order in Council under s 22 (Education Act 2002 s 211(2)). This does not apply, however, to the Education Act 1996 s 493(2) (as substituted) or s 493(2A) (as added) (see PARA 332 post): s 211(4). For the purposes of the Government of Wales Act 1998 s 22, an Order in Council made by virtue of the Education Act 2002 s 211(2) or s 208(3) (the transfer of the regulations-making function under the Education Act 1996 s 494: see PARA 332 post) is to be treated as if it were revoking or varying a previous Order in Council: Education Act 2002 s 211(3). Specific provision is made for the power to prohibit and restrict the employment of teachers under s 142 to be exercisable by the Secretary of State and the National Assembly for Wales concurrently in relation to Wales: see PARA 782 post.

As to the transfer of the functions of the Secretary of State under the Teaching and Higher Education Act 1998 s 22 (as amended) (arrangements for giving financial support to students: see PARAS 1046-1047 post) and s 23 (as amended) (transfer or delegation of functions relating to student support: see PARA 1048 post), and as to the functions under s 22 (as amended) which are exercisable concurrently with the Assembly, see the Higher Education Act 2004 s 44; and PARA 1046 note 6 post. For the purposes of the Government of Wales Act 1998: (A) any function that is so transferred to the Assembly or so made exercisable by the Assembly is to be taken to have been transferred to, or made exercisable by, the Assembly by an Order in Council under the Government of Wales Act 1998 s 22; and (B) in relation to any function which is taken by virtue of head (A) supra to have been transferred to the Assembly by such an Order in Council, any reference to the coming into force of the



Order in Council transferring it is to be read as a reference to the commencement of the provision by which the function is transferred: Higher Education Act 2004 s 44(6).

Any function conferred on the Secretary of State by the amendments made by certain provisions of the Education Act 2005, so far as exercisable in relation to Wales, is to be taken to have been transferred to the National Assembly for Wales by an Order in Council under the Government of Wales Act 1998 s 22: Education Act 2005 ss 119(1), 122(1). The provisions mentioned above are s 45 (not yet in force in relation to Wales) (power to direct closure of school: see PARA 1273 post), s 53 (inspection of child minding, day care and nursery education: see PARA 1291 et seq post), s 70 (not yet in force) (proposals for discontinuance of rural primary school: see PARA 134 post), s 71 (not yet in force) (proposals relating to maintained special school: see PARA 136 post), s 101 (not yet in force) (funding of maintained schools: see PARA 312 et seq post), s 106 (not yet in force in relation to Wales) (admission arrangements to make special provision for looked-after children: see PARA 398 post), s 107 (restrictions on disposal of land: see PARA 1364 et seq post), s 117 (not yet in force in relation to Wales) (miscellaneous amendments), Sch 7 (inspection of child minding, day care and nursery education: see PARA 1291 et seq post) (not yet in force in relation to Wales), Sch 16 (not yet in force in relation to Wales) (funding of maintained schools: see PARA 312 et seq post), Sch 17 (restrictions on disposal of land: see PARA 1364 et seq post) and Sch 18 (not yet in force in relation to Wales) (miscellaneous amendments): s 119(2).

22 See eg the Education Act 2002 Pt 6 (ss 76-96) (as amended) (the curriculum in England: see PARA 913 et seq post), Pt 7 (ss 97-118) (as amended) (the curriculum in Wales: see PARA 926 et seq post), ss 191-195 (regional provision for special educational needs in Wales and the Special Educational Needs Tribunal for Wales: see PARA 1014 et seq post), s 196 (publication and provision of material: see PARA 60 post), s 197 (partnership agreements and statements: see PARA 100 post), s 198 (transition from primary to secondary school: see PARA 101 post), the Education Act 2005 Pt 1 Chs 1-2 (ss 1-18) (school inspectors and school inspections: England) (see PARA 1167 et seq post), Pt 1 Chs 3-4 (ss 19-43) (not yet in force) (school inspectors and school inspections: Wales) (see PARA 1226 et seq post).

## UPDATE

### 53 Functions exercisable by the National Assembly for Wales

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 8--Functions under the 1983 Act s 1 now transferred, in relation to Wales, to the National Assembly for Wales: National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(a), 3.

NOTE 21--Head (a), reference to the 2000 Act s 90 omitted, reference to s 144 added (see PARA 1377): s 150(4)(a) (amended by the Education and Inspections Act 2006 Sch 14 para 63, Sch 18 Pt 5; and the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238). See also the Education and Inspections Act 2006 ss 180 (amended by Education and Skills Act 2008 Sch 1 para 88), 182A (added by Learner Travel (Wales) Measure 2008 s 23(4)).

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#### **54. General duties.**

The Secretary of State must promote the education of the people of England<sup>1</sup>, and the National Assembly for Wales<sup>2</sup> must promote the education of the people of Wales<sup>3</sup>. The Secretary of State (or, as it may be, the National Assembly for Wales) must exercise the powers in respect of those bodies in receipt of public funds which:

- 78 (1) carry responsibility for securing that the required provision for primary<sup>4</sup>, secondary<sup>5</sup> or further education<sup>6</sup> is made in schools<sup>7</sup>, or in institutions within the further education sector<sup>8</sup>, in or in any area of England or Wales<sup>9</sup>; or
- 79 (2) conduct schools or institutions within the further education sector in England and Wales<sup>10</sup>,

for the purpose of promoting primary, secondary and further education in England and Wales<sup>11</sup>.

The Secretary of State (or, as it may be, the National Assembly for Wales) must, in the case of the powers to regulate the provision made in schools and institutions within the further education sector in England and Wales, exercise those powers with a view to, among other things, improving standards, encouraging diversity and increasing opportunities for choice<sup>12</sup>.

In carrying out the above duties<sup>13</sup> the Secretary of State (or, as it may be, the National Assembly for Wales) must, in particular, make such arrangements as are considered expedient for securing that sufficient facilities are available for the training of teachers<sup>14</sup> to serve in schools maintained by local education authorities<sup>15</sup>, institutions within the further education sector and institutions which are maintained by such authorities and provide higher education<sup>16</sup> or further education, or both<sup>17</sup>.

The role of the Secretary of State and the National Assembly for Wales in relation to education includes a wide range of duties and powers. They have functions, for example, in relation to school admissions<sup>18</sup>, the closure of schools<sup>19</sup>, the appointment of governors<sup>20</sup> or interim executive members<sup>21</sup> and of members of local authority education committees<sup>22</sup>, and the setting of limits on infant class sizes<sup>23</sup>. Their powers also include the power to issue guidance, such as codes of practice, for local education authorities and maintained schools<sup>24</sup>, and to secure proper performance of a local education authority's functions<sup>25</sup>. They must publish any guidance given by them for the purposes of any provision of the Education Act 1996 in such manner as seems fit<sup>26</sup>.

1 As to the Secretary of State see PARA 52 ante. For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Education Act 1996 s 10. For the meaning of 'Wales' see PARA 52 note 13 ante.

4 For the meaning of 'primary education' see PARA 16 ante.

5 For the meaning of 'secondary education' see PARA 17 ante.

6 For the meaning of 'further education' see PARA 18 ante.

- 7 For the meaning of 'school' see PARA 81 post.
- 8 As to references to institutions within the further education sector see PARA 579 post.
- 9 Education Act 1996 s 11(1)(a).
- 10 Ibid s 11(1)(b).
- 11 Ibid s 11(1).
- 12 Ibid s 11(2).
- 13 Ie the duties under ibid ss 10, 11: see the text and notes 1-11 supra.
- 14 As to teacher training see PARA 784 et seq post.
- 15 For the meaning of 'school maintained by a local education authority' see PARA 94 post. As to local education authorities see PARA 20 ante.
- 16 For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of the Education Act 1994 s 19(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 128; and the Education Act 2005 s 98, Sch 14 para 14(b)).
- 17 Education Act 1994 s 11A (added by the Education Act 1996 Sch 37 para 126; and amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 52, 53, Sch 31).
- 18 See the School Standards and Framework Act 1998 ss 84-85 (as amended); and PARAS 393-394 post.
- 19 See ibid s 19 (as amended); and PARA 1273 post.
- 20 See eg the Education Act 1996 s 497 (as amended); the School Standards and Framework Act 1998 s 18 (as substituted and amended; prospectively further amended in relation to Wales); and PARAS 58, 1271 post.
- 21 See eg the School Standards and Framework Act 1998 s 18A (as added and amended in relation to England; prospectively added and amended in relation to Wales); and PARA 1272 post.
- 22 See the Education Act 1996 s 499 (as amended); and PARA 50 ante.
- 23 See the School Standards and Framework Act 1998 ss 1-4 (as amended) (ss 1, 4 amended in relation to Wales; prospectively amended in relation to England; ss 2-3 repealed in relation to England; prospectively repealed in relation to Wales); and PARAS 405-407 post.
- 24 See ibid s 127 (as amended); and PARA 99 post. As to maintained schools generally see PARA 81 et seq post. As to the matters to be taken into consideration by the Secretary of State and National Assembly for Wales in issuing guidance to the governing bodies or head teachers of maintained schools see PARA 98 post.
- 25 See the Education Act 1996 ss 497A-497B (as added and amended); and PARA 56 post.
- 26 See ibid s 571(1) (amended by the Education Act 1997 s 57(1), Sch 7 para 41(a)).

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## **55. Power in relation to companies.**

The Secretary of State<sup>1</sup> may, if he considers it expedient to do so for purposes connected with any function of his relating to education<sup>2</sup>:

- 80 (1) form, or participate in forming, companies<sup>3</sup> to carry on any activities which he considers likely to secure or facilitate the achievement of those purposes<sup>4</sup>; or
- 81 (2) invest in any company<sup>5</sup> which is to carry on such activities<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For this purpose, 'education' includes: (1) vocational training, including the preparation of young people for employment in general; and (2) social and physical training, including the promotion of the development of young children, but does not include higher education: Education Act 2002 s 13(2). As to the Secretary of State's general duties in relation to education see PARA 54 ante.

3 For this purpose, 'company' means a company within the meaning of the Companies Act 1985 (see COMPANIES vol 14 (2009) PARA 201): Education Act 2002 s 13(3).

4 Ibid s 13(1)(a).

5 The reference to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise: ibid s 13(4).

6 Ibid s 13(1)(b). Section 13 is without prejudice to any powers of the Secretary of State exercisable otherwise than by virtue of s 13: s 13(5).

### **UPDATE**

## **55 Power in relation to companies**

NOTE 3--Education Act 2002 s 13(3) amended: SI 2009/1941.

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## **56. Power to secure proper performance of local education authority's functions.**

If the Secretary of State<sup>1</sup> is satisfied, either on a complaint by any person interested or otherwise, that a local education authority<sup>2</sup> is failing in any respect to perform any of its functions<sup>3</sup> to an adequate standard, or at all, he may exercise the following powers<sup>4</sup>.

The Secretary of State has power to give the authority or an officer of the authority such directions<sup>5</sup> as the Secretary of State thinks expedient for the purpose of securing that the function is performed on behalf of the authority by such person as is specified in the direction<sup>6</sup>. Such directions may require that any contract or other arrangement made by the authority with that person contains such terms and conditions as may be so specified<sup>7</sup>. The Secretary of State may also direct that the function is to be exercised by the Secretary of State or a person nominated by him and that the authority must comply with any instructions of the Secretary of State or his nominee in relation to the exercise of the function<sup>8</sup>. Whether or not the Secretary of State exercises either of these powers<sup>9</sup> in relation to such a function, he may give the authority or an officer of the authority such other directions as he thinks expedient for the purpose of securing that the function is performed to an adequate standard<sup>10</sup>.

The Secretary of State may also exercise his powers to give directions<sup>11</sup> where: (1) he has given a previous such direction in relation to a local education authority in respect of any of its functions<sup>12</sup>; and (2) he is satisfied that it is likely that, if no further such direction were given on the expiry or revocation of the previous direction, the authority would fail in any respect to perform that function to an adequate standard, or at all<sup>13</sup>.

Where the Secretary of State gives such directions<sup>14</sup> to a local education authority or to an officer of such an authority, the specified person<sup>15</sup> is, in the performance of the function or functions specified in the directions, entitled to exercise the following powers<sup>16</sup>:

- 82 (a) the specified person has, at all reasonable times, a right of entry to the premises of the authority, and a right to inspect, and take copies of, any records or other documents<sup>17</sup> kept by the authority, and any other documents containing information relating to the authority, which he considers relevant to the performance of the specified function or functions<sup>18</sup>; and
- 83 (b) in exercising the right to inspect records or other documents under head (a) above, the specified person<sup>19</sup>: (i) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question<sup>20</sup>; and (ii) may require the person by whom or on whose behalf the computer is or has been so used, or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such assistance<sup>21</sup> as he may reasonably require<sup>22</sup>.

The local education authority must give the specified person all assistance in connection with the performance of the specified function or functions which it is reasonably able to give<sup>23</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 The Education Act 1996 s 497A (as added and amended) applies to a local education authority's functions under the Education Act 1996 and to other functions, of whatever nature, which are conferred on it in its capacity as a local education authority: s 497A(1) (s 497A added by the School Standards and Framework Act 1998 s 8; and the Education Act 1996 s 497A(1) substituted by the Education Act 2002 s 60(1), (2)). As to the meaning of 'functions' see PARA 14 note 5 ante.

4 Education Act 1996 s 497A(2) (as added (see note 3 supra); and amended by the Education Act 2002 s 60(1), (3)). The powers referred to in the text are those under the Education Act 1996 s 497A(4) (as added and substituted), s 497A(4A) (as added) and s 497A(4B) (as added): see the text and notes 5-10 infra. Where, in relation to any function to which s 497A (as added and amended) applies (see note 3 supra), the Secretary of State is satisfied as mentioned in s 497A(2) (as added and amended), and has notified the local education authority that he is so satisfied and that he is contemplating the giving of directions under s 497A(4) (as added and substituted) or s 497A(4A) (as added), the authority must give the Secretary of State, and any person authorised by him for these purposes, all such assistance, in connection with the proposed exercise of the function by the Secretary of State or another person in pursuance of directions, as it is reasonably able to give: s 497AA (added by the Education Act 2002 s 61).

5 Any direction under the Education Act 1996 s 497A (as added and amended) may either: (1) have effect for an indefinite period until revoked by the Secretary of State; or (2) have effect for a period specified in the direction unless revoked earlier by the Secretary of State: s 497A(6) (as added (see note 3 supra); and amended by the Education Act 2002 s 60(1), (9)). Any direction given under the Education Act 1996 s 497A(4) (as added and substituted), s 497A(4A) (as added) or s 497A(4B) (as added) is enforceable, on an application made on behalf of the Secretary of State, by a mandatory order: s 497A(7) (as so added; and amended by the Education Act 2002 s 60(1), (10)). As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

6 Education Act 1996 s 497A(4) (as added (see note 3 supra); and substituted by the Education Act 2002 s 60(1), (6)). See also note 5 supra. Where the Secretary of State considers it expedient that the person specified in directions under the Education Act 1996 s 497A(4) (as added and substituted) ought to perform other functions to which s 497A (as added and amended) applies, in addition to the function to which s 497A(2) (as added and amended) (see the text and notes 1-4 supra) or s 497A(2A) (as added) (see the text and notes 11-13 infra) applies, the directions under s 497A(4) (as added and substituted) may relate to the performance of those other functions as well: see s 497A(5) (as so added; and substituted by the Education Act 2002 s 60(1), (8)). In considering whether it is expedient that that person ought to perform any such additional functions, the Secretary of State may have regard to financial considerations: Education Act 1996 s 497A(5) (as so added and substituted).

7 Ibid s 497A(4) (as added and substituted: see note 6 supra). See also note 5 supra. As to the Secretary of State's specific power to direct the local education authority to enter into a contract or other arrangement for the provision of advisory services see PARA 1274 post.

8 Ibid s 497A(4A) (s 497A as added (see note 3 supra); and s 497A(4A) added by the Education Act 2002 s 60(1), (7)). See also note 5 supra. Where the Secretary of State considers it expedient that he or a person nominated by him in directions under the Education Act 1996 s 497A(4A) (as added) ought to perform other functions to which s 497A (as added and amended) applies, in addition to the function to which s 497A(2) (as added and amended) (see the text and notes 1-4 supra) or s 497A(2A) (as added) (see the text and notes 11-13 infra) applies, the directions under s 497A(4A) (as added and substituted) may relate to the performance of those other functions as well: see s 497A(5) (as so added; and substituted by the Education Act 2002 s 60(1), (8)). In considering whether it is expedient that that person ought to perform any such additional functions, the Secretary of State may have regard to financial considerations: Education Act 1996 s 497A(5) (as so added and substituted).

9 I.e. the powers conferred by ibid s 497A(4) (as added and substituted), s 497A(4A) (as added).

10 Ibid s 497A(4B) (s 497A as added (see note 3 supra); and s 497A(4B) added by the Education Act 2002 s 60(1), (7)). See also note 5 supra.

11 I.e. under the Education Act 1996 s 497A(4) (as added and substituted), s 497A(4A) (as added) or s 497A(4B) (as added): see the text and notes 5-10 supra.

12 Ibid s 497A(2A)(a) (s 497A as added (see note 3 supra); and s 497A(2A) added by the Education Act 2002 s 60(1), (4)). The functions referred to in the text are those to which the Education Act 1996s 497A (as added and amended) applies: see note 3 supra.

13 Ibid s 497A(2A)(b) (as added: see notes 3, 12 supra). Where, in relation to any function to which s 497A (as added and amended) applies (see note 3 supra), the Secretary of State is satisfied as mentioned in s 497A(2A)(b) (as added), and has notified the local education authority that he is so satisfied and that he is

contemplating the giving of directions under s 497A(4) (as added and substituted) or s 497A(4A) (as added), the authority must give the Secretary of State, and any person authorised by him for these purposes, all such assistance, in connection with the proposed exercise of the function by the Secretary of State or another person in pursuance of directions, as it is reasonably able to give: s 497AA (as added: see note 4 supra).

14 Ibid under ibid s 497A(4) (as added and substituted) ( see the text and notes 5-7 supra) or s 497A(4A) (as added) ( see the text and note 8 supra).

15 For this purpose, 'the specified person' means: (1) in relation to directions under ibid s 497A(4) (as added and substituted) (see the text and notes 5-6 supra), the person specified in the directions; and (2) in relation to directions under s 497A(4A) (as added) (see the text and note 8 supra), the Secretary of State or the person nominated by him: s 497B(1A) (s 497B added by the School Standards and Framework Act 1998 s 8; and the Education Act 1996 s 497B(1A) added by the Education Act 2002 s 62(1), (3)). Any reference in the Education Act 1996 s 497B (as added and amended) to the specified person includes a reference to any person assisting him in the performance of the specified function or functions: s 497B(6) (as so added).

16 Ibid s 497B(1) (as added (see note 15 supra); and amended by the Education Act 2002 s 62(1), (2)).

17 For these purposes, 'document' and 'records' each includes information recorded in any form: Education Act 1996 s 497B(7) (as added: see note 15 supra).

18 Ibid s 497B(2) (as added: see note 15 supra). Section s 497B(2) (as added) applies in relation to any school maintained by the local education authority as it applies in relation to the authority; and without prejudice to s 497B(2) (as added) (as it so applies): (1) the governing body of any such school must give the specified person all assistance in connection with the exercise of his functions which it is reasonably able to give; and (2) the governing body of any such school and the authority must secure that all such assistance is also given by persons who work at the school: s 497B(5) (as so added). For the meaning of 'school' see PARA 81 post; and for the meaning of 'school maintained by a local education authority' see PARA 94 post. As to the governing bodies of maintained schools see PARA 203 et seq post.

19 Ibid s 497B(3) (as added: see note 15 supra).

20 Ibid s 497B(3)(a) (as added: see note 15 supra).

21 This includes, in particular, the making of information available for inspection or copying in a legible form: ibid s 497B(3)(b) (as added: see note 15 supra).

22 Ibid s 497B(3)(b) (as added: see note 15 supra).

23 Ibid s 497B(4) (as added: see note 15 supra). This provision is expressed to be without prejudice to s 497B(2) (as added) (see the text and notes 17-18 supra): s 497B(4) (as so added).

## UPDATE

### **56 Power to secure proper performance of local education authority's functions**

TEXT AND NOTES--Education Act 1996 s 497A applies in relation to an English local authority's functions under the Childcare Act 2006 Pt 1 (ss 1-21) as it applies in relation to the functions of a local education authority in England mentioned in the Education Act 1996 s 497A(1): Childcare Act 2006 s 15(3). The Education Act 1996 ss 497AA and 497B apply accordingly where powers under s 497A are exercised in relation to any of the functions of an English local authority under the Childcare Act 2006 Pt 1: s 15(4). In the application of the Education Act 1996 ss 497A(2)-(7), 497AA and 497B in relation to an English local authority's functions under the Childcare Act 2006 Pt 1, references to the local education authority are to be read as references to the local authority: s 15(5). In the Education Act 1996 s 497A(5), the reference to functions to which s 497A applies includes (for all purposes) functions of an English local authority under the Childcare Act 2006 Pt 1: s 15(6).

TEXT AND NOTES 1-13--Education Act 1996 s 497A is subject to Education Act 1996 ss 508I, 509AE (see PARAS 534A.4, 6): Education Act 1996 s 497A(8) (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 2 para 9).





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### **57. Power to prevent unreasonable exercise of functions by local education authority or governing body.**

If the Secretary of State<sup>1</sup> is satisfied, either on a complaint by any person or otherwise, that any local education authority<sup>2</sup> or the governing body of any community, foundation or voluntary school or any community or foundation special school<sup>3</sup> has acted or is proposing to act unreasonably<sup>4</sup> with respect to the exercise of any power conferred or the performance of any duty imposed by or under the Education Act 1996<sup>5</sup>, he may give such directions<sup>6</sup> as to the exercise of the power or the performance of the duty as appear to him to be expedient, and may do so despite any enactment which makes the exercise of the power or the performance of the duty contingent upon the opinion of the authority or body<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq post. As to special schools see also PARA 1027 et seq post.

4 It has been held that the test for unreasonableness is in essence that set out in *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223, [1947] 2 All ER 680, CA, ie that the authority's conduct was such that no reasonable authority would engage in it, and that unreasonable conduct is 'conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt': *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1064, [1976] 3 All ER 665 at 695, HL, per Lord Diplock. See further **JUDICIAL REVIEW** vol 61 (2010) PARAS 617, 623. See also PARA 58 note 6 post.

5 For the purposes of the Education Act 1996 s 496 (as amended), the provisions of the Learning and Skills Act 2000 s 113A, Sch 7A (both as added) are to be treated as if they were provisions of the Education Act 1996: see the Learning and Skills Act 2000 s 113A(10) (as added); and PARA 1277 et seq post.

6 A direction under the Education Act 1996 s 496 (as amended) imposes on a local education authority a statutory duty which it is bound to comply with, and which can be enforced: *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, [1976] 3 All ER 665, HL (in this case, decided under previous legislation, it was, however, held that the direction was ultra vires).

7 Education Act 1996 s 496(1), (2) (s 496(2) amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 129). As to the revocation or variation of directions under the Education Act 1996 s 496 (as amended) see s 570 (as amended); and PARA 15 note 6 ante.

The proper exercise by the Secretary of State of his functions under ss 496-497 (both as amended) should have the effect of avoiding the involvement of the courts in education matters: see *R v Secretary of State for Education and Science, ex p Chance* (26 July 1982, unreported); *R v Brent London Borough Council, ex p F* [1999] ELR 32, [1999] COD 38; *R v Secretary of State for Education, ex p Prior* [1994] ELR 231, [1994] ICR 877.

The power of the Secretary of State to prevent unreasonable exercise of functions under the Education Act 1996 s 496 (as amended) is applied in relation to: (1) the governing body of an institution which is maintained by a local education authority and provides higher education or further education or both (see the Education Reform Act 1988 s 219(3) (as substituted); and PARA 611 post); (2) the proprietors of certain schools who are under a duty to secure that all registered pupils are provided with a programme of careers education (see the Education Act 1997 s 43(4); and PARA 1161 note 4 post); (3) the governing bodies of a relevant school or a further education institution and appropriate bodies and their duties and powers conferred under the provisions relating to the requirement for teachers to serve induction periods (see the Teaching and Higher Education Act

1998 s 19(12) (as added); and PARA 774 note 5 post); (4) the proprietors of independent schools and the duties imposed by or under ballot regulations (see the School Standards and Framework Act 1998 s 105(7); and PARA 439 note 6 post); (5) a school organisation committee (see s 24, Sch 4 para 10; and PARA 119 note 3 post); (6) a local education authority or the governing body of a maintained school which has adopted a scheme formulated by a local education authority for the purpose mentioned in s 89B (as added in relation to England; prospectively added in relation to Wales) (see s 89C(2) (as added in relation to England; prospectively added in relation to Wales); and PARA 399 post); (7) any local education authority, any school organisation committee and the governing bodies of maintained schools and their powers and duties conferred under the provisions relating to inadequate sixth forms (see the Learning and Skills Act 2000 s 113; and PARA 1275 et seq post); and (8) a local authority and the duties imposed by the provisions relating to the education functions of the overview and scrutiny committees (see the Local Government Act 2000 s 23, Sch 1 paras 7-10; and PARA 49 ante).

As to the power of the Secretary of State under the Education Act 1996 s 496 (as amended) in relation to complaints against maintained schools see s 409 (as amended); and PARA 36 ante.

## **UPDATE**

### **57 Power to prevent unreasonable exercise of functions by local education authority or governing body**

TEXT AND NOTES--These provisions also apply to maintained nursery schools: Education Act 1996 s 496(2) (amended by Education and Inspections Act 2006 s 168(1)). The Education Act 1996 s 496 applies in relation to an English local authority and the powers conferred or duties imposed on them by or under the Childcare Act 2006 Pt 1 (ss 1-21) as it applies in relation to a local education authority in England and the powers conferred or duties imposed on them by or under the Education Act 1996: Childcare Act 2006 s 15(1). See also s 180. The Secretary of State may not make a direction in respect of a matter that has been complained about to a local commissioner in accordance with Apprenticeships, Skills, Children and Learning Act 2009 ss 206-224 (see PARA 36) or, in the Secretary of State's opinion, could have been so complained about: Education Act 1996 s 496(3) (s 496(3), (4) added by Apprenticeships, Skills, Children and Learning Act 2009 s 221(1) (in force in part in relation to complaints against schools maintained by specified local authorities: see SI 2010/303, SI 2010/1151)). Regulations may disapply the above provision in relation to cases where a complaint about the matter has been made to the Secretary of State by a prescribed person or a person of a prescribed description: Education Act 1996 s 496(4). The above provisions are subject to Education Act 1996 ss 508I, 509AE (see PARAS 534A.4, 6): Education Act 1996 s 496(5) (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 2 para 7).

See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 6.

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## **58. Power to declare local education authority or governing body in default of duty.**

If the Secretary of State<sup>1</sup> is satisfied, either on a complaint by any person interested or otherwise, that any local education authority<sup>2</sup> or the governing body of any community, foundation or voluntary school or any community or foundation special school<sup>3</sup>, has failed to discharge any duty imposed on it by or for the purposes of the Education Act 1996<sup>4</sup>, he may make an order declaring the authority or body to be in default in respect of that duty, and giving such directions<sup>5</sup> for the purpose of enforcing the performance of the duty as appear to him to be expedient<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq post. As to special schools see also PARA 1027 et seq post.

4 For the purposes of the Education Act 1996 s 497 (as amended), the provisions of the Learning and Skills Act 2000 s 113A, Sch 7A (both as added) are to be treated as if they were provisions of the Education Act 1996: see the Learning and Skills Act 2000 s 113A(10) (as added); and PARA 1277 note 1 post.

5 Any such directions are enforceable, on an application made on behalf of the Secretary of State, by a mandatory order: Education Act 1996 s 497(3). As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq. As to the revocation or variation of directions under s 497 (as amended) see s 570 (as amended); and PARA 15 note 6 ante. As to the provision for modification of s 497 (as amended) for the purposes of the Education Act 2005 s 114 see PARA 62 post.

6 Education Act 1996 s 497(1), (2) (s 497(2) amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 130). Orders under the Education Act 1996 s 497 (as amended) are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante. As to the making of orders under the Education Act 1996 generally see PARA 15 note 6 ante. 'The Secretary of State has a power, and not a duty, to issue a direction under the Education Act 1996 s 497 if he is satisfied that the school is in breach of its duty': *R v Secretary of State for Education and Employment and the Governors of Southlands Community Comprehensive School, ex p W* [1998] ELR 413 at 421, [1998] COD 112 at 113 per Harrison J. The proper exercise by the Secretary of State of his functions under the Education Act 1996 s 496 (as amended) (see PARA 57 ante) and s 497 (as amended) should have the effect of avoiding the involvement of the courts in education matters: see *R v Secretary of State for Education and Science, ex p Chance* (26 July 1982, unreported); *R v Brent London Borough Council, ex p F* [1999] ELR 32, [1999] COD 38; *R v Secretary of State for Education, ex p Prior* [1994] ELR 231, [1994] ICR 877. The existence of the remedy of complaint to the Secretary of State under the Education Act 1996 s 497 (as amended) does not exclude the remedy of judicial review where 'the public authority flies in the face of the statute, by doing something which the statute expressly prohibits, or by failing to do something which the statute expressly enjoins, or otherwise so conducts itself, by omission or commission, as to frustrate or hinder policy and the objects of the Act': *Meade v Haringey London Borough Council* [1979] 2 All ER 1016 at 1024, [1979] 1 WLR 637 at 647, CA, per Lord Denning MR. See also *Watt v Kesteven County Council* [1955] 1 QB 408, [1955] 1 All ER 473, CA; *Bradbury v Enfield London Borough Council* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA; *R v Inner London Education Authority, ex p Ali* [1990] COD 317, 2 Admin LR 822, DC. It is arguable that the role of the court in these circumstances is to consider whether the default powers under the Education Act 1996 ss 496-497 (as amended) are an adequate alternative remedy: *R (on the application of Rhodes) v Kingston upon Hull City Council* [2001] ELR 230. In circumstances where an application is made to the Secretary of State and has failed, a judicial review should be sought against the decision of the Secretary of State rather than against the body which was the subject of the application: *R (on the application of Rhodes) v Kingston upon Hull City Council* supra.

The power of the Secretary of State to prevent the unreasonable exercise of functions under the Education Act 1996 s 497 (as amended) is applied in relation to: (1) the governing body of an institution which is maintained

by a local education authority and provides higher education or further education or both (see the Education Reform Act 1988 s 219(3) (as substituted); and PARA 611 post); (2) the proprietors of certain schools who are under a duty to secure that all registered pupils are provided with a programme of careers education (see the Education Act 1997 s 43(4); and PARA 1161 note 4 post); (3) the governing bodies of a relevant school or a further education institution and appropriate bodies and their duties and powers conferred under the provisions relating to the requirement for teachers to serve induction periods (see the Teaching and Higher Education Act 1998 s 19(12) (as added); and PARA 774 note 5 post); (4) the proprietors of independent schools and the duties imposed by or under ballot regulations (see the School Standards and Framework Act 1998 s 105(7); and PARA 439 note 6 post); (5) a school organisation committee (see s 24, Sch 4 para 10; and PARA 119 note 3 post); (6) a local education authority or the governing body of a maintained school which has adopted a scheme formulated by a local education authority for the purpose mentioned in s 89B (as added in relation to England; prospectively added in relation to Wales) (see s 89C(2) (as added in relation to England; prospectively added in relation to Wales); and PARA 399 post); (7) any local education authority, any school organisation committee and the governing bodies of maintained schools and their powers and duties conferred under the provisions relating to inadequate sixth forms (see the Learning and Skills Act 2000 s 113; and PARA 1275 et seq post); and (8) a local authority and the duties imposed by the provisions relating to the education functions of the overview and scrutiny committees (see the Local Government Act 2000 s 23, Sch 1 paras 7-10; and PARA 49 ante).

As to the power of the Secretary of State under the Education Act 1996 s 497 (as amended) in relation to complaints against maintained schools see s 409 (as amended); and PARA 36 ante.

## UPDATE

### **58 Power to declare local education authority or governing body in default of duty**

TEXT AND NOTES--The 1996 Act s 497 applies in relation to the duties imposed on an English local authority by or for the purposes of the Childcare Act 2006 Pt 1 (ss 1-21) as it applies in relation to the duties imposed on a local education authority in England by or for the purposes of the 1996 Act: 2006 Act s 15(2). See also s 180. The Secretary of State may not make an order in respect of a matter that has been complained about to a local commissioner in accordance with Apprenticeships, Skills, Children and Learning Act 2009 ss 206-224 (see PARA 36) or, in the Secretary of State's opinion, could have been so complained about: Education Act 1996 s 497(4) (s 497(4), (5) added by Apprenticeships, Skills, Children and Learning Act 2009 s 221(2) (in force in part in relation to complaints against schools maintained by specified local authorities: see SI 2010/303, SI 2010/1151)). Regulations may disapply the above provision in relation to cases where a complaint about the matter has been made to the Secretary of State by a prescribed person or a person of a prescribed description: Education Act 1996 s 497(5). The above provisions are subject to Education Act 1996 ss 508I, 509AE (see PARAS 534A.4, 6): Education Act 1996 s 497(6) (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 2 para 8).

See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 6.

TEXT AND NOTE 3--After 'foundation special school' read 'or of any maintained nursery school': 1996 Act s 497(2) (further amended by the Education and Inspections Act 2006 s 168(2)).

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## **59. Determination of disputes between local education authority and governing body.**

Except where the Education Act 1996 expressly provides otherwise<sup>1</sup>, any dispute between a local education authority<sup>2</sup> and the governing body of a school<sup>3</sup> as to the exercise of any power conferred or the performance of any duty imposed by or under that Act may be referred to the Secretary of State<sup>4</sup>, despite any enactment which makes the exercise of the power or the performance of the duty contingent upon the opinion of the authority or of the governing body<sup>5</sup>. The Secretary of State must determine any dispute so referred to him<sup>6</sup>. Any dispute between two or more local education authorities as to which of them is responsible for the provision of education for any pupil<sup>7</sup> must be determined by the Secretary of State<sup>8</sup>.

<sup>1</sup> See eg the Education Act 1996 ss 496-497 (paras 57-58 ante) and the School Standards and Framework Act 1998 Sch 15 (see PARAS 322-325 post).

<sup>2</sup> As to local education authorities see PARA 20 ante.

<sup>3</sup> For the meaning of 'school' see PARA 81 post. As to the governing bodies of maintained schools see PARA 203 et seq post.

<sup>4</sup> As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>5</sup> Education Act 1996 s 495(1). Section 495(1) is applied in relation to the governing body of an institution which is maintained by a local education authority and provides higher education or further education or both: see the Education Reform Act 1988 s 219(2) (as substituted); and PARAS 610, 715 post. As to the power of the Secretary of State to require a medical examination where a question is referred to him under the Education Act 1996 s 495 see s 506; and PARA 553 post.

<sup>6</sup> Ibid s 495(2).

<sup>7</sup> For the meaning of 'pupil' see PARA 16 note 4 ante.

<sup>8</sup> Education Act 1996 s 495(3). As to disputes of the kind mentioned in the text see also the Education (Areas to which Pupils and Students Belong) Regulations 1996, SI 1996/615 (as amended); and PARA 20 note 3 ante.

## **UPDATE**

## **59 Determination of disputes between local education authority and governing body**

TEXT AND NOTES 1-6--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 5.

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## **60. Power to require information from governing bodies.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provisions requiring: (1) the governing body of every school<sup>3</sup> which is maintained by a local education authority<sup>4</sup> or a special school<sup>5</sup> which is not maintained by such an authority<sup>6</sup>; and (2) proprietors<sup>7</sup> of independent schools<sup>8</sup>, to provide such information about the school as may be prescribed<sup>9</sup>. For these purposes, information about the continuing education of pupils<sup>10</sup> leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school<sup>11</sup>. No information provided in accordance with such regulations may name any pupil to whom it relates<sup>12</sup>.

Where the Secretary of State exercises such a power, he must do so with a view to making available information which is likely to assist parents<sup>13</sup> in choosing schools for their children<sup>14</sup>, increase public awareness of the quality of education provided by the schools concerned and the educational standards achieved in those schools<sup>15</sup>, or assist in assessing the degree of efficiency with which the financial resources of those schools are managed<sup>16</sup>. The Secretary of State may: (a) publish information provided in accordance with regulations under these provisions in such form and manner as he considers appropriate<sup>17</sup>; (b) make arrangements for such information to be published in such form and manner, and by such persons, as he may specify for these purposes<sup>18</sup>; (c) make regulations requiring local education authorities to publish prescribed categories of such information, together with such supplementary information as may be prescribed, in such form and manner as may be prescribed<sup>19</sup>. The Secretary of State may also make regulations requiring the governing body of any school which is maintained by a local education authority<sup>20</sup>, the proprietor of any city technology college<sup>21</sup>, city college for the technology of the arts<sup>22</sup> or academy<sup>23</sup>, or any local education authority<sup>24</sup>, to provide prescribed persons with prescribed categories of information published under heads (a) to (c) above<sup>25</sup>.

Regulations may make provision for the designation by the Secretary of State, in accordance with the regulations, of particular schools or classes of schools for the purposes of the application of particular provisions of the regulations in relation to such schools<sup>26</sup>.

The provisions described above do not apply to nursery schools<sup>27</sup>, and are not to be taken as restricting, or otherwise affecting, any other powers that the Secretary of State may have to make regulations with respect to, or otherwise to require, the provision of information by any person<sup>28</sup>.

A local education authority in Wales must publish any material which the National Assembly for Wales provides to the authority for the purpose<sup>29</sup>, being material ('qualifying material') the Assembly considers likely to assist parents in choosing schools for their children<sup>30</sup>, increase public awareness of the quality of education provided at schools or a school and of the educational standards achieved there<sup>31</sup>, or assist in assessing the degree of efficiency with which the financial resources of schools or a school are managed<sup>32</sup>. A local education authority in Wales must provide to such persons as the Assembly may specify any qualifying material which the Assembly provides to the authority for the purpose<sup>33</sup>; and the governing body of any school maintained by a local education authority in Wales must provide to such persons as the Assembly may specify any qualifying material which the Assembly provides to the body for the purpose<sup>34</sup>. Any material so published or so provided may not name any individual to whom it relates<sup>35</sup> and must be in such form and manner as may be prescribed<sup>36</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the equivalent power given to the National Assembly for Wales under the Education Act 2002 to require information from governing bodies and local education authorities in Wales see the text and notes 29-36 infra.

2 For these purposes, 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. See further note 9 infra.

3 For the meaning of 'school' see PARA 81 post. As to the governing bodies of maintained schools see PARA 203 et seq post.

4 For the meaning of 'school maintained by a local education authority' see PARA 94 post. As to local education authorities see PARA 20 ante.

5 As to special schools see PARA 1027 et seq post.

6 Education Act 1996 s 537(1)(a) (s 537(1) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 152(a)).

7 'Proprietor', in relation to a school, means the person or body of persons responsible for the management of the school, so that, in relation to a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school, it means the governing body: Education Act 1996 s 579(1) (amended by the School Standards and Framework Act 1998 Sch 30 para 183(a)(iii); the Education Act 2002 (Modification and Transitional Provisions) (England) Regulations 2003, SI 2003/2045, reg 3; and the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 4). As to community, foundation and voluntary schools and community or foundation special schools see PARA 102 et seq post. As to special schools see also PARA 1027 et seq post. For the meaning of 'maintained nursery school' see PARA 36 note 6 ante. The Education Act 1996 s 537 (as amended) does not apply to nursery schools: see the text and note 27 infra.

8 Ibid s 537(1)(b) (as substituted: see note 6 supra). As to independent schools see PARA 465 post.

9 Ibid s 537(1) (as substituted: see note 6 supra). 'Prescribed' means prescribed by regulations: s 579(1). As to the regulations that have been made under s 537 (as amended) see the Education (School Information) (Wales) Regulations 1999, SI 1999/1812 (amended by SI 2001/1111; SI 2001/3710; SI 2002/1400; SI 2004/1736; SI 2004/2914; SI 2005/1396); the Education (School Performance Information) (England) Regulations 2001, SI 2001/3446 (amended by SI 2002/2017; SI 2002/3178; SI 2003/537; SI 2003/2135; SI 2004/2141; SI 2005/51; SI 2005/2338); the Education (School Information) (England) Regulations 2002, SI 2002/2897 (amended by SI 2005/845; SI 2005/2039; SI 2005/2152); and the Education (School Performance Information) (Wales) Regulations 2004, SI 2004/1025 (amended by SI 2004/2914; SI 2005/1396). See also the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 14, which applies, with modifications, the Education (School Information) (England) Regulations 2002, SI 2002/2897 (as amended) to pupil referral units. For the meaning of 'pupil referral unit' see PARA 457 post.

Information which is required by virtue of regulations made under the Education Act 1996 s 537 (as amended) must be provided in such form and manner, on such occasions, and to such person or persons, in addition to or in place of the Secretary of State, as may be prescribed: s 537(4). Regulations under s 537 (as amended) may provide that, in such circumstances as may be prescribed, the provision of information to a person other than the Secretary of State is to be treated, for the purposes of any provision of such regulations or s 537 (as amended), as compliance with any requirement of such regulations relating to the provision of information to the Secretary of State: s 537(4) (amended by the Education Act 1997 s 57(1), Sch 7 para 37).

The Education Act 1996 s 537 (as amended) has given the Secretary of State a wide discretion as to the form and manner in which information may be published: *R v Secretary of State for Education and Employment, ex p Governing Body of West Horndon County Primary School and the National Association of Head Teachers* [1997] ELR 350.

10 For the meaning of 'pupil' see PARA 16 note 4 ante.

11 Education Act 1996 s 537(2).

12 Ibid s 537(5). As to the provision of information about individual pupils see PARA 61 post.

13 As to the meaning of 'parent' see PARA 510 note 1 post.

- 14 Education Act 1996 s 537(3)(a). For the meaning of 'child' see PARA 16 note 2 ante. A power identical to that in s 537(3) can be exercised by the National Assembly for Wales under the Education Act 2002: see the text and notes 29-36 infra.
- 15 Education Act 1996 s 537(3)(b). See note 14 supra.
- 16 Ibid s 537(3)(c). See note 14 supra.
- 17 Ibid s 537(6)(a).
- 18 Ibid s 537(6)(b).
- 19 Ibid s 537(6)(c).
- 20 Ibid s 537(7)(a) (amended by the School Standards and Framework Act 1998 s 140(3), Sch 30 para 152(b), Sch 31). Information provided under the Education Act 1996 s 537(7) (as amended) must be provided in such form and manner as may be prescribed: s 537(8).
- 21 As to the meaning of 'city technology college' see PARA 496 note 31 post.
- 22 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 post.
- 23 Education Act 1996 s 537(7)(b) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 60; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 6(1), (5)). See also note 20 supra. As to the meaning of 'academy' see PARA 496 note 29 post.
- 24 Education Act 1996 s 537(7)(c). See also note 20 supra.
- 25 Ibid s 537(7).
- 26 Ibid s 537(11). This provision is expressed to be without prejudice to the generality of s 569(4) (regulations may make different provision for different cases, etc: see PARA 40 note 5 ante): s 537(11).
- 27 Ibid s 537(13). As to the meaning of 'nursery school' see PARA 81 post.
- 28 Ibid s 537(12).
- 29 Education Act 2002 s 196(1).
- 30 Ibid s 196(4)(a).
- 31 Ibid s 196(4)(b).
- 32 Ibid s 196(4)(c).
- 33 Ibid s 196(2).
- 34 Ibid s 196(3).
- 35 Ibid s 196(5).
- 36 Ibid s 196(6). For these purposes, 'prescribed' means prescribed by regulations; and 'regulations' in relation to Wales means regulations made under the Education Act 2002 by the National Assembly for Wales: s 212(1). As to the making of regulations under the Education Act 2002 see PARA 79 note 2 post.

## UPDATE

### 60 Power to require information from governing bodies

TEXT AND NOTES 1-28--As to the exercise of the Secretary of State's powers under the Education Act 1996 s 537, in relation to securing the provision of special needs information, see PARA 1021A.

As to the application of the Education Act 1996 s 537 to certain part-time educational institutions in England see Education Act 1996 s 537AA (added by Education and Skills Act 2008 Sch 1 para 8) (not yet in force).



NOTE 9--SI 1999/1812 further amended: SI 2005/3238, SI 2005/3239, SI 2009/569. SI 2001/3446 replaced: Education (School Performance Information) (England) Regulations 2007, SI 2007/2324 (amended by SI 2008/364, SI 2008/1727, SI 2009/646; modified by SI 2007/2979). SI 2002/2897 replaced: School Information (England) Regulations 2008, SI 2008/3093. SI 2004/1025 further amended: SI 2005/3239, SI 2007/3564. SI 2005/2039 replaced: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979.

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## **61. Provision of information about individual pupils.**

Regulations<sup>1</sup> may make provision requiring: (1) the governing body of every school<sup>2</sup> which is maintained by a local education authority<sup>3</sup>, or a special school<sup>4</sup> which is not maintained by such an authority<sup>5</sup>; and (2) the proprietor<sup>6</sup> of every independent school<sup>7</sup>, to provide to the Secretary of State<sup>8</sup> or any prescribed person<sup>9</sup> (or both) such individual pupil information<sup>10</sup> as may be prescribed<sup>11</sup>. The Secretary of State may provide any individual pupil information to any information collator<sup>12</sup>, to any prescribed person, or to any person falling within a prescribed category<sup>13</sup>. Any information collator:

- 84 (a) may provide any individual pupil information to the Secretary of State, to any other information collator, or to the governing body or proprietor of the school attended by the pupil or pupils to whom the information relates<sup>14</sup>; and
- 85 (b) may, at such times as the Secretary of State may determine, provide such individual pupil information as may be prescribed to any prescribed person, or to any person falling within a prescribed category<sup>15</sup>.

Any person holding any individual pupil information, other than the Secretary of State or an information collator, may provide that information to the Secretary of State, any information collator, or any prescribed person<sup>16</sup>.

No information received under or by virtue of these provisions may be published in any form which includes the name of the pupil or pupils to whom it relates<sup>17</sup>.

1 For these purposes, 'regulations' means regulations made by the Secretary of State (see note 8 infra): Education Act 1996 s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante.

2 For the meaning of 'school' see PARA 81 post. As to the governing bodies of maintained schools see PARA 203 et seq post.

3 For the meaning of 'school maintained by a local education authority' see PARA 94 post. As to local education authorities see PARA 20 ante.

4 As to special schools see PARA 1027 et seq post.

5 Education Act 1996 s 537A(1)(a) (s 537A added by the Education Act 1997 s 20; and substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 153).

6 For the meaning of 'proprietor' see PARA 60 note 7 ante.

7 Education Act 1996 s 537A(1)(b) (as added and substituted: see note 5 supra). As to independent schools see PARA 465 post.

8 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1). As to the regulations made under s 537A(1), (2) (as added and substituted) see note 11 infra. Where any prescribed person receives information by virtue of s 537A(1) (as added and substituted), the Secretary of State may require that person to provide any such information to him, or to any prescribed person: s 537A(3) (as added and substituted: see note 5 supra).

10 For these purposes, 'individual pupil information' means information relating to and identifying individual pupils or former pupils at any school within *ibid* s 537A(1) (as added and substituted), whether obtained under s 537A(1) (as added and substituted) or otherwise: s 537A(9) (as added and substituted: see note 5 *supra*). For the meaning of 'pupil' see PARA 16 note 4 *ante*.

11 *Ibid* s 537A(1), (2) (as added and substituted: see note 5 *supra*). As to the regulations made under s 537A(1), (2) (as added and substituted) see the Education (Individual Performance Information) (Identification of Individual Pupils) Regulations 1998, SI 1998/1834 (revoked, in relation to individual pupil information relating to pupils at schools (other than nursery schools) in England, by SI 1999/903); the Education (School Performance Information) (England) Regulations 2001, SI 2001/3446 (amended by SI 2002/2017; SI 2002/3178; SI 2003/537; SI 2003/2135; SI 2004/2141; SI 2005/51; SI 2005/2338); the Education (Information About Individual Pupils) (England) Regulations 2001, SI 2001/4020 (amended by SI 2002/3112; SI 2003/689; SI 2003/3277; SI 2005/3101); the Education (Information About Individual Pupils) (Wales) Regulations 2003, SI 2003/3237 (amended by SI 2005/35; SI 2006/30); and the Education (School Performance Information) (Wales) Regulations 2004, SI 2004/1025 (amended by SI 2004/2914; SI 2005/1396).

Regulations under the Education Act 1996 s 537A (as added and substituted) may provide that, in such circumstances as may be prescribed, the provision of information to a person other than the Secretary of State is to be treated, for the purposes of any provision of such regulations or s 537A (as added and substituted), as compliance with any requirement relating to the provision of information to the Secretary of State imposed by or by virtue of any such provision: s 537A(8) (as so added and substituted).

12 For these purposes, 'information collator' means any body which, for the purposes of or in connection with the functions of the Secretary of State relating to education, is responsible for collating or checking information relating to pupils: *ibid* s 537A(9) (as added and substituted: see note 5 *supra*).

13 *Ibid* s 537A(4) (as added and substituted: see note 5 *supra*). As to the prescribed categories of person see the Education (Individual Pupil Information) (Prescribed Persons) Regulations 1999, SI 1999/903; the Education (Information About Individual Pupils) (Wales) Regulations 2003, SI 2003/3237 (amended by SI 2005/35; SI 2006/30); and the Education (Individual Pupil Information) (Prescribed Persons) (Wales) Regulations 2004, SI 2004/549.

14 Education Act 1996 s 537A(5)(a) (as added and substituted: see note 5 *supra*).

15 *Ibid* s 537A(5)(b) (as added and substituted: see note 5 *supra*). As to the regulations made under s 537A(5) (as added and substituted) see the Education (Individual Pupil Information) (Prescribed Persons) Regulations 1999, SI 1999/903 (amended by SI 2004/1377); and the Education (Individual Pupil Information) (Prescribed Persons) (Wales) Regulations 2004, SI 2004/549.

16 Education Act 1996 s 537A(6) (as added and substituted: see note 5 *supra*). As to the regulations made under s 537A(6) (as added and substituted) see the Education (Individual Pupil Information) (Prescribed Persons) Regulations 1999, SI 1999/903 (amended by SI 2004/1377).

17 Education Act 1996 s 537A(7) (as added and substituted: see note 5 *supra*).

## UPDATE

### 61 Provision of information about individual pupils

TEXT AND NOTES--Equivalent provision is made to enable individual information to be collected about children receiving education funded by a local education authority otherwise than at a school: see Education Act 1996 s 537B (added by Education and Inspections Act 2006 s 164).

See further Education (Information About Children in Alternative Provision) (England) Regulations 2007, SI 2007/1065 (amended by SI 2007/3224); Childcare (Provision of Information About Young Children) (England) Regulations 2009, SI 2009/1554; Education (Information About Children in Alternative Provision) (Wales) Regulations 2009, SI 2009/3355.

As to the exercise of the Secretary of State's powers under the Education Act 1996 ss 537A, 537B, in relation to securing the provision of special needs information, see PARA 1021A.

As to the application of the Education Act 1996 s 537A to certain part-time educational institutions in England see Education Act 1996 s 537AA (added by Education and Skills Act 2008 Sch 1 para 8) (not yet in force).

NOTES 11, 13, 15--SI 2003/3237, SI 2004/549 replaced: Education (Information About Individual Pupils) (Wales) Regulations 2007, SI 2007/3562.

NOTE 11--SI 2001/3446 replaced: Education (School Performance Information) (England) Regulations 2007, SI 2007/2324 (amended by SI 2008/364, SI 2008/1727, SI 2009/646; modified by SI 2007/2979). SI 2004/1025 further amended: SI 2005/3239, SI 2007/3564. SI 2001/4020 replaced: see now the Education (Information About Individual Pupils) (England) Regulations 2006, SI 2006/2601 (amended by SI 2007/3224, SI 2007/3373, SI 2008/3072). See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 5, Sch 3 para 2.

NOTES 13, 15, 16--SI 1999/903 replaced: Education (Individual Pupil Information) (Prescribed Persons) (England) Regulations 2009, SI 2009/1563.

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## 62. Supply of information about school workforce.

Regulations<sup>1</sup> may authorise or require: (1) the proprietor of a school<sup>2</sup>; (2) a children's services authority in England or Wales<sup>3</sup>; or (3) any prescribed<sup>4</sup> person<sup>5</sup>, to supply to: (a) the Secretary of State; (b) the National Assembly for Wales; or (c) any prescribed person<sup>6</sup>, prescribed information relating to persons who are or have been qualifying workers<sup>7</sup> or qualifying trainees<sup>8</sup>, for use by the Secretary of State, the Assembly, or any prescribed person, for a qualifying purpose<sup>9</sup>. Regulations may also authorise the Secretary of State or the Assembly to supply to the other or to any prescribed person, for use for a qualifying purpose, prescribed information relating to persons who are or have been qualifying workers or qualifying trainees<sup>10</sup>.

Regulations may authorise the Secretary of State, the Assembly, or any prescribed person to supply to any prescribed person ('the recipient') any information relating to persons who are or have been qualifying workers or qualifying trainees which has been lawfully held by the recipient, or is information which another person was, or could have been, required, whether by virtue of regulations made under these provisions or otherwise, to supply to the recipient<sup>11</sup>. Regulations may also prohibit any person to whom information is supplied by virtue of these provisions from further disclosing the information otherwise than in prescribed circumstances, and provide that the default powers of the Secretary of State or Assembly<sup>12</sup> are, in relation to the duties imposed by virtue of these provisions, to have effect with modifications<sup>13</sup>.

These provisions do not limit the circumstances in which information is otherwise authorised or required to be supplied<sup>14</sup>.

1 For these purposes, 'regulations' means: (1) in relation to England, regulations made by the Secretary of State; and (2) in relation to Wales, regulations made by the National Assembly for Wales: Education Act 2005 s 114(10). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. At the date at which this volume states the law, no regulations had been made under s 114.

Any power to make an order or regulations conferred by the Education Act 2005 on the Secretary of State or the National Assembly for Wales is exercisable by statutory instrument, and includes power: (1) to make different provision for different cases or areas; (2) to make provision generally or in relation to specific cases; and (3) to make such incidental, supplementary, saving or transitional provision as the Secretary of State thinks fit: s 120(1)-(2). Any statutory instrument containing regulations made by the Secretary of State under any provision of the Education Act 2005 is subject to annulment in pursuance of a resolution of either House of Parliament: s 121(1). However, this provision does not apply to: (a) an order made under s 125 (commencement); or (b) a statutory instrument which contains (whether alone or with other provisions) regulations made by the Secretary of State under s 124 (power to make further supplementary and consequential provision etc) which amend or repeal any part of the text of an Act: s 121(2)-(3). An instrument under head (b) supra may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 121(3).

2 Ibid s 114(1)(a). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 122(2), (3). For the meaning of 'school' see PARA 81 post; definition applied by virtue of s 122(2), (3).

3 Ibid s 114(1)(b). For these purposes, 'children's services authority in England' and 'children's services authority in Wales' have the same meaning as in the Children Act 2004: Education Act 2005 s 113(1), (5). In the Children Act 2004, 'children's services authority in England' means:

- 22 (1) a county council in England;
- 23 (2) a metropolitan district council;

- 24 (3) a non-metropolitan district council for an area for which there is no county council;
- 25 (4) a London borough council;
- 26 (5) the Common Council of the City of London;
- 27 (6) the Council of the Isles of Scilly,

and 'children's services authority in Wales' means a county council or county borough council in Wales: s 65(1). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq; as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55; and as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36. For the meaning of 'England' see PARA 52 note 11 post; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 For this purpose, 'prescribed' means prescribed by regulations: Education Act 2005 s 114(10).

5 Ibid s 114(1)(c). A person may not be prescribed for this purpose or for the purpose of head (c) in the text unless he appears to the person making the regulations to be exercising functions of a public nature: s 114(4) (a).

6 See note 7 infra.

7 For this purpose, 'qualifying worker' means any person who: (1) is employed at, or otherwise engaged to work at, a school; (2) does not fall within head (1) supra but provides, or assists in the provision of, education under a contract of employment or for services where the other party to the contract is a children's services authority in England or Wales, or a person exercising a function relating to the provision of education on behalf of such an authority; or (3) provides education at a further education institution: Education Act 2005 s 113(1), (2). For this purpose, 'contract of employment' has the meaning given by the Employment Rights Act 1996 s 230(2) (see EMPLOYMENT vol 39 (2009) PARA 2); and 'further education institution' means an institution which is: (a) an institution (other than a school) which provides further education; or (b) an institution within the further education sector: Education Act 2005 s 113(1), (4). For the meaning of 'further education' see PARA 18 ante. As to references to institutions within the further education sector see PARA 579 post; and as to further education generally see PARA 579 et seq post.

8 For this purpose, 'qualifying trainee' means a person (other than a qualifying worker) for whom training as a member of the school workforce is being provided: ibid s 113(1), (3). 'Member of the school workforce' has the same meaning as in Pt 3 (ss 74-100) (see PARA 793 note 4 post): s 113(1), (4).

9 Ibid s 114(1), (2). Information is supplied to a person for use for a qualifying purpose if it is supplied to him for use for: (1) evaluation, planning, research or statistical purposes; or (2) any other prescribed purpose: s 114(5).

10 Ibid s 114(3).

11 Ibid s 114(6), (7).

12 Ie under the Education Act 1996 s 497 (as amended): see PARA 58 post.

13 Education Act 2005 s 114(8). The modifications referred to in the text are that: (1) the reference in the Education Act 1996 s 497(2)(a) (as amended) to a local education authority has effect as if it were a reference to a children's services authority in England or Wales; and (2) any reference to a body to which s 497 (as amended) applies has effect as if it included a reference to a prescribed person: Education Act 2005 s 114(8). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 122(2), (3).

14 Ibid s 114(9).

## UPDATE

### 62 Supply of information about school workforce

NOTE 1--See the Education (Supply of Information about the School Workforce) (No 2) (England) Regulations 2007, SI 2007/2260 (amended by SI 2009/2266).

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**63. Services for schools in other member states providing education for British children.**

In relation to any school<sup>1</sup> which:

- 86 (1) is situated in a member state<sup>2</sup> other than the United Kingdom<sup>3</sup>;
- 87 (2) provides education for pupils<sup>4</sup> who are British citizens, have attained the age of five years but not the age of 19 years and are residing in that member state<sup>5</sup>;
- 88 (3) has a curriculum which, in the case of any pupil at the school, is broadly similar to the curriculum which he would follow if he were a pupil at a maintained school<sup>6</sup> in England and Wales<sup>7</sup>; and
- 89 (4) has such other characteristics as may be prescribed<sup>8</sup>,

the Secretary of State must:

- 90 (a) on a regular basis provide the persons responsible for the management of the school with such information relating to educational developments in England and Wales as he thinks appropriate<sup>9</sup>; and
- 91 (b) if those persons so request, make arrangements for inspections to be made of the school by, or under the direction of, one or more of Her Majesty's Inspectors of Schools for England<sup>10</sup>.

The Secretary of State must charge the persons at whose request any inspection of a school is so made such fees as will cover the full cost of the inspection<sup>11</sup>.

1 For the meaning of 'school' see PARA 81 post; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81(1), (4)).

2 'Member state' means a state which is a member of the European Communities: see the European Communities Act 1972 s 1(2), Sch 1 Pt II.

3 Education Reform Act 1988 s 226(1)(a). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

4 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 1 supra).

5 Ibid s 226(1)(b).

6 For these purposes, 'maintained school' means any community, foundation or voluntary school: ibid s 226(4) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 16, 19). As to community, foundation and voluntary schools see PARA 102 et seq post. As to maintained schools generally see PARA 94 et seq post.

7 Education Reform Act 1988 s 226(1)(c). As to the curriculum in England see PARA 913 et seq post; and as to the curriculum in Wales see PARA 926 et seq post.

8 Ibid s 226(1)(d). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 1 supra). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. At the date at which this volume states the law, no such regulations had been made under s 226 (as amended).

9 Ibid s 226(2)(a).

10 Ibid s 226(2)(b) (amended by the Education (Schools) Act 1992 s 21(7), Sch 4 para 7). As to Her Majesty's Inspectorate of Schools in England see PARA 1168 et seq post.

11 Education Reform Act 1988 s 226(3).

## **UPDATE**

### **63 Services for schools in other member states providing education for British children**

TEXT AND NOTE 10--For 'by, or under ... Schools for England' read 'by Her Majesty's Chief Inspector of Education, Children's Services and Skills': 1988 Act s 226(2)(b) (amended by the Education and Inspections Act 2006 Sch 15 para 8). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills, see PARA 1167A.



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#### **64. Persons not covered by the Education Act 1996.**

No power or duty conferred or imposed by the Education Act 1996 on the Secretary of State<sup>1</sup> is to be construed as relating to any person who is employed by or under the Crown in any service or capacity with respect to which the Secretary of State certifies that, by reason of the arrangements made for the education of children<sup>2</sup> and young persons<sup>3</sup> so employed, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary<sup>4</sup>.

No power or duty conferred or imposed by or under the Education Act 1996 on the Secretary of State is to be construed as relating to any person who is detained in pursuance of an order made by a court or of an order of recall made by the Secretary of State, but a local education authority<sup>5</sup> may make arrangements for a person who is detained in pursuance of such an order to receive the benefit of educational facilities provided by the authority<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'child' see PARA 16 note 2 ante.

3 For the meaning of 'young person' see PARA 38 note 4 ante.

4 Education Act 1996 s 561.

5 As to local education authorities see PARA 20 ante.

6 Education Act 1996 s 562(1). A child or young person who is being educated as a boarder at a school is not to be regarded for these purposes as detained in pursuance of an order made by a court by reason of the fact that he is required to be at the school: (1) by virtue of an order made by a court under the Children and Young Persons Act 1933 or by virtue of anything done under such an order; or (2) by virtue of a requirement of a community order under the Criminal Justice Act 2003 s 177 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 163) or by virtue of anything done under such a requirement: Education Act 1996 s 562(2) (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 para 73). As to the meaning of 'boarder' see PARA 26 note 16 ante. For the meaning of 'school' see PARA 81 post.

#### **UPDATE**

#### **64 Persons not covered by the Education Act 1996**

NOTE 6--Education Act 1996 s 562(2) further amended: Criminal Justice and Immigration Act 2008 Sch 4 para 47.

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## (ii) Provision of Grants

### A. GENERAL GRANT-MAKING POWERS

#### 65. Financial assistance for purposes related to education or children etc in England and Wales.

The Secretary of State<sup>1</sup> (in relation to England<sup>2</sup>) or the National Assembly for Wales<sup>3</sup> (in relation to Wales<sup>4</sup>) may give, or make arrangements<sup>5</sup> for the giving of, financial assistance to any person for or in connection with any of the following purposes<sup>6</sup>:

- 92 (1) the provision, or proposed provision, in the United Kingdom<sup>7</sup> or elsewhere, of education<sup>8</sup> or of educational services<sup>9</sup>;
- 93 (2) the provision, or proposed provision, in the United Kingdom or elsewhere, of childcare or of services related to childcare<sup>10</sup>;
- 94 (3) enabling any person to undertake any course of education, or any course of higher education<sup>11</sup> provided by an institution within the further education sector<sup>12</sup>;
- 95 (4) providing for a person's maintenance while he undertakes such a course<sup>13</sup>;
- 96 (5) the promotion of learning or research<sup>14</sup>;
- 97 (6) the promotion of the use of educational buildings or facilities for purposes other than those of education<sup>15</sup>;
- 98 (7) the provision of any form of training for teachers or for non-teaching staff<sup>16</sup>;
- 99 (8) the promotion of the recruitment or retention of teachers or non-teaching staff<sup>17</sup>;
- 100 (9) the remuneration of, or provision of other benefits to, teachers or non-teaching staff<sup>18</sup>;
- 101 (10) the promotion of the welfare of children<sup>19</sup> and their parents<sup>20</sup>;
- 102 (11) the provision of support for parenting, including support for prospective parents<sup>21</sup>.

Such assistance may be given in any form<sup>22</sup>, and may, in particular, be given by way of grants<sup>23</sup>, loans<sup>24</sup>, guarantees<sup>25</sup>, incurring expenditure on the provision of equipment for the benefit of the person assisted<sup>26</sup>, or incurring other expenditure for the benefit of the person assisted<sup>27</sup>.

Such assistance may be given also on such terms as the Secretary of State or, as the case may be, the National Assembly for Wales considers appropriate<sup>28</sup>, and may, in particular, include provisions as to:

- 103 (a) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State or the National Assembly for Wales, and the manner in which that is to be done<sup>29</sup>;
- 104 (b) the giving by the person receiving assistance of financial assistance to other persons on such terms as that person or the Secretary of State or the Assembly considers appropriate<sup>30</sup>;
- 105 (c) circumstances in which any payments made by virtue of terms included by virtue of head (b) above are to be repaid, or otherwise made good, to the person

- receiving assistance from the Secretary of State or the Assembly, and the manner in which that is to be done<sup>31</sup>;
- 106 (d) the keeping, and making available for inspection, of accounts and other records<sup>32</sup>.

The person receiving assistance must comply with the terms on which it is given, and compliance may be enforced by the Secretary of State or, as the case may be, the National Assembly for Wales<sup>33</sup>.

- 1 As to the Secretary of State see PARA 52 ante.
- 2 For the meaning of 'England' see PARA 52 note 11 ante.
- 3 As to the National Assembly for Wales see PARA 53 ante.
- 4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 Arrangements under the Education Act 2002 s 14 may provide for assistance to be given, or other functions relating to assistance to be exercised, otherwise than by the Secretary of State or the National Assembly for Wales (s 17(1)); and such arrangements which so provide may make provision for the functions concerned to be so exercised either wholly or to such extent as may be specified in the arrangements, and either generally or in such cases or circumstances as may be so specified, but must not prevent the functions concerned from being exercised by the Secretary of State or, as the case may be, the National Assembly for Wales (s 17(2)).

6 Ibid s 14(1). The power given in s 14 supersedes the following specific powers which were conferred on the Secretary of State or the National Assembly for Wales and are repealed by s 18 as from a day to be appointed under s 216(4): (1) the Education Act 1967 s 4 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (loans for capital expenditure for the purposes of colleges of education: see PARA 802 post) (Education Act 2002 s 18(1)(a)); (2) the Education Act 1986 s 1(1)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (grants to the Further Education Unit: see PARA 75 post) (Education Act 2002 s 18(1)(b)); (3) the Education (No 2) Act 1986 s 50(1)(b) (repealed) (grants to facilitate training of persons other than teachers) (Education Act 2002 s 18(1)(c)); (4) the Education Reform Act 1988 s 210 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (grants to further education institutions for education of travellers and displaced persons: see PARA 641 post) (Education Act 2002 s 18(1)(d)); (5) the Education Reform Act 1988 s 211 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (grants in respect of special provision for immigrants in Wales: see PARA 642 post) (Education Act 2002 s 18(1)(e)); (6) the Nursery Education and Grant-Maintained Schools Act 1996 s 1 (repealed in relation to England; prospectively repealed in relation to Wales) (arrangements for making grants in respect of nursery education: see PARA 91 post) (Education Act 2002 s 18(1)(f)); (7) the Education Act 1996 ss 486-488 (s 486 prospectively repealed; ss 487-488 repealed in relation to England; prospectively repealed in relation to Wales) (see PARAS 71-73 post), s 490 (repealed) (Education Act 2002 s 18(1)(g)); (8) the Education Act 1996 s 491 (repealed in relation to England; prospectively repealed in relation to Wales) (payment of school fees and expenses: see PARA 476 post) (Education Act 2002 s 18(1)(h)); and (9) the School Standards and Framework Act 1998 s 3 (repealed in relation to England; prospectively repealed in relation to Wales) (payment of grant in connection with reductions in infant class sizes: see PARA 407 post) (Education Act 2002 s 18(1)(i)). In relation to England, the appointed day is 1 April 2003 (except in respect of the Education Act 1996 s 486 (see head (7) supra)) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. The power to pay grants under the Education Act 1996 s 484 (as amended) (education standards grants: see PARA 68 post) is made exercisable only in relation to Wales: Education Act 2002 s 18(2).

Note that the Funding Agency for Schools was dissolved on 1 November 1999: see the School Standards and Framework Act 1998 s 132(1); and the Funding Agency for Schools Dissolution Order 1999, SI 1999/2767.

- 7 For the meaning of 'United Kingdom' see PARA 63 note 3 ante.
- 8 For this purpose, 'education' includes:
- 28 (1) vocational training, including the preparation of young people for employment in general; and
- 29 (2) social and physical training, including the promotion of the development of young children,

and 'educational' must be construed accordingly: Education Act 2002 s 14(3). Higher education is not included in this definition, except for the purposes of s 14(2ZA)(a) (as added) (see note 16 infra): s 14(3) (amended by the Education Act 2005 s 98, Sch 14 para 23(1), (3)). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'young person' see PARA 38 note 4 ante; definition applied by virtue of s 212(2), (3).

9 Ibid s 14(2)(a). For this purpose, 'educational services' includes administrative, advisory, organisational, training or information services related to education: s 14(3).

10 Ibid s 14(2)(b). As to a local education authority's duties in respect of childcare provision see PARA 25 ante.

11 For the meaning of 'higher education' see PARA 19 ante.

12 Education Act 2002 s 14(2)(c). As to references to institutions within the further education sector see PARA 579 post.

13 Ibid s 14(2)(d).

14 Ibid s 14(2)(e).

15 Ibid s 14(2)(f).

16 Ibid s 14(2)(g). For this purpose, 'training for teachers or for non-teaching staff' includes: (1) any training or education, whether or not constituting higher education, with the object of fitting persons to be teachers or non-teaching staff, or better teachers or non-teaching staff; and (2) any assessment related to the award of a qualification or status to teachers or non-teaching staff, or prospective teachers or non-teaching staff: s 14(2ZA) (added by the Education Act 2005 Sch 14 para 23(1), (2)). 'Teacher' does not include a teacher at an institution within the higher education sector: Education Act 2002 s 14(3). As to references to institutions within the higher education sector see PARA 646 post. As to the training of teachers see PARA 784 et seq post.

17 Ibid s 14(2)(h).

18 Ibid s 14(2)(i).

19 For this purpose, 'children' means persons under the age of 20: ibid s 14(2A) (added by the Education Act 2005 Sch 14 para 23(1), (2)).

20 Education Act 2002 s 14(2)(j) (added by the Children Act 2004 s 59(1), (2)).

21 Education Act 2002 s 14(2)(k) (added by the Children Act 2004 s 59(1), (2)).

22 Education Act 2002 s 15(1).

23 Ibid s 15(2)(a).

24 Ibid s 15(2)(b). Assistance given under s 14 to a local authority may not be given by way of loan: s 15(3). For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of s 212(2), (3).

25 Ibid s 15(2)(c). Assistance given under s 14 to a local authority may not be given by way of guarantee: s 15(3).

26 Ibid s 15(2)(d).

27 Ibid s 15(2)(e).

28 Ibid s 16(1).

29 Ibid s 16(2)(a).

30 Ibid s 16(2)(b). In relation to financial assistance required by virtue of s 16(2)(b), s 15(2) (see the text and notes 23-27 supra) applies as it applies to financial assistance given under s 14 (as amended): s 16(4).

31 Ibid s 16(2)(c).

32 Ibid s 16(2)(d).

33 Ibid s 16(3).

**UPDATE**

**65 Financial assistance for purposes related to education or children etc in England and Wales**

NOTE 6--Day now appointed in relation to Wales: SI 2007/3611. Head (7). Day now appointed in relation to England: SI 2006/2895.

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## **66. Supply of information regarding education maintenance allowances.**

Information which:

- 107 (1) is held for the purposes of functions relating to tax or tax credits<sup>1</sup> by the Commissioners for Her Majesty's Revenue and Customs<sup>2</sup>, or by a person providing services to the Commissioners for Her Majesty's Revenue and Customs, in connection with the provision of those services<sup>3</sup>; or
- 108 (2) is held for the purposes of functions relating to social security<sup>4</sup> by the Secretary of State<sup>5</sup>, or by a person providing services to the Secretary of State, in connection with the provision of those services<sup>6</sup>,

may be supplied to the Secretary of State, the Learning and Skills Council for England<sup>7</sup>, the National Assembly for Wales<sup>8</sup>, and to any person providing services to them, for purposes relating to eligibility for education maintenance allowances<sup>9</sup>. Information received under these provisions<sup>10</sup> may be supplied to the Assembly, to any person exercising functions in relation to financial assistance paid in respect of education or training<sup>11</sup>, to any person exercising functions under regulations in relation to allowances paid in respect of education or training<sup>12</sup>, or to any person providing services to the Assembly, for use for purposes relating to eligibility for education maintenance allowances<sup>13</sup>.

A person may, in making a request for the supply to him of information<sup>14</sup>, supply to any person who holds, or is to be supplied with, the information:

- 109 (a) the name, address and date of birth of any person to whom the request relates ('the student')<sup>15</sup>;
- 110 (b) the name, address and date of birth of any parent of the student, or any other person whose financial circumstances are relevant to the student's eligibility for an education maintenance allowance<sup>16</sup>; and
- 111 (c) any other information, whether relating to the student, any parent of his or any person whose financial circumstances are relevant to the student's eligibility for an education maintenance allowance, which is required for the purpose of determining the student's eligibility for an education maintenance allowance<sup>17</sup>.

These provisions do not limit the circumstances in which information may be supplied otherwise<sup>18</sup>.

A person who discloses information which he has received by virtue of these provisions<sup>19</sup> and which relates to a particular person commits an offence unless the information is disclosed<sup>20</sup>:

- 112 (i) in accordance with the provisions governing the disclosure of received information<sup>21</sup>;
- 113 (ii) in the course of any duty that the person who discloses information has in connection with the exercise of functions relating to eligibility for education maintenance allowances<sup>22</sup>;
- 114 (iii) in accordance with an enactment or an order of a court<sup>23</sup>;

- 115 (iv) for the purpose of instituting, or otherwise for the purposes of, civil or criminal proceedings<sup>24</sup>; or
- 116 (v) with consent given by or on behalf of the person to whom the information relates<sup>25</sup>.

A person guilty of such an offence is liable to a penalty<sup>26</sup>. It is a defence for a person charged with such an offence to prove that he reasonably believed that his disclosure was lawful<sup>29</sup>.

1 As to tax generally see INCOME TAXATION; and as to tax credits see INCOME TAXATION vol 23(1) (Reissue) PARA 934 et seq.

2 The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13. All statutory and other references to the Commissioners of Customs and Excise and their officers are, in so far as it is appropriate, now to be taken as references to the Commissioners for Her Majesty's Revenue and Customs and their officers: s 50(1), (2).

3 Education Act 2005 s 108(1)(a).

4 See SOCIAL SECURITY AND PENSIONS.

5 As to the Secretary of State see PARA 52 ante.

6 Education Act 2005 s 108(1)(b).

7 As to the Learning and Skills Council for England see PARA 1072 et seq post.

8 As to the National Assembly for Wales see PARA 53 ante.

9 Education Act 2005 ss 108(2), (3), 122(1). For these purposes, 'education maintenance allowance' means: (1) financial assistance under the Education Act 2002 s 14 (as amended) (see PARA 65 ante) paid to or in respect of a person who is over compulsory school age in connection with his undertaking any course of education or training; or (2) an allowance under s 181 (see PARA 540 post); Education Act 2005 s 108(8). As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 122(2), (3).

10 Ie by virtue of ibid s 108(2) (see the text to note 9 supra) or s 108(4) (see the text to note 13 infra).

11 Ie any person by whom functions in relation to education maintenance allowances falling within ibid s 108(1)(a) (see head (1) in the text) are exercisable by virtue of the Education Act 2002 s 14 (as amended) (see PARA 65 ante) or s 17 (see PARA 65 note 5 ante).

12 Ie any person by whom functions under regulations under ibid s 181 (see PARA 540 post) are exercisable by virtue of s 183 or s 184 (see PARA 540 post).

13 Education Act 2005 s 108(4), (5).

14 See note 10 supra.

15 Education Act 2005 s 108(6)(a).

16 Ibid s 108(6)(b).

17 Ibid s 108(6)(c).

18 Ibid s 108(7).

19 See note 10 supra.

20 Education Act 2005 s 109(1).

21 Ibid s 109(1)(a). The provisions referred to in the text are those contained in s 108(4) (see the text and notes 10-13 supra).

22 Ibid s 109(1)(b).

23 Ibid s 109(1)(c).

24 Ibid s 109(1)(d).

25 Ibid s 109(1)(e).

26 The penalty, on conviction on indictment, is imprisonment for a term not exceeding two years, a fine, or both; the penalty, on summary conviction, is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum, or both: *ibid* s 109(3). In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (general limit on magistrates' courts power to impose imprisonment), the reference to 12 months is to be read as a reference to 6 months: Education Act 2005 s 109(4). At the date at which this volume states the law, no day had been appointed for the commencement of the Criminal Justice Act 2003 s 154(1). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140.

27 Education Act 2005 s 109(2).

## UPDATE

### 66 Supply of information regarding education maintenance allowances

TEXT AND NOTES 7-9--References to Learning and Skills Council for England replaced by references to Chief Executive of Skills Funding (see PARA 1088A), and information may also be supplied to the Young People's Learning Agency for England (see PARA 27A) for these purposes: Education Act 2005 s 108(3) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 57).



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## **67. Financial assistance for overseas scholarships.**

There continues to be a Commission known as the Commonwealth Scholarship Commission in the United Kingdom<sup>1</sup>, whose functions include selecting the recipients of awards<sup>2</sup> and making arrangements for placing the recipients at appropriate educational establishments in the United Kingdom as well as selecting persons to be put forward as candidates from the United Kingdom for appropriate awards that are to be granted in countries outside the United Kingdom<sup>3</sup>.

The Secretary of State may also provide scholarships, among other general forms of overseas development assistance<sup>4</sup>, on such terms and conditions, if any, as he may determine<sup>5</sup>.

1 See the International Development Act 2002 s 13; and PARA 1058 post. For the meaning of 'United Kingdom' see PARA 63 note 3 ante.

2 The persons so selected must be Commonwealth citizens or British protected persons (within the meaning of the British Nationality Act 1981: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 10-11), except where the Commonwealth Scholarship Commission for special reasons approved by the Secretary of State otherwise determines: see the International Development Act 2002 s 14(4); and PARA 1058 post. As to the Secretary of State see PARA 52 ante.

3 See *ibid* s 14; and PARA 1058 post.

4 For these purposes, 'assistance' means assistance in any form or of any nature, including financial or technical assistance and assistance consisting in a supply of materials: *ibid* s 5(1). 'Technical assistance' includes assistance that consists in know-how in the form of personnel, training or the provision of the results of research, or is provided in the form of a scholarship: s 5(2). As to financial assistance see s 6.

5 See *ibid* s 7(1).

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## ***B. SPECIFIC GRANT-MAKING POWERS***

### **68. Power of National Assembly for Wales to pay education standards grants.**

The National Assembly for Wales<sup>1</sup> may pay grants<sup>2</sup>, known as education standards grants, to local education authorities<sup>3</sup> in Wales<sup>4</sup> in respect of eligible expenditure incurred or to be incurred by them<sup>5</sup>. 'Eligible expenditure' means expenditure of any class or description for the time being specified in regulations<sup>6</sup>, being expenditure for or in connection with educational purposes which it appears to the National Assembly for Wales that local education authorities should be encouraged to incur in the interests of education in Wales<sup>7</sup>.

The regulations must provide that any education standards grant payable in pursuance of the regulations is<sup>8</sup>: (1) only payable in respect of eligible expenditure incurred or to be incurred by a local education authority in a financial year<sup>9</sup> to the extent to which that expenditure is approved for that year by the National Assembly for Wales for the purposes of the regulations<sup>10</sup>; and (2) payable at such rate as may be specified in the regulations<sup>11</sup>. The regulations may provide for the time and manner of payment of any education standards grant<sup>12</sup>. The regulations may provide for expenditure incurred or to be incurred by any local education authority in making payments, whether by way of maintenance, assistance or otherwise, to any body or persons who incur expenditure for or in connection with educational purposes (including another local education authority) to be treated, in such circumstances as may be specified in the regulations, as eligible expenditure<sup>13</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 As to the conditions for payments of grants see PARA 74 post.

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 Education Act 1996 s 484(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 125(a); and the Education Act 2002 s 215(1), Sch 21 para 49). The power to pay grants under the Education Act 1996 s 484 (as amended) is exercisable only in relation to Wales: Education Act 2002 s 18(2). In England, a general grant-making power is used: see PARA 65 ante.

6 As to the regulations made under the Education Act 1996 s 484 (as amended) see the Education Standards Grants (Wales) Regulations 2002, SI 2002/438 (amended by SI 2005/761); the Education (Capital Grants) (Wales) Regulations 2002, SI 2002/679 (amended by SI 2005/761); and the Education (Assembly Learning Grant Scheme) (Wales) Regulations 2002, SI 2002/1857 (amended by SI 2002/2814; SI 2005/761). As to the making of regulations generally see PARA 40 note 5 ante.

7 Education Act 1996 s 484(2) (amended by the Education Act 2002 Sch 21 para 49). See also note 5 supra. References to 'eligible expenditure' include expenditure for or in connection with the implementation by local education authorities of their education development plans: School Standards and Framework Act 1998 s 7(10). Section 7(10) is repealed by the Education Act 2002 s 215, Sch 21 para 89, Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

8 Education Act 1996 s 484(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 125(b)). See also note 5 supra.

9 'Financial year' means a period of 12 months ending with 31 March: Education Act 1996 s 579(1).

10 Ibid s 484(3)(a) (amended by the Education Act 2002 Sch 21 para 49(1), (2)). See also note 5 supra.

11 Education Act 1996 s 484(3)(b). See also note 5 supra.

12 Ibid s 484(4) (amended by the School Standards and Framework Act 1998 Sch 30 para 125(b)). See also note 5 supra.

13 Education Act 1996 s 484(5). Nothing in s 29(1) (provision of information by local education authorities: see PARA 40 ante) or s 507 (repealed) applies in relation to any function of the National Assembly for Wales under s 484 (as amended) or under s 489 (as amended) (see PARA 74 post) so far as it relates to regulations under s 484 (as amended): s 484(7) (amended by the Education Act 2002 Sch 21 para 49(1), (2)). Nothing in the Education Act 1996 ss 495-497 (as amended) (see PARAS 57-59 ante) applies in relation to any function arising by virtue of s 489 (as amended) so far as it relates to such regulations: s 484(7). See also note 5 supra. As to the meaning of 'functions' see PARA 14 note 5 ante.

## **UPDATE**

### **68 Power of National Assembly for Wales to pay education standards grants**

NOTE 7--Repeal of 1998 Act s 7(10) also in force in relation to Wales (by virtue of repeal of s 7 by Children Act 2004 Sch 5 Pt 1 (in force in relation to Wales: SI 2006/885).

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## **69. Grants in aid of educational services or research.**

Regulations must make provision for the payment by the Secretary of State<sup>1</sup> to persons other than local education authorities<sup>2</sup> of grants<sup>3</sup> in respect of expenditure incurred or to be incurred by them<sup>4</sup>: (1) for the purposes of, or in connection with, the provision (or proposed provision) of educational services<sup>5</sup>; or (2) for the purposes of educational research<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 As to the conditions for payments of grants see PARA 74 post.

4 Education Act 1996 s 485. As to the regulations made under s 485 see the Education (Grants for Early Excellence Centres) (England) Regulations 1998, SI 1998/1877; the Education (Post 16 Partnership Grant) (England) Regulations 1999, SI 1999/605; the Education (Grants) (Music, Ballet and Choir Schools) (England) Regulations 2001, SI 2001/2743 (amended by SI 2002/2004); the Education (Grants etc) (Dance and Drama) (England) Regulations 2001, SI 2001/2857 (amended by SI 2002/2064; SI 2005/677; SI 2005/3436); and the Education (Grant) (Financial Support for Students) Regulations 2001, SI 2001/2894.

As to the regulations which, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, have effect as if made under s 485 see the Education (Schools and Further Education) Regulations 1981, SI 1981/1086 (amended by SI 1983/262; SI 1989/351; SI 1993/559; SI 1995/2089; SI 1999/3181; SI 2000/1323); the Education (Grants) (City Technology Colleges) Regulations 1987, SI 1987/1138; the Education (Grant) Regulations 1990, SI 1990/1989 (amended by SI 1991/1975; SI 1992/1296; SI 1993/559; SI 1994/2102; SI 1995/2985; SI 1997/678; SI 1997/2961; SI 1998/86); the Education (Grants) (Voluntary Aided Sixth Form Colleges) Regulations 1992, SI 1992/2181; the Education (Grants) (Higher Education Corporations) 1992, SI 1992/3237; the Education (Grants) (Music, Ballet and Choir Schools) Regulations 1995, SI 1995/2018 (amended by SI 1996/2036; SI 1997/1967; SI 1998/1583; SI 1999/1503; SI 2000/2113; and revoked, in relation to England, by SI 2001/2743); and the Education (Grants for Nursery Education) (England) Regulations 1996, SI 1996/353. Some regulations made in exercise of this power are local in nature and therefore are not noted in this work. As to the making of regulations generally see PARA 40 note 5 ante.

5 Education Act 1996 s 485(a). As to the regulations made under s 485(a), some of which are local in nature see eg the Education (Grants) (Royal Ballet School) Regulations 2000, SI 2000/443; the Education (Grants) (Royal Ballet School) Regulations 2001, SI 2001/2859; and the Education (Grants) (Yehudi Menuhin School) Regulations 2001, SI 2001/2861.

6 Education Act 1996 s 485(b).

## **UPDATE**

## **69 Grants in aid of educational services or research**

NOTE 4--SI 2001/2857 further amended: SI 2005/2114, SI 2007/464. SI 1995/2089 replaced, in relation to England, by the Education (Pupil Registration) (England) Regulations 2006, SI 2006/1751 (amended by SI 2007/603).

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## **70. Transfer of property to grant-aided institutions in Wales.**

Where, in the case of any institution in Wales<sup>1</sup> which is conducted by a body corporate<sup>2</sup> and has a full-time equivalent enrolment number<sup>3</sup> for courses of higher education<sup>4</sup> which exceeds 55 per cent of its total full-time equivalent enrolment number<sup>5</sup>:

117 (1) the National Assembly for Wales<sup>6</sup> proposes to make to the body conducting the institution grants under regulations made for the purposes of grants in aid of educational services or research<sup>7</sup>; and

118 (2) any land<sup>8</sup> or other property of a local education authority<sup>9</sup> is for the time being used or held, or any subsisting rights or liabilities<sup>10</sup> of such an authority were acquired or incurred, for the purposes of the institution<sup>11</sup>,

the Assembly may by order designate the institution<sup>12</sup>.

On the date on which any such designation of an institution takes effect specified property, rights and liabilities must be transferred to, and by virtue of the Education Reform Act 1988 vested in, the body corporate by whom the institution is conducted<sup>13</sup>. The property, rights and liabilities in question are:

119 (a) all land or other property which, immediately before that date, was property of any local education authority used or held for the purposes of the designated institution<sup>14</sup>; and

120 (b) all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred for those purposes<sup>15</sup>.

1 For the meaning of 'Wales' see PARA 52 note 13 ante.

2 Education Reform Act 1988 s 228(1)(a). As to bodies corporate generally see CORPORATIONS.

3 As to the determination of full-time equivalent enrolment numbers see PARA 678 post.

4 As to courses of higher education see PARA 726 post.

5 Education Reform Act 1988 s 228(1)(b).

6 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Education Reform Act 1988 s 228(2)(a) (amended by the Education Act 1996 s 582(1), Sch 37 para 79). As to regulations made under the Education Act 1996 s 485 for the purposes of grants in aid of educational services or research see PARA 69 note 4 ante.

8 As to the meaning of 'land' see PARA 1381 note 5 post.

9 As to local education authorities see PARA 20 ante.

10 As to the meaning of 'liability' see PARA 1388 note 5 post.

11 Education Reform Act 1988 s 228(2)(b).

12 Ibid s 228(2). 'Designation' for these purposes means designation for the purposes of s 228 (as amended): s 228(2). Orders under s 228 (as amended) are local in nature and are therefore not recorded in this work. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante.

13 Ibid s 228(3). Section 228(3) does not apply to any liability of any such authority in respect of the principal of, or any interest on, any loan (s 228(5)(a)) nor to any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by it (s 228(5)(b)). For the meaning of 'employed' see PARA 387 note 4 post.

Section 199 (as amended) (loan liabilities excepted from transfer under Pt II (ss 120-161) (as amended): see PARA 677 post) applies to an institution designated under s 228 (as amended); and, for the purposes of s 199 (as amended) as it applies by virtue of s 228, s 199(2) applies as if s 199(2)(a) defined an excepted liability as one which would have been transferred under s 228(3) but for s 228(5)(a): s 228(8).

Section 198 (as amended) (transfers under Pt I (repealed) and Pt II (as amended): see PARA 1388 post) applies to a transfer under s 228 (as amended); and the provisions of s 228(1)-(5) (as amended) (see the text and notes 1-12 supra, 14-15 infra) are subject to s 198(2) (as substituted), Sch 10 (as amended) (supplementary provisions with respect to transfers: see PARA 1387 et seq post): s 228(6). See also s 228(7).

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 228 (as amended) (taken with Sch 10 (as amended)): s 230(1) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 55, Sch 9; the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(a), Sch 21 Pt I; the Education Act 1996 s 582(2), Sch 38 Pt I; and the Statute Law (Repeals) Act 2004). This is subject to the requirement that no instrument (other than a statutory instrument) made or executed under or in pursuance of the Education Reform Act 1988 s 228 (as amended) may be treated as duly stamped unless it is stamped with the duty to which it would, but for s 230 (as amended) (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Education Reform Act 1988 s 230(4) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(b), Sch 21 Pt I).

14 Education Reform Act 1988 s 228(4)(a).

15 Ibid s 228(4)(b).

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## **71. Grants to bodies whose objects are the promotion of learning or research.**

Regulations may provide for the payment of grants<sup>1</sup> to bodies other than local education authorities<sup>2</sup> whose object or main object is, in the opinion of the Secretary of State<sup>3</sup>, the promotion of learning or research<sup>4</sup>.

1 As to the conditions for payments of grants see PARA 74 post.

2 As to local education authorities see PARA 20 ante.

3 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 Education Act 1996 s 486. Section 486 is repealed by the Education Act 2002 ss 18(1)(g), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4): see PARA 65 ante. At the date at which this volume states the law, no such day had been appointed.

As to the regulations which, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, have effect as if made under s 486 see the Education (Grant) Regulations 1990, SI 1990/1989 (amended by SI 1991/1975; SI 1992/1296; SI 1993/559; SI 1994/2102; SI 1995/2985; SI 1997/678; SI 1997/2961; SI 1998/86). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante.

### **UPDATE**

## **71 Grants to bodies whose objects are the promotion of learning or research**

NOTE 4--Day now appointed: SI 2006/2895 (England), SI 2007/3611 (Wales).

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## **72. Duty of National Assembly for Wales to make provision for the payment of grants for education in Welsh.**

Regulations must make provision for the payment by the National Assembly for Wales<sup>1</sup> to local education authorities<sup>2</sup> and other persons of grants<sup>3</sup> in respect of expenditure incurred or to be incurred in, or in connection with, the teaching of the Welsh language or the teaching in that language of other subjects<sup>4</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 As to the conditions for payments of grants see PARA 74 post.

4 Education Act 1996 s 487. Section 487 is repealed by the Education Act 2002 ss 18(1)(g), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4): see PARA 65 ante. In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

As to the regulations which, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, have effect as if made under s 487 see the Grants for Welsh Language Education Regulations 1980, SI 1980/1011. As to the making of regulations under the Education Act 1996 see PARA 40 note 5 ante.

### **UPDATE**

## **72 Duty of National Assembly for Wales to make provision for the payment of grants for education in Welsh**

NOTE 4--Day now appointed in relation to Wales: SI 2007/3611.



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### **73. Power of National Assembly for Wales to make provision for the payment of grants for the education of travellers and displaced persons.**

Regulations may make provision for the payment by the National Assembly for Wales<sup>1</sup> to local education authorities<sup>2</sup> of grants in respect of expenditure incurred or to be incurred by them in making provision the purpose (or main purpose) of which is to promote and facilitate the education of persons to whom any of heads (1) to (3) below apply<sup>3</sup>. This applies to a person if:

- 121 (1) by reason of his way of life (or, in the case of a child<sup>4</sup>, his parent's<sup>5</sup> way of life) he either has no fixed abode or leaves his main abode to live elsewhere for significant periods in each year<sup>6</sup>; or
- 122 (2) he fell within head (1) above within a prescribed<sup>7</sup> period immediately preceding the making of the provision in question<sup>8</sup>; or
- 123 (3) he is for the time being resident in a camp or other accommodation or establishment provided for refugees or for displaced or similar persons<sup>9</sup>.

The regulations may prescribe classes or descriptions of expenditure in respect of which grants are payable under the regulations<sup>10</sup>, and may provide for the determination of the amount of any grant so payable<sup>11</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 Education Act 1996 s 488(1). Section 488 is repealed by the Education Act 2002 ss 18(1)(g), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4): see PARA 65 ante. In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the conditions for payments of grants see PARA 74 post.

As to the regulations which, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, have effect as if made under s 488 see the Education (Grants) (Travellers and Displaced Persons) Regulations 1993, SI 1993/569 (amended by SI 1995/543; SI 1999/606; SI 2005/761). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to grants for the education of travellers and displaced persons paid to institutions within the further education sector in Wales see the Education Reform Act 1988 s 210 (as amended); and PARA 641 post.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 As to the meaning of 'parent' see PARA 510 note 1 post.

6 Education Act 1996 s 488(2)(a) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 3 supra).

7 Ie prescribed by regulations: *ibid* s 579(1). See note 3 supra.

8 *Ibid* s 488(2)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 3 supra).

9 Ibid s 488(2)(c) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 3 supra).

10 Ibid s 488(3)(a) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 3 supra).

11 Ibid s 488(3)(b) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 3 supra).

## **UPDATE**

### **73 Power of National Assembly for Wales to make provision for the payment of grants for the education of travellers and displaced persons**

NOTE 3--Day now appointed in relation to Wales: SI 2007/3611.

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#### **74. Conditions as to the payment of grants in England and Wales under specific grant-making powers.**

Regulations made for the purposes of education standards grants in Wales<sup>1</sup>, grants in aid of educational services or research<sup>2</sup>, grants to bodies whose objects are promotion of learning or research<sup>3</sup>, grants for education in Welsh<sup>4</sup> and grants for education of travellers and displaced persons<sup>5</sup> may provide<sup>6</sup>: (1) for the payment of grants under the regulations to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations<sup>7</sup>; and (2) for requiring persons to whom payments have been made under the regulations to comply with such requirements as may be so determined<sup>8</sup>. Conditions and requirements determined under head (1) or head (2) above by or in accordance with regulations made for the purposes of education standards grants<sup>9</sup> may include conditions and requirements obliging the local education authority<sup>10</sup> in question to delegate decisions about the spending of<sup>11</sup>: (a) education standards grants<sup>12</sup>; and (b) amounts allocated by the authority to meet eligible expenditure<sup>13</sup> which is approved by the Secretary of State<sup>14</sup>, to such persons as may be determined by or in accordance with the regulations<sup>15</sup>.

The Secretary of State may by order<sup>16</sup> make certain modifications<sup>17</sup> of any trust deed<sup>18</sup> or other instrument relating to or regulating any institution that<sup>19</sup>:

- 124 (i) provides or is concerned in the provision of educational services<sup>20</sup>; or
- 125 (ii) is concerned in educational research<sup>21</sup>.

The modifications that he may make are such modifications as, after consultation with the persons responsible for the management of the institution, appear to him to be requisite to enable them to fulfil any condition or meet any requirement imposed by regulations for the purposes of grants in aid of educational services or research<sup>22</sup>.

1    Ie made under the Education Act 1996 s 484 (as amended): see PARA 68 ante.

2    Ie made under *ibid* s 485: see PARA 69 ante.

3    Ie made under *ibid* s 486 (prospectively repealed): see PARA 71 ante.

4    Ie made under *ibid* s 487 (repealed in relation to England; prospectively repealed in relation to Wales): see PARA 72 ante.

5    Ie made under *ibid* s 488 (repealed in relation to England; prospectively repealed in relation to Wales): see PARA 73 ante.

6    See *ibid* s 489(1). As to the regulations made under s 489, some of which are local in nature, see eg the Education (Grant) Regulations 1990, SI 1990/1989 (amended by SI 1991/1975; SI 1992/1296; SI 1993/559; SI 1994/2102; SI 1995/2985; SI 1997/678; SI 1997/2961; SI 1998/86); the Education (Grants) (Voluntary Aided Sixth Form Colleges) Regulations 1992, SI 1992/2181; the Education (Grants) (Higher Education Corporations) 1992, SI 1992/3237; the Education (Grants) (Travellers and Displaced Persons) Regulations 1993, SI 1993/569 (amended by SI 1995/543; SI 1999/606; SI 2005/761); the Education (Grants) (Music, Ballet and Choir Schools) Regulations 1995, SI 1995/2018 (amended by SI 1996/2036; SI 1997/1967; SI 1998/1583; SI 1999/1503; SI 2000/2113; and revoked, in relation to England, by SI 2001/2743); the Education (Grants for Nursery Education) (England) Regulations 1996, SI 1996/353; the Education (Grants for Early Excellence Centres) (England) Regulations 1998, SI 1998/1877; the Education (Grants) (Royal Ballet School) Regulations 2000, SI 2000/443;

the Education (Grants) (Music, Ballet and Choir Schools) (England) Regulations 2001, SI 2001/2743 (amended by SI 2002/2004); the Education (Grants etc) (Dance and Drama) (England) Regulations 2001, SI 2001/2857 (amended by SI 2002/2064; SI 2005/677; SI 2005/3436); the Education (Grants) (Royal Ballet School) Regulations 2001, SI 2001/2859; the Education (Grants) (Yehudi Menuhin School) Regulations 2001, SI 2001/2861; the Education (Grant) (Financial Support for Students) Regulations 2001, SI 2001/2894; the Education Standards Grants (Wales) Regulations 2002, SI 2002/438 (amended by SI 2005/761); the Education (Capital Grants) (Wales) Regulations 2002, SI 2002/679 (amended by SI 2005/761); the Education (Assembly Learning Grant Scheme) (Wales) Regulations 2002, SI 2002/1857 (amended by SI 2002/2814; SI 2005/761). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante.

7 Ibid s 489(1)(a).

8 Ibid s 489(1)(b).

9 le made under ibid s 484 (as amended): see PARA 68 ante.

10 As to local education authorities see PARA 20 ante.

11 Education Act 1996 s 489(2).

12 Ibid s 489(2)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 126). As to education standards grants see PARA 68 ante.

13 For the meaning of 'eligible expenditure' see PARA 68 ante.

14 Education Act 1996 s 489(2)(b). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

15 Ibid s 489(2).

16 Orders under ibid s 489(3) are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante.

17 Any modification made by an order under ibid s 489(3) may be made to have permanent effect or to have effect for such period as may be specified in the order: s 489(4). As to the meaning of 'modification' see PARA 43 note 7 ante.

18 As to the meaning of 'trust deed' see PARA 104 note 6 post.

19 Education Act 1996 s 489(3).

20 Ibid s 489(3)(a).

21 Ibid s 489(3)(b).

22 Ibid s 489(3). The regulations referred to in the text are regulations under s 485 (see PARA 69 ante).

## UPDATE

### **74 Conditions as to the payment of grants in England and Wales under specific grant-making powers**

NOTE 6--SI 2001/2857 further amended: SI 2005/2114, SI 2007/464.

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## **75. Grants in respect of specific institutions.**

The Secretary of State<sup>1</sup> may out of money provided by Parliament<sup>2</sup> make grants to the Royal Academy of Engineering<sup>3</sup> in respect of expenditure incurred or to be incurred by that body for the purposes of any of its activities<sup>4</sup>. In making such a grant the Secretary of State may impose conditions<sup>5</sup> for the purposes of:

- 126 (1) requiring the repayment of the grant in whole or part if any other condition is not complied with<sup>6</sup>;
- 127 (2) where the grant is made in respect of capital expenditure, requiring the payment to the Secretary of State on the sale of, or of any part of, a grant-aided asset<sup>7</sup> of such sums related to the value of the asset at the time of the sale as he may by notice in writing specify to the recipient of the grant as being in his opinion reasonable having regard to the extent to which the asset has been acquired, provided or improved as a result of the grant<sup>8</sup>; and
- 128 (3) requiring the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any other condition remains unpaid<sup>9</sup>,

and may also impose such other conditions as he thinks fit<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 There must be paid out of money provided by Parliament any expenses incurred by the Secretary of State under the Education Act 1986 and any increase attributable to the Education Act 1986 in the sums payable out of moneys so provided under any other Act: s 5 (amended by the Transfer of Functions (Science) Order 1995, SI 1995/2985, art 5(1), Schedule para 4(3)).

3 Education Act 1986 s 1(1)(a). The statute refers to the body corporate constituted by Royal Charter and known on 18 July 1986 (ie the date the Education Act 1986 was passed) as the Fellowship of Engineering: s 1(1)(a). This body is now known as the Royal Academy of Engineering.

4 Ibid s 1(1) (amended by the Education Act 2002 ss 18(1)(b), 215, Sch 21 para 7, Sch 22 Pt 3). The amendments made by the Education Act 2002 are brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed, in relation to Wales, grants may also be made to the Learning and Skills Development Agency: see the Education Act 1986 s 1(1)(b). The statute refers to the company formed and registered under the Companies Act 1948 and known on 18 July 1986 (ie the date the Education Act 1986 was passed) as the Further Education Unit (see s 1(1)(b)), but the Further Education Unit has been merged with the Staff College to form the Further Education Development Agency which is now known as the Learning and Skills Development Agency. The Learning and Skills Development Agency has a remit covering all provision funded by the Learning and Skills Council. As to the Learning and Skills Council see PARA 1072 et seq post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 Ibid s 1(2) (amended by the Transfer of Functions (Science) Order 1995, SI 1995/2985, Schedule para 4(2)(b)).

6 Education Act 1986 s 1(3)(a).

7 'Grant-aided asset', in relation to a grant, means an asset acquired, provided or improved as a result of the expenditure in respect of which the grant is made: *ibid* s 1(4).

8 *Ibid* s 1(3)(b) (amended by the Transfer of Functions (Science) Order 1995, SI 1995/2985, Schedule para 4(2)(b)). A condition imposed under head (2) in the text may require a payment to be made even if the grant has been repaid at the time of the sale: Education Act 1986 s 1(4).

9 *Ibid* s 1(3)(c) (amended by the Transfer of Functions (Science) Order 1995, SI 1995/2985, Schedule para 4(2)(b)).

10 Education Act 1986 s 1(2).

## **UPDATE**

### **75 Grants in respect of specific institutions**

NOTE 4--Day now appointed in relation to Wales: SI 2007/3611.

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### **(iii) Provision for New Legal Frameworks for Schools**

#### **A. POWERS TO FACILITATE INNOVATION**

##### **76. Purpose of powers.**

The Secretary of State<sup>1</sup> and the National Assembly for Wales<sup>2</sup> have powers<sup>3</sup> whose purpose is to facilitate the implementation by qualifying bodies<sup>4</sup> of innovative projects that may<sup>5</sup>:

- 129 (1) in the opinion of the Secretary of State, contribute to the raising of the educational standards achieved by children<sup>6</sup> in England<sup>7</sup>; or
- 130 (2) in the opinion of the National Assembly for Wales, contribute to the raising of the educational standards achieved by children in Wales<sup>8</sup>.

In forming an opinion as to whether a project may contribute to the raising of the educational standards achieved by children in England or Wales, the Secretary of State or the National Assembly for Wales must:

- 131 (a) have regard to the need for the curriculum for any school affected by the project to be a balanced and broadly based curriculum which promotes the spiritual, moral, cultural, mental and physical development of children and of society<sup>9</sup>; and
- 132 (b) consider the likely effect of the project on all the children who may be affected by it<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 See note 5 infra. As to the National Assembly for Wales see PARA 53 ante.

3 Ie under the Education Act 2002 Pt 1 Ch 1 (ss 1-5).

4 For these purposes, 'qualifying body' means: (1) a local education authority; (2) an education action forum; (3) the governing body of a qualifying school; or (4) the proprietor of any special school that is not maintained by a local education authority but is for the time being approved by the Secretary of State or the National Assembly for Wales under the Education Act 1996 s 342 (as substituted) (see PARAS 1028-1029 post); Education Act 2002 s 1(3) (not yet in force in relation to Wales) (see note 5 infra). 'Qualifying school' means: (a) a community, foundation or voluntary school or a community or foundation special school; (b) a maintained nursery school; (c) a city technology college; (d) a city college for the technology of the arts; or (e) an academy: s 1(3) (not yet in force in relation to Wales) (see note 5 infra). Unless the context otherwise requires, any reference in the Education Act 2002, or in any Act amended by it, to a community, foundation or voluntary school or a community or foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998 (see PARA 102 et seq post); Education Act 2002 s 212(5). As to local education authorities see PARA 20 ante; as to education action forums see PARA 453 et seq post; as to the governing bodies of maintained schools see PARA 203 et seq post; and as to special schools see PARA 1027 et seq post. As to the meanings of 'city technology college', 'city college for the technology of the arts' and 'academy' see PARA 496 post. For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'maintained nursery school' see PARA 36 note 6 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 post; definition applied by virtue of s 212(2), (3). For the meaning of 'school maintained by a local education authority' see PARA 94 post.

5 Ibid s 1(1). Section 1 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (except in relation to the definition of 'qualifying school' in s 1(3) (b) (see note 4 supra)) (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) and 1 September 2003 (for remaining purposes) (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

6 For these purposes, 'children' means persons under the age of 19: Education Act 2002 s 1(3) (not yet in force in relation to Wales) (see note 5 supra).

7 Ibid s 1(1)(a) (not yet in force in relation to Wales) (see note 5 supra).

8 Ibid s 1(1)(b) (not yet in force in relation to Wales) (see note 5 supra).

9 Ibid s 1(2)(a) (not yet in force in relation to Wales) (see note 5 supra). The requirement specified in head (a) in the text is a general requirement of the curriculum for a maintained school or maintained nursery school in England or Wales. As to the curriculum in England see PARA 913 et seq; and as to the curriculum in Wales see PARA 926 et seq.

10 Ibid s 1(2)(b) (not yet in force in relation to Wales) (see note 5 supra).

## **UPDATE**

### **76 Purpose of powers**

NOTE 4--In the definition of 'qualifying body', now head (3) a qualifying foundation; add heads (5) the governing body of a maintained school; (6) the head teacher of a maintained school; (7) the proprietor of an Academy, a city technology college or a city college for the technology of the arts; or (8) the governing body of an institution within the further education sector: 2002 Act s 1(3) (amended by the Education and Inspections Act 2006 Sch 16 para 1(4)(b), Sch 18 Pt 1). As from a day to be appointed head (4) in the definition of 'qualifying body' substituted: Education and Skills Act 2008 Sch 1 para 14. 'Qualifying foundation' means the foundation, as defined by the School Standards and Framework Act 1998 s 21(3)(a), of any foundation or foundation special school that for the purposes of s 21 has a foundation established otherwise than under the 1998 Act: 2002 Act s 1(3) (definition added by the 2006 Act Sch 16 para 1(4)(c)).

TEXT AND NOTES 6, 8, 9--For 'the educational standards achieved by children' (in each place) read 'educational standards': 2002 Act s 1(1)(a), (b), (2) (amended by the 2006 Act Sch 16 para 1(2), (3)(a)).

TEXT AND NOTE 10--For 'children' read 'pupils or students': 2002 Act s 1(2)(b) (amended by the 2006 Act Sch 16 para 1(3)(b)).



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## **77. Powers to suspend or modify statutory requirements.**

On the application of one or more qualifying bodies<sup>1</sup> ('the applicant'), the Secretary of State<sup>2</sup>, in relation to England<sup>3</sup>, or the National Assembly for Wales<sup>4</sup>, in relation to Wales<sup>5</sup>, may<sup>6</sup> by order<sup>7</sup> make provision<sup>8</sup>:

- 133 (1) conferring on the applicant exemption from any requirement imposed by education legislation<sup>9</sup>;
- 134 (2) relaxing any such requirement in its application to the applicant<sup>10</sup>;
- 135 (3) enabling the applicant to exercise any function conferred by education legislation on any other qualifying body, either concurrently with or in place of that other body<sup>11</sup>;
- 136 (4) making such modifications<sup>12</sup> of any provision of education legislation, in its application to the applicant or any other qualifying body, as are in the opinion of the Secretary of State or the National Assembly for Wales<sup>13</sup> consequential on any provision made by virtue of any of heads (1) to (3) above<sup>14</sup>.

An application for these purposes must be in such form, and contain such information, as may be required by the Secretary of State or, as the case may be, the National Assembly for Wales<sup>15</sup>.

Before making such an application, the qualifying body must:

- 137 (a) in the case of an education action forum<sup>16</sup>, consult each local education authority<sup>17</sup> by whom any participating school<sup>18</sup> is maintained<sup>19</sup>;
- 138 (b) in the case of the governing body of a school maintained by a local education authority<sup>20</sup>, consult that authority<sup>21</sup>; and
- 139 (c) in any case, consult such persons as appear to the qualifying body to be appropriate, having regard to any guidance given from time to time by the Secretary of State or, as the case may be, the National Assembly for Wales<sup>22</sup>.

Before making such an order, the Secretary of State or the National Assembly for Wales<sup>23</sup> must, if he or it considers it appropriate to do so, consult the Chief Inspector<sup>24</sup>.

The Secretary of State or the National Assembly for Wales<sup>25</sup> must refuse an application for such an order if it appears to the Secretary of State or the National Assembly for Wales<sup>26</sup> that the proposed order would be likely to have a detrimental effect on the education of children<sup>27</sup> with special educational needs<sup>28</sup>. The Secretary of State or the National Assembly for Wales<sup>29</sup> may with the consent of the applicant include in such an order provisions different from those requested in the application<sup>30</sup>.

An order has effect during a period specified in the order which<sup>31</sup> must not exceed three years<sup>32</sup>.

The Secretary of State or the National Assembly for Wales<sup>33</sup> may from time to time give guidance as to the matters which he or it<sup>34</sup> will take into account in determining whether to grant applications for such orders<sup>35</sup>.

No order under these provisions<sup>36</sup>, except an amending or revoking order<sup>37</sup>, may be made after the end of the period of four years beginning with the commencement date<sup>38</sup>.

1 For the meaning of 'qualifying body' see PARA 76 note 4 ante.

2 As to the Secretary of State see PARA 52 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 See note 8 infra. As to the National Assembly for Wales see PARA 53 ante.

5 For the meaning of 'Wales' see PARA 52 note 13 ante.

6 Ie under the Education Act 2002 Pt 1 Ch 1 (ss 1-5).

7 The power conferred on the Secretary of State and the National Assembly for Wales by *ibid* s 2 (see the text and note 8 infra) includes: (1) power by a further order made under s 2 on an application made for those purposes by one or more qualifying bodies to amend any order previously made under s 2 so as to extend: (a) the requirements or functions in relation to which the order applies; (b) the qualifying bodies to which it applies; or (c) subject to s 3(2), the period during which it has effect; and (2) power by a further order under s 2, which may be made without any application from a qualifying body, to revoke any order previously made under s 2: s 3(1). An order made under s 2 by virtue of head (1)(c) *supra* may, on one occasion only, extend the period for which a previous such order has effect by a period of not more than three years from the end of the period originally specified in the previous order: s 3(2). Section 3 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

Any power of the Secretary of State or the National Assembly for Wales to make an order under the Education Act 2002 is exercisable by statutory instrument (s 210(1)), unless the order is one made under s 165 (as amended) (see PARA 486 post) or s 192 (see PARA 1015 post), or under s 19(6), Sch 1 para 3(6) (in relation to England, see PARA 228 post and, in relation to Wales, see PARA 278 post) or Sch 1 para 5 (in relation to England, see PARA 203 post and, in relation to Wales, see PARA 251 post) (s 210(2)). No order is to be made by the Secretary of State under s 80(3) (see PARA 914 post), s 82(4)(b) (see PARA 918 post), s 83(3) (see PARA 917 post), s 84(6) (see PARA 918 post), s 86 (see PARA 918 post) or s 125(4) (see PARA 864 post) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: s 210(3). A statutory instrument which contains any order made under the Education Act 2002 by the Secretary of State, and is not subject to the requirement in s 210(3) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament (s 210(4)), unless the order is one made under s 7(2) (see PARA 79 post), s 87(2)(c) or s 87(3)(c) (see PARA 919 post), s 128(2) (see PARA 865 post), or s 216 (commencement) (s 210(5)).

Any power of the Secretary of State or the National Assembly for Wales to make an order under the Education Act 2002 includes power: (i) to make different provisions for different cases or areas; (ii) to make provision generally or only in relation to specific cases; and (iii) to make such incidental, supplemental, saving or transitional provisions as the Secretary of State or the Assembly thinks fit (s 210(7)). Nothing in the Education Act 2002 is to be regarded as affecting the generality of s 210(7): s 210(8).

No order under s 2 (see the text and note 8 infra) which relates to ss 119-129 (teachers' pay and conditions: see PARA 861 et seq post) may be made by the National Assembly for Wales without the consent of the Secretary of State: s 2(4).

The effect of an order under s 2 (see the text and note 8 infra) is to be disregarded in determining for the purposes of the Regulatory Reform Act 2001 s 1 (power by order to make provision reforming law which imposes burdens: see COMPETITION vol 18 (2009) PARA 380) whether any provision of an Act falls within the Regulatory Reform Act 2001 s 1(4)(b) (provisions amended by subordinate legislation within previous two years): Education Act 2002 s 2(9).

8 *Ibid* s 2(1). Section 2 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The orders made under the Education Act 2002 s 2(1) are local in nature and are not recorded in this work.

9 Education Act 2002 s 2(1)(a). See note 8 *supra*. For these purposes, 'education legislation' means: (1) the Education Acts as defined by the Education Act 1996 s 578 (as amended) (see PARA 1 note 14 ante); (2) the

Learning and Skills Act 2000; and (3) any subordinate legislation made under any of those Acts, where 'subordinate legislation' has the same meaning as in the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1381): Education Act 2002 s 1(3).

10 Ibid s 2(1)(b). See note 8 supra.

11 Ibid s 2(1)(c). See note 8 supra.

12 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

13 See note 8 supra.

14 Education Act 2002 s 2(1)(d). See note 8 supra.

15 Ibid s 4(1). Section 4 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

16 As to education action forums see PARA 453 et seq post.

17 As to local education authorities see PARA 20 ante.

18 Ie as defined by the School Standards and Framework Act 1998 s 10(6)(b) (as substituted) (see PARA 454 post).

19 Education Act 2002 s 4(2)(a). See note 15 supra.

20 As to the governing bodies of maintained schools see PARA 203 et seq post. For the meaning of 'school maintained by a local education authority' see PARA 94 post. For the meaning of 'school' see PARA 81 post; definition applied by virtue of ibid s 212(2), (3).

21 Ibid s 4(2)(b). See note 15 supra.

22 Ibid s 4(2)(c). See note 15 supra.

23 See note 8 supra.

24 Education Act 2002 s 2(3). See note 8 supra. For these purposes, 'the Chief Inspector' means: (1) in relation to England, Her Majesty's Chief Inspector of Schools in England, and (2) in relation to Wales, Her Majesty's Chief Inspector of Education and Training in Wales: s 1(3). As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 post; as to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 post. As to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 see PARA 1227 post.

25 See note 8 supra.

26 See note 8 supra.

27 For the meaning of 'children' for these purposes see PARA 76 note 6 ante.

28 Education Act 2002 s 2(5). See note 8 supra. For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of s 212(2), (3).

29 See note 8 supra.

30 Education Act 2002 s 4(3). See note 14 supra.

31 Ie subject to ibid s 3(2) (see note 7 supra).

32 Ibid s 2(2). See note 8 supra. When either the Secretary of State or the National Assembly for Wales has made an order under s 2 he or it must make a report on the matter: see PARA 78 post.

33 See note 8 supra.

34 See note 8 supra.

35 Education Act 2002 s 2(6). See note 8 supra.

36 Ie under ibid s 2.

37 Ie made by virtue of ibid s 3 (see note 7 supra).

38 Ibid s 2(7). For this purpose, 'the commencement date' means: (1) in relation to an order made by the Secretary of State, the day on which s 2 comes into force in relation to England (ie 1 October 2002: see note 8 supra); and (2) in relation to an order made by the National Assembly for Wales, the day on which the Education Act 2002 s 2 comes into force in relation to Wales (not yet in force): s 2(8). See note 8 supra.

## **UPDATE**

### **77 Powers to suspend or modify statutory requirements**

NOTE 7--2002 Act s 210(3), (5) amended: Childcare Act 2006 Sch 1 para 16, Sch 3 Pt 1. 2002 Act s 210(1), (7) amended: Learner Travel (Wales) Measure 2008 s 21(3)(a), (c).

2002 Act s 2(9) repealed: Legislative and Regulatory Reform Act 2006 Schedule.

See also Education Act 2002 ss 210(6A), (6B) (added by Learner Travel (Wales) Measure 2008 s 21(3)(b); s 210(6A) amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 56); 210A (added by Education and Skills Act 2008 Sch 1 para 79) (regulations under power conferred on Welsh Ministers after implementation of Government of Wales Act 2006) (not yet in force).

TEXT AND NOTES 9-14--Where the applicant is or includes a qualifying foundation, references in heads (1)-(4) to the applicant, so far as they would otherwise be read as references to the qualifying foundation, are to be read as references to the governing bodies of all or any of the foundation or foundation special schools in respect of which the applicant is the foundation: 2002 Act s 2(1A) (added by the Education and Inspections Act 2006 Sch 16 para 2(2)).

TEXT AND NOTE 21--In head (b), after 'that authority' read 'and, where the school is a foundation school with a qualifying foundation, that foundation': 2002 Act s 4(2)(b) (substituted by the Education and Inspections Act 2006 Sch 16 para 3(4)(c)).

TEXT AND NOTE 22--Add head (d) in the case of a qualifying foundation, consult the governing body of each foundation or foundation special school to which the application relates and the local education authority which maintains the school: 2002 Act s 4(2)(aa) (added by the Education and Inspections Act 2006 Sch 16 para 3(4)(b)).

TEXT AND NOTES 36-38--2002 Act s 2(7), (8) repealed: Education and Inspections Act 2006 Sch 16 para 2(3), Sch 18 Pt 1.

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## **78. Annual report on use of powers.**

Where the Secretary of State<sup>1</sup> has made any order<sup>2</sup> to suspend or modify<sup>3</sup> statutory requirements in any academic year<sup>4</sup>, he must: (1) prepare a report on all the orders made by him<sup>5</sup> in that academic year<sup>6</sup>; and (2) lay a copy of the report before each House of Parliament<sup>7</sup>.

Where the National Assembly for Wales<sup>8</sup> has made any order<sup>9</sup> in any academic year, the Assembly must prepare and publish a report on all the orders made by the Assembly<sup>10</sup> in that academic year<sup>11</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Ie under the Education Act 2002 s 2: see PARA 77 ante.

3 As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 212(2), (3).

4 For these purposes, 'academic year' means a period beginning with 1 August and ending with the next 31 July: *ibid* s 5(3).

5 See note 2 *supra*.

6 Education Act 2002 s 5(1)(a). Section 5 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3); but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

7 Education Act 2002 s 5(1)(b). See note 6 *supra*.

8 See note 6 *supra*. As to the National Assembly for Wales see PARA 53 ante.

9 See note 2 *supra*.

10 See note 2 *supra*.

11 Education Act 2002 s 5(2). See note 6 *supra*.

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## ***B. EXEMPTIONS RELATED TO SCHOOL PERFORMANCE***

### **79. Exemptions available to qualifying schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> may:

- 140 (1) designate any curriculum provision<sup>3</sup> or pay and conditions provision<sup>4</sup> as attracting exemption as of right<sup>5</sup>;
- 141 (2) designate any curriculum provision or pay and conditions provision as attracting discretionary exemption<sup>6</sup>;
- 142 (3) designate modifications<sup>7</sup> of any curriculum provision or pay and conditions provision as being available as of right<sup>8</sup>; and
- 143 (4) designate modifications of any curriculum provision or pay and conditions provision as being available on a discretionary basis<sup>9</sup>.

On the application of the governing body of a qualifying school<sup>10</sup>, the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales, may by order<sup>11</sup>:

- 144 (a) provide that any pay and conditions provision which is designated under head (1) or head (2) above and specified in the order is not to apply in relation to school teachers employed at the school<sup>12</sup>;
- 145 (b) provide that any pay and conditions provision which is designated under head (3) or head (4) above is to apply in relation to school teachers employed at the school with modifications which are specified in the order and fall within the modifications designated as being available as of right or available on a discretionary basis<sup>13</sup>;
- 146 (c) provide that any curriculum provision which is designated under head (1) or head (2) above and specified in the order is not to apply in relation to the school<sup>14</sup>;
- 147 (d) provide that any curriculum provision which is designated under head (3) or head (4) above is to apply in relation to the school with modifications which are specified in the order and fall within the modifications designated as being available as of right or available on a discretionary basis<sup>15</sup>; or
- 148 (e) revoke or vary any order previously made under heads (a) to (d) above<sup>16</sup>.

Where such an application by a qualifying school relates only to exemption from provisions that are designated under head (1) above as attracting exemption as of right or to modifications that fall within the modifications designated under head (3) above as being available as of right (or only to such exemption and such modifications)<sup>17</sup> and does not relate to the revocation or variation of an order previously made under heads (a) to (e) above<sup>18</sup>, the Secretary of State or, as the case may be, the National Assembly for Wales must make the order requested<sup>19</sup>.

An application for the purposes of heads (a) to (e) above must be in such form, and contain such information, as may be required by the Secretary of State or, as the case may be, the National Assembly for Wales<sup>20</sup>.

Before making such an application, the governing body must:

- 149 (i) consult the local education authority<sup>21</sup>;
- 150 (ii) where the application relates to a curriculum provision, consult the parents<sup>22</sup> of registered pupils<sup>23</sup> at the school<sup>24</sup>;
- 151 (iii) where the application relates to a pay and conditions provision, consult each school teacher employed at the school<sup>25</sup>; and
- 152 (iv) in any case, consult such other persons as appear to be appropriate, having regard to any guidance given from time to time by the Secretary of State or, as the case may be, the National Assembly for Wales<sup>26</sup>.

The Secretary of State or the National Assembly for Wales may with the consent of the applicant include in an order under heads (a) to (e) above provisions different from those requested in the application<sup>27</sup>.

The Secretary of State or the National Assembly for Wales may from time to time give guidance as to the matters which he or it will take into account in determining whether to grant applications under heads (a) to (e) above which relate to<sup>28</sup>:

- 153 (A) provisions which are designated under head (2) above as attracting discretionary exemption<sup>29</sup>; or
- 154 (B) modifications which fall within the modifications designated under head (4) above as being available on a discretionary basis<sup>30</sup>.

1 The Education Act 2002 Pt 1 Ch 2 (ss 6-10) is to be brought into force by order made, in relation to England, by the Secretary of State or, in relation to Wales, by the National Assembly for Wales under s 216(4) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For these purposes, 'regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1).

Any power of the Secretary of State or the National Assembly for Wales to make regulations under the Education Act 2002 is exercisable by statutory instrument: s 210(1). A statutory instrument which contains any such regulations made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament: s 210(4). Any power of the Secretary of State or the National Assembly for Wales to make regulations under the Education Act 2002 includes power: (1) to make different provisions for different cases or areas; (2) to make provision generally or only in relation to specific cases; and (3) to make such incidental, supplemental, saving or transitional provisions as the Secretary of State or the National Assembly for Wales thinks fit: s 210(7). Nothing in the Education Act 2002 is to be regarded as affecting the generality of s 210(7): s 210(8).

3 For these purposes, 'curriculum provision' means: (1) in relation to a maintained school maintained by a local education authority in England, any provision of the National Curriculum for England; and (2) in relation to a maintained school maintained by a local education authority in Wales, any provision of the National Curriculum for Wales: *ibid* s 6(4). 'Maintained school' means a community, foundation or voluntary school or a community or foundation special school: s 6(4). For the meaning of 'school maintained by a local education authority' see PARA 94 post. As to local education authorities see PARA 20 ante. As to the National Curriculum for England see PARA 913 et seq; and as to the National Curriculum for Wales see PARA 926 et seq. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 post. For the meaning of 'school' see PARA 81 post; definition applied by virtue of s 212(2), (3). See note 1 *supra*.

4 For these purposes, 'pay and conditions provision' means any provision of an order under *ibid* s 122 (see PARA 864 post): s 6(4). No regulations under s 7(1) which relate to a pay and conditions provision may be made by the National Assembly for Wales without the consent of the Secretary of State: s 7(5). See note 1 *supra*.

Where an order under s 7(2) (see heads (a) to (e) in the text) which relates to a pay and conditions provision is in force in relation to a school: (1) the governing body must determine the remuneration and other conditions of employment of each school teacher employed at the school, to the extent that by virtue of the order the pay and conditions provisions do not apply to him; (2) the local education authority must do anything necessary to

give effect to the governing body's determination under head (1) supra; and (3) pending a determination under head (1) supra, the terms on which a school teacher is employed at the school will remain unchanged, irrespective of any new order under s 122 except so far as applying to him despite the effect of the order under s 7(2): s 10(1). The Secretary of State may make regulations about the application of s 122(2) (see PARA 864 post) where an order under s 7(2) is revoked or the exemption conferred by it is restricted: s 10(2). For these purposes, 'the local education authority', in relation to a school maintained (or proposed to be maintained) by a local education authority, means that authority: s 212(1). 'School teacher' has the same meaning as in ibid s 122 (see PARA 864 note 3 post) (s 6(4)); and a school teacher is 'employed' at a school if he works at the school under a contract falling within s 122(3)(b), (c) and (d) (see PARA 864 post) (s 6(3)). See note 1 supra. As to the governing bodies of maintained schools see PARA 203 et seq post.

5 Ibid s 7(1)(a). See note 1 supra.

6 Ibid s 7(1)(b). See note 1 supra.

7 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

8 Ibid s 7(1)(c). See note 1 supra.

9 Ibid s 7(1)(d). See note 1 supra.

10 For these purposes, a maintained school is a 'qualifying school' at any time if it is a school of a prescribed description which satisfies prescribed criteria relating to one or more of the following: (1) the performance of the school; (2) the quality of the leadership in the school; and (3) the quality of the management of the school: ibid s 6(1). The criteria prescribed for these purposes may include criteria referring to the opinion of the Chief Inspector, the Secretary of State or the National Assembly for Wales: s 6(2). 'Prescribed' means prescribed by regulations: s 212(1). 'The Chief Inspector' has the meaning given by s 1(3) (see PARA 77 note 24 ante): s 6(4). See note 1 supra.

11 Ibid s 7(2). See note 1 supra. An order under s 7(2) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 210(5); and PARA 77 note 7 ante.

12 Ibid s 7(2)(a). See note 1 supra.

13 Ibid s 7(2)(b). See note 1 supra.

14 Ibid s 7(2)(c). See note 1 supra.

15 Ibid s 7(2)(d). See note 1 supra.

16 Ibid s 7(2)(e). See note 1 supra.

17 Ibid s 7(3)(a). See note 1 supra.

18 Ibid s 7(3)(b). See note 1 supra.

19 Ibid s 7(3). See note 1 supra.

20 Ibid s 8(1). See note 1 supra.

21 Ibid s 8(2)(a). See note 1 supra.

22 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 212(2), (3).

23 For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of ibid s 212(2), (3).

24 Ibid s 8(2)(b). See note 1 supra.

25 Ibid s 8(2)(c). See note 1 supra.

26 Ibid s 8(2)(d). See note 1 supra.

27 Ibid s 8(3). See note 1 supra.

28 Ibid s 7(4). See note 1 supra.

29 Ibid s 7(4)(a). See note 1 supra.



30 Ibid s 7(4)(b). See note 1 supra.

## **UPDATE**

### **79 Exemptions available to qualifying schools**

NOTE 2--See also Education Act 2002 s 210A (added by Education and Skills Act 2008 Sch 1 para 79) (regulations under power conferred on Welsh Ministers after implementation of Government of Wales Act 2006) (not yet in force).

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## **2. NURSERY, PRIMARY AND SECONDARY EDUCATION**

### **(1) SCHOOLS**

#### **81. Meaning of 'school' etc.**

'School' means an educational institution which is outside the further education sector<sup>1</sup> and the higher education sector<sup>2</sup> and is an institution for providing primary education<sup>3</sup>, secondary education<sup>4</sup> or both primary and secondary education, whether or not the institution also provides further education<sup>5</sup>.

Most schools are maintained schools<sup>6</sup>, which receive funding from local education authorities<sup>7</sup> and which do not charge fees<sup>8</sup>. There are also non-maintained schools, generally known as independent schools, which often have charitable status and which are mainly financed by fees and income from investments<sup>9</sup>.

Children<sup>10</sup> under compulsory school age<sup>11</sup> may attend nursery schools<sup>12</sup>, and a primary school is a nursery school if it is used wholly or mainly for the purpose of providing education for children who have attained the age of two but are under compulsory school age<sup>13</sup>.

'Primary school' means a school for providing primary education, whether or not it also provides further education<sup>14</sup>.

A 'middle school' is a school<sup>15</sup> providing full-time education suitable to the requirements of pupils<sup>16</sup> who have attained a specified age below 10 years and six months and are under a specified age above 12 years<sup>17</sup>. The Secretary of State<sup>18</sup> may make regulations for determining, or enabling him to determine, whether a middle school is to be treated for the purposes of the Education Act 1996 and the other enactments relating to education as a primary school or as a secondary school<sup>19</sup>.

'Secondary school' means a school for providing secondary education, whether or not it also provides further education<sup>20</sup>.

Certain maintained secondary schools in England may be designated as specialist schools, specialising in technology, languages, sports or arts in addition to providing the full National Curriculum<sup>21</sup>.

Education may also be provided by special schools<sup>22</sup> and by pupil referral units<sup>23</sup>. A school is a special school if it is specially organised to make special educational provision<sup>24</sup> for pupils with special educational needs<sup>25</sup> or, in the case of a school which is not maintained by a local

education authority<sup>26</sup>, if it is for the time being approved as such by the Secretary of State<sup>27</sup>. Pupil referral units are schools established and maintained by local education authorities which are specially organised to provide education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not otherwise receive suitable education<sup>28</sup>.

1 As to the meaning of 'institution outside the further education sector' see PARA 579 post. As to further education generally see PARA 579 et seq post.

2 As to the meaning of 'institution outside the higher education sector' see PARA 646 post. As to higher education generally see PARA 646 et seq post.

3 For the meaning of 'primary education' see PARA 16 ante.

4 For the meaning of 'secondary education' see PARA 17 ante.

5 Education Act 1996 s 4(1) (substituted by the Education Act 1997 s 51; and amended by the Education Act 2002 s 215(2), Sch 22 Pt 3). However, nothing in the Education Act 1996 s 4(1) (as substituted and amended) is to be taken to preclude the making of arrangements under s 19(1) (as amended) (exceptional educational provision: see PARA 457 post) under which part-time education is to be provided at a school: s 4(2) (amended by the Education Act 1997 s 57, Sch 7 para 10(a)). For the purposes of the Education Act 1996, an educational institution that would fall within s 4(1) (as substituted and amended) but for the fact that it provides part-time rather than full-time education must nevertheless be treated as a school if that part-time education is provided under arrangements made under s 19(1) (as amended) (see PARA 457 post): s 4(2) (amended by the Education Act 1997 Sch 7 para 10(a), (b), Sch 8).

An institution which would have become a school on the coming into force of the Learning and Skills Act 2000 s 110(1) (by virtue of the Education Act 1996 s 4(1) (as substituted and amended)) is not to be treated as being a school by virtue of s 4(1) (as substituted and amended) unless it has been established as a new school in accordance with the School Standards and Framework Act 1998 s 28(1)(a) (see PARA 132 post) or s 28(2)(a) (as amended in relation to England; prospectively amended in relation to Wales; prospectively further amended) (see PARA 132 post) or s 31(1)(a) (see PARA 136 post): Learning and Skills Act 2000 s 110(2), (3). A local education authority may not continue to maintain an institution which would have become a school on the coming into force of s 110(1) (by virtue of the Education Act 1996 s 4(1) (as substituted and amended)) in pursuance of the Education Act 1996 s 15A (as added and amended) (see PARA 27 ante): Learning and Skills Act 2000 s 110(2), (4). In relation to England, s 110(1), (2) came into force for certain purposes on 1 September 2000; s 100(1) came into force for the remaining purposes on 1 April 2001; s 100(2) came into force for the remaining purposes on 1 August 2002; s 110(3) came into force on 1 September 2000; and s 110(4) came into force on 1 August 2002: see the Learning and Skills Act 2000 (Commencement No 1) Order 2000, SI 2000/2114, art 2(3), Schedule Pt III; the Learning and Skills Act 2000 (Commencement No 3 and Savings and Transitional Provisions) Order 2001, SI 2001/654, art 2(2), Schedule Pt II; and the Learning and Skills Act 2000 (Commencement No 4) and Transitional Provisions Order 2002, SI 2002/279, art 2(3)(b). The Learning and Skills Act 2000 s 110 came wholly into force in relation to Wales on 1 April 2001: see the Learning and Skills Act 2000 (Commencement No 3 and Transitional Provisions) (Wales) Order 2001, SI 2001/1274, art 2(1), Schedule Pt I.

6 As to maintained schools see PARA 94 et seq post.

7 As to local education authorities see PARA 20 ante.

8 As to funding of maintained schools see PARA 302 et seq post.

9 As to independent schools see PARA 465 et seq post.

10 For the meaning of 'child' see PARA 16 note 2 ante.

11 As to the meaning of 'compulsory school age' see PARA 15 ante.

12 As to nursery education see PARA 85 et seq post.

13 Education Act 1996 s 6(1) (amended by the Education Act 1997 Sch 7 para 11; and the Education Act 2002 s 156(1)).

14 Education Act 1996 s 5(1) (amended by the Education Act 2002 Sch 22 Pt 3). This provision is expressed to be subject to regulations made under the Education Act 1996 s 5(4) (see the text and notes 18-19 infra): s 5(1).

15 le a school in respect of which proposals authorised by the School Standards and Framework Act 1998 s 28(4) (prospectively repealed) (see PARA 132 post) are implemented: Education Act 1996 s 5(3) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 59(a)). See also note 17 infra.

16 For the meaning of 'pupil' see PARA 16 note 4 ante.

17 Education Act 1996 s 5(3). As from a day to be appointed, s 5(3) is substituted so as to provide that a 'middle school' means a school which, in pursuance of proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 post) or s 28A (prospectively added) (see PARA 133 post) or s 34, Sch 7 para 5 (prospectively amended) (see PARA 169 post) or the Education Act 2005 s 66 (not yet in force) (see PARA 150 post) or s 67, Sch 11 para 7 (not yet in force) (see PARA 178 post) has been established as, or altered so as to become, a school for providing full-time education suitable to the requirements of pupils who: (1) have attained a specified age below 10 years and six months; and (2) are under a specified age above 12 years ('the relevant upper age'): Education Act 1996 s 5(3) (prospectively substituted by the Education Act 2005 s 72, Sch 12 para 1(1), (2)). At the date at which this volume states the law, no such day had been appointed.

18 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

19 Education Act 1996 s 5(4). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to regulations made under s 5(4) in relation to England see the Education (Middle School) (England) Regulations 2002, SI 2002/1983. In relation to Wales see the Education (Middle Schools) Regulations 1980, SI 1980/918 (amended by SI 1994/581; SI 2002/1983) which have effect, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, as if made under s 5(4).

The powers conferred by the School Standards and Framework Act 1998 s 28(4) (prospectively repealed) (see PARA 132 post) and the Education Act 1996 s 5(4) are exercisable notwithstanding anything in the Education Act 1996 (and in particular s 1 (as amended) (see PARA 14 ante)); but without prejudice to the exercise of any other power conferred by the Education Act 1996: s 5(5) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 59(b)). As from a day to be appointed, the Education Act 1996 s 5(5) (as amended) is further amended so as to refer to the powers conferred by the enactments mentioned in s 5(3) (as amended; prospectively substituted) (so far as relating to the establishment of middle schools: see note 17 supra) and the powers conferred by s 5(4): s 5(5) (prospectively amended by the Education Act 2005 Sch 12 para 1(1), (3)). At the date at which this volume states the law, no such day had been appointed.

20 Education Act 1996 s 5(2). This provision is expressed to be subject to regulations made under s 5(4) (see the text and notes 18-19 supra): s 5(2). As to the provision of secondary education by the further education sector see PARA 579 et seq post. As to the duty to safeguard pupils receiving secondary education in a further education institution see PARA 620 post.

21 As to specialist schools see PARA 95 post. As to the National Curriculum see PARA 916 et seq post; and as to the school curriculum generally see PARA 913 et seq post.

22 As to special schools see PARA 1027 et seq post.

23 As to pupil referral units see PARA 457 et seq post.

24 For the meaning of 'special educational provision' see PARA 984 post.

25 For the meaning of 'special educational needs' see PARA 984 post.

26 For the meaning of 'school maintained by a local education authority' see PARA 94 post.

27 See the Education Act 1996 s 6(2) (as amended), s 337(1), (2) (as substituted); and PARA 1027 post.

28 See *ibid* s 19 (as amended); and PARA 457 et seq post. For the meaning of 'suitable education' see PARA 457 note 2 post.

## UPDATE

### 81 Meaning of 'school' etc

TEXT AND NOTE 5--1996 Act s 4(1) further amended, s 4(1A) added: Childcare Act 2006 s 95.

NOTE 17--1996 Act s 5(3) substituted by s 5(3), (3A): Education and Inspections Act 2006 Sch 3 para 7.

NOTE 19--Day now appointed: SI 2006/2129. SI 2002/1983 amended: SI 2009/1556.

TEXT AND NOTE 27--1996 Act s 6(2) substituted: Education and Skills Act 2008 Sch 1 para 6 (not yet in force).

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## 82. Home-school agreements.

A 'home-school agreement' is a statement specifying:

- 155 (1) the school's aims and values<sup>1</sup>;
- 156 (2) the school's responsibilities, namely the responsibilities which the school intends to discharge in connection with the education of pupils<sup>2</sup> at the school who are of compulsory school age<sup>3</sup>;
- 157 (3) the parental responsibilities, namely the responsibilities which the parents<sup>4</sup> of such pupils are expected to discharge in connection with the education of their children while they are registered pupils<sup>5</sup> at the school<sup>6</sup>; and
- 158 (4) the school's expectations of its pupils, namely the expectations of the school as regards the conduct of such pupils while they are registered pupils there<sup>7</sup>.

The governing body<sup>8</sup> of a school which is a maintained school<sup>9</sup>, or a city technology college<sup>10</sup>, a city college for the technology of the arts<sup>11</sup> or an academy<sup>12</sup>, must adopt a home-school agreement for the school, together with a parental declaration<sup>13</sup> to be used in connection with the agreement<sup>14</sup>. It must also take reasonable steps to secure that the parental declaration is signed by every qualifying parent<sup>15</sup>. This does not, however, require the governing body to seek the signature of a qualifying parent if, having regard to any special circumstances relating to the parent or the pupil in question, it considers that it would be inappropriate to do so<sup>16</sup>. Where the governing body considers that a registered pupil at the school has a sufficient understanding of the home-school agreement as it relates to him, it may invite the pupil to sign the parental declaration as an indication that he acknowledges and accepts the school's expectations of its pupils<sup>17</sup>. The governing body must from time to time review the home-school agreement<sup>18</sup>. Before adopting the home-school agreement or parental declaration, or revising that agreement, the governing body must consult all qualifying parents<sup>19</sup>, and such other persons as may be prescribed<sup>20</sup>.

In discharging any of the above functions<sup>21</sup> the governing body of a school must have regard to any guidance given from time to time by the Secretary of State<sup>22</sup>. If the Secretary of State by order so provides<sup>23</sup>, the governing body of a maintained school, a city technology college, a city college for the technology of the arts or an academy<sup>24</sup> must ensure that any form of words specified in the order, or having such effect as is so specified, is not used in a home-school agreement or, as the case may be, in a parental declaration<sup>25</sup>. Neither the governing body of such a school nor the local education authority<sup>26</sup> where it is the admission authority<sup>27</sup> for such a school may:

- 159 (a) invite any person to sign the parental declaration at a time when the child in question has not been admitted to the school<sup>28</sup>;
- 160 (b) make it a condition of a child being admitted to the school that the parental declaration is signed in respect of the child<sup>29</sup>; or
- 161 (c) make any decision as to whether or not to admit a child to the school by reference to whether any such declaration is or is not likely to be signed in respect of the child<sup>30</sup>.

No person may be excluded<sup>31</sup> from such a school or suffer any other adverse consequences on account of any failure to comply with any invitation to sign the parental declaration<sup>32</sup>.

A home-school agreement is not capable of creating any obligation in respect of whose breach any liability arises in contract or in tort<sup>33</sup>.

1 School Standards and Framework Act 1998 s 110(2)(a). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8).

2 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

3 Ibid s 110(2)(b). As to the meaning of 'compulsory school age' see PARA 15 ante.

4 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 142(8).

5 For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of ibid s 142(8).

6 Ibid s 110(2)(c).

7 Ibid s 110(2)(d).

8 As to the governing bodies of maintained schools see PARA 203 et seq post.

9 School Standards and Framework Act 1998 s 110(1)(a). For the meaning of 'maintained school' see PARA 94 post. The reference to a maintained school in s 110(1)(a) is modified in relation to the period prior to 1 September 1999: see the School Standards and Framework Act 1998 (Home-School Agreements) (Modification) Regulations 1998, SI 1998/2834 (revoked, in relation to England, by SI 2003/2694).

10 As to the meaning of 'city technology college' see PARA 496 note 31 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

11 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 post; definition applied by virtue of ibid s 142(8).

12 Ibid s 110(1)(b) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 85; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 9). As to the meaning of 'academy' see PARA 496 note 29 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

13 For these purposes, 'parental declaration' means a document to be used by qualifying parents for recording that they take note of the school's aims and values and its responsibilities and that they acknowledge and accept the parental responsibilities and the school's expectations of its pupils: ibid s 110(2). 'Qualifying parent' means a registered parent of a pupil at the school who is of compulsory school age: s 110(10).

14 Ibid s 110(1).

15 Ibid s 110(3). The governing body must discharge its duty under s 110(3), in the case of a pupil attending the school on the relevant date, as soon after that date as is reasonably practicable and, in the case of a pupil admitted to the school after the relevant date, as soon after the date of his admission as is reasonably practicable: s 110(6). For these purposes, 'the relevant date' means such date as the Secretary of State may by order appoint or such later date as he may determine in the case of the school in question: s 110(10). The appointed relevant date is 1 September 1999: see the School Standards and Framework Act 1998 (Home-School Agreements) (Appointed Day) Order 1998, SI 1998/2877.

Any power of the Secretary of State to make an order or regulations under the School Standards and Framework Act 1998, except an order under s 11(5) (see PARA 455 post), s 20(5) (see PARA 102 post), s 21(8) (see PARA 104 post), s 73 (see PARA 391 post), s 82 (as amended) (see PARA 117 post), s 111(3)(a) (see note 23 infra) or s 142(1) or under Sch 5 para 5 (see PARA 128 post), Sch 7 para 2 (prospectively amended) (see PARAS 166, 184, 193 post) or Sch 7 para 3 (prospectively amended) (see PARAS 167, 185, 194 post), Sch 14 para 1 (see PARA 319 post), Sch 21 para 10 (see PARA 1404 post), Sch 22 para 4(2) (see PARA 1368 post), Sch 22 para 7(3)(c) (see PARA 1374 post) or Sch 32 para 5(3) (see PARA 320 post), must be exercised by statutory instrument (s 138(1), (2) (s 138(2) amended by the Education Act 2002 s 215(2), Sch 22 Pt 3)). A statutory instrument containing any such order or regulations is generally subject to annulment in pursuance of a resolution of either House of Parliament: School Standards and Framework Act 1998 s 138(3). However, s 138(3) does not apply to any order under s 20(7) (see PARA 102 post), s 45C(2) (as added; prospectively substituted in relation to Wales) (see PARA 314 post), s 69(3) (see PARA 951 post), s 85(5) (see PARA 394 post), s 104 (see PARA 438 post), s 110(10) (definition of 'relevant date') or s 145 (commencement) or under Sch 32 para 1 (transitional provisions): s 138(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 111, Sch 22 Pt 3). Nor does the

School Standards and Framework Act 1998 s 138(3) apply to any order under s 1(5) (see PARA 405 post); and no such order or regulations are to be made (whether alone or with other provisions) unless a draft of the statutory instrument containing the order or regulations has been laid before, and approved by a resolution of, each House of Parliament: s 138(5)(a) (amended by the Education Act 2002 Sch 22 Pt 3). The reference in the School Standards and Framework Act 1998 s 138(4) (as amended) to s 45C(2) (as added; prospectively substituted in relation to Wales) comes into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(a), the School Standards and Framework Act 1998 s 138(4) (as amended) is further amended to include a reference to s 29(9A) (prospectively added) (see PARA 134 post): s 138(4) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 9). However, at the date at which this volume states the law, no such day had been appointed.

Any order or regulations under the School Standards and Framework Act 1998 may make different provision for different cases, circumstances or areas; may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit (s 138(7)); and may make different provision in relation to England and Wales respectively (s 138(8)). Nothing in the School Standards and Framework Act 1998 is to be read as affecting the generality of s 138(7): s 138(9). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

16 Ibid s 110(4).

17 Ibid s 110(5). Where the governing body decides to exercise its power under s 110(5), it must exercise it, in the case of a pupil attending the school on the relevant date (see note 15 supra), as soon after that date as is reasonably practicable and, in the case of a pupil admitted to the school after the relevant date, as soon after the date of his admission as is reasonably practicable: s 110(6).

18 Ibid s 110(7). Where the home-school agreement is revised by the governing body following such a review, the provisions of s 110(3)-(6) (see the text and notes 15-17 supra), in the case of pupils admitted to the school after the revision takes effect, accordingly apply in relation to the revised agreement: s 110(8).

19 Ibid s 110(9)(a).

20 Ibid s 110(9)(b). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). At the date at which this volume states the law, no such regulations had been made.

21 Ie any functions under ibid s 110 (as amended) (see the text and notes 1-20 supra). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8).

22 Ibid s 111(1). As to such guidance see the Department for Education and Skills Circular 27/99 *Home-School Agreements: Guidance for Schools* (1999).

23 Such an order may apply to any school specified in the order (School Standards and Framework Act 1998 s 111(3)(a)), or to any description of school so specified (s 111(3)(b)). Such an order is not to be made by statutory instrument: see s 138(2) (as amended); and note 15 supra.

24 Ie a school to which ibid s 110(1) (as amended) applies: see the text and notes 8-14 supra.

25 Ibid s 111(2). At the date at which this volume states the law, no such order had been made.

26 As to local education authorities see PARA 20 ante.

27 For the meaning of 'admission authority' see PARA 398 note 1 post; definition applied by the School Standards and Framework Act 1998 s 111(4).

28 Ibid s 111(4)(a).

29 Ibid s 111(4)(b).

30 Ibid s 111(4)(c).

31 For the meaning of 'exclude' see PARA 313 note 6 post.

32 School Standards and Framework Act 1998 s 111(5).

33 Ibid s 111(6).

## **UPDATE**

### **82 Home-school agreements**

NOTE 15--Day now appointed in relation to England in respect of reference to School Standards and Framework Act 1998 s 29(9A): SI 2006/2129.

In addition an order under the 1998 Act Sch 22 para 8A (see PARA 104) is not required to be exercised by statutory instrument: s 138(2) (amended by Education and Inspections Act 2006 Sch 4 para 21).

The power of the National Assembly for Wales to make an order or regulations under the School Standards and Framework Act 1998 is identical to that of the Secretary of State, but a statutory instrument containing any such order or regulations is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 138 (s 138(1), (3), (7) amended by Education and Inspections Act 2006 Sch 17 para 3).



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### 83. Learning agreements.

Regulations<sup>1</sup> may require a learning agreement<sup>2</sup> to be in the prescribed form and to be signed by the student and by or on behalf of such other persons as may be prescribed<sup>3</sup>. Regulations may also:

- 162 (1) provide that a person is not eligible to receive an allowance unless the person providing the relevant education or training holds a learning agreement signed by him<sup>4</sup>;
- 163 (2) provide that payment of an allowance is conditional on the person providing the relevant education or training from time to time determining that the student has complied with the learning agreement or has done so to a prescribed extent or in prescribed respects<sup>5</sup>;
- 164 (3) enable or require a learning agreement to specify targets relating to the attendance, conduct or attainments of the student<sup>6</sup>;
- 165 (4) enable or require the Secretary of State<sup>7</sup>, in any case where the person providing the relevant education or training determines that targets have been met, to make additional payments of allowance to or in respect of the student<sup>8</sup>; and
- 166 (5) impose obligations relating to learning agreements on the governing body of a maintained school<sup>9</sup>, or the governing body of an institution within the further education sector<sup>10</sup>.

Regulations may contain provision for determining the person by whom any relevant education or training is to be treated for the purposes of these provisions as being provided<sup>11</sup>.

A learning agreement is not capable of creating any obligation in respect of whose breach any liability arises in contract or in tort<sup>12</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 182.

2 For these purposes, a 'learning agreement' is a document which: (1) specifies conditions which: (a) relate to the attendance or conduct of, or completion of assigned tasks by, a person to whom an allowance is or may become payable ('the student'); and (b) are either prescribed by regulations or, if regulations so provide, determined in accordance with any prescribed requirements by the person providing the relevant education or training; (2) contains a declaration by the student relating to compliance with those conditions; and (3) deals with such other matters as may be prescribed: *ibid* s 182(1). 'Allowance' means an allowance under s 181 (see PARA 540 post); and 'relevant education or training' means the education or training referred to in s 181: s 182(8). 'Prescribed' means prescribed by regulations: s 212(1). See note 1 *supra*.

3 *Ibid* s 182(2)(a), (b).

4 *Ibid* s 182(3)(a). Section 182(3) is expressed to be without prejudice to the generality of s 181(3)(h) (see PARA 540 head (8) post): s 182(3).

5 *Ibid* s 182(3)(b). See note 4 *supra*.

6 *Ibid* s 182(4)(a).

7 Or, in relation to Wales, the National Assembly for Wales.

8 Education Act 2002 s 182(4)(b).

9 Ibid s 182(5)(a). Section 182(5) is expressed to be without prejudice to the generality of s 181(3)(k) (see PARA 540 head (11) post): s 182(5). For the meaning of 'maintained school' for these purposes see PARA 540 note 19 post. As to the governing bodies of maintained schools see PARA 203 et seq post.

10 Ibid s 182(5)(b). See note 9 supra. For these purposes, 'governing body', in relation to an institution within the further education sector, has the meaning given by the Further and Higher Education Act 1992 s 90 (see PARA 584 note 5 post): Education Act 2002 s 181(4). As to references to institutions within the further education sector see PARA 579 post; applied by virtue of s 212(2), (3).

11 Ibid s 182(6).

12 Ibid s 182(7).

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#### **84. Educational records.**

Regulations<sup>1</sup> may make provision as to:

- 167 (1) the keeping, disclosure and transfer of educational records about persons receiving education at any school maintained by a local education authority<sup>2</sup>, and any special school<sup>3</sup> not maintained by a local education authority<sup>4</sup>; and
- 168 (2) the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations<sup>5</sup>.

The regulations may authorise persons who supply copies of such records in pursuance of the regulations to charge such fee as they think fit, not exceeding the cost of supply, in respect of each copy so supplied<sup>6</sup>.

1 As to the regulations that have been made under the Education Act 1996 s 563 (as amended) see the Education (Pupil Information) (England) Regulations 2005, SI 2005/1437; and the Education (Pupil Information) (Wales) Regulations 2004, SI 2004/1026 (amended by SI 2004/2914; SI 2005/1396). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante.

2 Ibid s 563(3)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 172). For the meaning of 'school maintained by a local education authority' see PARA 94 post. As to local education authorities see PARA 20 ante.

Any function of a local education authority in England which is conferred by or under s 563 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (ccc). As to the meaning of 'function' see PARA 14 note 5 ante. For the meaning of 'England' see PARA 52 note 11 ante.

3 For the meaning of 'special school' see PARA 1027 post.

4 Education Act 1996 s 563(1)(a), (3)(c). See also note 2 supra.

5 Ibid s 563(1)(b). See also note 2 supra. A distinction is made between a 'curricular record' and an 'educational record'. 'Curricular record' means a formal record of a pupil's academic achievements, his other skills and abilities and his progress in school: see the Education (Pupil Information) (England) Regulations 2005, SI 2005/1437, reg 2(1); and the Education (Pupil Information) (Wales) Regulations 2004, SI 2004/1026, reg 3(1). 'Educational record' means any record of information, including a pupil's curricular record, which: (1) is processed by or on behalf of the governing body of, or a teacher at, any school maintained by a local education authority, or a special school which is not so maintained; (2) relates to any person who is or has been a pupil at the school; and (3) originated from or was supplied by or on behalf of any of the persons specified in heads (a)-(d) infra, other than information which is processed by a teacher solely for the teacher's own use: see the Education (Pupil Information) (England) Regulations 2005, SI 2005/1437, reg 3(1), (2); and the Education (Pupil Information) (Wales) Regulations 2004, SI 2004/1026, reg 3(2), (3). The persons referred to in head (3) supra are: (a) an employee of the local education authority which maintains the school (or, in the case of England only, the former school attended by the pupil to whom the record relates); (b) in the case of a voluntary aided, foundation or foundation special school, or a special school which is not maintained by a local education authority, a teacher or other employee at the school (or, in relation to England only, at the pupil's former school), including an educational psychologist engaged by the governing body under a contract for services; (c) the pupil to whom the record relates; and (d) a parent of that pupil: see the Education (Pupil Information) (England) Regulations 2005, SI 2005/1437, reg 3(3); and the Education (Pupil Information) (Wales) Regulations 2004, SI 2004/1026, reg 3(4).

6 Education Act 1996 s 563(2). See also note 2 supra. Within 15 school days of making a request in writing a parent is entitled to inspect the child's educational record, and is entitled to a copy of it, under the conditions

provided for by the regulations: see the Education (Pupil Information) (England) Regulations 2005, SI 2005/1437, reg 5; and the Education (Pupil Information) (Wales) Regulations 2004, SI 2004/1026, reg 5. See also *Pupil Records and Reports* (March 2000) (Ref: DfEE 0015/2000).

## **UPDATE**

### **84 Educational records**

NOTE 1--SI 2004/1026 further amended: SI 2005/3239, SI 2007/3563. SI 2005/1437 amended: SI 2007/3224, SI 2008/1747.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(2) NURSERY EDUCATION/(i) Meaning of 'Nursery Education'/85. Meaning of 'nursery education'.

## **(2) NURSERY EDUCATION**

### **(i) Meaning of 'Nursery Education'**

#### **85. Meaning of 'nursery education'.**

For the purposes of Part V of the School Standards and Framework Act 1998<sup>1</sup>, 'nursery education' means full-time or part-time education suitable for children<sup>2</sup> who have not attained compulsory school age<sup>3</sup> (whether provided at schools or elsewhere)<sup>4</sup>.

1    le the School Standards and Framework Act 1998 Pt V (ss 117-124) (as amended).

2    For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of ibid s 142(8).

3    As to the meaning of 'compulsory school age' see PARA 15 ante.

4    School Standards and Framework Act 1998 s 117.

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## **(ii) Duties of the Local Education Authority**

### **86. Duty of local education authority as respects availability of nursery education.**

A local education authority<sup>1</sup> must secure that the provision, whether or not by it, of nursery education<sup>2</sup> for children<sup>3</sup> who have not attained compulsory school age<sup>4</sup>, but who have attained such age as may be prescribed<sup>5</sup>, is sufficient for its area<sup>6</sup>. In determining for these purposes whether the provision of such education is sufficient for its area, a local education authority may have regard to any facilities which it expects to be available outside its area for providing such education<sup>7</sup>, and must have regard to any guidance given from time to time<sup>8</sup>.

Where a local education authority, in pursuance of this duty<sup>9</sup>, makes arrangements with a person, other than the governing body of a maintained school<sup>10</sup>, for the provision by that person of nursery education<sup>11</sup> in consideration of financial assistance provided by the authority under the arrangements<sup>12</sup>, it must:

- 169 (1) in making the arrangements, have regard to any guidance given from time to time as to provision to be made in such arrangements in respect of the requirements to be met by the provider of the nursery education<sup>13</sup>; and
- 170 (2) exercise its functions with a view to securing that the provider meets any requirements imposed on him by the arrangements<sup>14</sup>.

Subject to any guidance given under head (1) above, the requirements imposed by the arrangements may, in particular, if any specified conditions are not satisfied, require the repayment of the whole or any part of any financial assistance provided by the local education authority under the arrangements<sup>15</sup>.

1 As to the local education authorities see PARA 20 ante.

2 For the meaning of 'nursery education' see PARA 85 ante.

3 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Ibid s 118(1)(a). As to the meaning of 'compulsory school age' see PARA 15 ante.

5 Ibid s 118(1)(b). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. The prescribed ages are set out in the Education (Nursery Education and Early Years Development) (England) Regulations 1999, SI 1999/1329, reg 2 (amended by SI 2003/2939); and the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003, SI 2003/893, reg 4 (amended by SI 2005/1813).

6 School Standards and Framework Act 1998 s 118(1). As to the power of local education authorities to establish, maintain and assist nursery schools see the Education Act 1996 s 17 (as amended; prospectively further amended); and PARA 24 ante. As to the duty of a local education authority to review annually the sufficiency of childcare provision for its area see PARA 25 ante.

7 School Standards and Framework Act 1998 s 118(2)(a).

8 Ibid s 118(2)(b). The guidance referred to in the text is ministerial guidance: see s 118(2)(b).

9 le the duty imposed on it by *ibid* s 118 (see notes 1-8 *supra*).

10 For these purposes, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: Education Act 2002 s 153(4). See note 12 *infra*. As to community, foundation or voluntary schools and community or foundation special schools see PARA 102 *et seq post*. For the meaning of 'nursery school' see PARA 81 *ante*; definition applied by virtue of s 212(2), (3).

11 For these purposes, 'nursery education' means full-time or part-time education suitable for children who have not attained compulsory school age (whether provided at schools or elsewhere): s 153(4). See note 12 *infra*. For the meaning of 'compulsory school age' see PARA 15 *ante*; definition applied by virtue of s 212(2), (3).

12 *Ibid* s 153(1). Section 153 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*.

13 Education Act 2002 s 153(2)(a). See note 12 *supra*. The guidance referred to in the text is ministerial guidance: see s 153(2)(a). As to the publication of such guidance as is mentioned in the text see, by virtue of s 212(2), (3), the Education Act 1996 s 571 (as amended); and PARA 54 *ante*.

14 Education Act 2002 s 153(2)(b). See note 12 *supra*.

15 *Ibid* s 153(3). See note 12 *supra*.

## **UPDATE**

### **86 Duty of local education authority as respects availability of nursery education**

TEXT AND NOTES 6, 8--1998 Act s 118(1), (2)(b) amended: Childcare Act 2006 Sch 2 para 30.

TEXT AND NOTES 12, 13--2002 Act s 153(1), (2)(a) amended: 2006 Act Sch 2 para 41, Sch 3 Pt 2.

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## **87. Early years development and childcare partnerships.**

Every local education authority<sup>1</sup> must establish for its area a body to be known as an early years development and childcare partnership<sup>2</sup>. In establishing the partnership and determining its constitution the authority must have regard to any guidance given from time to time<sup>3</sup>. The authority may establish a sub-committee of the partnership for any part of its area<sup>4</sup>. The authority must make arrangements for the meetings and proceedings of the partnership and any such sub-committee<sup>5</sup>, and for the partnership (and any such sub-committee) to be provided with accommodation and with such services as the authority considers appropriate<sup>6</sup>. The functions<sup>7</sup> of the partnership are to work with the authority in reviewing the sufficiency of the provision of nursery education<sup>8</sup> for the authority's area<sup>9</sup>, in reviewing the sufficiency of childcare provision for the authority's area<sup>10</sup>, and (in Wales only) in preparing early years development and childcare plans<sup>11</sup>. An order may be made conferring on early years development and childcare partnerships such additional functions as are specified in the order<sup>12</sup>.

1 As to local education authorities see PARA 20 ante.

2 School Standards and Framework Act 1998 s 119(1) (amended by the Education Act 2002 s 150(5)). As to child minding and day care for young children generally see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1070 et seq.

3 School Standards and Framework Act 1998 s 119(2). The guidance referred to in the text is ministerial guidance: see s 119(2).

4 Ibid s 119(3).

5 Ibid s 119(4)(a).

6 Ibid s 119(4)(b).

7 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).

8 For the meaning of 'nursery education' see PARA 85 ante.

9 School Standards and Framework Act 1998 s 119(5)(a) (amended by the Education Act 2002 s 215(2), Sch 22 Pt 3). The review mentioned in the text is a review for the purposes of the School Standards and Framework Act 1998 s 118: see PARA 86 ante.

10 Ibid s 119(5)(ab) (added by the Education Act 2002 s 150(1)). The review mentioned in the text is a review for the purposes of the School Standards and Framework Act 1998 s 118A (as added): see PARA 25 ante.

11 Ibid s 119(5)(b) (amended by the Education Act 2002 s 150(5); and the Children Act 2004 s 64, Sch 5 Pt 1). The School Standards and Framework Act 1998 s 119(5)(b) (as amended) is repealed by the Children Act 2004 Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. In relation to England, the appointed day is 1 March 2005 (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(1)(i)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the preparation of early years development plans see PARA 88 post.

12 School Standards and Framework Act 1998 s 119(6) (amended by the Education Act 2002 s 150(5)). At the date at which this volume states the law, no such order had been made.

## **UPDATE**



## **87 Early years development and childcare partnerships**

TEXT AND NOTE 2--1998 Act s 119(1) further amended so as to refer to a local education authority in Wales: Childcare Act 2006 Sch 2 para 32(2).

TEXT AND NOTES 3, 12--1998 Act s 119(2) amended, s 119(6) further amended: 2006 Act Sch 2 para 32(3), (5).

TEXT AND NOTE 10--1998 Act s 119(5)(ab) repealed: 2006 Act Sch 2 para 32(4), Sch 3 Pt 2 (in force in relation to England: SI 2007/2717).

NOTE 11--Day now appointed in relation to Wales: SI 2006/885.

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## **88. Early years development and childcare plans in Wales.**

Every local education authority in Wales<sup>1</sup> must, in conjunction with the early years development and childcare partnership<sup>2</sup> for its area<sup>3</sup> prepare an early years development and childcare plan for its area<sup>4</sup>, and prepare further such plans at such intervals as may be determined by or in accordance with regulations<sup>5</sup>. An early years development and childcare plan consists<sup>6</sup> of a statement which sets out the authority's proposals for complying with its duty<sup>7</sup> as respects the availability of nursery education<sup>8</sup>, a statement which sets out the authority's proposals for providing or promoting the provision of childcare for its area<sup>9</sup>, and background and supporting statements<sup>10</sup>.

1 As to local education authorities see PARA 20 ante. For the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to early years development and childcare partnerships see PARA 87 ante.

3 School Standards and Framework Act 1998 s 120(1) (amended by the Education Act 2002 s 150(5)). The School Standards and Framework Act 1998 s 120 (as amended) is repealed by Children Act 2004 Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. At the date at which this volume states the law, no such day had been appointed in relation to Wales.

4 School Standards and Framework Act 1998 s 120(1)(a) (amended by the Education Act 2002 s 150(5)). See note 3 supra.

5 School Standards and Framework Act 1998 s 120(1)(b). See note 3 supra. The intervals at which early years development and childcare plans are to be published are prescribed in the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003, SI 2003/893, reg 5. As to the making of regulations generally see PARA 43 note 3 ante.

6 School Standards and Framework Act 1998 s 120(2) (amended by the Education Act 2002 s 150(5)). See note 3 supra.

7 Its duty under the School Standards and Framework Act 1998 s 118: see PARA 86 ante.

8 Ibid s 120(2)(a) (amended by the Education Act 2002 s 215(2), Sch 22 Pt 3). The statement of proposals mentioned in the text must deal with such matters, and relate to such period, as may be determined by or in accordance with regulations: School Standards and Framework Act 1998 s 120(3) (substituted by the Education Act 2002 s 150(3)). See note 3 supra. For the meaning of 'nursery education' see PARA 85 ante. As to the periods to which statements of proposals relate see the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003, SI 2003/893, reg 6.

9 School Standards and Framework Act 1998 s 120(2)(b) (substituted by the Education Act 2002 s 150(2)). In relation to the form and content of the statement mentioned in the text, the authority must have regard to any guidance given from time to time by the National Assembly for Wales: School Standards and Framework Act 1998 s 120(4) (substituted by the Education Act 2002 s 150(3)). See note 3 supra. As to the National Assembly for Wales see PARA 53 ante. As to the authority's duty regarding the provision of childcare for its area see PARA 25 ante.

10 School Standards and Framework Act 1998 s 120(2)(c) (added by the Education Act 2002 s 150(2)). In relation to the form and content of the statement mentioned in the text, the authority must have regard to any guidance given from time to time by the National Assembly for Wales: School Standards and Framework Act 1998 s 120(4) (as substituted: see note 9 supra). See note 3 supra.

## **UPDATE**

## **88 Early years development and childcare plans in Wales**

NOTE 3--Day now appointed in relation to Wales: SI 2006/885.

NOTES 5, 8--SI 2003/893 regs 5, 6 revoked: SI 2006/877.

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### **89. Approval, modification and review of early years development and childcare plans in Wales.**

Where an early years development and childcare plan has been prepared<sup>1</sup>, the local education authority<sup>2</sup> must, by such date as may be determined by or in accordance with regulations<sup>3</sup>, submit the plan to the National Assembly for Wales<sup>4</sup> for it to approve<sup>5</sup>. The Assembly may in the case of any plan submitted to it<sup>6</sup>:

- 171 (1) approve the plan in any of the following ways, namely, wholly or in part, for a limited period of time, or subject to conditions<sup>7</sup>;
- 172 (2) require the authority to make such modifications<sup>8</sup> to the plan as the Assembly may specify<sup>9</sup>; or
- 173 (3) reject the plan<sup>10</sup>.

If the Assembly approves the plan<sup>11</sup> it must notify the authority of its decision<sup>12</sup>, and the authority must implement the plan, so far as approved by the Assembly, as from such date as it may determine<sup>13</sup>. If the Assembly requires the authority to make modifications or rejects the plan<sup>14</sup>, it must notify the authority of its decision and of its reasons for it<sup>15</sup>, and the authority must prepare a revised plan and submit it to the Assembly for its approval by such date as it may determine<sup>16</sup>.

Once the Assembly has approved an authority's plan<sup>17</sup>, it must keep under review the plan, as so approved, and its implementation by the authority<sup>18</sup>, and:

- 174 (a) where the Assembly is of the opinion that the plan should be modified (or further modified), it may withdraw its approval and require the authority to make such modifications to the plan as it may specify<sup>19</sup>; and
- 175 (b) where the Assembly is of the opinion that the authority's plan is not being properly implemented by the authority, it may withdraw its approval for such period as it thinks fit<sup>20</sup>.

If the Assembly withdraws its approval<sup>21</sup> of a plan<sup>22</sup>, it must notify the authority of its decision and of its reasons for it<sup>23</sup>; and, in a case falling within head (a) above, the authority must prepare a revised plan and submit it to the Assembly for its approval by such date as it may determine<sup>24</sup>.

At any time after the Assembly has approved<sup>25</sup> an authority's plan<sup>26</sup>:

- 176 (i) the authority may, with the agreement of the early years development and childcare partnership<sup>27</sup>, submit modifications to the plan to the Assembly for its approval<sup>28</sup>; and
- 177 (ii) the Assembly may approve the modifications, whether in whole or in part, for a limited period of time, or subject to conditions<sup>29</sup>; and
- 178 (iii) if and to the extent that the Assembly approves those modifications, it must notify the authority of its decision and the plan has effect with the modifications, and the authority must implement its plan as modified, as from such date as the Assembly may determine<sup>30</sup>.

Once the Assembly has approved an authority's plan<sup>31</sup>, or the modification of an authority's plan<sup>32</sup>, the authority must publish its plan (or its plan as so modified) in such manner and by such date as may be prescribed<sup>33</sup>, and must provide such persons as may be prescribed with copies of that plan or of a summary of that plan<sup>34</sup>.

1     le in accordance with the School Standards and Framework Act 1998 s 120 (as amended; repealed in relation to England; prospectively repealed in relation to Wales): see PARA 88 ante.

2     As to local education authorities see PARA 20 ante.

3     The dates by which early years development plans must be prepared and submitted are prescribed in the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003, SI 2003/893, reg 5. As to the making of regulations generally see PARA 43 note 3 ante.

4     As to the National Assembly for Wales see PARA 53 ante.

5     School Standards and Framework Act 1998 s 121(1) (amended by the Education Act 2002 ss 150(4)(a), (5), 215(2), Sch 22 Pt 3). The School Standards and Framework Act 1998 s 121 (as amended) is repealed by the Children Act 2004 Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. In relation to England, the appointed day is 1 March 2005 (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(1)(l)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

6     School Standards and Framework Act 1998 s 121(2) (amended by the Education Act 2002 s 150(4)(b)). See note 5 supra.

7     School Standards and Framework Act 1998 s 121(2)(a) (as amended: see note 6 supra). See note 5 supra.

8     As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 142(8).

9     *Ibid* s 121(2)(b) (as amended: see note 6 supra). See note 5 supra.

10    *Ibid* s 121(2)(c) (as amended: see note 6 supra). See note 5 supra.

11    *Ibid* s 121(3) (amended by the Education Act 2002 s 150(4)(c)). See note 5 supra.

12    School Standards and Framework Act 1998 s 121(3)(a) (as amended: see note 11 supra). See note 5 supra.

13    *Ibid* s 121(3)(b) (as amended: see note 11 supra). See note 5 supra.

14    *Ibid* s 121(4) (amended by the Education Act 2002 s 150(4)(d)). See note 5 supra.

15    School Standards and Framework Act 1998 s 121(4)(a) (as amended: see note 14 supra). See note 5 supra.

16    *Ibid* s 121(4)(b) (as amended: see note 14 supra). Section 120 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (early years development and childcare plans: see PARA 88 ante) applies to the preparation of a revised statement under s 121(4)(b) (as amended) or s 121(6)(b) (as amended), with such modifications (if any) as the National Assembly for Wales may determine: s 121(7) (amended by the Education Act 2002 s 150(4)(g)). See note 5 supra.

17    le under the School Standards and Framework Act 1998 s 121(2) (as amended): see the text and notes 6-10 supra.

18    *Ibid* s 121(5) (amended by the Education Act 2002 s 150(4)(e)). See note 5 supra.

19    School Standards and Framework Act 1998 s 121(5)(a) (as amended: see note 18 supra). See note 5 supra. See also the text and notes 17-18 supra.

20    *Ibid* s 121(5)(b) (as amended: see note 18 supra). See note 5 supra.

21    le under *ibid* s 121(5) (as amended): see the text and notes 17-20 supra.

- 22 Ibid s 121(6) (amended by the Education Act 2002 s 150(4)(f)). See note 5 supra.
- 23 School Standards and Framework Act 1998 s 121(6)(a) (as amended: see note 22 supra). See note 5 supra.
- 24 Ibid s 121(6)(b) (as amended: see note 22 supra). See note 5 supra. See also note 16 supra.
- 25 Ie under ibid s 121(2) (as amended): see the text and notes 6-10 supra.
- 26 Ibid s 121(8) (amended by the Education Act 2002 s 150(4)(h)). See note 5 supra.
- 27 As to the early years development and childcare partnerships see PARA 87 ante.
- 28 School Standards and Framework Act 1998 s 121(8)(a) (as amended (see note 26 supra); and also amended by the Education Act 2002 s 150(5)). See note 5 supra.
- 29 School Standards and Framework Act 1998 s 121(8)(b) (as amended: see note 26 supra). See note 5 supra.
- 30 Ibid s 121(8)(c) (as amended: see note 26 supra). See note 5 supra.
- 31 Ie under ibid s 121(2) (as amended): see the text and notes 6-10 supra.
- 32 Ie under ibid s 121(8) (as amended): see the text and notes 25-26 supra.
- 33 Ie prescribed by regulations: ibid s 142(8). As to the prescribed manner of publication see the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003, SI 2003/893, reg 7.
- 34 School Standards and Framework Act 1998 s 121(9) (amended by the Education Act 2002 s 150(4)(i), Sch 22 Pt 3). See note 5 supra. As to the prescribed persons see the Education (Nursery Education and Early Years Development and Childcare Plans) (Wales) Regulations 2003, SI 2003/893, reg 7.

## **UPDATE**

### **89 Approval, modification and review of early years development and childcare plans in Wales**

NOTES 3, 33, 34--SI 2003/893 regs 5, 7 revoked: SI 2006/877.

NOTE 5--Day now appointed in relation to Wales: SI 2006/885.

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### **(iii) Funded Nursery Education in Wales**

#### **90. General grant-making powers.**

The power conferred by the Nursery Education and Grant-Maintained Schools Act 1996 to make grants in respect of nursery education<sup>1</sup> has been superseded by the general grant-making powers contained in the Education Act 2002<sup>2</sup>. However, the relevant provisions of that Act have not yet been commenced in relation to Wales<sup>3</sup>. Until such time as the new regime contained in the Education Act 2002 is brought into force in relation to Wales, the regime contained in the Nursery Education and Grant-Maintained Schools Act 1996 continues to apply in relation to Wales<sup>4</sup>.

1     Ie the Nursery Education and Grant-Maintained Schools Act 1996 ss 1-4 (as amended; repealed in relation to England; prospectively repealed in relation to Wales): see PARAS 91-92 post. For the meaning of 'nursery education' see PARA 85 ante.

2     Ie the Education Act 2002 ss 14-18: see PARA 65 et seq ante.

3     See PARA 65 ante.

4     See PARA 65 ante.

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## **91. Grants in respect of nursery education in Wales.**

The National Assembly for Wales<sup>1</sup> may make arrangements for the making of grants in respect of nursery education in Wales<sup>2</sup>. For these purposes, 'nursery education' is education provided for children, whether at schools<sup>3</sup> or other premises, before they begin to be of compulsory school age, but after such earlier time as may be prescribed, whether by reference to their having attained a particular age or any other circumstances<sup>4</sup>.

Such grants may be made to local education authorities<sup>5</sup> in respect of nursery education provided at schools maintained by them<sup>6</sup>, and to authorities and other persons of such descriptions as may be prescribed<sup>7</sup> in respect of nursery education provided by them<sup>8</sup>. An authority or other person to whom a grant is made under such arrangements<sup>9</sup> must comply with such requirements as may be imposed by or in accordance with the arrangements<sup>10</sup>. Such requirements: (1) may be imposed on, or at any time after, the making of any grant by reference to which they are imposed<sup>11</sup>; (2) may at any time be varied, waived or removed<sup>12</sup>; and (3) may in particular, if any specified conditions are satisfied, require the repayment of the whole or any part of any grant to which they relate<sup>13</sup>.

The amount of such a grant must be determined in such manner as may be prescribed<sup>14</sup>, and regulations may, in particular, provide for the determination to be made by reference to an amount, or amounts, specified for the purpose by the National Assembly for Wales<sup>15</sup>. The times at which, and the manner in which, grants are paid are such as may be determined by the arrangements<sup>16</sup>.

Nothing is to be taken to prevent or afford any right of appeal against a refusal by any authority or person to provide, or continue to provide, a child<sup>17</sup> with a place for nursery education at a maintained school<sup>18</sup> if the reason for the refusal is that a relevant condition<sup>19</sup> has not been complied with in relation to the child<sup>20</sup>.

1 As to the National Assembly for Wales see PARA 53 ante. Arrangements under the Nursery Education and Grant-Maintained Schools Act 1996 s 1 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see the text and notes 2-20 infra) may provide for grants to be made, or other functions relating to grants to be exercised, otherwise than by the National Assembly for Wales: s 2(1). Such arrangements may make provision for the functions concerned to be so exercised either wholly or to such extent as may be specified in the arrangements, and either generally or in such cases or circumstances as may be so specified, but must not prevent the functions concerned from being exercised by the National Assembly for Wales: s 2(2).

There must be paid out of money provided by Parliament: (1) any sums required by the National Assembly for Wales for making grants under arrangements under s 1 (as amended) or for making payments to any person exercising any function by virtue of s 2; (2) any administrative expenses incurred by the National Assembly for Wales under the Nursery Education and Grant-Maintained Schools Act 1996; and (3) any increase attributable to that Act in sums payable out of money provided by Parliament under any other Act: s 9(1).

Section 1 (as amended) is repealed by the Education Act 2002 ss 18(1)(f), 215(2), Sch 22 Pt 3, and the Nursery Education and Grant-Maintained Schools Act 1996 ss 2-11 (as amended) are repealed by the Education Act 2002 Sch 22 Pt 3, as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.



2 Nursery Education and Grant-Maintained Schools Act 1996 s 1(1). See note 1 supra. For the meaning of 'nursery education' see PARA 85 ante. Section 1(1) does not affect any power of the National Assembly for Wales to make grants in respect of nursery education under any other enactment: s 1(7).

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 11(2) (substituted by the Education Act 1996 s 582(1), Sch 37 para 132). See note 1 supra.

4 Nursery Education and Grant-Maintained Schools Act 1996 s 1(2) (amended by the Education Act 1997 s 57(1), Sch 7 para 8). See note 1 supra. 'Prescribed' means prescribed by regulations: Nursery Education and Grant-Maintained Schools Act 1996 s 8(1). At the date at which this volume states the law, no such regulations had been made in relation to Wales.

Any power to make an order or regulations under the Nursery Education and Grant-Maintained Schools Act 1996 must be exercised by statutory instrument: s 8(2). Any regulations made under that Act may make different provision for different cases or different areas, and may contain such incidental, supplementary, saving or transitional provisions as the National Assembly for Wales considers appropriate: s 8(4). See note 1 supra.

5 As to local education authorities see PARA 20 ante.

6 Nursery Education and Grant-Maintained Schools Act 1996 s 1(3)(a). See note 1 supra.

7 See note 4 supra.

8 Nursery Education and Grant-Maintained Schools Act 1996 s 1(3)(b). See note 1 supra.

9 The arrangements under *ibid* s 1 (as amended; repealed in relation to England; prospectively repealed in relation to Wales).

10 *Ibid* s 3(1). See note 1 supra.

11 *Ibid* s 3(2)(a). See note 1 supra.

12 *Ibid* s 3(2)(b). See note 1 supra.

13 *Ibid* s 3(3). Sums received by the National Assembly for Wales by virtue of s 3(3) must be paid into the Consolidated Fund: s 9(2)(a). See note 1 supra. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

14 See note 4 supra.

15 Nursery Education and Grant-Maintained Schools Act 1996 s 1(4). See note 1 supra.

16 *Ibid* s 1(5). See note 1 supra.

17 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of *ibid* s 11(2) (as substituted: see note 3 supra).

18 For these purposes, 'a maintained school' means a school maintained by a local education authority, a school which was formerly a grant maintained school or a school which was formerly a grant maintained special school: *ibid* s 1(6)(a). See note 1 supra. Schools which were formerly grant maintained schools or grant maintained special schools have been reallocated to categories under the School Standards and Framework Act 1998: see PARA 102 et seq post.

19 For these purposes, 'a relevant condition' means a prescribed condition designed to facilitate the determination of the amount of grants payable under arrangements under the Nursery Education and Grant-Maintained Schools Act 1996 s 1 (as amended): s 1(6)(b). See notes 1, 4 supra.

20 *Ibid* s 1(6). Section 1(6) applies even if the child has been provided with, or offered, a place at the school before its commencement: s 1(6). See note 1 supra.

## UPDATE

### 91 Grants in respect of nursery education in Wales

NOTE 1--Day now appointed in relation to Wales: SI 2007/3611.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(2) NURSERY EDUCATION/ (iii) Funded Nursery Education in Wales/92. Duty to consult the code of practice in respect of children with special educational needs in Wales.

## **92. Duty to consult the code of practice in respect of children with special educational needs in Wales.**

It is the duty of any authority or other person providing funded nursery education in Wales<sup>1</sup>, and any person employed by such an authority or other person in the provision of such education<sup>2</sup>, to have regard to the provisions of the code of practice<sup>3</sup> giving practical guidance in respect of the discharge of functions under Part IV of the Education Act 1996<sup>4</sup>. That code of practice may include practical guidance in respect of the provision of funded nursery education for children with special educational needs<sup>5</sup> in circumstances where functions under Part IV of the Education Act 1996 do not fall to be discharged<sup>6</sup>.

1 Nursery Education and Grant-Maintained Schools Act 1996 s 4(1)(a). For these purposes, 'funded nursery education' means nursery education in respect of which the National Assembly for Wales is making, or is to make, grants under arrangements under s 1 (as amended) (see PARA 91 ante): s 4(4). For the meaning of 'nursery education' see PARA 85 ante. As to the National Assembly for Wales see PARA 53 ante.

Sections 2-11 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Nursery Education and Grant-Maintained Schools Act 1996 s 4(1)(b). See note 1 supra.

3 le issued under the Education Act 1996 s 313 (as amended): see PARA 1036 post.

4 Nursery Education and Grant-Maintained Schools Act 1996 s 4(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 56). As to the Education Act 1996 Pt IV (ss 312-349) (as amended) see PARA 984 et seq post. The duty referred to in the text is imposed except where a duty is already imposed under s 313(2) (see PARA 1036 post) or the School Standards and Framework Act 1998 s 123(1) (see PARA 1038 post): Nursery Education and Grant-Maintained Schools Act 1996 s 4(1) (as so amended). See note 1 supra.

5 For the meaning of 'special educational needs' see PARA 984 post.

6 Nursery Education and Grant-Maintained Schools Act 1996 s 4(2) (amended by the Education Act 1996 s 582(1), Sch 37 para 131). Unless that code of practice includes provision made by virtue of the Nursery Education and Grant-Maintained Schools Act 1996 s 4(2) (as amended) the National Assembly for Wales must publish a document explaining how the practical guidance contained in that code applies in circumstances where functions under the Education Act 1996 Pt IV (as amended) do not fall to be discharged; and the duty imposed by the Nursery Education and Grant-Maintained Schools Act 1996 s 4(1) (as amended) (see the text and notes 1-4 supra) includes a duty to have regard to the provisions of that document: s 4(3) (amended by the Education Act 1996 Sch 37 para 131). See note 1 supra.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(2) NURSERY EDUCATION/(iv) Provision of Teaching Services/93. Arrangements to provide teaching services for day nurseries.

#### **(iv) Provision of Teaching Services**

##### **93. Arrangements to provide teaching services for day nurseries.**

A local education authority<sup>1</sup> may, in accordance with arrangements made by it for that purpose, make available to a day nursery<sup>2</sup> the services of any teacher who is employed by it in a nursery school<sup>3</sup> or in a primary school<sup>4</sup> having one or more nursery classes and who has agreed to provide his services for the purposes of the arrangements<sup>5</sup>. Such arrangements in respect of a teacher in a foundation or voluntary school<sup>6</sup> require the concurrence of the governing body of the school<sup>7</sup>.

The governing body of a community<sup>8</sup>, foundation or voluntary primary school having one or more nursery classes may, in accordance with arrangements made by it for that purpose, make available to a day nursery the services of any teacher who is employed by it in the school and who has agreed to provide his services for the purposes of the arrangements<sup>9</sup>. No such arrangements may be made except at the request of the local education authority and on terms approved by it<sup>10</sup>.

Arrangements<sup>11</sup> may make provision: (1) for the supply of equipment for use in connection with the teaching services made available under the arrangements<sup>12</sup>; (2) for regulating the respective functions of any teacher whose services are made available under the arrangements, the head teacher<sup>13</sup> of his school and the person in charge of the day nursery<sup>14</sup>; and (3) for any supplementary or incidental matters connected with the arrangements, including, where the teacher's school and the day nursery are in the areas of different local education authorities, financial adjustments between those authorities<sup>15</sup>.

A teacher is not to be regarded as ceasing to be a member of the teaching staff of his school and subject to the general directions of his head teacher by reason only of his services being made available in pursuance of arrangements as described above<sup>16</sup>.

1 As to local education authorities see PARA 20 ante.

2 For these purposes, 'day nursery' means a day nursery provided under the Children Act 1989 s 18 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 860); Education Act 1996 ss 515(4), 535(4).

3 As to the meaning of 'nursery school' see PARA 81 ante.

4 For the meaning of 'primary school' see PARA 81 ante.

5 Education Act 1996 s 515(1).

6 As to foundation schools and voluntary schools see PARA 102 et seq post.

7 Education Act 1996 s 515(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 136). As to the governing bodies of maintained schools see PARA 203 et seq post. While staff who are appointed to work under a contract of employment at voluntary controlled schools are employed by the local education authority (see the Education Act 2002 s 35; and PARA 333 post), staff who are appointed to work under a contract of employment at foundation schools and voluntary aided schools are employed by the governing body of the school (see the Education Act 2002 s 36; and PARA 343 post).

8 As to community schools see PARA 102 et seq post.

- 9 Education Act 1996 s 535(1) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 150).
- 10 Education Act 1996 s 535(2).
- 11 ie under ibid ss 515, 535 (both as amended).
- 12 Ibid ss 515(3)(a), 535(3)(a).
- 13 'Head teacher' includes acting head teacher: ibid s 579(1).
- 14 Ibid ss 515(3)(b), 535(3)(b).
- 15 Ibid ss 515(3)(c), 535(3)(c).
- 16 Ibid ss 515(5), 535(5).

## **UPDATE**

### **93 Arrangements to provide teaching services for day nurseries**

TEXT AND NOTES--1996 Act ss 515, 535 further amended: Childcare Act 2006 Sch 2 paras 25, 26.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(i) In general/94. Meaning of 'maintained school'.

### **(3) MAINTAINED SCHOOLS**

#### **(i) In general**

##### **94. Meaning of 'maintained school'.**

Unless the context otherwise requires<sup>1</sup>, 'maintained school' means a community, foundation or voluntary school or a community or foundation special school<sup>2</sup>.

'School maintained by a local education authority', in relation to any time on or after 1 September 1999<sup>3</sup>, means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school<sup>4</sup> or a pupil referral unit<sup>5</sup>.

<sup>1</sup> Ie except in the School Standards and Framework Act 1998 Pt III (ss 84-109) (as amended): see PARA 393 et seq post.

<sup>2</sup> Ibid ss 20(7), 142(1). For the meaning of 'school' see PARA 81 ante; and see PARA 102 note 1 post.

'Community or foundation special school' means a community special school or a foundation special school: s 142(1). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq post. As to special schools see PARA 1027 et seq post. As to the meaning of 'maintained school' in relation to special educational needs see PARA 984 note 11 post.

<sup>3</sup> Ie the appointed day: see the School Standards and Framework Act 1998 (Appointed Day) Order 1998, SI 1998/2083, art 2; and PARA 102 note 3 post.

<sup>4</sup> 'Maintained nursery school' means a nursery school which is maintained by a local education authority and is not a special school: Education Act 1996 s 579(1); School Standards and Framework Act 1998 s 22(9). As to nursery education see PARA 85 et seq ante.

<sup>5</sup> Ibid s 142(1). For the meaning of 'pupil referral unit' see PARA 457 post; definition applied by virtue of s 142(8).

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## **95. Specialist schools.**

Specialist schools are maintained secondary schools<sup>1</sup> which are designated for a four-year period by the Secretary of State<sup>2</sup> to specialise in technology, humanities, languages, sports or arts in addition to providing the full National Curriculum<sup>3</sup>. Such schools work in partnership with private sector sponsors and are supported by additional government funding. A school wishing to become a specialist school must draw up a development plan in accordance with published criteria and secure the required sponsorship<sup>4</sup>.

<sup>1</sup> For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'secondary school' see PARA 81 ante.

<sup>2</sup> As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>3</sup> Specialist schools can apply for re-designation to extend the status for a further four-year period. As to the National Curriculum see PARA 916 et seq post; and as to the school curriculum generally see PARA 913 et seq post.

<sup>4</sup> See the Department for Education and Skills publication *Specialist Schools Programme Application Guidance*.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(i) In general/96. Grammar schools.

## **96. Grammar schools.**

The Secretary of State<sup>1</sup> may designate a maintained school<sup>2</sup> which has selective admission arrangements as a grammar school<sup>3</sup>. A school has selective admission arrangements if its admission arrangements make provision for all, or substantially all, of its pupils to be selected by reference to general ability, with a view to admitting only pupils with high ability<sup>4</sup>. The Secretary of State may make provision by regulations for a ballot to be held at the request of the parents to determine whether a school should become, remain or cease to be a grammar school<sup>5</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'maintained school' for these purposes see PARA 433 note 2 post.

3 As to grammar schools see PARAS 438-442 post.

4 See PARA 438 post.

5 See PARA 439 et seq post.



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## 97. Charitable status of maintained schools etc.

The following bodies are charities<sup>1</sup> which are exempt charities for the purposes of the Charities Act 1993<sup>2</sup>: (1) the governing body<sup>3</sup> of any foundation, voluntary or foundation special school<sup>4</sup>; and (2) any foundation body<sup>5</sup>. However, no governing body of a community or community special school may be a charity<sup>6</sup>.

So far as it is a charity, any institution<sup>7</sup> which is administered by or on behalf of any body to which head (1) or head (2) above applies<sup>8</sup>, and is established for the general purposes of, or for any special purpose of or in connection with, that body or any school or schools falling within head (1) above<sup>9</sup>, is also an exempt charity for the purposes of the Charities Act 1993<sup>10</sup>.

Any foundation established otherwise than under the School Standards and Framework Act 1998 which has no property other than the premises<sup>11</sup> of any school or schools falling within head (1) above is a charity which is not required<sup>12</sup> to be registered for the purposes of the Charities Act 1993, but is not an exempt charity for the purposes of that Act<sup>13</sup>.

1 For the purposes of the School Standards and Framework Act 1998 s 23, 'charity' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 1): School Standards and Framework Act 1998 s 23(4)(a). As to educational trusts see PARA 1430 et seq post.

2 As to exempt charities see CHARITIES vol 8 (2010) PARAS 315.

3 As to the governing bodies of maintained schools see PARA 203 et seq post.

4 School Standards and Framework Act 1998 s 23(1)(a). As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq post. As to special schools see PARA 1027 et seq post.

5 Ibid s 23(1)(b). The reference in the text to any foundation body is a reference to any foundation body established under s 21: see PARA 104 post. For the meaning of 'foundation body' see PARA 104 note 6 post.

6 Ibid s 23(1). As to community and community special schools see PARA 102 et seq post.

7 For the purposes of ibid s 23, 'institution' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 1): School Standards and Framework Act 1998 s 23(4)(a).

8 Ibid s 23(2)(a).

9 Ibid s 23(2)(b).

10 Ibid s 23(2).

11 For the purposes of ibid s 23, 'premises' includes a teacher's dwelling-house: s 23(4)(b). As to the meaning of 'premises' generally see PARA 1352 note 3 post; definition applied by virtue of s 142(8).

12 Ie subject to the Charities Act 1993 s 3(5B) (as added): see CHARITIES vol 8 (2010) PARA 305.

13 School Standards and Framework Act 1998 s 23(3).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(i) In general/98. Communications with schools.

## **98. Communications with schools.**

In considering whether to issue any guidance or other circular to the governing bodies<sup>1</sup> or head teachers<sup>2</sup> of maintained schools<sup>3</sup> in the exercise of functions<sup>4</sup> relating to education<sup>5</sup>, the Secretary of State<sup>6</sup> and the National Assembly for Wales<sup>7</sup> must have regard to<sup>8</sup>:

- 179 (1) the desirability of providing information about good educational practice, while recognising the professional expertise of teachers<sup>9</sup>;
- 180 (2) the benefits that are expected to result from the issue of the guidance or other circular<sup>10</sup>; and
- 181 (3) the desirability of avoiding the sending of excessive material to governing bodies or head teachers, and the imposition of excessive administrative burdens on governing bodies or head teachers<sup>11</sup>.

In pursuance of the above duty<sup>12</sup>, the Secretary of State must in respect of each academic year<sup>13</sup>:

- 182 (a) prepare a report listing: (i) documents sent by him during the year to all governing bodies of maintained schools in England or to all head teachers of such schools<sup>14</sup>; and (ii) documents (not falling within head (i) above) sent by him during the year to all governing bodies of maintained schools in England of a particular kind or to all head teachers of such schools of a particular kind<sup>15</sup>; and
- 183 (b) lay a copy of the report before each House of Parliament, and include within it comparative statistics in respect of each of the two preceding academic years on documents<sup>16</sup> sent out by him<sup>17</sup>.

In pursuance of the above duty<sup>18</sup>, the National Assembly for Wales must in respect of each academic year prepare and publish a report listing<sup>19</sup>:

- 184 (A) documents sent by the Assembly during the year to all governing bodies of maintained schools in Wales or to all head teachers of such schools<sup>20</sup>; and
- 185 (B) documents (not falling within head (A) above) sent by the Assembly during the year to all governing bodies of maintained schools in Wales of a particular kind or to all head teachers of such schools of a particular kind<sup>21</sup>.

The documents referred to above<sup>22</sup> do not include any document sent by the Secretary of State or the National Assembly for Wales otherwise than in the exercise of functions relating to education, or at the request of the person to whom it is sent<sup>23</sup>.

Each document issued by the Secretary of State or the National Assembly for Wales and falling within head (i), head (ii), head (A) or head (B) above must list within it previous relevant documents issued by the Secretary of State or the National Assembly for Wales and must state clearly those documents which are superseded by the current document<sup>24</sup>. Each document issued by the Secretary of State or the National Assembly for Wales and falling within head (i), head (ii), head (A) or head (B) above must state clearly the persons for whom any advice and guidance is intended<sup>25</sup>.

- 1 As to the governing bodies of maintained schools see PARA 203 et seq post.
- 2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).
- 3 For the purposes of *ibid* Pt 3 Ch 1 (ss 19-40), 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school; and 'maintained nursery school' means a nursery school which is maintained by a local education authority and is not a special school: s 39(1). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to local education authorities see PARA 20 ante; as to nursery schools see PARA 85 et seq ante; as to community, foundation and voluntary schools and community or foundation special schools see PARA 102 et seq post; and as to special schools see PARA 1027 et seq post.
- 4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 212(2), (3).
- 5 See PARA 52 et seq ante.
- 6 As to the Secretary of State see PARA 52 ante.
- 7 As to the National Assembly for Wales see PARA 53 ante. See also note 8 *infra*.
- 8 Education Act 2002 s 38(1). Section 38 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 5) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.
- 9 Education Act 2002 s 38(1)(a). See note 8 *supra*.
- 10 *Ibid* s 38(1)(b). See note 8 *supra*.
- 11 *Ibid* s 38(1)(c). See note 8 *supra*.
- 12 *Ie* the duty in *ibid* s 38(1): see notes 1-11 *supra*.
- 13 *Ibid* s 38(2). For this purpose, 'academic year' means a period beginning with 1 August and ending with the next 31 July: s 38(7). See note 8 *supra*.
- 14 *Ibid* s 38(2)(a)(i). See note 8 *supra*.
- 15 *Ibid* s 38(2)(a)(ii). See note 8 *supra*.
- 16 *Ie* falling within *ibid* s 38(2): see notes 12-15 *supra*.
- 17 *Ibid* s 38(2)(b). See note 8 *supra*.
- 18 *Ie* the duty in *ibid* s 38(1): see notes 1-11 *supra*.
- 19 *Ibid* s 38(3). See note 8 *supra*.
- 20 *Ibid* s 38(3)(a). See note 8 *supra*.
- 21 *Ibid* s 38(3)(b). See note 8 *supra*.
- 22 *Ie* referred to in *ibid* s 38(2), (3): see the text and notes 12-21 *supra*. See also note 8 *supra*.
- 23 *Ibid* s 38(4). See note 8 *supra*.
- 24 *Ibid* s 38(5). See note 8 *supra*.
- 25 *Ibid* s 38(6). See note 8 *supra*.

## UPDATE

### 98 Communications with schools

NOTE 8--Day now appointed in relation to Wales: SI 2007/3611.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(i) In general/99. Code of practice for securing effective relationships between local education authorities and maintained schools.

**99. Code of practice for securing effective relationships between local education authorities and maintained schools.**

The Secretary of State<sup>1</sup> must issue, and may from time to time revise, a code of practice<sup>2</sup> containing such practical guidance as he thinks appropriate with a view to securing effective relationships between local education authorities<sup>3</sup> and the schools maintained by them<sup>4</sup>:

- 186 (1) in relation to promoting high standards of education in such schools<sup>5</sup>; and
- 187 (2) in relation to the discharge of relevant functions<sup>6</sup> of such authorities in relation to such schools<sup>7</sup>.

The Secretary of State must publish the code as for the time being in force<sup>8</sup>.

In discharging their functions in relation to any maintained school<sup>9</sup> or any maintained nursery school<sup>10</sup>, it is the duty of the local education authority, the governing body<sup>11</sup>, and the head teacher<sup>12</sup> to have regard to any relevant provisions of the code<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Different provision may be made under the School Standards and Framework Act 1998 s 127(1) for England and Wales (whether or not by means of separate codes of practice); and references in s 127 (as amended) to 'the code' accordingly apply to any such separate code of practice: s 127(5). See, in relation to England, the *Code of Practice on Local Education Authority-School Relations* (February 2001) (Ref: DfEE 0027/2001), which came into force on 16 February 2001; and the Local Education Authority-School Relations Code of Practice Order 2001, SI 2001/435. In relation to Wales see the *Code of Practice on LEA-School Relations*, which came into force on 30 June 1999; and the Education (Code of Practice on LEA-School Relations) (Appointed Day) (Wales) Order 1999, SI 1999/2022. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

The provisions of the School Standards and Framework Act 1998 s 85 (making and approval of code of practice: see PARA 394 post) apply in relation to the code as they apply in relation to a code of practice under s 84 (see PARA 393 post): s 127(3).

3 As to local education authorities see PARA 20 ante.

4 School Standards and Framework Act 1998 s 127(1). For the meaning of 'school maintained by a local education authority' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8).

5 Ibid s 127(1)(a).

6 For the purposes of ibid s 127, the relevant functions of a local education authority are the functions exercisable by or on behalf of such an authority relating to: (1) the preparation of education development plans in Wales (see s 6 (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 42 ante) and approval of proposals (see s 7 (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 46 ante), so far as they relate to schools maintained by the authority; (2) the issue of warning notices (see s 15(2) (as amended); and PARA 1265 post); (3) the appointment of additional governors (see s 16(1); and PARA 1268 post); (4) the power of an authority to provide for a governing body to consist of interim executive members (see s 16A(1) (added in relation to England; prospectively added in relation to Wales); and PARA 1270 post); (5) the power to suspend the right to a delegated budget (see s 17(1); and PARA 1269 post); (6) the staffing of different categories of school in Wales (see ss 54-55 (prospectively repealed), Sch 16 (as amended; prospectively repealed), Sch 17 (as amended; prospectively repealed); and PARAS 354 et seq, 367 et seq post); (7) the reserve power to prevent a breakdown of discipline (see s 62(1); and PARA 561 post); (8) the

control of premises by governing bodies (see s 40, Sch 13 (prospectively repealed); and PARAS 1420-1427 post); (9) the suspension of financial delegation (see s 51, Sch 15 paras 1-2 (as amended); and PARAS 322-323 post); (10) the staffing of community, voluntary controlled and community special schools and foundation, voluntary aided and foundation special schools in Wales (see Schs 16, 17 (both as amended; prospectively repealed); and PARA 355 et seq post); (11) the power to inspect a school for a specific purpose (see the School Inspections Act 1996 s 25 (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 1225 post); (12) regulations under the Education Act 2002 s 19 (see PARA 203 et seq post), so far as relating to the appointment of persons as LEA (local education authority) governors; (13) regulations under s 30(3) (as amended) relating to governors' reports (see PARA 296 et seq post); (14) governors' reports and other information (see s 30(3), (4) (as amended); and PARA 296 post); (15) regulations under s 31 (not yet in force) relating to the control of school premises (see PARA 1420 et seq post); (16) ss 35-36 (currently in force in relation to England only) relating to staffing and regulations made thereunder (see PARAS 333 et seq, 343 et seq post); (17) the effect on staffing of the suspension of a delegated budget (see ss 35(7), 36(7) (in force in relation to England only), Sch 2 (not yet in force); and PARA 333 et seq post); (18) the power of a local education authority to inspect schools for a specific purpose (see the Education Act 2005 s 51 (currently in force in relation to England only); and PARA 1225 post); and (19) such other functions exercisable by or on behalf of a local education authority as the Secretary of State may determine for the purposes of the School Standards and Framework Act 1998 s 127(6) (as amended): s 127(6) (amended by the Education Act 2002 s 215(1), Sch 21 para 110(1), (3), Sch 22 Pt 3; the Education Act 2005 ss 61, 123, Sch 9 para 21, Sch 19 Pt 1; the Education Act 2002 (Modification and Transitional Provisions) (England) Regulations 2003, SI 2003/2045, reg 4; and the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2004, SI 2004/1743, reg 4). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

Head (4) is added by the Education Act 2002 s 215(1), Sch 21 para 110(1), (3)(a) as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

Heads (6), (8) and (10) supra are repealed, and heads (13), (15)-(17) supra are added, by the Education Act 2002 s 215, Sch 21 para 110(1), (3), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day in relation to heads (6), (10), (16) and (17) supra is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to England for any other purpose nor had any day been appointed in relation to Wales. The need to appoint a day in relation to head (13) is not required given the coming into effect of head (14).

Head (11) supra is repealed, and head (18) supra is added, by the Education Act 2005 ss 61, 123, Sch 9 para 21, Sch 19 Pt 1 as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

7 School Standards and Framework Act 1998 s 127(1)(b).

8 Ibid s 127(4).

9 For the meaning of 'maintained school' see PARA 94 ante.

10 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

11 As to the governing bodies of maintained schools see PARA 203 et seq post.

12 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

13 Ibid s 127(2) (amended by the Education Act 2002 Sch 21 para 110(1), (2)).

## UPDATE

### **99 Code of practice for securing effective relationships between local education authorities and maintained schools [in Wales]**

TEXT AND NOTES--These provisions now apply to Wales only and references to the Secretary of State are now to the National Assembly for Wales: School Standards and Framework Act 1998 s 127(1), (2), (4) (amended by the Education and Inspections Act 2006 s 58(2)(a)-(c), (3), (5), (7)).

NOTES 2, 6--1998 Act s 127(5), (6) repealed: Education and Inspections Act 2006 s 58(6), Sch 18 Pt 2.

NOTE 2--Reference to the 1998 Act s 85 is now to s 85(1), (2) and reference to a code of practice is to a code relating to Wales: s 127(3) (substituted by the Education and Inspections Act 2006 s 58(4)).

TEXT AND NOTE 7--Now, head (2) in relation to the discharge of such functions as the Assembly may determine for these purposes which are functions exercisable by or on behalf of such authorities in relation to such schools: 1998 Act s 127(1)(b) (substituted by the Education and Inspections Act 2006 s 58(2)(d)).

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### **100. Partnership agreements and statements between local education authorities and governing bodies in Wales.**

The National Assembly for Wales<sup>1</sup> may by regulations<sup>2</sup> require any local education authority<sup>3</sup> in Wales to enter into a partnership agreement<sup>4</sup> with the governing body of each school maintained by that authority, or each such school of a prescribed class<sup>5</sup>.

Where a local education authority fails to reach agreement with the governing body of a school<sup>6</sup>, the authority may draw up a statement setting out how it and the governing body are to discharge their respective functions<sup>7</sup> in relation to the school<sup>8</sup>.

Regulations<sup>9</sup> may:

- 188 (1) require the parties to a partnership agreement to review the agreement<sup>10</sup>;  
and
- 189 (2) require a local education authority that has drawn up a statement<sup>11</sup> and the governing body to which that statement relates to review the statement<sup>12</sup>,

at such intervals, or in such circumstances, as may be prescribed<sup>13</sup>.

Following a review of a partnership agreement, the parties may agree:

- 190 (a) not to change the agreement<sup>14</sup>;
- 191 (b) to amend the agreement in such a manner that it remains a partnership agreement<sup>15</sup>; or
- 192 (c) to replace the agreement with a new partnership agreement<sup>16</sup>.

However, where they fail to do so, the provisions allowing an authority to draw up a statement setting out how it and the governing body are to discharge their respective functions in relation to the school apply<sup>17</sup>.

Following a review of a statement<sup>18</sup>, the local education authority and governing body in question may agree to replace the statement with a partnership agreement, but, where they fail to do so, the authority may amend the statement or draw up a new one<sup>19</sup>. Regulations may make provision for the time by which a local education authority or governing body must comply with any requirement imposed<sup>20</sup> upon them<sup>21</sup>.

In the discharge of their functions in relation to a school maintained by a local education authority<sup>22</sup> in Wales, both the authority and the governing body and head teacher<sup>23</sup> of the school must have regard to any partnership agreement or statement<sup>24</sup> which for the time being has effect in relation to the school<sup>25</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made under the Education Act 2002 by the National Assembly for Wales (in relation to Wales): s 212(1). For the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 197.



3 As to local education authorities see PARA 20 ante.

4 For the purposes of the Education Act 2002 s 197, a partnership agreement is an agreement about how a local education authority and the governing body of a school are to discharge their respective functions in relation to the school as regards: (1) such matters as may be prescribed (s 197(2)(a)); and (2) such other matters as the authority and the governing body may agree (s 197(2)(b)). 'Prescribed' means prescribed by regulations (see note 2 supra): s 212(1). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). As to the governing bodies of maintained schools see PARA 203 et seq post.

5 Ibid s 197(1).

6 Ie for the purposes of ibid s 197(1): see the text and notes 1-5 supra.

7 Ie as regards the matters prescribed under ibid s 197(2)(a) (see note 4 head (1) supra).

8 Ibid s 197(3).

9 Ie regulations under ibid s 197. See note 2 supra.

10 Ibid s 197(4)(a).

11 Ie under ibid s 197.

12 Ibid s 197(4)(b).

13 Ibid s 197(4). See notes 2, 4 supra.

14 Ibid s 197(5)(a).

15 Ibid s 197(5)(b).

16 Ibid s 197(5)(c).

17 Ibid s 197(5). The provisions mentioned in the text are those under s 197(3) (see the text and notes 6-8 supra) which apply in the circumstances described as they apply where a local education authority and the governing body fail to reach agreement for the purposes of s 197(1) (see the text and notes 1-5 supra).

18 Ie under ibid s 197(3): see the text and notes 6-8 supra.

19 Ibid s 197(6). The statement in the text carries the proviso that the amended or replacement statement is one that could have been drawn up under s 197(3) (see the text and notes 6-8 supra).

20 Ie imposed by or under ibid s 197(1)-(6) (see the text and notes 1-19 supra).

21 Ibid s 197(7). See note 2 supra.

22 For the meaning of 'school maintained by a local education authority' under the School Standards and Framework Act 1998 see PARA 94 ante.

23 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

24 Ie under ibid s 197 (see the text and notes 1-21 supra).

25 Ibid s 197(8).

## UPDATE

### **100 Partnership agreements and statements between local education authorities and governing bodies in Wales**

TEXT AND NOTES--The Maintained Schools (Partnership Agreements) (Wales) Regulations 2007, SI 2007/3066, have been made pursuant to the power under the 2002 Act s 197.

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**101. Plans to facilitate the transition from primary school to secondary school of pupils in Wales.**

The National Assembly for Wales<sup>1</sup> may require:

- 193 (1) the governing body<sup>2</sup> of each secondary school<sup>3</sup> maintained by a local education authority<sup>4</sup> in Wales<sup>5</sup>, or of each such secondary school belonging to a class specified in the requirement<sup>6</sup>; and
- 194 (2) the governing body of each of its feeder primary schools<sup>7</sup> maintained by such an authority<sup>8</sup>,

jointly to draw up plans to facilitate the transition from primary school to secondary school of pupils<sup>9</sup> at those primary schools who are admitted to the secondary school<sup>10</sup>.

Regulations<sup>11</sup> may:

- 195 (a) provide for the Assembly to determine<sup>12</sup> any disputes as to whether a particular school is a feeder primary school of a particular secondary school<sup>13</sup>; and
- 196 (b) make provision about plans<sup>14</sup>, including provision which specifies the period within which such plans are to be drawn up and provision about the content, review and amendment of such plans<sup>15</sup>.

In carrying out any functions<sup>16</sup> so conferred on them<sup>17</sup>, governing bodies must have regard to any guidance given, from time to time, by the Assembly<sup>18</sup>. In the discharge of their functions under any enactment, the governing body of a school maintained by a local education authority in Wales, and the head teacher<sup>19</sup> of that school, must have regard to any plans drawn up by the governing body<sup>20</sup> which for the time being have effect<sup>21</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq post.

3 For the meaning of 'secondary school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to local education authorities see PARA 20 ante.

5 For the meaning of 'Wales' see PARA 52 note 13 ante.

6 Education Act 2002 s 198(1)(a).

7 In determining whether, for the purposes of *ibid* s 198, a particular school is to be regarded as a feeder primary school, in relation to a particular secondary school, regard is to be had to any guidance given, from time to time, by the Assembly: s 198(2). For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

8 *Ibid* s 198(1)(b).

9 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of *ibid* s 212(2), (3).

10 Ibid s 198(1).

11 'Regulations' means regulations made under the Education Act 2002 by the National Assembly for Wales (in relation to Wales): s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 198.

12 Ie for the purposes of ibid s 198.

13 Ibid s 198(3)(a).

14 Ie under ibid s 198.

15 Ibid s 198(3)(b).

16 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

17 Ie by or under ibid s 198.

18 Ibid s 198(4).

19 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 212(2), (3).

20 Ie under ibid s 198.

21 Ibid s 198(5).

## **UPDATE**

### **101 Plans to facilitate the transition from primary school to secondary school of pupils in Wales**

TEXT AND NOTES--See the Transition from Primary to Secondary School (Wales) Regulations 2006, SI 2006/520.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ii) Categories of Maintained Schools/A. DIVISION OF MAINTAINED SCHOOLS INTO CATEGORIES/102. Categorisation of maintained schools.

## **(ii) Categories of Maintained Schools**

### **A. DIVISION OF MAINTAINED SCHOOLS INTO CATEGORIES**

#### **102. Categorisation of maintained schools.**

Schools<sup>1</sup> maintained by local education authorities<sup>2</sup> on or after 1 September 1999<sup>3</sup> are divided into the following categories<sup>4</sup>:

- 197 (1) community schools<sup>5</sup>;
- 198 (2) foundation schools<sup>6</sup>;
- 199 (3) voluntary schools, comprising: (a) voluntary aided schools<sup>7</sup>; and (b) voluntary controlled schools<sup>8</sup>;
- 200 (4) community special schools<sup>9</sup>; and
- 201 (5) foundation special schools<sup>10</sup>.

Provision is made<sup>11</sup> for, and in connection with, the allocation to these categories of schools which immediately before 1 September 1999<sup>12</sup> were: (i) county schools<sup>13</sup>, voluntary schools (which comprised controlled schools, aided schools and special agreement schools)<sup>14</sup> or maintained special schools<sup>15</sup>; or (ii) grant-maintained schools<sup>16</sup> or grant-maintained special schools<sup>17</sup>.

As from 1 September 1999<sup>18</sup>, a local education authority must: (A) maintain (as a school falling within heads (1) to (5) above) any school within head (i) above which was maintained by the authority immediately before that date<sup>19</sup>; and (B) maintain any school within head (ii) above which immediately before that date was situated within the authority's area<sup>20</sup>.

1 For the purposes of the School Standards and Framework Act 1998 s 20 (as amended), 'school' means a primary, secondary or special school including a nursery school which is a special school, but excluding both a nursery school which is not a special school and a pupil referral unit: s 20(6). For the meaning of 'school' generally see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of s 142(8). For the meaning of 'secondary school' see PARA 81 ante; definition applied by virtue of s 142(8). As to special schools see PARA 1027 et seq post. As to nursery schools see PARA 85 et seq ante. For the meaning of 'pupil referral unit' see PARA 457 post; definition applied by virtue of s 142(8).

2 For the meaning of 'school maintained by a local education authority' generally see PARA 94 ante. As to local education authorities see PARA 20 ante.

3 On or after the appointed day: see the School Standards and Framework Act 1998 s 20(1). For the purposes of the School Standards and Framework Act 1998, 'the appointed day' (except in s 144, Sch 32 Pt I (transitional provisions)) means such day as may be appointed for the purposes of s 20 by an order made by the Secretary of State: s 20(7). The day appointed is 1 September 1999: see the School Standards and Framework Act 1998 (Appointed Day) Order 1998, SI 1998/2083, art 2. An order made under the School Standards and Framework Act 1998 s 20(7) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 138(4) (as amended); and PARA 82 note 15 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 A school maintained by a local education authority is a school falling within one of the categories set out in ibid s 20(1) (see heads (1) to (5) in the text) if: (1) it became a school of that category on 1 September 1999 (ie the appointed day: see note 3 supra) in accordance with s 20 (as amended), Sch 2 (see PARAS 94 ante, 103 et

seq post) and has not changed its category under s 35, Sch 8 (see PARA 112 et seq post) (s 20(2)(a)); or (2) it was established as a school of that category under any enactment and has not changed its category under Sch 8 (see PARA 112 et seq post) (s 20(2)(b) (amended by the Education Act 2002 s 215(1), Sch 21 para 95)); or (3) it has become a school of that category in accordance with the School Standards and Framework Act 1998 Sch 8 (see PARA 112 et seq post) (s 20(2)(c)).

5 Ibid s 20(1)(a). As to community schools see PARA 103 post. Unless the context otherwise requires, any reference in the Education Act 2002 or in any Act amended by the Education Act 2002 to a community school is to such a school within the meaning of the School Standards and Framework Act 1998: Education Act 2002 s 212(5).

6 School Standards and Framework Act 1998 s 20(1)(b). As to foundation schools see PARA 104 post. Unless the context otherwise requires, any reference in the Education Act 2002 or in any Act amended by the Education Act 2002 to a foundation school is to such a school within the meaning of the School Standards and Framework Act 1998: Education Act 2002 s 212(5).

7 School Standards and Framework Act 1998 s 20(1)(c)(i). Any reference in the School Standards and Framework Act 1998 to the categories set out in s 20(1) (see heads (1) to (5) in the text) or to any such category is to be read, in its application to voluntary schools, as (or as including) a reference to the sub-categories set out in s 20(1)(c)(i) (ie voluntary aided schools: see head (3)(a) in the text) and s 20(1)(c)(ii) (ie voluntary controlled schools: see head (3)(b) in the text) or to any such sub-category: s 20(8). As to voluntary schools see PARA 104 post.

Unless the context otherwise requires, any reference in the Education Act 2002 or in any Act amended by the Education Act 2002 to a voluntary school is to such a school within the meaning of the School Standards and Framework Act 1998: Education Act 2002 s 212(5).

8 School Standards and Framework Act 1998 s 20(1)(c)(ii). See note 7 supra.

9 Ibid s 20(1)(d). Unless the context otherwise requires, any reference in the Education Act 2002 or in any Act amended by the Education Act 2002 to a community special school is to such a school within the meaning of the School Standards and Framework Act 1998: Education Act 2002 s 212(5).

10 School Standards and Framework Act 1998 s 20(1)(e). Unless the context otherwise requires, any reference in the Education Act 2002 or in any Act amended by the Education Act 2002 to a foundation special school is to such a school within the meaning of the School Standards and Framework Act 1998: Education Act 2002 s 212(5).

11 Ie by the School Standards and Framework Act 1998 Sch 2: see PARA 105 et seq post.

Regulations under Sch 2 para 10(1) may provide that any provision of the Education Acts is to apply to any such school with such modifications as are specified in the regulations: School Standards and Framework Act 1998 Sch 2 para 10(2). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8). Any regulations made under Sch 2 para 10, so far as relating to transfers under them, have effect subject to the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes) (see PARA 1388 et seq post): see s 198(1) (substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 2(2)). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post.

As to the regulations that have been made under the School Standards and Framework Act 1998 Sch 2 para 10 see the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998, SI 1998/1969; the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999, SI 1999/362 (amended by SI 1999/2163; SI 1999/2242; SI 1999/3297; SI 2000/1867; SI 2001/2263; SI 2003/2694); and the Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999, SI 1999/704 (amended by SI 1999/1671; SI 1999/2213).

As to consequential and transitional provision in relation to employment and staffing see the School Standards and Framework Act 1998 (Modification, Transitional and Consequential Provisions) Regulations 1999, SI 1999/638. As to staffing generally see PARA 354 et seq post.

As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante.

12 Ie the appointed day: see note 3 supra.

13 Before 1 September 1999, a primary or secondary school which was maintained by a local education authority was a county school if: (1) it was established by a local education authority (Education Act 1996 s 31(1)(a) (repealed)); or (2) it was not so established but (a) it had been maintained as a county school since before 1 November 1996; or (b) it was maintained as a county school in pursuance of proposals under s 35(1)

(b) (repealed) (proposals to maintain as a county school a school not for the time being a county school); or (c) it was maintained as a county school in pursuance of an order under s 50 (repealed) (division of a county school) (s 31(1)(b) (repealed)). Nothing in s 31 (repealed) applied to a nursery school, a special school or a pupil referral unit within the meaning of s 19 (as amended) (exceptional provision of education in pupil referral units or elsewhere: see PARA 457 post): s 31(3) (repealed). County schools are now community schools: see PARA 105 post.

14 Before 1 September 1999, there were three categories of voluntary school: (1) controlled schools; (2) aided schools; and (3) special agreement schools: *ibid* s 32(1) (repealed). The category of a voluntary school depended on whether or not an order had been made in relation to it: see s 32(2)-(4) (repealed). A primary or secondary school which was maintained by a local education authority was a voluntary school if it was not within s 31(1)(a) (repealed) (see note 13 *supra*) or s 31(1)(b) (repealed) (see note 13 *supra*): s 31(2) (repealed). Controlled schools are now voluntary controlled schools; and aided schools and special agreement schools are now voluntary aided schools: see PARA 105 post.

15 School Standards and Framework Act 1998 s 20(3)(a). Before 1 September 1999, a special school was a maintained special school if it was maintained by a local education authority: see the Education Act 1996 s 33(1) (repealed), s 337(3) (as originally enacted). Maintained special schools are now community special schools: see PARA 105 post.

16 Before 1 September 1999, a school conducted by a governing body incorporated under *ibid* Pt III (ss 183-311) (repealed), the Education Act 1993 Pt II (ss 22-155) (repealed) or the Education Reform Act 1988 Pt I Ch IV (ss 52-104) (repealed) for the purpose of conducting the school was known as a grant-maintained school: see the Education Act 1996 s 183(1) (repealed). Under the Education Act 1996, a grant-maintained school had to be either a secondary school or a primary school: s 183(3) (repealed). As to the allocation of grant-maintained schools to the categories of schools introduced by the School Standards and Framework Act 1998 see PARA 106 et seq post.

17 *Ibid* s 20(3)(b). Before 1 September 1999, a special school was a grant-maintained special school if it was conducted by a governing body incorporated in pursuance of proposals for the purpose made by the funding authority under the Education Act 1996 s 339 (repealed) (establishment of maintained or grant-maintained special schools) or under the Education Act 1993 s 183 (repealed) (establishment of maintained or grant-maintained special schools), or made under the Education Act 1996 s 345 (repealed) (maintained special school becoming grant-maintained special school) or the Education Act 1993 s 186 (repealed) (maintained special school becoming grant-maintained special school): see the Education Act 1996 s 337(4) (as originally enacted). As to the allocation of grant-maintained special schools to the categories of schools introduced by the School Standards and Framework Act 1998 see PARA 106 et seq post.

18 *Ie* the appointed day: see note 3 *supra*.

19 School Standards and Framework Act 1998 s 20(4)(a).

20 *Ibid* s 20(4)(b). However, where a grant-maintained school within s 20(3)(b) (see head (ii) in the text) was, immediately before becoming such a school, maintained by a local education authority ('the former maintaining authority') other than the one within whose area it was then situated, and remained outside the area of the former maintaining authority immediately before 1 September 1999 (*ie* the appointed day: see note 3 *supra*), nevertheless, if an order made by the Secretary of State before 1 September 1999 so provides, as from that day the school is to be maintained (as a school falling within one of the categories set out in s 20(1) (see heads (1) to (5) in the text)) by the former maintaining authority rather than the authority in whose area it was situated on that day: s 20(5). Such an order was not to be made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 *ante*. The Secretary of State could only make an order under s 20(5) where he considered it appropriate to do so on an application made for the purpose by the former maintaining authority (within the meaning of s 20(5)) or the local education authority in whose area the school in question was situated immediately before 1 September 1999, and received by him not later than 30 November 1998: see s 144(7), Sch 32 para 8.

## UPDATE

### 102 Categorisation of maintained schools

NOTE 4--In the case of a school in England, the references to the 1998 Act Sch 8 also refer to the Education and Inspections Act 2006 ss 18-24 (see PARA 165A): 1998 Act s 20(2), (2A) (s 20(2) amended, s 20(2A) added by the 2006 Act Sch 3 para 13).

NOTE 11--SI 1999/704 further amended, in relation to England only: SI 2009/1556.



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### **103. Community schools.**

Community schools, formerly known as county schools<sup>1</sup>, are wholly maintained by their local education authorities<sup>2</sup>. In the case of such a school, the local education authority owns the school premises<sup>3</sup>, employs the staff<sup>4</sup>, and is responsible for admissions arrangements<sup>5</sup>.

- 1 See PARA 105 post. As to county schools see PARA 102 note 13 ante.
- 2 As to local education authorities see PARA 20 ante.
- 3 As to school premises see PARA 1352 et seq post.
- 4 As to staffing of schools see PARA 354 et seq post.
- 5 As to admission generally see PARA 392 et seq post.



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#### **104. Foundation and voluntary schools.**

In the case of a foundation school, the school premises<sup>1</sup> are owned either by the governing body<sup>2</sup> or by a charitable foundation<sup>3</sup>, and the governing body employs the staff<sup>4</sup> and is responsible for admissions<sup>5</sup>. There are three kinds of foundation school:

- 202 (1) those having a foundation<sup>6</sup> established otherwise than under the School Standards and Framework Act 1998<sup>7</sup>;
- 203 (2) those belonging to a group of schools for which a foundation body acts under the provisions relating to foundation schools and types of foundations<sup>8</sup>; and
- 204 (3) those not falling within either of heads (1) and (2) above<sup>9</sup>.

A voluntary school is maintained by the local education authority<sup>10</sup>, although the school premises are generally owned by a charitable foundation. In the case of a voluntary aided school, the governing body contributes towards the capital costs of running the school<sup>11</sup>, employs the staff, and is responsible for admissions. In the case of a voluntary controlled school, the local education authority employs the staff and is responsible for admissions. There are three kinds of voluntary controlled or voluntary aided school:

- 205 (a) those having a foundation established otherwise than under the School Standards and Framework Act 1998<sup>12</sup>;
- 206 (b) those belonging to a group of schools for which a foundation body acts under the provisions relating to voluntary schools and types of foundations<sup>13</sup>; and
- 207 (c) those not falling within either of heads (a) and (b) above but having been, immediately before 1 September 1999<sup>14</sup>, either a voluntary school<sup>15</sup> or a grant-maintained school<sup>16</sup> that was a voluntary school immediately before becoming grant-maintained<sup>17</sup>.

The Secretary of State<sup>18</sup> may by regulations<sup>19</sup> make provision for and in connection with the establishment, membership, functions and winding up of a foundation body<sup>20</sup>, and the steps to be taken in connection with schools joining or leaving the group<sup>21</sup>. Such regulations may, in particular, make provision:

- 208 (i) with respect to the transfer of property, rights and liabilities<sup>22</sup> to and from a foundation body when schools join or leave the group but do not change category<sup>23</sup>;
- 209 (ii) with respect to the revision or replacement of the instruments of government of schools joining or leaving the group in such circumstances and the reconstitution of their governing bodies<sup>24</sup>;
- 210 (iii) authorising a foundation body to appoint foundation governors to every school in the group<sup>25</sup>;
- 211 (iv) prescribing a model instrument of government for adoption by a foundation body subject to variations approved by the Secretary of State<sup>26</sup>;
- 212 (v) for conferring functions with respect to the resolution of disputes between schools in the group, or between one or more such schools and a foundation body, on such person or body as may be specified in the regulations<sup>27</sup>;
- 213 (vi) in connection with a school leaving the group:

7

10. (A) for requiring the publication of proposals<sup>28</sup> as to the procedure for changing the category of a school<sup>29</sup>;
11. (B) for enabling the Secretary of State to require the publication<sup>30</sup> of proposals for the school to become a school of a category specified by him<sup>31</sup>;
12. (C) for preventing a voluntary school from becoming one falling within head (a) above unless any specified conditions<sup>32</sup> are satisfied in relation to the school<sup>33</sup>;

8

- 214 (vii) for the dissolution of a foundation body by order of the Secretary of State<sup>34</sup>;
- 215 (viii) for enabling the Secretary of State, in the case of any land held by a foundation body immediately before its dissolution which by virtue of the School Standards and Framework Act 1998 could not be disposed of without his consent, to determine how that land is to be dealt with on its dissolution<sup>35</sup>;
- 216 (ix) for conferring functions on school organisation committees<sup>36</sup> and adjudicators<sup>37</sup>, including any functions which might otherwise be conferred on the Secretary of State<sup>38</sup>.

The Secretary of State may, after consulting a foundation body, make an order modifying<sup>39</sup> the instrument of government adopted by that body<sup>40</sup>.

1 As to school premises see PARA 1352 et seq post.

2 As to the governing bodies of maintained schools see PARA 203 et seq post.

3 As to the charitable status of maintained schools see PARA 97 ante. As to charities generally see CHARITIES.

4 As to staffing of schools see PARA 354 et seq post.

5 As to admission generally see PARA 392 et seq post.

6 'Foundation', in relation to a foundation or voluntary school, means: (1) any body of persons (whether incorporated or not but excluding the governing body) which holds land on trust for the purposes of the school; or (2) a foundation body: School Standards and Framework Act 1998 s 21(3)(a). A school 'has' a foundation if such a body of persons exists for holding land on trust for the purposes of the school, or if the school belongs to a group of schools for which a foundation body acts under s 21: s 21(3)(b). References to land or other property held on trust, or by trustees, for the purposes of a school include references to land or other property which: (a) is held on trust for purposes which (whether the trust deed expressly so provides or not) include the purposes of the school; and (b) is used for the purposes of the school: s 21(3)(c). As to the meaning of 'land' see PARA 1352 note 9 post; definition applied by virtue of s 142(8). 'Trust deed' includes any instrument (other than an instrument of government) regulating the constitution of the school's governing body or the maintenance, management or conduct of the school: Education Act 1996 s 579(1) (definition substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 183(a)(iv)); definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8).

'Foundation body' means a body corporate established under s 21 to perform, in relation to three or more schools each of which is either a foundation or a voluntary school, the following functions, namely: (i) to hold property of those schools for the purposes of the schools; and (ii) to appoint foundation governors for those schools: s 21(4)(a). 'The group', in relation to a foundation body, means the group of three or more schools for which the body performs those functions: s 21(4)(b). In relation to a foundation school, a foundation special school or a voluntary school, 'foundation governor' means a person appointed as a foundation governor in accordance with regulations under the Education Act 2002 s 19 (see PARA 203 post): School Standards and Framework Act 1998 s 142(1) (definition added by the Education Act 2002 s 215(1), Sch 21 para 112). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7 Ibid s 21(1)(a).

8 Ibid s 21(1)(b). The provisions referred to in the text are those of s 21.

9 Ibid s 21(1)(c).

- 10 As to local education authorities see PARA 20 ante.
- 11 As to the funding of maintained schools see PARA 302 et seq post.
- 12 School Standards and Framework Act 1998 s 21(2)(a).
- 13 Ibid s 21(2)(b). The provisions referred to in the text are those of s 21.
- 14 Ie the appointed day: see PARA 102 note 3 ante.
- 15 As to voluntary schools before 1 September 1999 see PARAS 102 note 14 ante, 105 post.
- 16 As to grant-maintained schools see PARAS 102 note 16 ante, 106 et seq post.
- 17 School Standards and Framework Act 1998 s 21(2)(c).
- 18 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 19 As to the regulations made under the School Standards and Framework Act 1998 s 21(5), (6) see the Education (Foundation Body) (England) Regulations 2000, SI 2000/2872 (amended by SI 2004/3264); and the Education (Foundation Body) (Wales) Regulations 2001, SI 2001/2709. Any regulations made under the School Standards and Framework Act 1998 s 21(5), so far as relating to transfers under them, have effect subject to the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes) (see PARA 1388 et seq post): s 198(1) (substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 2(2)). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante.
- 20 Ibid s 21(5)(a).
- 21 Ibid s 21(5)(b).
- 22 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).
- 23 Ibid s 21(6)(a). The reference in the text to changing category is a reference to changing category in accordance with s 35, Sch 8: see PARA 112 et seq post.
- 24 Ibid s 21(6)(b). Regulations made in pursuance of s 21(6)(b) may, in connection with the making or variation of instruments of government in preparation for schools joining or leaving the group, modify s 37, Sch 12 para 1 (repealed) in its operation in relation to such instruments of government: s 21(7).
- 25 Ibid s 21(6)(c).
- 26 Ibid s 21(6)(d).
- 27 Ibid s 21(6)(e).
- 28 Ie under ibid Sch 8 para 2: see PARA 114 post.
- 29 Ibid s 21(6)(f)(i).
- 30 Ie under ibid Sch 8 para 2: see PARA 114 post.
- 31 Ibid s 21(6)(f)(ii).
- 32 Ie specified in pursuance of ibid Sch 8 para 4(2)(b): see PARA 115 post.
- 33 Ibid s 21(6)(f)(iii).
- 34 Ibid s 21(6)(g).
- 35 Ibid s 21(6)(h).
- 36 As to school organisation committees see PARA 118 et seq post.
- 37 For the meaning of 'adjudicator' see PARA 124 post.
- 38 School Standards and Framework Act 1998 s 21(6)(i).

39 As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 142(8).

40 *Ibid* s 21(8). Such an order is not to be made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante.

Regulations may make provision for applying to foundation special schools, with or without modifications, any of the provisions of s 21(3)-(8) or any provision of Sch 21 (transfers of land on appointed day: see PARA 1399 et seq post): s 21(9). As to special schools see PARA 1027 et seq post. Any regulations made under s 21(9), so far as relating to transfers under them, have effect subject to the Education Reform Act 1988 Sch 10 (as amended; modified for certain purposes) (see PARA 1388 et seq post): s 198(1) (as substituted: see note 19 supra). At the date at which this volume states the law, no regulations had been made under the School Standards and Framework Act 1998 s 21(9).

## UPDATE

### 104 Foundation and voluntary schools

NOTE 6--The 1998 Act s 21(3) applies to foundation special schools, as it applies in relation to foundation and voluntary schools, with specified modifications: School Organisation (Foundation Special Schools) (Application of Provisions Relating to Foundations) (England) Regulations 2007, SI 2007/1329.

Provision is made concerning requirements as to foundation or foundation special schools having a foundation where one or more of the following conditions is met: (1) the school was established as a foundation or foundation special school in pursuance of proposals falling to be implemented under the Education and Inspections Act 2006 Sch 2; (2) the school acquired its foundation, or became a school whose instrument of government provides for the majority of governors to be foundation governors, in pursuance of proposals falling to be implemented under regulations under s 24; (3) the school changed category from voluntary aided school to foundation school in pursuance of proposals falling to be implemented under regulations under s 24 and has an instrument of government providing for the majority of governors to be foundation governors: 1998 Act s 23A(1)-(4) (ss 23A, 23B added by the 2006 Act s 33(1)). Where one or more of these conditions is met (a) the institution acting as the foundation must be incorporated and must be a charity having a purpose of the advancement of the education of pupils at the school or schools in respect of which it acts as the foundation (1998 Act s 23A(5)); (b) the foundation must, in carrying out its functions in relation to the school, promote community cohesion (s 23A(6)); (c) where any members or charity trustees of the foundation are local authorities or persons appointed by local authorities, those members or charity trustees may have no more than 20 per cent of the total voting rights exercisable by members or charity trustees (see s 23A(7), (8)); (d) regulations may disqualify persons from acting as charity trustee in relation to a foundation or foundation special school (s 23A(9)); and (e) regulations may make provision enabling the Secretary of State in prescribed cases by direction to remove any charity trustee of a foundation or foundation special school and to appoint a person to be such a charity trustee (see s 23B). In certain circumstances, the Secretary of State may order that land held by the body corporate on trust for a foundation or foundation special school to which s 23A applies is to be transferred to the governing body of the school: see Sch 22 paras 8A, 9(1) (Sch 22 para 8A added, Sch 22 para 9(1) amended, by the 2006 Act Sch 4 paras 13, 14). See also the School Organisation (Requirements as to Foundations) (England) Regulations 2007, SI 2007/1287 (amended by SI 2009/1924); and the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, SI 2007/3475.

NOTE 19--SI 2000/2872 further amended: SI 2006/1722, SI 2006/2198. SI 2001/2709 amended: SI 2009/2544.

NOTE 23--The reference to changing category is also a reference to changing category under the Education and Inspections Act 2006 s 19: 1998 Act s 22(6)(a) (amended by 2006 Act Sch 3 para 14).

NOTES 28, 30--Or under the 2006 Act s 19: 1998 Act s 22(6)(f)(i), (ii) (amended by 2006 Act Sch 3 para 14).

TEXT AND NOTE 32--The reference is now to a voluntary school in Wales: 1998 Act s 22(6)(f)(iii) (amended by 2006 Act Sch 3 para 14).

TEXT AND NOTE 35--Head (viii) refers also to such land to the disposal of which the 1998 Act Sch 22 para A9 would apply: s 22(6)(h) (amended by 2006 Act Sch 3 para 14).

TEXT AND NOTE 36--Words 'school organisation committees' omitted: s 22(6)(i) (amended by 2006 Act Sch 3 para 14, Sch 18 Pt 3).

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## ***B. ALLOCATION OF MAINTAINED SCHOOLS TO CATEGORIES***

### **(A) SCHOOLS MAINTAINED BY LOCAL EDUCATION AUTHORITIES**

#### **105. Allocation of schools maintained by local education authorities.**

Provision was made for the allocation of schools maintained by local education authorities<sup>1</sup> to the categories introduced on 1 September 1999<sup>2</sup> by the School Standards and Framework Act 1998<sup>3</sup>.

Under these provisions, county schools<sup>4</sup> became community schools<sup>5</sup>, controlled schools<sup>6</sup> became voluntary controlled schools<sup>7</sup>, aided schools<sup>8</sup> and special agreement schools<sup>9</sup> became voluntary aided schools<sup>10</sup>, and maintained special schools<sup>11</sup> became community special schools<sup>12</sup>.

1 For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to local education authorities see PARA 20 ante.

2 I.e. the appointed day: see PARA 102 note 3 ante.

3 See the School Standards and Framework Act 1998 s 20, Sch 2 para 1. As to the categories of maintained schools see PARA 102 et seq ante.

4 As to county schools see PARA 102 note 13 ante.

5 As to community schools see PARA 102 et seq ante.

6 As to controlled schools see PARA 102 note 14 ante.

7 As to voluntary schools see PARA 102 et seq ante.

8 As to aided schools see PARA 102 note 14 ante.

9 As to special agreement schools see PARA 102 note 14 ante.

10 See note 7 supra.

11 As to maintained special schools see PARA 102 note 15 ante.

12 See the School Standards and Framework Act 1998 Sch 2 para 1, Table. As to community special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post.

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## (B) FORMER GRANT-MAINTAINED SCHOOLS

### **106. Allocation of former grant-maintained and grant-maintained special schools.**

Provision was made for a school which immediately before 1 September 1999<sup>1</sup> was a grant-maintained school<sup>2</sup> or a grant-maintained special school<sup>3</sup> to become a school of the category allocated to it in accordance with the School Standards and Framework Act 1998<sup>4</sup>.

The indicative allocation provided that: (1) a grant-maintained school formerly a county<sup>5</sup> or controlled school<sup>6</sup> and a grant-maintained school established by the Funding Agency for Schools<sup>7</sup> should become a foundation school<sup>8</sup>; (2) a grant-maintained school formerly an aided<sup>9</sup> or special agreement school<sup>10</sup> and a grant-maintained school established by promoters<sup>11</sup> should become a voluntary aided school<sup>12</sup>; and (3) a grant-maintained special school should become a foundation special school<sup>13</sup>.

However, the governing body could opt for the school to be allocated by the Secretary of State<sup>14</sup> to a different category<sup>15</sup>.

1    le the appointed day: see PARA 102 note 3 ante.

2    As to former grant-maintained schools see PARA 102 note 16 ante.

3    As to former grant-maintained special schools see PARA 102 note 17 ante.

4    School Standards and Framework Act 1998 s 20, Sch 2 para 2. Schools were to be allocated in accordance with Sch 2 paras 3-11: see Sch 2 para 2.

Where the category to which a grant-maintained school or a grant-maintained special school was to be allocated had not been finally determined in accordance with Sch 2 paras 3-8 by 1 September 1999, the school had to be taken to be allocated on that day to the category provided for by its indicative allocation (see the text and notes 5-13 infra): Sch 2 para 9(1). This did not prevent such a school from being subsequently allocated to a different category in accordance with Sch 2 para 7 (see PARA 110 post): Sch 2 para 9(2). Where such a school was subsequently so allocated, s 20(2)(a) (see PARA 102 note 4 ante) applies to it as if it had been allocated to the category in question on 1 September 1999: Sch 2 para 9(3).

5    As to county schools see PARA 102 note 13 ante.

6    As to controlled schools see PARA 102 note 14 ante.

7    The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

8    School Standards and Framework Act 1998 Sch 2 para 3, Table. As to foundation schools see PARA 102 et seq ante.

9    As to aided schools see PARA 102 note 14 ante.

10   As to special agreement schools see PARA 102 note 14 ante.

11   le within the meaning of the Education Act 1996 Pt III (ss 183-311) (repealed).

12   School Standards and Framework Act 1998 Sch 2 para 3, Table. As to voluntary schools see PARA 102 et seq ante.

13 Ibid Sch 2 para 3, Table. As to foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

14 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

15 See PARA 107 et seq post.



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### **107. Preliminary decision by governing body as to new category.**

The governing body of a grant-maintained school<sup>1</sup> or a grant-maintained special school<sup>2</sup> had in the first instance to take a decision (its 'preliminary decision') on the question whether to accept the school's allocation to a particular category of school<sup>3</sup> in accordance with its indicative allocation<sup>4</sup>, or to opt for it to be allocated to a different category<sup>5</sup>. Provision could be made by regulations<sup>6</sup> as to the procedure to be followed in connection with the taking by governing bodies of their preliminary decisions<sup>7</sup>. Such regulations could, in particular, make provision:

- 217 (1) as to the consultation to be carried out by governing bodies before taking their preliminary decisions<sup>8</sup>;
- 218 (2) as to the time by which governing bodies were to take such decisions<sup>9</sup>;
- 219 (3) as to the notification of such decisions to prescribed<sup>10</sup> persons<sup>11</sup>;
- 220 (4) as to the provision of prescribed information to prescribed persons<sup>12</sup>;
- 221 (5) authorising governing bodies to charge a fee (not exceeding the cost of supply) for prescribed documents supplied by them in pursuance of regulations made by virtue of head (4) above<sup>13</sup>;
- 222 (6) requiring the holding of ballots of registered parents<sup>14</sup> in prescribed cases<sup>15</sup>;
- 223 (7) enabling the Secretary of State, in any prescribed circumstances, to declare a previous ballot void and require the holding of a fresh ballot<sup>16</sup>;
- 224 (8) as to the conduct of ballots held under the regulations<sup>17</sup>;
- 225 (9) specifying criteria for determining<sup>18</sup> the result of any such ballot<sup>19</sup>.

1 As to former grant-maintained schools see PARA 102 note 16 ante.

2 As to former grant-maintained special schools see PARA 102 note 17 ante.

3 As to the categories of maintained schools see PARA 102 et seq ante.

4 School Standards and Framework Act 1998 s 20, Sch 2 para 4(1)(a). As to the indicative allocation of a school see PARA 106 ante.

5 Ibid Sch 2 para 4(1)(b).

6 As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 2 para 4 see the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998, SI 1998/1969.

7 School Standards and Framework Act 1998 Sch 2 para 4(2).

8 Ibid Sch 2 para 4(3)(a).

9 Ibid Sch 2 para 4(3)(b).

10 I.e. prescribed by regulations: see ibid s 142(1). As to the regulations made see note 6 supra. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

11 Ibid Sch 2 para 4(3)(c).

12 Ibid Sch 2 para 4(3)(d).

13 Ibid Sch 2 para 4(3)(e).

14 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 142(8). In its application for the purposes of Sch 2 para 4, this definition must be taken as referring only to persons who are individuals: see s 142(10). For the meaning of 'registered' see PARA 512 post; definition applied by virtue of s 142(8).

15 Ibid Sch 2 para 4(3)(f).

16 Ibid Sch 2 para 4(3)(g).

17 Ibid Sch 2 para 4(3)(h).

18 Ie for the purposes of the regulations and of ibid Sch 2: see Sch 2 para 4(3)(i).

19 Ibid Sch 2 para 4(3)(i).

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### **108. Final decision by governing body as to new category.**

Where the governing body of a grant-maintained school<sup>1</sup> or a grant-maintained special school<sup>2</sup> took its preliminary decision<sup>3</sup>, and the result of a ballot<sup>4</sup> did not accord with that decision<sup>5</sup>, the governing body had to reconsider the question as to whether to accept the allocation of the school to a particular category or to opt for it to be allocated to a different category<sup>6</sup>, having regard to the result of the ballot, and then to take a further decision on that question<sup>7</sup>.

Where the governing body of grant-maintained school or a grant-maintained special school took its preliminary decision, and either a ballot was held whose result (if any) did not disagree with that decision, or no such ballot was required to be held, the governing body had to take a further decision confirming its preliminary decision<sup>8</sup>.

Provision could be made by regulations<sup>9</sup> as to the procedure to be followed in connection with the taking by governing bodies of their final decisions<sup>10</sup>, including, in particular, provision as to the time by which governing bodies were to take such decisions<sup>11</sup>.

1 As to former grant-maintained schools see PARA 102 note 16 ante.

2 As to former grant-maintained special schools see PARA 102 note 17 ante.

3 School Standards and Framework Act 1998 s 20, Sch 2 para 5(1)(a). For the meaning of 'preliminary decision' see PARA 107 ante.

4 Ie held by virtue of ibid Sch 2 para 4: see PARA 107 ante.

5 Ibid Sch 2 para 5(1)(b).

6 Ie the question set out in ibid Sch 2 para 4: see PARA 107 ante. As to the categories of maintained schools see PARA 102 et seq ante.

7 Ibid Sch 2 para 5(1).

8 Ibid Sch 2 para 5(2).

9 As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 2 para 5 see the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998, SI 1998/1969.

10 For the purposes of the School Standards and Framework Act 1998 Sch 2, any reference to a governing body's 'final decision' is a reference to any such further decision as is required by Sch 2 para 5(1) (see the text and notes 1-7 supra) or Sch 2 para 5(2) (see the text and note 8 supra): Sch 2 para 5(4).

11 Ibid Sch 2 para 5(3).

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### **109. Notification of final decision.**

Once the governing body of a grant-maintained school<sup>1</sup> or a grant-maintained special school<sup>2</sup> had taken its final decision<sup>3</sup>, it had to give written notification of that decision to the Secretary of State<sup>4</sup>. Provision could be made by regulations<sup>5</sup>: (1) requiring governing bodies, when giving such notifications, to certify specified<sup>6</sup> matters<sup>7</sup> and to provide specified information to specified persons<sup>8</sup>; and (2) as to the time by which such notifications were to be given or such information was to be provided<sup>9</sup>.

1 As to former grant-maintained schools see PARA 102 note 16 ante.

2 As to former grant-maintained special schools see PARA 102 note 17 ante.

3 As to the meaning of 'final decision' see PARA 108 note 10 ante.

4 School Standards and Framework Act 1998 s 20, Sch 2 para 6(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 As to the regulations that have been made under *ibid* Sch 2 para 6 see the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998, SI 1998/1969. As to the making of regulations generally see PARA 43 note 3 ante.

6 *Ie* specified in the regulations: see note 5 *supra*.

7 School Standards and Framework Act 1998 Sch 2 para 6(2)(a)(i).

8 *Ibid* Sch 2 para 6(2)(a)(ii).

9 *Ibid* Sch 2 para 6(2)(b).

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### **110. Final determination of new category.**

If the final decision<sup>1</sup> of the governing body of a grant-maintained school<sup>2</sup> or a grant-maintained special school<sup>3</sup> accorded with the school's indicative allocation<sup>4</sup>, and either a ballot was held<sup>5</sup> whose result (if any) did not disagree with that allocation, or no such ballot was required to be held<sup>6</sup>, the school had to be allocated to the category provided for by its indicative allocation<sup>7</sup>.

If the final decision of the governing body, or the result of a ballot<sup>8</sup>, did not accord with the school's indicative allocation, the school had to be allocated to such category (whether or not that provided for by its indicative allocation) as the Secretary of State<sup>9</sup> determined<sup>10</sup>.

The Secretary of State was required to notify the governing body of each grant-maintained school or grant-maintained special school of the category to which it was to be allocated in accordance with these provisions<sup>11</sup>.

1 As to the meaning of 'final decision' see PARA 108 note 10 ante.

2 As to former grant-maintained schools see PARA 102 note 16 ante.

3 As to former grant-maintained special schools see PARA 102 ante.

4 School Standards and Framework Act 1998 s 20, Sch 2 para 7(1)(a). As to the indicative allocation of a school see PARA 106 ante.

5 I.e. by virtue of *ibid* Sch 2 para 4: see PARA 107 ante.

6 *Ibid* Sch 2 para 7(1)(b).

7 *Ibid* Sch 2 para 7(1).

8 I.e. a ballot held by virtue of *ibid* Sch 2 para 4: see PARA 107 ante.

9 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

10 School Standards and Framework Act 1998 Sch 2 para 7(2). The Secretary of State had to make his determination in conformity with regulations under Sch 2 para 8 (see Sch 2 para 7(2)), and such regulations could make provision for prohibiting a school of any description specified in the regulations from being allocated under Sch 2 para 7 to a category so specified, or from being so allocated unless conditions specified in the regulations were satisfied (Sch 2 para 8). As to the regulations that have been made under Sch 2 para 8 see the Education (Allocation of Grant-maintained and Grant-maintained Special Schools to New Categories) Regulations 1998, SI 1998/1969. As to the making of regulations generally see PARA 43 note 3 ante.

11 School Standards and Framework Act 1998 Sch 2 para 7(3).

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## (C) EFFECT OF ALLOCATION

### **111. Effect of allocation.**

The allocation of a school to a particular category<sup>1</sup> was not to be taken as authorising or requiring any change as from 1 September 1999<sup>2</sup> in the character of the school conducted by its governing body (including, in particular, any religious character of the school)<sup>3</sup>.

1     I.e. under the School Standards and Framework Act 1998 s 20, Sch 2: see PARAS 105-110 ante. As to the categories of maintained schools see PARA 102 et seq ante.

2     I.e. the appointed day: see PARA 102 note 3 ante.

3     School Standards and Framework Act 1998 Sch 2 para 11. As to schools having a religious character see PARAS 953-954 post.

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### ***C. CHANGING THE CATEGORY OF A MAINTAINED SCHOOL***

#### **112. School changing from one category to another.**

Under the School Standards and Framework Act 1998<sup>1</sup>, provision is made for and in connection with:

- 226 (1) enabling a maintained school<sup>2</sup> within one of the established categories of schools<sup>3</sup> to become a school within another of those categories<sup>4</sup>; and
- 227 (2) in certain circumstances, requiring proposals to be published for a voluntary aided school<sup>5</sup> to become a school within another of those categories<sup>6</sup>.

A maintained school may not so change its category otherwise than in accordance with these provisions<sup>7</sup>.

1    le the School Standards and Framework Act 1998 s 35, Sch 8: see PARAS 113-116 post.

2    For the meaning of 'maintained school' see PARA 94 ante.

3    le the categories set out in the School Standards and Framework Act 1998 s 20(1): see PARA 102 et seq ante.

4    Ibid s 35(1)(a).

5    As to voluntary schools see PARA 102 et seq ante.

6    School Standards and Framework Act 1998 s 35(1)(b). Except in relation to a change of category from voluntary aided to voluntary controlled school for which proposals are required to be published by virtue of Sch 8 para 3 (see PARA 114 post), the provisions of Sch 8 (see PARAS 113-116 post) do not apply at any time before the end of such period as may be prescribed by regulations: ss 35(2), 142(1). As to the regulations that have been made under s 35 see the Education (Change of Category of Maintained Schools) (England) Regulations 2000, SI 2000/2195 (amended by SI 2003/2136; SI 2005/1731); the Education (Foundation Body) (England) Regulations 2000, SI 2000/2872 (amended by SI 2004/3264); and the Change of Category of Maintained Schools (Wales) Regulations 2001, SI 2001/2678 (amended by SI 2005/2916). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to voluntary schools see PARA 102 et seq ante.

7    Ibid s 35(1).

### **UPDATE**

#### **112 School [in Wales] changing from one category to another**

TEXT AND NOTES--These provisions now apply only in relation to Wales: see 1998 Act s 35(1) (amended by Education and Inspections Act 2006 Sch 3 para 26). For similar provision in relation to England see s 18; and PARA 165A.5.

NOTE 6--SI 2000/2195 revoked: SI 2007/1289. SI 2001/2678 further amended: SI 2006/173. SI 2004/1576 amended: SI 2006/173. SI 2000/2872 further amended: see PARA 104 NOTE 19.



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### **113. Permitted changes of category of school.**

A community school<sup>1</sup> may become<sup>2</sup> a foundation school<sup>3</sup> in pursuance of proposals published by the local education authority<sup>4</sup>. A school within one of the following categories<sup>5</sup>, namely, a community school, a foundation school, a voluntary aided school or a voluntary controlled school<sup>6</sup>, may become<sup>7</sup> a school within another of those categories in pursuance of proposals published by the governing body<sup>8</sup>. A community special school<sup>9</sup> may become<sup>10</sup> a foundation special school<sup>11</sup> in pursuance of proposals published by the local education authority<sup>12</sup>. A community special school or a foundation special school may become<sup>13</sup> a foundation special school or a community special school in pursuance of proposals published by the governing body<sup>14</sup>.

1 As to community schools see PARA 102 et seq ante.

2 In accordance with the School Standards and Framework Act 1998 s 35, Sch 8.

3 As to foundation schools see PARA 102 et seq ante.

4 School Standards and Framework Act 1998 Sch 8 para 1(1). As to local education authorities see PARA 20 ante.

5 As to the categories of maintained schools see PARA 102 et seq ante.

6 As to voluntary schools see PARA 102 et seq ante.

7 See note 2 supra.

8 School Standards and Framework Act 1998 Sch 8 para 1(2). As to the governing bodies of maintained schools see PARA 203 et seq post.

9 As to community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

10 See note 2 supra.

11 As to foundation special schools see PARA 102 et seq ante.

12 School Standards and Framework Act 1998 Sch 8 para 1(3).

13 See note 2 supra.

14 School Standards and Framework Act 1998 Sch 8 para 1(4).

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#### **114. Publication of proposals for school to change category.**

Where, in the case of any maintained school<sup>1</sup>, the local education authority<sup>2</sup> or the governing body<sup>3</sup> proposes that the school should become a school of another category<sup>4</sup>, it must publish its proposals<sup>5</sup>.

If at any time the governing body of a voluntary aided school<sup>6</sup> is unable or unwilling to carry out its obligations<sup>7</sup>, it must publish proposals for the school to become either a voluntary controlled school<sup>8</sup> or a foundation school<sup>9</sup>, as the governing body may determine<sup>10</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante.

2 As to local education authorities see PARA 20 ante.

3 As to the governing bodies of maintained schools see PARA 203 et seq post.

4 Ie as permitted by the School Standards and Framework Act 1998 s 35, Sch 8 para 1: see PARA 113 ante. As to the categories of maintained schools see PARA 102 et seq ante.

5 Ibid Sch 8 para 2(1). Regulations may provide for any of the provisions of s 28 (as amended; prospectively further amended) (see PARA 132 post), s 31 (prospectively amended) (see PARA 136 post) and ss 28(8), 29(7), 31(8), Sch 6 Pt I (paras 1-5) (as amended; prospectively further amended) (see PARAS 137-140 post) or Sch 6 Pt II (paras 6-10) (as amended; prospectively further amended) (see PARAS 137-140 post) to have effect in relation to any such proposals with or without modifications: Sch 8 para 2(2). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8). As to the regulations that have been made under Sch 8 para 2 see the Education (Change of Category of Maintained Schools) (England) Regulations 2000, SI 2000/2195 (amended by SI 2003/2136; SI 2005/1731); the Education (Foundation Body) (England) Regulations 2000, SI 2000/2872 (amended by SI 2004/3264); and the Change of Category of Maintained Schools (Wales) Regulations 2001, SI 2001/2678 (amended by SI 2005/2916). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante.

6 As to voluntary schools see PARA 102 et seq ante.

7 Ie under the School Standards and Framework Act 1998 s 22(7), Sch 3 (as amended): see PARAS 304 et seq, 1352 et seq post.

8 See note 6 supra.

9 As to foundation schools see PARA 102 et seq ante.

10 School Standards and Framework Act 1998 Sch 8 para 3(1), (3). If the proposals were published during the period mentioned in s 35(2) (see PARA 112 note 4 ante), they had to be proposals for the school to become a voluntary controlled school: Sch 8 para 3(2).

The provisions of Sch 8 para 2(2) (see note 5 supra) apply in relation to proposals published under Sch 8 para 3 as they apply in relation to proposals published under Sch 8 para 2 (see the text and notes 1-5 supra): Sch 8 para 3(4).

#### **UPDATE**

#### **114 Publication of proposals for school to change category**

NOTE 5--SI 2000/2195 revoked: SI 2007/1289. SI 2001/2678 further amended: SI 2006/173. SI 2000/2872 further amended: see PARA 104 NOTE 19.

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### **115. Restrictions on changing category of school.**

Regulations<sup>1</sup> may make provision for preventing a school<sup>2</sup> of any description specified in the regulations from changing its category<sup>3</sup> unless such conditions are satisfied as are so specified<sup>4</sup>. The conditions which may be so specified include conditions requiring (according to the circumstances of the case) any of the following to be demonstrated to the satisfaction of any person so specified, namely<sup>5</sup>:

- 228 (1) that the school will join a group of schools for which a foundation body<sup>6</sup> acts or proposes to act<sup>7</sup>;
- 229 (2) where a foundation<sup>8</sup> is proposed to be established for the school otherwise than under the School Standards and Framework Act 1998, that the foundation would meet such requirements as may be so specified<sup>9</sup>;
- 230 (3) that the governing body<sup>10</sup> will be able to carry out its obligations<sup>11</sup>;
- 231 (4) that the school's governing or foundation body or trustees has or have agreed to sell or otherwise transfer to the local education authority<sup>12</sup> any land<sup>13</sup> of a description so specified<sup>14</sup>.

1 As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 35, Sch 8 para 4 see the Education (Change of Category of Maintained Schools) (England) Regulations 2000, SI 2000/2195 (amended by SI 2003/2136; SI 2005/1731); the Education (Foundation Body) (England) Regulations 2000, SI 2000/2872 (amended by SI 2004/3264); and the Change of Category of Maintained Schools (Wales) Regulations 2001, SI 2001/2678 (amended by SI 2005/2916).

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ie under *ibid* Sch 8. As to the categories of maintained schools see PARA 102 et seq ante.

4 *Ibid* Sch 8 para 4(1).

5 For the meaning of 'foundation body' see PARA 104 note 6 ante.

6 School Standards and Framework Act 1998 Sch 8 para 4(2).

7 *Ibid* Sch 8 para 4(2)(a).

8 For the meaning of 'foundation' see PARA 104 note 6 ante.

9 School Standards and Framework Act 1998 Sch 8 para 4(2)(b).

10 As to the governing bodies of maintained schools see PARA 203 et seq post.

11 School Standards and Framework Act 1998 Sch 8 para 4(2)(c). The obligations referred to in the text are those under s 22(7), Sch 3, which relate to the funding of, and the provision of sites for, foundation, voluntary and foundation special schools: see PARAS 304 et seq, 1352 et seq post. As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

12 As to local education authorities see PARA 20 ante.

13 As to the meaning of 'land' see PARA 1352 note 9 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

14 Ibid Sch 8 para 4(2)(d).

## **UPDATE**

### **115 Restrictions on changing category of school**

NOTE 1--SI 2000/2195 revoked: SI 2007/1289. SI 2001/2678 further amended: SI 2006/173. SI 2000/2872 further amended: see PARA 104 NOTE 19.

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### **116. Implementation of proposals to change category of school.**

Regulations<sup>1</sup> may make such provision as the Secretary of State<sup>2</sup> considers necessary or expedient in connection with the implementation of published proposals relating to a change of category<sup>3</sup>, including provision with respect to<sup>4</sup>:

- 232 (1) the revision or replacement of the school's instrument of government<sup>5</sup> and the reconstitution of its governing body<sup>6</sup>;
- 233 (2) the transfer of property, rights and liabilities<sup>7</sup> (including such a transfer to or from a foundation body<sup>8</sup>), and staff<sup>9</sup>; and
- 234 (3) any transitional matters, whether relating to the implementation of proposals published under other provisions of the School Standards and Framework Act 1998 or otherwise<sup>10</sup>.

The regulations may, in particular, make provision with respect to:

- 235 (a) restricting the disposal of land<sup>11</sup> by a local authority<sup>12</sup> which is used or held for the purposes of a school<sup>13</sup> in relation to which proposals to change category<sup>14</sup> are, or may be, published<sup>15</sup>, as from the date of publication of such proposals or such other time as may be prescribed<sup>16</sup>;
- 236 (b) restricting the taking of action by virtue of which any such land would cease to be so used or held to any extent<sup>17</sup>;
- 237 (c) the consequences of any contravention of any such restriction<sup>18</sup>;
- 238 (d) conferring on any prescribed body such functions as may be prescribed with respect to any such contravention<sup>19</sup>.

The regulations may<sup>20</sup> modify<sup>21</sup> any provision made by or under Part II of the School Standards and Framework Act 1998<sup>22</sup>, apply any such provision with or without modifications<sup>23</sup>, and make provision corresponding or similar to any such provision<sup>24</sup>.

A school's change of category<sup>25</sup> may not be taken as authorising or requiring any change in the character of the school conducted by its governing body (including, in particular, any religious character of the school)<sup>26</sup>.

1 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 35, Sch 8 para 5 see the Education (Change of Category of Maintained Schools) (England) Regulations 2000, SI 2000/2195 (amended by SI 2003/2136; SI 2005/1731); the Education (Foundation Body) (England) Regulations 2000, SI 2000/2872 (amended by SI 2004/3264); the Change of Category of Maintained Schools (Wales) Regulations 2001, SI 2001/2678 (amended by SI 2005/2916); the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507 (amended by SI 2004/696); and the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576. Any regulations made under the School Standards and Framework Act 1998 Sch 8 para 5, so far as relating to transfers under them, have effect subject to the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes) (see PARA 1388 et seq post): s 198(1) (substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 2(2)).

- 2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 3 Ie proposals published under the School Standards and Framework Act 1998 Sch 8 para 2 or Sch 8 para 3: see PARA 114 ante.
- 4 Ibid Sch 8 para 5(1).
- 5 As to instruments of government see PARAS 291-295 post.
- 6 School Standards and Framework Act 1998 Sch 8 para 5(1)(a). As to the governing bodies of maintained schools see PARA 203 et seq post.
- 7 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).
- 8 For the meaning of 'foundation body' see PARA 104 note 6 ante.
- 9 School Standards and Framework Act 1998 Sch 8 para 5(1)(b). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post.
- 10 Ibid Sch 8 para 5(1)(c).
- 11 As to the meaning of 'land' see PARA 1352 note 9 post; definition applied by virtue of ibid s 142(8).
- 12 For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante. As to the disposal of land by local authorities see LOCAL GOVERNMENT VOL 69 (2009) PARAS 515, 520.
- 13 As to references to land held on trust see PARA 104 note 6 ante.
- 14 As to the categories of maintained schools see PARA 102 et seq ante.
- 15 Ie under the School Standards and Framework Act 1998 Sch 8 para 2: see PARA 114 ante.
- 16 Ibid Sch 8 para 5(2)(a). 'Prescribed' means prescribed by regulations: see s 142(1). As to the regulations that have been made under Sch 8 para 5 see note 1 supra.
- 17 Ibid Sch 8 para 5(2)(b).
- 18 Ibid Sch 8 para 5(2)(c).
- 19 Ibid Sch 8 para 5(2)(d).
- 20 Ie in connection with any matters falling within ibid Sch 8 para 5(1): see the text and notes 1-10 supra.
- 21 As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of ibid s 142(8).
- 22 Ibid Sch 8 para 5(3)(a). The School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) deals with the new framework for maintained schools: see eg para 94 et seq ante.
- 23 Ibid Sch 8 para 5(3)(b).
- 24 Ibid Sch 8 para 5(3)(c).
- 25 Ie under ibid Sch 8: see PARA 113 et seq ante.
- 26 Ibid Sch 8 para 6. As to schools having a religious character see PARAS 953-954 post.

## **UPDATE**

### **116 Implementation of proposals to change category of school**

NOTE 1--SI 2000/2195 revoked: SI 2007/1289 . SI 2001/2678 further amended: SI 2006/173. SI 2004/1576 amended and renamed School Organisation Proposals by the

National Assembly for Wales Regulations 2004, SI 2004/1576: SI 2005/3238. SI 2000/2872 further amended: SI 2006/1722, SI 2006/2198.

NOTE 2--Reference to Secretary of State now to National Assembly for Wales: 1998 Act Sch 8 para 5(1) (amended by Education and Inspections Act 2006 Sch 3 para 34).



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### **117. Modification of trust deeds.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make such modifications<sup>3</sup> of any trust deed<sup>4</sup> or other instrument relating to:

- 239 (1) a school<sup>5</sup> which is or is to become a foundation, voluntary or foundation special school<sup>6</sup>; or
- 240 (2) property held on trust for the purposes of such a school<sup>7</sup>,

as appear to him to be necessary or expedient in connection with the operation of any provision of the School Standards and Framework Act 1998, the Learning and Skills Act 2000 or the Education Act 2002 or anything done under or for the purposes of any such provision<sup>8</sup>. Before making such an order the Secretary of State must consult:

- 241 (a) the governing body of the school in question<sup>9</sup>;
- 242 (b) any trustees holding property on trust for the purposes of the school<sup>10</sup>;
- 243 (c) in the case of a Church of England, Church in Wales or Roman Catholic Church school<sup>11</sup>, the appropriate diocesan authority<sup>12</sup>; and
- 244 (d) such other persons as he considers appropriate<sup>13</sup>.

Any modification made by such an order may be made so as to have permanent effect or to have effect for such period as is specified in the order<sup>14</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Such an order is not to be made by statutory instrument: see the School Standards and Framework Act 1998 s 138(2) (as amended); and PARA 82 note 15 ante.

3 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 142(8).

4 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of *ibid* s 142(8).

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 142(8).

6 *Ibid* s 82(1)(a). As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

7 *Ibid* s 82(1)(b). As to references to property held on trust see PARA 104 note 6 ante.

8 *Ibid* s 82(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 108).

9 School Standards and Framework Act 1998 s 82(2)(a). As to the governing bodies of maintained schools see PARA 203 et seq post.

10 *Ibid* s 82(2)(b).

11 For the meanings of 'Church of England school', 'Church in Wales school' and 'Roman Catholic Church school' see PARA 42 note 15 ante.

12 School Standards and Framework Act 1998 s 82(2)(c). For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 ante.

13 Ibid s 82(2)(d).

14 Ibid s 82(3). Where any scheme in force for the regulation of any endowed charity or charities, established or approved before or after 11 May 1891 (ie the date of the passing of the Army Schools Act 1891 s 1 (as amended)), includes any provision for the benefit of children who are or have been scholars in a public elementary school, an army school is to be deemed a public elementary school within the meaning of those provisions: s 1(1). For these purposes, 'army school' means a school established for the purpose of affording education to children of non-commissioned officers and men of Her Majesty's regular land forces, and conducted under the authority of a Secretary of State: see s 1(2) (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II).

## **UPDATE**

### **117 Modification of trust deeds**

TEXT AND NOTE 8--After 'or the Education Act 2002' read 'or the Education and Inspections Act 2006': 1998 Act s 82(1) (amended by the Education and Inspections Act 2006 Sch 3 para 28).

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### **(iii) Organisation of Schools**

#### **A. SCHOOL ORGANISATION COMMITTEES**

##### **118. Establishment and constitution of school organisation committees.**

Each local education authority<sup>1</sup> in England<sup>2</sup> must establish a school organisation committee<sup>3</sup> for its area<sup>4</sup>. A school organisation committee must be constituted in accordance with regulations<sup>5</sup> made by the Secretary of State<sup>6</sup>. Those regulations must be so framed as to secure that every school organisation committee includes at least one person within each of the following categories<sup>7</sup>:

- 245 (1) a member of the local education authority<sup>8</sup>;
- 246 (2) a person nominated by the diocesan board of education for any diocese of the Church of England any part of which is comprised in the authority's area<sup>9</sup>; and
- 247 (3) a person nominated by the bishop of any Roman Catholic Church diocese any part of which is comprised in the authority's area<sup>10</sup>.

Regulations may make provision for the establishment by local education authorities in Wales<sup>11</sup> of school organisation committees<sup>12</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 Any reference to the school organisation committee in relation to: (1) a local education authority in England; (2) a school maintained or proposed to be maintained by such a local education authority; or (3) any proposals relating to such a school, is a reference to the school organisation committee established for the local education authority's area: School Standards and Framework Act 1998 s 24(4). For the meaning of 'school maintained by a local education authority' see PARA 94 post.

4 Ibid s 24(1).

5 For these purposes, 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. See also note 6 infra.

6 Ibid s 24(2). As to the regulations that have been made see the Education (School Organisation Committees) (England) Regulations 1999, SI 1999/700 (amended by SI 2001/783; SI 2004/3052).

7 School Standards and Framework Act 1998 s 24(3).

8 Ibid s 24(3)(a).

9 Ibid s 24(3)(b). As to diocesan boards of education see ECCLESIASTICAL LAW.

10 Ibid s 24(3)(c).

11 For the meaning of 'Wales' see PARA 52 note 13 ante.

12 School Standards and Framework Act 1998 s 27(1)(a). The regulations may provide for any of the provisions of s 24 (see the text and notes 1-10 supra), s 25 (prospectively amended) (see PARA 124 post), Sch 4 (as amended; prospectively further amended) (see PARAS 119-123 post), Sch 5 (as amended; prospectively further amended) (see PARAS 124-129 post) and the Learning and Skills Act 2000 s 113 (as amended in relation to England; prospectively amended in relation to Wales), Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post) to apply for the purposes of the regulations with or without modifications: School Standards and Framework Act 1998 s 27(1) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 82(1), (2)). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). In connection with any provision made by virtue of s 27(1) (as amended), regulations may make provision:

- 30 (1) for applying in relation to Wales any provision of s 26 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 130 post), Pt II Ch II (ss 28-35) (as amended; prospectively further amended) (see PARA 131 et seq post) or Pt III Ch I (ss 84-98) (as amended) (see PARA 393 et seq post) or the Learning and Skills Act 2000 Sch 7 (as amended; prospectively further amended in relation to Wales) which would otherwise apply in relation to England only (School Standards and Framework Act 1998 s 27(2)(a) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 82(1), (3)));
- 31 (2) for disapplying in relation to Wales any such provision which would otherwise apply in relation to Wales only (School Standards and Framework Act 1998 s 27(2)(b));
- 32 (3) for any statutory provision to have effect with such modifications as appear to the National Assembly for Wales to be appropriate (s 27(2)(c)).

The School Standards and Framework Act 1998 refers to the Secretary of State, but certain of his functions, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales: see PARA 53 ante.

As from a day to be appointed, s 27(2)(a) (as amended) is further amended so that regulations may no longer make provision for applying in relation to Wales any provision of s 26 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see head (1) supra): s 27(2)(a) (as so amended; prospectively amended by the Children Act 2004 s 64, Sch 5 Pt 1). At the date at which this volume states the law, no such day had been appointed.

At the date at which this volume states the law, no regulations had been made under the School Standards and Framework Act 1998 s 27 (as amended; prospectively further amended).

## **UPDATE**

### **118-123 School Organisation Committees**

These provisions repealed: Education and Inspections Act 2006 s 29, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/A. SCHOOL ORGANISATION COMMITTEES/119. Election of chairmen and appointment of members of a school organisation committee.

### **119. Election of chairmen and appointment of members of a school organisation committee.**

Regulations<sup>1</sup> may make provision with respect to: (1) the election by a school organisation committee<sup>2</sup> of one of its number to be chairman, and one to be vice-chairman, of the committee<sup>3</sup>; (2) the period for which the chairman and vice-chairman are to be elected<sup>4</sup>; and (3) the appointment and tenure of office of, and the vacation of office by, members of a committee<sup>5</sup>.

1 For these purposes, 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 24(5), Sch 4 (as amended; prospectively further amended) see the Education (School Organisation Committees) (England) Regulations 1999, SI 1999/700 (amended by SI 2001/783; SI 2004/3052).

2 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

3 School Standards and Framework Act 1998 Sch 4 para 2(a). Each of the Education Act 1996 s 496 (as amended) (see PARA 57 ante) and s 497 (as amended) (see PARA 58 ante) (default powers of Secretary of State) applies in relation to a school organisation committee as it applies in relation to a body falling within s 496(2) (as amended) or s 497(2) (as amended): School Standards and Framework Act 1998 Sch 4 para 10.

4 Ibid Sch 4 para 2(b).

5 Ibid Sch 4 para 2(c).

## **UPDATE**

### **118-123 School Organisation Committees**

These provisions repealed: Education and Inspections Act 2006 s 29, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/A. SCHOOL ORGANISATION COMMITTEES/120. Allowances for members of a school organisation committee.

## **120. Allowances for members of a school organisation committee.**

The provisions of the Local Government Act 1972 relating to the payment of financial loss allowance<sup>1</sup> apply, with any necessary modifications<sup>2</sup>, to any member of a school organisation committee<sup>3</sup> as they apply to any member of a parish or community council<sup>4</sup>. A school organisation committee is included in the bodies to which the provisions of the Local Government Act 1972 relating to travelling and subsistence allowances<sup>5</sup> apply<sup>6</sup>.

1    Ie the Local Government Act 1972 s 173(4) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 172.

2    As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3    For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

4    School Standards and Framework Act 1998 s 24(5), Sch 4 para 3(1). As to members of parish and community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 117 et seq.

5    Ie the Local Government Act 1972 s 174 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 174.

6    School Standards and Framework Act 1998 Sch 4 para 3(1). In the Local Government Act 1972 s 174(1) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 174), in its application to a school organisation committee in accordance with the School Standards and Framework Act 1998 Sch 4 para 3(1), the reference to payments at rates determined by the body in question is to be read as a reference to payments at rates determined by the relevant authority: Sch 4 para 3(2). For these purposes, 'the relevant authority', in the case of any school organisation committee, means the local education authority by whom the committee is established: Sch 4 para 1. As to local education authorities see PARA 20 ante.

## **UPDATE**

### **118-123 School Organisation Committees**

These provisions repealed: Education and Inspections Act 2006 s 29, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/A. SCHOOL ORGANISATION COMMITTEES/121. Financial and other assistance by the local education authority for school organisation committee.

### **121. Financial and other assistance by the local education authority for school organisation committee.**

The relevant authority<sup>1</sup> in the case of a school organisation committee<sup>2</sup> must defray<sup>3</sup> the expenses of the committee<sup>4</sup> and make arrangements for it to be provided with accommodation and with such services as the authority considers appropriate<sup>5</sup>.

Before the beginning of each financial year<sup>6</sup> a committee must submit to the relevant authority a statement of the estimated expenses of the committee in respect of that year, including estimates of any allowances payable to its members<sup>7</sup>. Where it has received such a statement the relevant authority must approve it, either without modification or with such modifications as it may specify<sup>8</sup>. Once it has so approved the statement, the relevant authority must defray the expenses of the committee, in respect of the financial year in question, up to the total amount of the expenses set out in the statement as so approved<sup>9</sup>. However, the relevant authority is not so required to defray any expenses of the committee which do not relate to an activity of the committee mentioned in the statement<sup>10</sup>.

1 For the meaning of 'the relevant authority' see PARA 120 note 6 ante.

2 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

3 In accordance with the School Standards and Framework Act 1998 s 24(5), Sch 4 para 4(2)-(5): see the text and notes 6-10 infra.

4 Ibid Sch 4 para 4(1)(a).

5 Ibid Sch 4 para 4(1)(b).

6 For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of ibid s 142(8).

7 Ibid Sch 4 para 4(2). The allowances referred to in the text are those payable by virtue of Sch 4 para 3: see PARA 120 ante.

8 Ibid Sch 4 para 4(3). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

9 Ibid Sch 4 para 4(4). If it considers it appropriate to do so, the relevant authority may defray the expenses of the committee in respect of a financial year up to an amount which exceeds the total amount referred to in Sch 4 para 4(4): Sch 4 para 4(6)(a).

10 Ibid Sch 4 para 4(5). If it considers it appropriate to do so, the relevant authority may defray any expenses of the committee to which Sch 4 para 4(5) applies: Sch 4 para 4(6)(b).

### **UPDATE**

### **118-123 School Organisation Committees**

These provisions repealed: Education and Inspections Act 2006 s 29, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/A. SCHOOL ORGANISATION COMMITTEES/122. Proceedings.

## 122. Proceedings.

Regulations<sup>1</sup> may make provision as to the meetings and proceedings of a school organisation committee<sup>2</sup>. Such regulations may in particular provide that, in any prescribed<sup>3</sup> circumstances, the members within each category of members of a school organisation committee are to have collectively a single vote<sup>4</sup>, and require all decisions of a prescribed description which are taken by a committee in accordance with those regulations<sup>5</sup> to be unanimous decisions of those voting<sup>6</sup>. The regulations must, however, include provision for the members within each category of members of a school organisation committee to have collectively a single vote in relation to specified decisions<sup>7</sup>, and must also include provision requiring any such decision which is taken by a committee to be a unanimous decision of those voting<sup>8</sup>.

When taking any decision a committee must have regard, so far as relevant, to the obligations which, by virtue of legislation relating to discrimination<sup>9</sup>, are owed by any local education authority<sup>10</sup> or governing body which will be affected by the decision<sup>11</sup>.

The validity of any proceedings of a committee is not affected by any vacancy among the members or by any defect in the appointment of a member<sup>12</sup>.

Subject to any provision made by or under these provisions<sup>13</sup>, a committee may regulate its own procedure<sup>14</sup>.

1 For these purposes, 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante; and as to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 24(5), Sch 4 para 5 (as amended; prospectively further amended) see the Education (School Organisation Committees) (England) Regulations 1999, SI 1999/700 (amended by SI 2001/783; SI 2004/3052); the Education (School Organisation Plans) (England) Regulations 1999, SI 1999/701 (amended by SI 2001/783; SI 2003/1201); the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342); the Education (Change of Category of Maintained Schools) (England) Regulations 2000, SI 2000/2195 (amended by SI 2003/2136; SI 2005/1731); the Education (Foundation Body) (England) Regulations 2000, SI 2000/2872 (amended by SI 2004/3264); and the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507 (amended by SI 2004/696).

2 School Standards and Framework Act 1998 Sch 4 para 5(1). For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

3 I.e. prescribed by regulations: see *ibid* s 142(1).

4 *Ibid* Sch 4 para 5(2)(a).

5 I.e. those regulations made in accordance with *ibid* Sch 4 para 5(2)(a): see the text and notes 3-4 *supra*.

6 *Ibid* Sch 4 para 5(2)(b).

7 *Ibid* Sch 4 para 5(3)(a). Schedule 4 para 5(3) applies to any decision of a school organisation committee as to whether or not:

33 (1) to give any approval under s 26(5) (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 130 post) or to prepare such a plan as is mentioned in s 26(6)(d)



- (ii) (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 130 post) (Sch 4 para 5(4)(a));
- 34 (2) to give any approval under ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 post) or to modify any proposals, specify any date, or make any determination under Sch 6 para 5(2)(a) or Sch 6 para 5(2)(b) or Sch 6 para 5(3) (see PARA 140 post) (Sch 4 para 5(4)(b));
- 35 (3) to make, vary or revoke a transitional exemption order under Sch 6 para 21 (see PARA 148 post) or s 34, Sch 7 para 16 (prospectively repealed) (see PARA 174 post) (Sch 4 para 5(4)(c));
- 36 (4) to give any approval under Sch 7 para 8 (as amended; prospectively repealed) (see PARA 171 post) (Sch 4 para 5(4)(d));
- 37 (5) to make any decision authorised by or by virtue of Sch 23 para 6 (repealed, except in relation to any school year earlier than the 2004-2005 school year) (Sch 4 para 5(4)(e)).

Where regulations under Sch 8 para 2(2) (see PARA 114 ante) provide for either Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 post) or Sch 6 para 5(2)(a) (see PARA 140 post) to have effect in relation to proposals published under Sch 8 para 2 or 3 (see PARA 114 ante), the reference to that provision in Sch 4 para 5(4) (as amended; prospectively further amended) includes a reference to it as it so has effect: Sch 4 para 5(5). As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

Schedule 4 para 5(4)(e) (see head (5) supra) is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England (except in relation to any school year earlier than the 2004-2005 school year) the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(1)(c)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b):

- 38 (a) the School Standards and Framework Act 1998 Sch 4 para 5(4)(c) (see head (3) supra) is amended so that the reference to Sch 7 para 16 (prospectively repealed) is replaced by a reference to the Education Act 2005 Sch 11 para 14 (not yet in force) (see PARA 183 post) (School Standards and Framework Act 1998 Sch 4 para 5(4)(c) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 11(a)); and
- 39 (b) the School Standards and Framework Act 1998 Sch 4 para 5(4)(d) (see head (4) supra) is amended so that the reference to Sch 7 para 8 (as amended; prospectively repealed) is replaced by a reference to the Education Act 2005 Sch 11 para 9 (not yet in force) (see PARA 180 post) (School Standards and Framework Act 1998 Sch 4 para 5(4)(d) (prospectively amended by the Education Act 2005 Sch 12 para 11(b))).

At the date at which this volume states the law, no such day had been appointed in relation to either head (a) or head (b) supra.

8 School Standards and Framework Act 1998 Sch 4 para 5(3)(b). See also note 7 supra.

9 Ie the Sex Discrimination Act 1975 Pt III (ss 22-36) (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 378 et seq), the Race Relations Act 1976 Pt III (ss 17-27) (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 460 et seq) or s 71 (as substituted) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 469 et seq), or the Disability Discrimination Act 1995 Pt IV Ch 1 (ss 28A-28Q) (as added) (see DISCRIMINATION): School Standards and Framework Act 1998 Sch 4 para 8 (amended by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 30; and the Special Educational Needs and Disability Act 2001 s 42(1), (6), Sch 8 Pt 2 para 23, Sch 9).

10 As to local education authorities see PARA 20 ante.

11 School Standards and Framework Act 1998 Sch 4 para 8 (as amended: see note 9 supra).

12 Ibid Sch 4 para 6.

13 Ie under ibid Sch 4 (as amended; prospectively further amended).

14 Ibid Sch 4 para 7. The committee has power under Sch 4 para 7 to seek further information if it wishes: *R (on the application of WB) v Leeds School Organisation Committee* [2002] EWHC 1927 (Admin) at [28], [2003] ELR 67 at [28] per Scott Baker J.

## UPDATE

### **118-123 School Organisation Committees**

These provisions repealed: Education and Inspections Act 2006 s 29, Sch 18.

### **122 Proceedings**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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### **123. Indemnity.**

The relevant authority<sup>1</sup> in the case of a school organisation committee<sup>2</sup> must indemnify the members of the committee against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions<sup>3</sup> as members of the committee<sup>4</sup>.

1 For the meaning of 'the relevant authority' see PARA 120 note 6 ante.

2 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

3 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Ibid s 24(5), Sch 4 para 9.

### **UPDATE**

#### **118-123 School Organisation Committees**

These provisions repealed: Education and Inspections Act 2006 s 29, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/B. ADJUDICATORS/124. Appointment of adjudicators.

## **B. ADJUDICATORS**

### **124. Appointment of adjudicators.**

The Secretary of State<sup>1</sup> must appoint for England<sup>2</sup> such number of persons to act as adjudicators for the purposes of the School Standards and Framework Act 1998 as he considers appropriate<sup>3</sup>. Any matter which by virtue of that Act is required to be referred to the adjudicator<sup>4</sup> must be referred to such person appointed under these provisions as may be determined in accordance with regulations<sup>5</sup>. Accordingly, 'the adjudicator', in relation to any such matter, means that person<sup>6</sup>.

Regulations may make provision for the appointment by the National Assembly for Wales of adjudicators, or panels of adjudicators, for Wales<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante; and as to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 School Standards and Framework Act 1998 s 25(1). Adjudicators appointed under s 25 (prospectively amended) are under the supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1) (a), Sch 1 Pt I (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

4 In addition to his functions relating to the organisation of schools, the adjudicator also has functions in connection with admissions arrangements. As to admissions generally see PARA 392 et seq post.

5 School Standards and Framework Act 1998 s 25(2). For these purposes, 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations referred to in the text see s 25(4), Sch 5 (as amended; prospectively further amended); and PARAS 125-129 post.

As from a day to be appointed, s 25(2) is amended so as to apply also to any matter which by virtue of the Education Act 2005 Pt 2 (ss 64-73) (not yet in force) (school organisation: see PARA 131 et seq post) is required to be referred to the adjudicator: School Standards and Framework Act 1998 s 25(2) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 6). At the date at which this volume states the law, no such day had been appointed.

6 School Standards and Framework Act 1998 s 25(3). For the purposes of Sch 5 (as amended; prospectively further amended) (see PARAS 125-129 post), 'adjudicator' means a person appointed under s 25 (prospectively amended): Sch 5 para 1.

7 Ibid s 27(1)(b). For the meaning of 'Wales' see PARA 52 note 13 ante. As to the regulations that may be made under s 27 (as amended; prospectively further amended) see note 5 supra; and PARA 118 note 12 ante. At the date at which this volume states the law, no such regulations had been made.

## **UPDATE**

### **124 Appointment of adjudicators**

NOTE 5--In the prospective amendment, reference to Education Act 2005 Pt 2 (ss 64-73) is now to Education and Inspections Act 2006 Pt 2 (ss 7-32) (see PARA 165A): 1998 Act s 25(2) (amended by the 2006 Act Sch 3 para 16).

NOTE 6--When asked to do so by the Secretary of State, an adjudicator must give advice to the Secretary of State on such matters relating to the admission of pupils to relevant schools as the Secretary of State may specify: 1998 Act s 25(3A) (s 25(3A)-(3D) added by the 2006 Act s 163). The adjudicator may, for the purposes of providing such advice to the Secretary of State, request any of the following persons to provide him with such information held by them as the adjudicator may specify: (1) the admission authority (within the meaning of the 1998 Act Pt 3 Ch 1 (ss 84-98) of a community, foundation or voluntary school; (2) the proprietor of any other relevant school; and a person so requested to provide information must comply with the request: s 25(3B), (3C). For the meaning of 'relevant school' see the Education Act 2005 s 5(2); and PARA 522; definition applied by the 1998 Act s 25(3D).

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### **125. Tenure of office.**

An adjudicator<sup>1</sup> must hold and vacate office in accordance with the terms of his appointment<sup>2</sup>. An adjudicator may at any time resign his office by notice in writing to the Secretary of State<sup>3</sup>, and is eligible for re-appointment if he ceases to hold office<sup>4</sup>. An adjudicator may be removed from office by the Secretary of State on the ground of incapacity or misbehaviour<sup>5</sup>.

1 For the meaning of 'adjudicator' see PARA 124 ante.

2 School Standards and Framework Act 1998 s 25(4), Sch 5 para 2(1).

3 Ibid Sch 5 para 2(2)(a). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 Ibid Sch 5 para 2(2)(b).

5 Ibid Sch 5 para 2(3).

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## **126. Remuneration and pensions.**

The Secretary of State<sup>1</sup> may pay to an adjudicator<sup>2</sup> such remuneration and allowances as the Secretary of State may determine<sup>3</sup>. If the Secretary of State so determines in the case of any adjudicator, the Secretary of State may pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine<sup>4</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'adjudicator' see PARA 124 ante.

3 School Standards and Framework Act 1998 Sch 5 para 3(1).

4 Ibid Sch 5 para 3(2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/B. ADJUDICATORS/127. Staff, accommodation and other facilities for adjudicator.

### **127. Staff, accommodation and other facilities for adjudicator.**

The Secretary of State<sup>1</sup> may provide an adjudicator<sup>2</sup> with such administrative staff as the adjudicator may require<sup>3</sup>. He may also provide, or defray the expenses of providing, an adjudicator with such accommodation and other facilities as the adjudicator may require<sup>4</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'adjudicator' see PARA 124 ante.

3 School Standards and Framework Act 1998 s 25(4), Sch 5 para 4(a). For the purposes of the Parliamentary Commissioner Act 1967 s 5 (as amended) (matters subject to investigation: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq), administrative functions exercisable by any person provided by the Secretary of State under the School Standards and Framework Act 1998 Sch 5 para 4 must be taken to be administrative functions of the Department for Education and Skills: Sch 5 para 9 (amended by the Secretaries of State for Education and Skills and for Work and Pensions Order 2002, SI 2002/1397, art 12, Schedule Pt I para 14). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Ibid Sch 5 para 4(b).

### **UPDATE**

### **127 Staff, accommodation and other facilities for adjudicator**

NOTE 3--For 'Department for Education and Skills' Read 'Department for Children, Schools and Families': School Standards and Framework Act 1998 Sch 5 para 9 (amended by SI 2007/3224).



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## 128. Procedure.

Regulations<sup>1</sup> may make provision as to the procedure to be followed in connection with the reference<sup>2</sup> of matters to adjudicators<sup>3</sup> and their determination of matters so referred<sup>4</sup>. The regulations may, in particular, make provision:

- 248 (1) as to the manner in which matters may be referred to adjudicators<sup>5</sup>;
- 249 (2) for determining the adjudicators to which individual referrals are to be made<sup>6</sup>;
- 250 (3) authorising adjudicators to hold local inquiries<sup>7</sup>;
- 251 (4) as to the procedure to be followed where local inquiries are held by adjudicators (whether by virtue of head (3) above or otherwise)<sup>8</sup>;
- 252 (5) authorising adjudicators to appoint assessors to sit with them at local inquiries to advise them on matters arising<sup>9</sup>;
- 253 (6) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations<sup>10</sup>.

Subject to any provision made by the regulations, an adjudicator may regulate his own procedure<sup>11</sup>.

When taking any decision an adjudicator must have regard (so far as relevant) to the obligations which, by virtue of legislation relating to discrimination<sup>12</sup>, are owed by any local education authority<sup>13</sup> or governing body which will be affected by the decision<sup>14</sup>.

The Secretary of State<sup>15</sup> may make orders as to the costs of the parties at any local inquiry held by an adjudicator (whether by virtue of head (3) above or otherwise), and as to the parties by whom the costs are to be paid<sup>16</sup>. Any costs payable under any such order are subject to assessment in such manner as the Secretary of State may direct<sup>17</sup>.

1 For these purposes, 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 25(4), Sch 5 (as amended; prospectively further amended) see the Education (School Organisation Plans) (England) Regulations 1999, SI 1999/701 (amended by SI 2001/783; SI 2003/1201); the Education (References to Adjudicator) Regulations 1999, SI 1999/702 (amended by SI 1999/1286; SI 2004/3052); the Education (Adjudicators Inquiry Procedure etc) Regulations 1999, SI 1999/1286 (amended by SI 2001/1339); the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342); and the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507 (amended by SI 2004/696).

2 Ie under the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) (new framework for maintained schools: see eg para 94 et seq ante) or Pt III (ss 84-109) (as amended) (admissions: see PARA 393 et seq post).

As from a day to be appointed, Sch 5 para 5(1) is amended so that regulations may also make provision as to the procedure to be followed in connection with references under the Education Act 2005 Pt 2 (ss 64-73) (not yet in force) (school organisation: see PARA 131 et seq post): School Standards and Framework Act 1998 Sch 5 para 5(1) (prospectively amended by the Education Act 2005 s 71, Sch 12 para 12). At the date at which this volume states the law, no such day had been appointed.

3 For the meaning of 'adjudicator' see PARA 124 ante.

4 School Standards and Framework Act 1998 Sch 5 para 5(1). See note 2 *supra*.

5 *Ibid* Sch 5 para 5(2)(a).

6 *Ibid* Sch 5 para 5(2)(b).

7 *Ibid* Sch 5 para 5(2)(c).

8 *Ibid* Sch 5 para 5(2)(d).

9 *Ibid* Sch 5 para 5(2)(e).

10 *Ibid* Sch 5 para 5(2)(f).

11 *Ibid* Sch 5 para 5(3).

12 *Ie* the Sex Discrimination Act 1975 Pt III (ss 22-36) (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 378 et seq), the Race Relations Act 1976 Pt III (ss 17-27) (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 460 et seq) or s 71 (as substituted) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 469 et seq), or the Disability Discrimination Act 1995 Pt IV Ch 1 (ss 28A-28Q) (as added) (see DISCRIMINATION): School Standards and Framework Act 1998 Sch 5 para 6 (amended by the Race Relations (Amendment) Act 2000 s 9(1), Sch 2 para 31; and the Special Educational Needs and Disability Act 2001 s 42(1), (6), Sch 8 Pt 2 para 23, Sch 9).

13 As to local education authorities see PARA 20 *ante*.

14 School Standards and Framework Act 1998 Sch 5 para 6 (as amended: see note 12 *supra*.)

15 As to the Secretary of State see PARA 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

16 School Standards and Framework Act 1998 Sch 5 para 5(4). Such an order is not to be made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 *ante*.

17 *Ibid* Sch 5 para 5(4).

## UPDATE

### 128 Procedure

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288. SI 1999/1286 revoked: SI 2007/3464.

NOTE 2--Prospective amendment repealed: Education and Inspections Act 2006 Sch 3 para 32.

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### **129. Indemnity.**

The Secretary of State<sup>1</sup> must indemnify an adjudicator<sup>2</sup> against any reasonable legal costs and expenses reasonably incurred by him in connection with any decision or action taken by him in good faith in pursuance of his functions<sup>3</sup> as an adjudicator<sup>4</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'adjudicator' see PARA 124 ante.

3 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Ibid s 25(4), Sch 5 para 7.

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### ***C. SCHOOL ORGANISATION PLANS IN WALES***

#### **130. School organisation plans.**

Every local education authority<sup>1</sup> in Wales<sup>2</sup> must prepare a school organisation plan for its area<sup>3</sup>, and must prepare further such plans at such times as may be prescribed<sup>4</sup>. A school organisation plan is a statement which sets out:

- 254 (1) how the authority proposes to exercise its functions<sup>5</sup> during the prescribed period with a view to securing the provision of primary<sup>6</sup> education, and secondary<sup>7</sup> education suitable to the requirements of pupils<sup>8</sup> of compulsory school age<sup>9</sup>, that will meet the needs of the population of its area during that period<sup>10</sup>; and
- 255 (2) how the authority proposes to exercise its powers during the prescribed period with a view to securing the provision of secondary education suitable to the requirements of pupils over compulsory school age during that period<sup>11</sup>;
- 256 (3) any facilities which the authority expects to be available outside its area for providing education of a kind referred to in head (1) or head (2) above<sup>12</sup>.

A school organisation plan must deal with such matters, and take such form, as may be prescribed<sup>13</sup>. The matters prescribed for these purposes must include the provision which the authority proposes to make during the period in question for children<sup>14</sup> with special educational needs<sup>15</sup>.

A school organisation plan prepared by a local education authority requires adoption by the authority<sup>16</sup>. Regulations may make provision with regard to the procedure to be followed in connection with the preparation and adoption of such plans<sup>17</sup>. Such regulations may, in particular, make provision:

- 257 (a) requiring a local education authority to publish a draft school organisation plan prepared by it, and to consult such bodies or persons in connection with the draft plan as may be prescribed<sup>18</sup>;
- 258 (b) requiring the authority, in the light of such consultation, either to adopt the draft plan with or without modifications<sup>19</sup>, or to prepare a further draft school organisation plan for publication and consultation in accordance with any provision made by virtue of head (a) above<sup>20</sup>;
- 259 (c) requiring the publication of the plan as adopted by the authority<sup>21</sup>;
- 260 (d) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations<sup>22</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'Wales' see PARA 52 note 13 ante. See also note 4 infra.

3 In preparing a school organisation plan, a local education authority in Wales must have regard to the plans of the National Council for Education and Training for Wales published under the Learning and Skills Act 2000 s 43 (see PARA 1140 post): School Standards and Framework Act 1998 s 26B(1) (s 26B added by the Learning and

Skills Act 2000 s 149, Sch 9 paras 1, 81). As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

The School Standards and Framework Act 1998 s 26B (as added) is repealed by the Children Act 2004 s 64, Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. At the date at which this volume states the law, no such day had been appointed.

4 School Standards and Framework Act 1998 s 26(1). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 26 (as amended) in relation to Wales see the Education (School Organisation Plans) (Wales) Regulations 2003, SI 2003/1732.

The School Standards and Framework Act 1998 s 26 (as amended) is repealed by the Children Act 2004 s 64, Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. In relation to England, the appointed day is 1 March 2005 (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(1)(l)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante.

5 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of ibid s 142(8).

7 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

8 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

9 As to the meaning of 'compulsory school age' see PARA 15 ante.

10 School Standards and Framework Act 1998 s 26(2)(a) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 80(a)). See note 4 supra.

11 School Standards and Framework Act 1998 s 26(2)(ab) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 80(b)). See note 4 supra.

12 School Standards and Framework Act 1998 s 26(2)(b) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 80(c)). See note 4 supra.

13 School Standards and Framework Act 1998 s 26(3). See note 4 supra.

14 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of ibid s 142(8).

15 Ibid s 26(4). See note 4 supra. For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of s 142(8).

16 Ibid s 26(7). See note 4 supra. If a school organisation plan prepared by a local education authority in Wales is being considered by the school organisation committee or by the adjudicator, the committee or the adjudicator must have regard to the plans of the National Council for Education and Training for Wales published under the Learning and Skills Act 2000 s 43 (see PARA 1140 post): School Standards and Framework Act 1998 s 26B(2), (3) (as added and prospectively repealed: see note 3 supra). In s 26B (as added; prospectively repealed), references to the school organisation committee are references to the committee established by the authority under regulations made under s 27 (as amended; prospectively further amended) (see PARA 118 ante) (s 26B(4) (as so added and prospectively repealed)); and references to the adjudicator are references to such person appointed as adjudicator under those regulations as may be determined in accordance with them, or such persons appointed as a panel of adjudicators under those regulations as may be so determined (see PARA 124 ante) (s 26B(5) (as so added and prospectively repealed)).

17 Ibid s 26(7). See note 4 supra.

18 Ibid s 26(8)(a). See note 4 supra.

19 Ibid s 26(8)(b)(i). See note 4 supra. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

20 Ibid s 26(8)(b)(ii). See note 4 supra.

21 Ibid s 26(8)(c). See note 4 supra.

22 Ibid s 26(8)(d). See note 4 supra.

## **UPDATE**

### **130 School organisation plans**

NOTE 3--Day now appointed: SI 2006/885.

NOTE 4--SI 2003/1732 revoked: SI 2006/877. Day now appointed in relation to Wales: SI 2006/885.

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## ***D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS***

### **(A) PROPOSALS UNDER THE**

#### **131. Requirements as to proposals for the establishment, alteration or discontinuance of schools.**

No maintained school<sup>1</sup> may be established<sup>2</sup> or discontinued<sup>3</sup>, nor may any prescribed<sup>4</sup> alteration<sup>5</sup> be made to any such school<sup>6</sup>, and no maintained nursery school<sup>7</sup> may be established or discontinued<sup>8</sup>, nor may any prescribed alteration be made to any nursery school which is maintained by a local education authority in Wales<sup>9</sup>, except in pursuance of proposals falling to be implemented under any enactment<sup>10</sup>.

No alteration in the religious character of the school or change whereby the school would acquire or lose a religious character<sup>11</sup> may be made to any maintained school<sup>12</sup>.

In relation to published proposals<sup>13</sup>, regulations<sup>14</sup> may require any of the following, namely:

- 261 (1) the body or promoters<sup>15</sup> who published the proposals<sup>16</sup>;
- 262 (2) the school organisation committee<sup>17</sup>; and
- 263 (3) the adjudicator<sup>18</sup>,

to provide such information relating to the proposals to such persons, and at such times, as may be prescribed<sup>19</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 As to the meaning of 'establish' see PARA 132 note 2 post; definition applied by virtue of *ibid* s 142(8). For the purposes of Pt II (ss 20-83) (as amended) (new framework for maintained schools: see eg para 94 et seq ante), proposals for the establishment of a maintained school are to be taken to be implemented on the school opening date; and, for these purposes, 'school opening date', in relation to a new maintained school, means the date when the school first admits pupils: s 33(5), (6) (added by the Education Act 2002 s 215(1), Sch 21 para 98(1), (3)).

3 School Standards and Framework Act 1998 s 33(1)(a). As to the meaning of 'discontinue' see PARA 134 note 2 post; and see also PARA 132 note 2 post.

Section 33 (as amended) does not apply to the closure of a school by a local education authority as directed by the Secretary of State under s 19(1) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (school requiring special measures: see PARA 1273 post): see s 19(4); and PARA 1273 post. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 33 (as amended; prospectively further amended) see note 14 *infra*.

5 As to the meaning of 'alteration' see PARA 132 note 6 post. As to alterations to schools see PARAS 132, 136 post.

6 School Standards and Framework Act 1998 s 33(1)(b) (amended by the Education Act 2002 s 215(2), Sch 22 Pt 3).

7 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

8 School Standards and Framework Act 1998 s 33(1)(c) (amended by the Education Act 2002 Sch 21 para 98(1), (2)(b)).

9 School Standards and Framework Act 1998 s 33(1)(d) (added by the Education Act 2002 Sch 21 para 98(1), (2)(c)). For the meaning of 'school maintained by a local education authority' see PARA 94 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. See also note 10 infra.

10 School Standards and Framework Act 1998 s 33(1) (amended by the Education Act 2002 Sch 21 para 98(1), (2)(a)). The School Standards and Framework Act 1998 s 33(1) (as amended) has effect subject to s 19(4) (see note 3 supra; and PARA 1273 post), s 30(9) (see PARA 135 note 25 post) and s 32(5) (see PARA 149 note 15 post): s 33(3). As to schools having a religious character see PARAS 953-954 post.

No proposals may be published under any enactment: (1) for the establishment of a school in Wales which is proposed to be maintained by a local education authority in England; or (2) for the establishment of a school in England which is proposed to be maintained by a local education authority in Wales: Education Act 2005 s 69. For the meaning of 'England' see PARA 52 note 11 ante. Section 69 is brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

11 I.e. an alteration falling within the School Standards and Framework Act 1998 s 28(11)(a)(i) or s 28(11)(a)(ii): see PARA 132 post.

12 Ibid s 33(2).

13 I.e. proposals published under ibid s 28 (as amended; prospectively further amended) (see PARA 132 post), s 29 (prospectively amended) (see PARA 134 post) or s 31 (prospectively amended) (see PARA 136 post): see s 33(4). As from a day to be appointed, s 33(4) is amended so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 post): see s 33(4) (prospectively amended by the Education Act 2005 ss 125(4), 126(1), (3)(b)). At the date at which this volume states the law, no such day had been appointed.

14 As to the regulations that have been made under the School Standards and Framework Act 1998 s 33(4) (prospectively amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

15 As to the meaning of 'promoters' see PARA 132 post.

16 School Standards and Framework Act 1998 s 33(4)(a). See note 13 supra.

17 Ibid s 33(4)(b). See note 13 supra. For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

18 Ibid s 33(4)(c). See note 13 supra. For the meaning of 'adjudicator' see PARA 124 ante.

19 Ibid s 33(4). See note 13 supra.

## UPDATE

### **131 Requirements as to proposals for the establishment, alteration or discontinuance of schools [in Wales]**

TEXT AND NOTES--These provisions now apply only in relation to Wales: see the 1998 Act s 33 (amended by the Education and Inspections Act 2006 Sch 3 para 25, Sch 18 Pt 3). For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.



NOTE 10--Head (1) omitted: 2005 Act s 69 (amended by 2006 Act Sch 3 para 51, Sch 18 Pt 3).

NOTE 13--Prospective amendment now repealed: 2006 Act Sch 3 para 25(4), Sch 18 Pt 3.

NOTE 14--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

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**132. Proposals for establishment or alteration of community, foundation or voluntary school or maintained nursery school.**

Where a local education authority<sup>1</sup> proposes to establish<sup>2</sup> a new community or foundation school<sup>3</sup> or a new maintained nursery school<sup>4</sup>, or to make any prescribed<sup>5</sup> alteration<sup>6</sup> to a community school<sup>7</sup>, or to make any prescribed alteration to a foundation school consisting of an enlargement<sup>8</sup> of the premises of the school<sup>9</sup> or (in the case of a local education authority in Wales) to make any prescribed alteration to a maintained nursery school<sup>10</sup>, the authority must publish its proposals<sup>11</sup>. Where any persons (known as 'promoters'<sup>12</sup>) propose to establish a new foundation or voluntary school<sup>13</sup>, or the governing body<sup>14</sup> of a foundation or voluntary school, or of a community school maintained by a local education authority<sup>15</sup> in England, proposes to make any prescribed alteration to the school<sup>16</sup>, those persons or, as the case may be, the governing body must publish the proposals<sup>17</sup>.

The proposals must contain such information, and be published in such manner, as may be prescribed<sup>18</sup>. The proposals may, if the relevant body or promoters<sup>19</sup> think fit, specify an age below 10 years and six months and an age above 12 years<sup>20</sup>, and provide that the school to which the proposals relate is to be a school providing full-time education suitable to the requirements of pupils<sup>21</sup> whose ages are between the ages so specified<sup>22</sup>.

Before publishing any such proposals<sup>23</sup>, the relevant body or promoters must consult such persons as appears to it or them to be appropriate<sup>24</sup>; and in discharging this duty the relevant body or promoters must have regard to any guidance given from time to time<sup>25</sup>.

Where any published proposals<sup>26</sup> relate to a school or proposed school in England, the relevant body or promoters must send a copy of the published proposals, and such information in connection with those proposals as may be prescribed, to the school organisation committee<sup>27</sup> for the area of the local education authority<sup>28</sup> which maintains the school or (in the case of a new school) which it is proposed should maintain the school<sup>29</sup>. Where any published proposals<sup>30</sup> relate to a school or proposed school in Wales, the relevant body or promoters must send a copy of the published proposals, and such information in connection with those proposals as may be prescribed, to the National Assembly for Wales<sup>31</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the purposes of the Education Act 1996 and any other enactment relating to the duties of a local education authority neither:

40 (1) references in whatever terms to discontinuing a school (including those to a local authority ceasing to maintain a school); nor

41 (2) references in whatever terms to establishing a new school,

may be read as applying by reason only of certain changes being made to an existing school (so that, where such a change is made to an existing school, the school must be regarded as continuing despite the change and as being the same school before and after it, unless for other reasons it is to be regarded as discontinued): s 574(1); applied by virtue of the School Standards and Framework Act 1998 s 142(8). The specified changes (as mentioned in the Education Act 1996 s 574(2)) are: (a) education beginning or ceasing to be provided for pupils above or below a particular age, for boys as well as girls, or for girls as well as boys (s 574(2)(a)); (b) an

enlargement or alteration of the school premises (s 574(2)(b)); and (c) the transfer of the school to a new site (s 574(2)(c)). For the meaning of 'pupil' see PARA 16 note 4 ante. As to the meaning of 'premises' see PARA 1352 note 3 post.

Proposals under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post) (s 74(1), (3)); and regulations may make provision modifying any provision contained in the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school (Education Act 2002 s 74(2)). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(1) (see the Education Act 2002 (Commencement No 5 and Transitional and Saving Provisions) Order 2003, SI 2003/1115, art 3) and 1 April 2003 in relation to the Education Act 2002 s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (5)(a), the Education Act 2002 s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2, and the provisions of the Education Act 2002 s 74(1), (3) are re-enacted as the Education Act 2005 s 68 (not yet in force) (proposals for establishment of federated school: see PARA 133 post). At the date at which this volume states the law, no such day had been appointed.

3 School Standards and Framework Act 1998 s 28(1)(a). As from 1 June 2003 (except where a local education authority has commenced consultation before that date, in accordance with s 28(5) (see the text and notes 24-25 infra), on the establishment of a community or foundation school which is an additional school within the meaning of the Education Act 2002 s 70 (prospectively repealed) (see PARAS 150 et seq, 497 et seq post)), the School Standards and Framework Act 1998 s 28(1)(a) does not apply to any proposal of a local education authority in England to establish a community or foundation school which is an additional secondary school as so defined: s 28(1A) (added by the Education Act 2002 s 215(1), Sch 21 para 97(1), (2)). As to community schools and foundation schools see PARA 102 et seq ante.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b): (1) the School Standards and Framework Act 1998 s 28(1A) (as added) is repealed by the Education Act 2005 ss 64(1), (2), 123, Sch 19 Pt 2; and (2) the School Standards and Framework Act 1998 s 28(1)(a) does not apply to any proposal to establish a secondary school which is to be maintained by a local education authority in England, where 'secondary school' includes a middle school as respects which the relevant upper age is at least 16 years, but does not include a school which provides education suitable only to the requirements of persons above compulsory school age: s 28(2A), (2B) (prospectively added by the Education Act 2005 s 64(1), (3)). At the date at which this volume states the law, no day had been appointed for the purposes of either head (1) or head (2) supra. For the meanings of 'secondary school', 'middle school' and 'school' see PARA 81 ante; definitions applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Ibid s 28(1)(aa) (added by the Education Act 2002 s 154(1), (2)). The School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) does not apply to any decision taken by a local education authority to establish a new maintained nursery school before 1 June 2003 in England or 31 March 2004 in Wales (including in Wales any decision to make a prescribed alteration to a maintained nursery school before that date): see the Education Act 2002 (Commencement No 5 and Transitional and Saving Provisions) Order 2003, SI 2003/1115, arts 3, 4; and the Education Act 2002 (Commencement No 4 and Transitional Provisions) (Wales) Order 2004, SI 2004/912, arts 2, 4, 6, Schedule Pt 1. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

5 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 28 (as amended; prospectively further amended) see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

6 For the purposes of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended), 'alteration', in the context of a prescribed alteration to a maintained school, means an alteration of whatever nature, including the transfer of the school to a new site (s 28(11)(a)), but excluding any change in the religious

character of the school (s 28(11)(a)(i)) or whereby the school would acquire or lose a religious character (s 28(11)(a)(ii)). For the meaning of 'maintained school' see PARA 94 ante. As to schools having a religious character see PARAS 953-954 post. For the purposes of the Education Act 1996, except where the context otherwise requires, references to the alteration of school premises include making improvements, extensions or additions to the premises: s 573(1), (2) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 178(a), Sch 31); applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7 Ibid s 28(1)(b). Any regulations made for the purposes of s 28(1)(b) may be framed by reference to the opinion of the local education authority: s 28(12).

8 For the purposes of the Education Act 1996, except where the context otherwise requires, references to the enlargement of any school premises include any modification of the school's existing premises which has the effect of increasing the number of pupils for whom accommodation can be provided: s 573(1), (3); applied by virtue of the School Standards and Framework Act 1998 s 142(8).

9 Ibid s 28(1)(c).

10 Ibid s 28(1)(d) (added by the Education Act 2002 s 154(1), (3)).

11 School Standards and Framework Act 1998 s 28(1). As to the procedure for dealing with proposals under s 28 (as amended; prospectively further amended) and their implementation, and the provision of premises or other assistance in connection with their implementation see s 28(8), Sch 6 (as amended; prospectively further amended); and PARA 137 et seq post.

12 Ie for the purposes of ibid Pt II (as amended) (new framework for maintained schools: see eg para 94 et seq ante).

13 Ibid s 28(2)(a). Section 28(2)(a) applies to proposals to establish a new foundation or voluntary school being made otherwise than pursuant to a notice under the Education Act 2002 s 70 (prospectively repealed) (see PARAS 150 et seq, 497 et seq post): School Standards and Framework Act 1998 s 28(2)(a) (amended by the Education Act 2002 Sch 21 para 97(1), (3)). The amendment made by the Education Act 2002 Sch 21 para 97(1), (3) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 June 2003 (see the Education Act 2002 (Commencement No 5 and Transitional and Saving Provisions) Order 2003, SI 2003/1115, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to voluntary schools see PARA 102 et seq ante.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (5)(a): (1) the amendment made to the School Standards and Framework Act 1998 s 28(2)(a) by the Education Act 2002 Sch 21 para 97(1), (3) is repealed by the Education Act 2005 Sch 19 Pt 2; and (2) the School Standards and Framework Act 1998 s 28(2)(a) (as amended in relation to England; prospectively amended in relation to Wales) does not apply to any proposal to establish a secondary school which is to be maintained by a local education authority in England, where 'secondary school' includes a middle school as respects which the relevant upper age is at least 16 years, but does not include a school which provides education suitable only to the requirements of persons above compulsory school age: s 28(2A), (2B) (prospectively added: see note 3 supra). At the date at which this volume states the law, no such day had been appointed for the purposes of either head (1) or head (2) supra.

14 As to the governing bodies of maintained schools see PARA 203 et seq post.

15 For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

16 School Standards and Framework Act 1998 s 28(2)(b) (amended by the Education Act 2002 s 73). Any regulations made for the purposes of the School Standards and Framework Act 1998 s 28(2)(b) (as amended) may be framed by reference to the opinion of the local education authority: s 28(12).

17 Ibid s 28(2). See also note 13 supra.

18 Ibid s 28(3).

19 For the purposes of ibid s 28 (as amended; prospectively further amended), 'the relevant body or promoters' means the local education authority, governing body or promoters mentioned in s 28(1) (as amended) (see the text and notes 1-11 supra) or s 28(2) (as amended; prospectively further amended) (see the text and notes 12-17 supra), as the case may be: s 28(10).

20 Ibid s 28(4)(a). Section 28(4) is repealed by the Education Act 2005 Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

21 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

22 Ibid s 28(4)(b) (prospectively repealed: see note 20 supra).

23 Ie under ibid s 28 (as amended; prospectively further amended).

24 Ibid s 28(5). Any function of a local education authority in England which is conferred by or under s 28(5) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (g).

As to the duty to consult see *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168. See also *Bradbury v Enfield London Borough Council* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA; *Lee v Department of Education and Science* (1967) 66 LGR 211; *Coney v Choyce, Ludden v Choyce* [1975] 1 All ER 979, [1975] 1 WLR 422; *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1; *R v Gwent County Council, ex p Bryant* [1988] COD 19, (1988) Times, 18 April; *R v Wandsworth London Borough Council, ex p M* [1993] 1 FLR 611, sub nom *Milne v Wandsworth London Borough Council* (1992) 90 LGR 515, CA; *R v Secretary of State for Education, ex p Skitt* [1995] ELR 388; *R v Secretary of State for Education and Employment and the North East London Education Association, ex p M* [1996] ELR 162, CA; *R v Lambeth London Borough Council, ex p N* [1996] ELR 299; *R v Secretary of State for Wales, ex p Williams* [1997] ELR 100; *R v Leeds City Council, ex p N* [1999] ELR 324, CA.

As to the right to object to proposals see PARA 137 post.

25 School Standards and Framework Act 1998 s 28(5). The guidance referred to in the text is ministerial guidance: see s 28(5). As to the role played by the guidance see *R v Lambeth London Borough Council, ex p N* [1996] ELR 299 at 309-310 per Latham J.

26 Ie published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended).

27 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

28 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

29 Ibid s 28(6). Where any proposals published under s 28 (as amended; prospectively further amended) are for the transfer of a school to a site in a different area, or relate to a school which is, or (in the case of a new school) is proposed to be, situated in an area other than that of the local education authority which maintains the school, or (as the case may be) which it is proposed should maintain the school, the provisions of s 28(6) and s 28(8), Sch 6 (as amended; prospectively further amended) (see PARA 137 et seq post) have effect in relation to the proposals with such modifications as may be prescribed: s 28(9). For the purposes of Pt II (as amended), 'area', without more, means a local education authority area: s 28(11)(b); and see PARA 20 ante.

30 Ie published under ibid s 28 (as amended; prospectively further amended).

31 Ibid s 28(7). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

## UPDATE

### 132 Proposals for establishment or alteration of community, foundation or voluntary school or maintained nursery school [in Wales]

TEXT AND NOTES--These provisions now apply only in relation to Wales: see the 1998 Act s 28 (amended by the Education and Inspections Act 2006 Sch 3 para 19, Sch 18 Pt 3). Similar provision is made in relation to England by s 28: see PARA 165A.1. For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.

NOTE 2--Day now appointed for repeal of 2002 Act s 74 and commencement of 2005 Act s 68: SI 2006/2129. 2005 Act s 68 amended: 2006 Act Sch 3 para 50, Sch 18 Pt 3.

NOTE 3--Day now appointed for purposes of heads (1) and (2): SI 2006/2129.

NOTE 5--SI 1999/1671 further amended: SI 2006/173. SI 1999/2213 revoked: SI 2007/1288.

NOTE 24--See also *R (on the application of Parents for Legal Action Ltd) v Northumberland CC* [2006] EWHC 1081 (Admin), [2006] LGR 646.

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### **133. Proposals for establishment of community, foundation or voluntary school maintained by an English local education authority.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

A local education authority<sup>2</sup> in England<sup>3</sup> may, with the consent of the Secretary of State<sup>4</sup>, publish<sup>5</sup> its proposals to establish<sup>6</sup> a new community or foundation school<sup>7</sup>.

Any persons (known as 'promoters') may with the consent of the Secretary of State publish<sup>8</sup> their proposals to establish<sup>9</sup> a new foundation or voluntary school<sup>10</sup> which is proposed to be maintained by a local education authority<sup>11</sup> in England<sup>12</sup>. Such proposals<sup>13</sup> must be proposals for a secondary school<sup>14</sup>, and must contain such information, and be published in such manner, as may be prescribed<sup>15</sup>.

Before publishing any such proposals<sup>16</sup>, the relevant authority or promoters<sup>17</sup> must consult such persons as appear to be appropriate; and in discharging this duty the relevant authority or promoters must have regard to any guidance given from time to time by the Secretary of State<sup>18</sup>.

The relevant authority or promoters must send a copy of any published proposals<sup>19</sup> and such information in connection with those proposals as may be prescribed, to the school organisation committee<sup>20</sup> for the area of the local education authority who it is proposed should maintain the school<sup>21</sup>.

1 The School Standards and Framework Act 1998 s 28A (prospectively added) is to be brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 As to the Secretary of State see PARA 52 ante.

5 Ie under the School Standards and Framework Act 1998 s 28A (prospectively added).

6 Ie otherwise than pursuant to a notice under the Education Act 2005 s 66 (not yet in force) (see PARA 150 post). As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7 Ibid s 28A(1) (prospectively added: see note 1 supra). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8). As to community and foundation schools see PARA 102 ante. As to the procedure for dealing with proposals under s 28A (prospectively added) and their implementation, and the provision of premises or other assistance in connection with their implementation see s 28A(7) (prospectively added), Sch 6 (as amended; prospectively further amended); and PARA 137 et seq post. Proposals under s 28A (prospectively added) for the establishment of a new school may relate to the establishment of the school as a federated school (within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post)): Education Act 2005 s 68. Section 68 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

8 See note 5 supra.

9 See note 6 supra.

10 As to voluntary schools see PARA 102 ante.

11 For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

12 School Standards and Framework Act 1998 s 28A(2) (prospectively added: see note 1 supra).

13 See note 5 supra.

14 School Standards and Framework Act 1998 s 28A(3) (prospectively added: see note 1 supra). For this purpose, 'secondary school' includes a middle school as respects which the relevant upper age is at least 16 years, but does not include a school which provides education suitable only to the requirements of persons above compulsory school age: s 28A(3) (as so prospectively added). For the meaning of 'secondary school' generally see PARA 81 ante; definition applied by virtue of s 142(8). For the meaning of 'middle school' see PARA 81 ante; definition applied by virtue of s 142(8). For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 142(8).

15 Ibid s 28A(4) (prospectively added: see note 1 supra). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 28A (prospectively added).

16 See note 5 supra.

17 For the purposes of the School Standards and Framework Act 1998 s 28A (prospectively added), 'the relevant authority or promoters' means the local education authority mentioned in s 28A(1) (prospectively added) (see the text and notes 1-7 supra) or the promoters mentioned in s 28A(2) (prospectively added) (see the text and notes 8-12 supra), as the case may be: s 28A(9) (prospectively added: see note 1 supra).

18 Ibid s 28A(5) (prospectively added: see note 1 supra). As to the duty to consult see the cases cited in PARA 132 note 24 ante; and as to the right to object to proposals see PARA 137 post.

19 See note 5 supra.

20 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

21 School Standards and Framework Act 1998 s 28A(6) (prospectively added: see note 1 supra). For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 142(8). Where any proposals published under s 28A (prospectively added) relate to a school which is proposed to be situated in an area other than that of the local education authority which it is proposed should maintain the school, the provisions of s 28(6) and s 28(8), Sch 6 (as amended; prospectively further amended) (see PARA 137 et seq post) have effect in relation to the proposals with such modifications as may be prescribed: s 28A(8) (as so prospectively added). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

## UPDATE

### **133 Proposals for establishment of community, foundation or voluntary school maintained by an English local education authority**

TEXT AND NOTES--Repealed: Education and Inspections Act 2006 Sch 3 para 19, Sch 18 Pt 3. For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.



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### **134. Proposals for discontinuance of community, foundation, voluntary or maintained nursery school.**

Where a local education authority<sup>1</sup> proposes to discontinue<sup>2</sup> a community, foundation or voluntary school<sup>3</sup>, or a maintained nursery school<sup>4</sup>, the authority must publish its proposals<sup>5</sup>. Where the governing body of a foundation or voluntary school proposes to discontinue the school, the governing body must publish its proposals<sup>6</sup>. The proposals must contain such information, and be published in such manner, as may be prescribed<sup>7</sup>.

Before publishing any such proposals<sup>8</sup>, the relevant body<sup>9</sup> must consult such persons as appear to it to be appropriate; and in discharging this duty the relevant body must have regard to any guidance given from time to time<sup>10</sup>.

Where any published proposals<sup>11</sup> relate to a school in England, the relevant body must send a copy of the published proposals, and such information in connection with those proposals as may be prescribed, to the school organisation committee<sup>12</sup> for the area of the local education authority which maintains the school<sup>13</sup>. Where any published proposals<sup>14</sup> relate to a school in Wales<sup>15</sup>, the relevant body must send a copy of the published proposals, and such information in connection with those proposals as may be prescribed, to the National Assembly for Wales<sup>16</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the purposes of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended), any reference to a local education authority discontinuing a school, or implementing proposals to discontinue a school (whether published by the authority or the governing body), is a reference to the authority ceasing to maintain the school: s 29(10). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8). See also PARA 132 note 2 ante. As to the governing bodies of maintained schools see PARA 203 et seq post. As to the discontinuance of a voluntary aided school see *R v Secretary of State for Education and Science, ex p Inner London Education Authority* [1990] COD 412, (1990) Times, 17 May, CA.

3 As to community, foundation and voluntary schools see PARA 102 et seq ante.

4 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

5 School Standards and Framework Act 1998 s 29(1). The proposals mentioned in the text must be published under s 29 (prospectively amended): s 29(1). As to the procedure for dealing with proposals under s 29 (prospectively amended) and their implementation see s 29(7), Sch 6 (as amended; prospectively further amended); and PARA 137 et seq post.

Section 29 (prospectively amended) does not apply to the closure of a school by a local education authority as directed by the Secretary of State under s 19(1) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (school requiring special measures: see PARA 1273 post): see s 19(4); and PARA 1273 post. As to the Secretary of State see PARA 52 ante; and as to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

6 Ibid s 29(2). The proposals mentioned in the text must be published under s 29 (prospectively amended): s 29(2). See also note 5 supra.

7 Ibid s 29(3). See also note 5 supra. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the

regulations that have been made under s 29 (prospectively amended) see the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342); and the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908).

8 le under the School Standards and Framework Act 1998 s 29 (prospectively amended).

9 For the purposes of ibid s 29 (prospectively amended), 'the relevant body' means the local education authority or governing body mentioned in s 29(1) (see the text and notes 1-5 supra) or s 29(2) (see the text and note 6 supra), as the case may be: s 29(9).

10 Ibid s 29(4). The guidance referred to in the text is ministerial guidance: see s 29(4).

Section 29(4) is repealed, and s 29(4A)-(4D) is added, by the Education Act 2005 s 70(1), (2) as from a day to be appointed under ss 125(4), 126(1), (3)(a). At the date at which this volume states the law, no such day had been appointed. The amendments made by s 70(1), (2) provide that the matters to which the relevant body must have regard in formulating any proposals under the School Standards and Framework Act 1998 s 29 (prospectively amended) in relation to a rural primary school include: (1) the likely effect of the discontinuance of the school on the local community; (2) the availability, and likely cost to the local education authority, of transport to other schools; (3) any increase in the use of motor vehicles which is likely to result from the discontinuance of the school, and the likely effects of any such increase; and (4) any alternatives to the discontinuance of the school: s 29(4A) (as so prospectively added). In considering these matters the relevant body must have regard to any guidance given from time to time: s 29(4A) (as so prospectively added). Before publishing any proposals under s 29 (prospectively amended) which relate to a rural primary school, the relevant body must consult: (a) the registered parents of registered pupils at the school; (b) where the relevant body is the governing body of the school, the local education authority; (c) in a case where the local education authority is a county council in England, any district council for the area in which the school is situated; (d) any parish council or community council for the area in which the school is situated; and (e) such other persons as appear to the relevant body to be appropriate: s 29(4B) (as so prospectively added). Before publishing any other proposals under s 29 (prospectively amended), the relevant body must consult such persons as appear to be appropriate: s 29(4C) (as so prospectively added). In discharging the duty under s 29(4B) (prospectively added) or s 29(4C) (prospectively added) the relevant body must have regard to any ministerial guidance given from time to time: s 29(4D) (as so prospectively added). For this purpose, 'rural primary school' means a primary school designated as such for the purposes of s 29 (prospectively amended) by ministerial order: see s 29(9A) (prospectively added by the Education Act 2005 s 70(1), (3)). For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to orders made under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. For the meanings of 'registered' and 'registered pupil' see PARA 512 post; definitions applied by virtue of s 142(8). As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of s 142(8). For the meaning of 'England' see PARA 52 note 11 ante. As to areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq.

As to the duty to consult see *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168. See also *Bradbury v Enfield London Borough Council* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA; *Lee v Department of Education and Science* (1967) 66 LGR 211; *Coney v Choyce, Ludden v Choyce* [1975] 1 All ER 979, [1975] 1 WLR 422; *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1; *R v Gwent County Council, ex p Bryant* [1988] COD 19, (1988) Times, 18 April; *R v Wandsworth London Borough Council, ex p M* [1993] 1 FLR 611, sub nom *Milne v Wandsworth London Borough Council* (1992) 90 LGR 515, CA; *R v Secretary of State for Education, ex p Skitt* [1995] ELR 388; *R v Secretary of State for Education and Employment and the North East London Education Association, ex p M* [1996] ELR 162, CA; *R v Lambeth London Borough Council, ex p N* [1996] ELR 299; *R v Secretary of State for Wales, ex p Williams* [1997] ELR 100; *R v Leeds City Council, ex p N* [1999] ELR 324, CA.

As the role played by the guidance see *R v Lambeth London Borough Council, ex p N* supra.

As to the right to object to proposals see PARA 137 post.

11 See note 8 supra.

12 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

13 School Standards and Framework Act 1998 s 29(5). For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 142(8). Where any proposals published under s 29 (prospectively amended) relate to a school which is situated in an area other than that of the local education authority which maintains it, the provisions of s 29(5) and s 29(7), Sch 6 (as amended; prospectively further amended) (see PARA 137 et seq post) have effect in relation to the proposals with such modifications as may be prescribed: s 29(8). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

14 See note 8 supra.

15 For the meaning of 'Wales' see PARA 52 note 13 ante.

16 School Standards and Framework Act 1998 s 29(6). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

## **UPDATE**

### **134 Proposals for discontinuance of community, foundation, voluntary or maintained nursery school [in Wales]**

TEXT AND NOTES--These provisions now apply only in relation to Wales: see the 1998 Act s 29 (amended by the Education and Inspections Act 2006 Sch 3 para 20, Sch 18 Pt 3). For similar provision in relation to England see ss 15, 16; and PARA 165A.3. For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.

NOTE 7--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/2213 revoked: SI 2007/1288.

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### **135. Notice by governing body to discontinue foundation or voluntary school.**

The governing body<sup>1</sup> of a foundation or voluntary school<sup>2</sup> may discontinue<sup>3</sup> the school by serving on the Secretary of State<sup>4</sup> and the local education authority<sup>5</sup> at least two years' notice of its intention to do so<sup>6</sup>. If discontinuing the school would affect the facilities for full-time education suitable to the requirements of persons over compulsory school age<sup>7</sup> who have not attained the age of 19, the governing body must, before serving such a notice, consult certain bodies<sup>8</sup>. A notice may not be withdrawn without the consent of the local education authority<sup>9</sup>.

If, while such a notice is in force in respect of a foundation or voluntary school, the governing body informs the local education authority that it is unable or unwilling to carry on the school until the notice expires, the authority may conduct the school for all or part of the unexpired period of the notice as if it were a community school<sup>10</sup>, and is entitled to use the school premises<sup>11</sup> free of charge for that purpose<sup>12</sup>. While the school is being so conducted, the authority must keep the school premises in good repair<sup>13</sup>; and any interest in the premises which is held for the purposes of the school is to be deemed, for all purposes relating to the condition, occupation or use of the premises, or the making of alterations<sup>14</sup> to them, to be vested in the authority<sup>15</sup>. The governing body may, however, use the premises, or any part of them, when not required for the purposes of the school to the same extent as if it had continued to carry on the school during the unexpired period of the notice<sup>16</sup>.

Where land<sup>17</sup> occupied by a foundation or voluntary school is held by any trustees for the purposes of the school<sup>18</sup>, and the termination of the school's occupation of that land would have the result that it was not reasonably practicable for the school to continue to be conducted at its existing site<sup>19</sup>, then if the trustees (being entitled to do so) give any notice to the governing body which purports to terminate the school's occupation of the land, any such notice is not effective to terminate its occupation of the land unless the following requirements are complied with in relation to the notice (without prejudice to any other statutory or other requirements falling to be so complied with)<sup>20</sup>. The requirements are: (1) that the period of notice must be reasonable having regard to the length of time that would be required to discontinue the school (if the governing body chose to do so)<sup>21</sup>, and in any event must not be less than two years<sup>22</sup>; and (2) that a copy of the notice must be given to the Secretary of State and the local education authority at the time when the notice is given to the governing body<sup>23</sup>.

If a foundation or voluntary school is discontinued under these provisions, the duty of the local education authority to maintain<sup>24</sup> the school as a foundation or voluntary school ceases<sup>25</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq post.

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to foundation schools and voluntary schools see PARA 102 et seq ante.

3 As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

4 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 As to local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 s 30(1). No such notice may be served without the consent of the Secretary of State if expenditure has been incurred on the school premises (otherwise than in connection with repairs): (1) by the Secretary of State (s 30(2)(a)); (2) by the Funding Agency for Schools (s 30(2)(b)); (3) by any local education authority (s 30(2)(c)); or (4) by an authority which was a local education authority within the meaning of any enactment repealed by the Education Act 1944 (itself now repealed) or an earlier Act (School Standards and Framework Act 1998 s 30(2)(d)). The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

Section 30 does not apply to the closure of a school by a local education authority as directed by the Secretary of State under s 19(1) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (school requiring special measures: see PARA 1273 post): see s 19(4); and PARA 1273 post.

7 As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of *ibid* s 142(8).

8 School Standards and Framework Act 1998 s 30(3) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 83). The bodies to be consulted are the Learning and Skills Council for England (if the school is in England) or the National Council for Education and Training for Wales (if the school is in Wales). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the Learning and Skills Council for England see PARA 1072 et seq post. As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

9 School Standards and Framework Act 1998 s 30(7).

10 *Ibid* s 30(4)(a). As to community schools see PARA 102 et seq ante.

11 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of *ibid* s 142(8).

12 *Ibid* s 30(4)(b).

13 *Ibid* s 30(5)(a).

14 As to the meaning of 'alteration' see PARA 132 note 6 ante.

15 School Standards and Framework Act 1998 s 30(5)(b).

16 *Ibid* s 30(6).

17 As to the meaning of 'land' see PARA 1352 note 9 post; definition applied by virtue of *ibid* s 142(8).

18 *Ibid* s 30(10)(a). As to references to land held by trustees for the purposes of a school see PARA 104 note 6 ante.

19 *Ibid* s 30(10)(b). Where trustees give, at the same (or substantially the same) time, notices purporting to terminate a foundation or voluntary school's occupation of two or more pieces of land held by the trustees for the purposes of the school, then for the purpose of determining whether s 30(10)(b) applies in relation to any of those pieces of land, regard may be had to the combined effect of terminating the school's occupation of both or all of them: s 30(12). If a question arises as to whether the termination of a school's occupation of any land would have the result mentioned in s 30(10)(b) (including a question as to whether s 30(12) applies in any particular circumstances), it must be determined by the Secretary of State: s 30(13).

20 *Ibid* s 30(10).

21 *Ibid* s 30(11)(a)(i).

22 *Ibid* s 30(11)(a)(ii).

23 *Ibid* s 30(11)(b).

24 As to the duty to maintain see *ibid* s 22 (as amended); and PARA 302 post.

25 *Ibid* s 30(8). Nothing in s 29 (prospectively amended) (see PARA 134 ante) or s 33 (as amended; prospectively further amended) (see PARA 131 ante) applies to any such discontinuance of a foundation or voluntary school: s 30(9).

## UPDATE

### **135 Notice by governing body to discontinue foundation or voluntary school**

NOTE 8--Reference to National Council for Education and Training for Wales is now to the National Assembly for Wales: 1998 Act s 30(3) (amended by SI 2005/3238).

NOTE 25--Nothing in the 1998 Act ss 29 and 33 (which relate to Wales), and nothing in the Education and Inspections Act 2006 ss 15 and 28 (which relate to England) applies in relation to the discontinuance under 1998 Act s 30 of a foundation or voluntary school: s 30(9) (substituted by the 2006 Act Sch 3 para 21).

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### **136. Proposals for establishment, alteration or discontinuance of community or foundation special school.**

Where a local education authority<sup>1</sup> intends to establish<sup>2</sup> a new community or foundation special school<sup>3</sup>, or to make any prescribed<sup>4</sup> alteration to such a school<sup>5</sup>, or to discontinue such a school<sup>6</sup>, the authority must publish its proposals<sup>7</sup>. Where the governing body<sup>8</sup> of a foundation special school proposes to make any prescribed alteration to the school<sup>9</sup>, or to discontinue the school<sup>10</sup>, the governing body must publish its proposals<sup>11</sup>. The proposals must contain such information, and be published in such manner, as may be prescribed by regulations<sup>12</sup>.

Before publishing any such proposals<sup>13</sup>, the relevant body<sup>14</sup> must consult such persons as appear to it to be appropriate; and in discharging this duty the relevant body must have regard to any guidance given from time to time<sup>15</sup>.

Where any published proposals<sup>16</sup> relate to a school or proposed school in England, the relevant body must send a copy of the proposals, and such information in connection with those proposals as may be prescribed, to the school organisation committee<sup>17</sup> for the area of the local education authority which maintains the school or (in the case of a new school) which it is proposed should maintain the school<sup>18</sup>. Where any proposals published under these provisions relate to a school or proposed school in Wales, the relevant body must send a copy of the proposals, and such information in connection with those proposals as may be prescribed, to the National Assembly for Wales<sup>19</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid s 31(1)(a). For the meaning of 'community or foundation special school' see PARA 94 note 2 ante. As to community special schools and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8).

Proposals under s 31 (prospectively amended) for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post) (s 74(1), (3)); and regulations may make provision modifying any provision contained in the School Standards and Framework Act 1998 s 31 (prospectively amended) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school (Education Act 2002 s 74(2)). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(1) (see the Education Act 2002 (Commencement No 5 and Transitional and Saving Provisions) Order 2003, SI 2003/1115, art 3) and 1 April 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (5)(a), the Education Act 2002 s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2, and the provisions of the Education Act 2002 s

74(1), (3) are re-enacted as the Education Act 2005 s 68 (not yet in force) (proposals for establishment of federated school: see PARA 133 ante). At the date at which this volume states the law, no such day had been appointed.

4 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 31 (prospectively amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).

5 School Standards and Framework Act 1998 s 31(1)(b). As to the meaning of 'alteration' see PARA 132 note 6 ante.

6 Ibid s 31(1)(c). As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

7 Ibid s 31(1). The proposals mentioned in the text must be published under s 31 (prospectively amended): s 31(1).

As to the procedure for dealing with proposals under s 31 (prospectively amended) and their implementation see s 31(8), Sch 6 (as amended; prospectively further amended); and PARA 137 et seq post.

Section 31 (prospectively amended) does not apply to the closure of a school by a local education authority as directed under s 19(1) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (school requiring special measures: see PARA 1273 post): see s 19(4); and PARA 1273 post.

8 As to the governing bodies of maintained schools see PARA 203 et seq post.

9 School Standards and Framework Act 1998 s 31(2)(a). See also note 4 supra.

10 Ibid s 31(2)(b).

11 Ibid s 31(2). The proposals mentioned in the text must be published under s 31 (prospectively amended): s 31(2).

12 Ibid s 31(3). See also note 4 supra.

13 Ie under s 31 (prospectively amended).

14 For the purposes of ibid s 31 (prospectively amended), 'the relevant body' means the local education authority or governing body mentioned in s 31(1) (see the text and notes 1-7 supra) or s 31(2) (see the text and notes 8-11 supra), as the case may be: s 31(9).

15 Ibid s 31(4). The guidance referred to in the text is ministerial guidance: see s 31(4).

Section 31(4) is repealed, and s 31(4A)-(4C) is added, by the Education Act 2005 s 71 as from a day to be appointed under ss 125(4), 126(1), (3)(a). At the date at which this volume states the law, no such day had been appointed. The amendments made by s 71 provide that before publishing any proposals under the School Standards and Framework Act 1998 s 31 (prospectively amended) to make any prescribed alteration to a school, or to discontinue a school, the relevant body must consult: (1) the registered parents of registered pupils at the school; (2) any local education authority which maintains a statement under the Education Act 1996 s 324 (statement of special educational needs: see PARA 996 post) in respect of a registered pupil at the school; and (3) such other persons as appear to the relevant body to be appropriate: School Standards and Framework Act 1998 s 31(4A) (as so prospectively added). Before publishing any proposals under s 31 (prospectively amended) to establish a new school, the relevant body must consult such persons as appear to be appropriate: s 31(4B) (as so prospectively added). In discharging the duty under s 31(4A) (prospectively added) or s 31(4B) (prospectively added), the relevant body must have regard to any ministerial guidance given from time to time: s 31(4C) (as so prospectively added). For the meaning of 'registered' see PARA 512 post; definition applied by virtue of s 142(8). As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of s 142(8). For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of s 142(8).

As to the duty to consult see *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168. See also *Bradbury v Enfield London Borough Council* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA; *Lee v Department of Education and Science* (1967) 66 LGR 211; *Coney v Choyce, Ludden v Choyce* [1975] 1 All ER 979, [1975] 1 WLR 422; *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1; *R v Gwent County Council, ex p Bryant* [1988] COD 19, (1988) Times, 18 April; *R v Wandsworth London Borough Council, ex p M* [1993] 1 FLR 611, sub nom *Milne v Wandsworth London Borough*



*Council* (1992) 90 LGR 515, CA; *R v Secretary of State for Education, ex p Skitt* [1995] ELR 388; *R v Secretary of State for Education and Employment and the North East London Education Association, ex p M* [1996] ELR 162, CA; *R v Lambeth London Borough Council, ex p N* [1996] ELR 299; *R v Secretary of State for Wales, ex p Williams* [1997] ELR 100; *R v Leeds City Council, ex p N* [1999] ELR 324, CA.

As the role played by the guidance see *R v Lambeth London Borough Council, ex p N* supra.

As to the right to object to proposals see PARA 137 post.

16 See note 13 supra.

17 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

18 School Standards and Framework Act 1998 s 31(5). The relevant body must also send a copy of any proposals to which s 31(5) applies to such other bodies or persons as may be prescribed: s 31(7). For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 142(8). See also note 4 supra.

19 Ibid s 31(6). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. The relevant body must also send a copy of any proposals to which s 31(6) applies to such other bodies or persons as may be prescribed: s 31(7). See also note 4 supra.

## UPDATE

### **136 Proposals for establishment, alteration or discontinuance of community or foundation special school [in Wales]**

TEXT AND NOTES--These provisions now apply only in relation to Wales: see the 1998 Act s 31 (amended by the Education and Inspections Act 2006 Sch 3 para 29, Sch 18 Pt 3). For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.

NOTE 3--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 4--SI 1999/2212 revoked: SI 2007/1288. SI 1999/1780 further amended: SI 2005/3238, SI 2009/48.

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### **137. Objections to proposals.**

Any person may make objections to, or comments on, published proposals<sup>1</sup> which relate to a school<sup>2</sup> or proposed school<sup>3</sup> in England<sup>4</sup>. Where the proposals were published by a local education authority<sup>5</sup>: (1) any such objections or comments so made must be sent to the authority within such period as may be prescribed<sup>6</sup> (the 'representation period')<sup>7</sup>; and (2) within such period as may be prescribed, the authority must send to the relevant committee<sup>8</sup> copies of all objections or comments made (and not withdrawn in writing) within the representation period, together with the authority's observations on them<sup>9</sup>. Where the proposals were published by a governing body<sup>10</sup> or promoters<sup>11</sup>, any objections or comments must be sent to the relevant committee within such period as may be prescribed<sup>12</sup>.

Similarly, any person may make objections to proposals<sup>13</sup> which relate to a school<sup>14</sup> or proposed school<sup>15</sup> in Wales<sup>16</sup>. Where the proposals were published by a local education authority: (a) any such objections must be sent to the authority within such period as may be prescribed ('the objection period')<sup>17</sup>; and (b) within such period as may be prescribed the authority must send to the National Assembly for Wales<sup>18</sup> copies of all objections made (and not withdrawn in writing) within the objection period, together with the authority's observations on them<sup>19</sup>. Where the proposals were published by a governing body or promoters, any objections must be sent to the National Assembly for Wales within such period as may be prescribed<sup>20</sup>.

1    le proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): ss 28(8), 29(7), 31(8), Sch 6 para 2(1). As from a day to be appointed, Sch 6 para 2(1) (as amended) is further amended so that a person may also make objections to, or comments on, proposals published under s 28A (prospectively added) (see PARA 133 ante): Sch 6 para 2(1) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 13(1), (3)). At the date at which this volume states the law, no such day had been appointed.

2    le the alteration or discontinuance of a school. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante. As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

3    le the establishment of a school. As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 142(8).

Regulations may make provision modifying any provision contained in Sch 6 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

4 School Standards and Framework Act 1998 Sch 6 paras 1(1), 2(1) (Sch 6 para 2(1) amended by the Education Act 2002 s 75, Sch 10 paras 1, 2(1), (2)). See also note 1 *supra*.

As from a day to be appointed, the School Standards and Framework Act 1998 Sch 6 para 1(1) is amended so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 *ante*): Sch 6 para 1(1) (prospectively amended by the Education Act 2005 Sch 12 para 13(1), (2)). At the date at which this volume states the law, no such day had been appointed.

The right to object to proposals ends with the end of the statutory consultation period (see PARA 132 *ante*): *R (on the application of WB) v Leeds School Organisation Committee* [2002] EWHC 1927 (Admin), [2003] ELR 67.

5 As to local education authorities see PARA 20 *ante*.

6 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 *ante*. As to the regulations that have been made under Sch 6 para 2 (as amended; prospectively further amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

7 School Standards and Framework Act 1998 Sch 6 para 2(2)(a) (amended by the Education Act 2002 Sch 10 paras 1, 2(1), (2), (3)(a)). See also notes 1, 3-4 *supra*.

8 For these purposes, 'the relevant committee' means the school organisation committee for the area of the local education authority which maintains the school or (in the case of a new school) which it is proposed should maintain the school: School Standards and Framework Act 1998 Sch 6 para 1(2). For the meaning of 'school organisation committee' see PARA 118 note 3 *ante*. See also notes 1, 3-4 *supra*. For the meaning of 'area of the local education authority' see PARA 20 note 3 *ante*; definition applied by virtue of s 142(8).

9 *Ibid* Sch 6 para 2(2)(b) (amended by the Education Act 2002 Sch 10 paras 1, 2(1), (2), (3)(b)). See also notes 1, 3-4 *supra*.

10 As to the governing bodies of maintained schools see PARA 203 *et seq post*.

11 As to the meaning of 'promoters' see PARA 132 *ante*.

12 School Standards and Framework Act 1998 Sch 6 para 2(3) (amended by the Education Act 2002 Sch 10 paras 1, 2(1), (4)). See also notes 1, 3-4 *supra*.

13 *Ie* any proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 *ante*), s 29 (prospectively amended) (see PARA 134 *ante*) or s 31 (prospectively amended) (see PARA 136 *ante*): Sch 6 para 7(1). See also notes 1, 3-4 *supra*.

14 See note 2 *supra*.

15 See note 3 *supra*.

16 School Standards and Framework Act 1998 Sch 6 paras 6, 7(1). See also notes 1, 3-4 *supra*.

17 *Ibid* Sch 6 para 7(2)(a). See also notes 1, 3-4 *supra*. As to the regulations made under Sch 6 para 7 see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).

18 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

19 School Standards and Framework Act 1998 Sch 6 para 7(2)(b). See also notes 1, 3-4 *supra*.

20 *Ibid* Sch 6 para 7(3). See also notes 1, 3-4 *supra*.

## UPDATE

### 137 Objections to proposals

TEXT AND NOTES 1-12--1998 Act Sch 6 paras 1-5 repealed: Education and Inspections Act 2006 Sch 3 para 33(3), Sch 18 Pt 3. For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.

NOTE 3--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 6--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

NOTE 16--1998 Act Sch 6 para 6 amended: 2006 Act Sch 3 para 33, Sch 18 Pt 3.

NOTE 17--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/1780 further amended: see PARA 136 NOTE 4.

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### 138. Approval of proposals.

Published proposals<sup>1</sup> which relate to a school<sup>2</sup> or proposed school<sup>3</sup> in England require approval<sup>4</sup> if:

- 264 (1) the proposals were published by a local education authority<sup>5</sup> and either objections to the proposals have been made<sup>6</sup> and any of them have not been withdrawn in writing within the representation period<sup>7</sup>, or such approval is required by virtue of the provisions<sup>8</sup> relating to determinations<sup>9</sup>; or
- 265 (2) the proposals were published by a governing body<sup>10</sup> or promoters<sup>11</sup>.

This does not prevent the body or promoters by whom any proposals have been published<sup>12</sup> from withdrawing those proposals by notice in writing given to the relevant committee<sup>13</sup> at any time before the proposals are determined<sup>14</sup>. Where any proposals require such approval, they must be considered in the first instance by the relevant committee<sup>15</sup>, who may: (a) reject the proposals<sup>16</sup>; (b) approve them without modification<sup>17</sup>; (c) approve them with such modifications as the committee thinks desirable after consulting such persons or bodies as may be prescribed<sup>18</sup>; or (d) if the committee thinks it appropriate to do so, and subject to regulations, refer them to the adjudicator<sup>19</sup>. Any approval given may be expressed to take effect only if an event specified in the approval occurs by a date so specified; and regulations may prescribe the events that may be so specified<sup>20</sup>. When deciding whether or not to give any approval, the committee must have regard to any guidance given from time to time by the Secretary of State and the committee must not give any such approval unless it is satisfied that adequate financial resources will be available to enable the proposals to be implemented<sup>21</sup>.

If, by the end of such period as may be specified in or determined in accordance with regulations<sup>22</sup>, the committee has not voted on the question whether to give any approval<sup>23</sup>, and the body or promoters by whom the proposals were published request the committee to refer the proposals to the adjudicator<sup>24</sup>, the committee must refer the proposals to the adjudicator<sup>25</sup>. The committee must also refer the proposals to the adjudicator<sup>26</sup>:

- 266 (i) if the committee has voted on any matter which falls<sup>27</sup> to be decided by it by a unanimous decision<sup>28</sup>, but has failed to reach such a decision on that matter<sup>29</sup>;
- 267 (ii) where the committee rejects proposals published by promoters for the establishment of a new foundation or voluntary school<sup>30</sup>, if the promoters so request<sup>31</sup>; or
- 268 (iii) where the committee rejects proposals to make an alteration to a school which are published by the governing body of the school<sup>32</sup>, the school is of a prescribed description and the alteration is of a prescribed description, if the governing body so requests<sup>33</sup>.

Where any proposals are referred to the adjudicator<sup>34</sup>, he must consider the proposals afresh<sup>35</sup>.

Published proposals<sup>36</sup> which relate to a school or proposed school in Wales require approval<sup>37</sup> if:

- 269 (A) the National Assembly for Wales<sup>38</sup>, within two months after a copy of the published proposals is sent to it, gives notice to the body or promoters by whom the proposals were published that such approval is required<sup>39</sup>; or
- 270 (B) objections to the proposals have been made<sup>40</sup> and any of them have not been withdrawn in writing within the objection period<sup>41</sup>.

This does not prevent the body or promoters by whom any proposals have been published<sup>42</sup> from withdrawing those proposals by notice in writing given to the National Assembly for Wales at any time before the proposals are approved<sup>43</sup>. Where any proposals require such approval, the National Assembly for Wales may reject the proposals<sup>44</sup>, approve them without modification<sup>45</sup>, or approve them with such modifications as it thinks desirable after consulting such persons or bodies as may be prescribed<sup>46</sup>. Any approval given may be expressed to take effect only if an event specified in the approval occurs by a date so specified<sup>47</sup>. When deciding whether or not to give any approval, the National Assembly for Wales must have regard to the school organisation plan<sup>48</sup> for the area in which the school is, or (in the case of a new school) is proposed to be, situated<sup>49</sup>.

1    le proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): ss 28(8), 29(7), 31(8), Sch 6 para 3(1).

As from a day to be appointed, Sch 6 para 3(1) is amended so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 ante): Sch 6 para 3(1) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 13(1), (4)(a)). At the date at which this volume states the law, no such day had been appointed.

2    le the alteration or discontinuance of a school. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante. As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

3    le the establishment of a school. As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 142(8).

Regulations may make provision modifying any provision contained in Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 139 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

4    le under the School Standards and Framework Act 1998 Sch 6 para 3 (as amended; prospectively further amended).

5    As to local education authorities see PARA 20 ante.

6    le in accordance with the School Standards and Framework Act 1998 Sch 6 para 2 (as amended; prospectively further amended): see PARA 137 ante.

7    Ibid Sch 6 para 3(1)(a)(i) (amended by the Education Act 2002 s 75, Sch 10 paras 1, 3(1), (2)). See also note 1 supra. For the meaning of 'representation period' see PARA 137 ante.

8    le the School Standards and Framework Act 1998 Sch 6 para 4(5) (as amended) (see PARA 139 note 6 post).

9 Ibid Sch 6 para 3(1)(a)(ii). See also note 1 supra.

10 As to the governing bodies of maintained schools see PARA 203 et seq post.

11 School Standards and Framework Act 1998 Sch 6 para 3(1)(b). See also notes 1, 3 supra. As to the meaning of 'promoters' see PARA 132 ante.

12 Ie published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): Sch 6 para 3(8). See also note 1 supra. As from a day to be appointed, Sch 6 para 3(8) is amended so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 ante): Sch 6 para 3(8) (prospectively amended by the Education Act 2005 Sch 12 para 13(1), (4)(c)). At the date at which this volume states the law, no such day had been appointed.

13 For the meaning of 'the relevant committee' see PARA 137 note 8 ante.

14 School Standards and Framework Act 1998 Sch 6 para 3(8). See also notes 1, 3 supra.

15 The requirement to make a decision under ibid Sch 6 para 3(2) (as amended) (see the text and notes 16-19 infra) in the case of proposals of a prescribed description only applies if, at the time when the decision falls to be made under Sch 6 para 3(2) (as amended), the committee is satisfied that the proposals do not relate to any relevant proposals (ie proposals of a description prescribed for these purposes): Sch 6 para 3(2A), (2B) (added by the Education Act 2002 s 215(1), Sch 21 para 115(1), (2)). In deciding for these purposes whether any proposals are related, the relevant committee must have regard to any guidance given from time to time by the Secretary of State: School Standards and Framework Act 1998 Sch 6 para 3(2C) (added by the Education Act 2002 Sch 21 para 115(1), (2)). See also note 1 supra. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 6 para 3(2A), (2B) (as added) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507 (amended by SI 2004/696).

16 School Standards and Framework Act 1998 Sch 6 para 3(2)(a). See also notes 1, 3 supra.

17 Ibid Sch 6 para 3(2)(b) (amended by the Education Act 2002 s 215(2), Sch 22 Pt 3). See also notes 1, 3 supra. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

18 Ibid Sch 6 para 3(2)(c). See also notes 1, 3 supra.

19 Ibid Sch 6 para 3(2)(d) (added by the Education Act 2002 Sch 10 paras 1, 3(1), (3)). See also notes 1, 3 supra. For the meaning of 'adjudicator' see PARA 124 ante. As to the regulations that have been made under the School Standards and Framework Act 1998 Sch 6 para 3 (as amended; prospectively further amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

20 School Standards and Framework Act 1998 Sch 6 para 3(3). See also notes 1, 3 supra.

21 Ibid Sch 6 para 3(4) (amended by the Children Act 2004 s 64, Sch 5 Pt 1). See also notes 1, 3 supra.

22 Regulations made for the purposes of the School Standards and Framework Act 1998 Sch 6 para 3(5), or for the purposes of any other corresponding provision of the School Standards and Framework Act 1998, may be framed by reference to the opinion of the committee: Sch 6 para 3(5). See also notes 1, 3 supra.

23 Ibid Sch 6 para 3(5)(a). See also notes 1, 3 supra.

24 Ibid Sch 6 para 3(5)(b). See also notes 1, 3 supra.

25 Ibid Sch 6 para 3(5). See also notes 1, 3 supra.

26 As from a day to be appointed, the committee must also refer the proposals to the adjudicator if, by the end of such period as may be specified in regulations, the committee has not determined whether to give any approval under ibid Sch 6 para 3 (as amended; prospectively further amended): Sch 6 para 3(6D) (prospectively added by the Education Act 2005 Sch 12 para 13(1), (4)(b)). At the date at which this volume states the law, no such day had been appointed.

- 27    Ie in accordance with regulations under the School Standards and Framework Act 1998 s 24(5), Sch 4 para 5 (as amended; prospectively further amended): see PARA 122 ante.
- 28    Ibid Sch 6 para 3(6)(a). See also notes 1, 3 supra.
- 29    Ibid Sch 6 para 3(6)(b). See also notes 1, 3 supra.
- 30    See PARAS 132-133 ante. As to community, foundation and voluntary schools see PARA 102 et seq ante.
- 31    School Standards and Framework Act 1998 Sch 6 para 3(6A) (added by the Education Act 2002 Sch 10 paras 1, 3(1), (4)). The School Standards and Framework Act 1998 Sch 6 para 3(6A) (as added) does not apply in relation to proposals published: (1) by the diocesan board of education for a diocese of the Church of England; or (2) by or on behalf of the bishop and trustees of a diocese of the Roman Catholic Church: Sch 6 para 3(6B) (as so added). See also notes 1, 3 supra. As to diocesan boards of education see ECCLESIASTICAL LAW.
- 32    Ie under ibid s 28 (as amended; prospectively further amended) (see PARA 132 ante).
- 33    Ibid Sch 6 para 3(6C) (added by the Education Act 2002 Sch 10 paras 1, 3(1), (4)). See also notes 1, 3 supra.
- 34    Ie under the School Standards and Framework Act 1998 Sch 6 para 3 (as amended; prospectively further amended): Sch 6 para 3(7) (amended by the Education Act 2002 Sch 10 paras 1, 3(1), (5)(a)). See also notes 1, 3 supra.
- 35    School Standards and Framework Act 1998 Sch 6 para 3(7)(a). The provisions of Sch 6 para 3(2)-(4) (as amended) (see the text and notes 15-21 supra) other than Sch 6 para 3(2)(d) (as added) (see head (d) in the text) apply to the adjudicator in connection with his decision on the proposals as they apply to the committee: Sch 6 para 3(7)(b) (amended by the Education Act 2002 Sch 10 paras 1, 3(1), (5)(b)). See also notes 1, 3 supra.
- 36    Ie proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): Sch 6 para 8(1). See also notes 1, 3 supra.
- 37    Ibid Sch 6 paras 6, 8(1). The approval mentioned in the text is required under Sch 6 para 8 (prospectively amended): Sch 6 para 8(1).
- 38    As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 39    School Standards and Framework Act 1998 Sch 6 para 8(1)(a). See also notes 1, 3 supra.
- 40    Ie in accordance with ibid Sch 6 para 7: see PARA 137 ante.
- 41    Ibid Sch 6 para 8(1)(b). See also notes 1, 3 supra.
- 42    See note 36 supra.
- 43    School Standards and Framework Act 1998 Sch 6 para 8(5). See also notes 1, 3 supra.
- 44    Ibid Sch 6 para 8(2)(a). See also notes 1, 3 supra.
- 45    Ibid Sch 6 para 8(2)(b). See also notes 1, 3 supra.
- 46    Ibid Sch 6 para 8(2)(c). As to the regulations that have been made under Sch 6 para 8 (prospectively amended) see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).
- 47    School Standards and Framework Act 1998 Sch 6 para 8(3). See also notes 1, 3 supra.
- 48    As to school organisation plans (which have effect only in Wales) see PARA 130 ante.
- 49    School Standards and Framework Act 1998 Sch 6 para 8(4). See also notes 1, 3 supra. Schedule 6 para 8(4) is repealed by the Children Act 2004 Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. At the date at which this volume states the law, no such day had been appointed.

## UPDATE



### **138 Approval of proposals**

TEXT AND NOTES 1-35--1998 Act Sch 6 paras 1-5 repealed: Education and Inspections Act 2006 Sch 3 para 33(3), Sch 18. For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.

NOTE 3--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 19--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

NOTE 37--1998 Act Sch 6 para 6 amended: 2006 Act Sch 3 para 33, Sch 18 Pt 3.

NOTE 46--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/1780 further amended: see PARA 136 NOTE 4.

NOTE 49--Day now appointed: SI 2006/885.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(A) Proposals under the School Standards and Framework Act 1998/139. Determination by local education authority whether to implement proposals.

### **139. Determination by local education authority whether to implement proposals.**

Where any proposals which relate to a school<sup>1</sup> or proposed school<sup>2</sup> in England have been published<sup>3</sup> by a local education authority<sup>4</sup> and either no objections were made<sup>5</sup> or all objections made were withdrawn in writing within the representation period<sup>6</sup>, then the authority must determine whether the proposals should be implemented<sup>7</sup>. Any such determination must be made within the period of four months beginning with the date of publication of the proposals, as determined in accordance with regulations<sup>8</sup>. The local education authority must notify the relevant committee of any such determination made by it<sup>9</sup>.

Where any proposals<sup>10</sup> which relate to a school or proposed school in Wales do not require approval<sup>11</sup>, the body or promoters<sup>12</sup> by whom the proposals were published must determine whether the proposals should be implemented<sup>13</sup>. Any such determination must be made within four months after a copy of the published proposals was sent<sup>14</sup> to the National Assembly for Wales<sup>15</sup>. The body or promoters in question must notify the National Assembly for Wales of any such determination made<sup>16</sup>.

1    Ie the alteration or discontinuance of a school. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante. As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

2    Ie the establishment of a school. As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 142(8).

Regulations may make provision modifying any provision contained in ss 28(8), 29(7), 31(8), Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 140 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

3    Ie published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): Sch 6 para 4(1) (amended by the Education Act 2002 s 75, Sch 10 paras 1, 4(1), (2)). See note 2 supra.

As from a day to be appointed, the School Standards and Framework Act 1998 Sch 6 para 4(1) (as amended) is further amended so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 ante): Sch 6 para 4(1) (as so amended; prospectively amended by the Education Act 2005 s 72, Sch 12 para 13(1), (5)(a)). At the date at which this volume states the law, no such day had been appointed.

4 As to local education authorities see PARA 20 ante.

5 le in accordance with the School Standards and Framework Act 1998 Sch 6 para 2 (as amended; prospectively further amended): see PARA 137 ante.

6 For the meaning of 'representation period' see PARA 137 ante.

7 School Standards and Framework Act 1998 Sch 6 para 4(1) (as amended and prospectively amended: see note 3 supra). The requirement to make a determination under Sch 6 para 4(1) (as amended; prospectively further amended) in the case of any proposals only applies if, at the time when the determination falls to be made, the authority is satisfied that the proposals are not related to any of the following:

- 42 (1) any undetermined proposals published under s 28(2) (as amended; prospectively further amended) (see PARA 132 ante) to establish a new foundation or voluntary school in the area of the authority (Sch 6 para 4(3)(a));
- 43 (2) any undetermined proposals published under s 28(2) (as amended; prospectively further amended) (see PARA 132 ante), s 29(2) (see PARA 134 ante) or s 31(2) (see PARA 136 ante) by the governing body of a community, foundation, voluntary or foundation special school in the area of the authority (Sch 6 para 4(3)(b) (amended by the Education Act 2002 s 215(1), Sch 21 para 115(1), (3)(a)));
- 44 (3) any undetermined proposals published by the authority which, by virtue of the School Standards and Framework Act 1998 Sch 6 para 3(1)(a) (as amended) (see PARA 138 ante), require approval under that provision (Sch 6 para 4(3)(c));
- 45 (4) any order under s 34, Sch 7 para 2(2) (prospectively amended) (see PARA 166 post) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 post) (Sch 6 para 4(3)(d));
- 46 (5) any undetermined proposals published under the Learning and Skills Act 2000 s 113 (as amended in relation to England; prospectively amended in relation to Wales), Sch 7 (as amended; prospectively further amended) (see PARA 1275 et seq post) (School Standards and Framework Act 1998 Sch 6 para 4(3)(e) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 89));
- 47 (6) any undetermined proposals published under the Learning and Skills Act 2000 s 113A (as added) (see PARA 1277 et seq post), if those proposals are relevant proposals for the purposes of the School Standards and Framework Act 1998 Sch 6 para 3(2A) (as added) (see PARA 138 ante) (Sch 6 para 4(3)(f) (added by the Education Act 2002 Sch 21 para 115(1), (3)(b)));
- 48 (7) any undetermined proposals made under the Further and Higher Education Act 1992 s 51 (as amended) (see PARA 585 post), if those proposals are relevant proposals for those purposes (School Standards and Framework Act 1998 Sch 6 para 4(3)(g) (added by the Education Act 2002 Sch 21 para 115(1), (3)(b))); or
- 49 (8) any direction under the Education Act 2002 s 71 (prospectively repealed) (see PARA 157 post) (School Standards and Framework Act 1998 Sch 6 para 4(3)(h) (added by the Education Act 2002 Sch 21 para 115(1), (3)(b))).

For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b), the School Standards and Framework Act 1998 Sch 6 para 4(3)(d) (see head (4) supra) is repealed, and Sch 6 para 4(3)(h) (as added) (see head (8) supra) is substituted so as to refer to a direction under the Education Act 2005 s 67, Sch 11 para 3(2) or 4(2) (not yet in force) (see PARA 149 post), by Sch 12 para 13(1), (5)(b), Sch 19 Pt 2. At the date at which this volume states the law, no such day had been appointed.

For the purposes of the School Standards and Framework Act 1998 Sch 6 para 4(3) (as amended; prospectively further amended), proposals are 'undetermined' if they have not been withdrawn and: (a) they have not been approved or rejected under Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), Sch 7 para 8 (as amended; prospectively repealed) (see PARA 171 post), Sch 7 para 9 (as amended; prospectively repealed) (see PARA 172 post) or under the Learning and Skills Act 2000 Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post) or s 113A(6), Sch 7A (both as added) (see PARA 1277 et seq post); or (b) the authority has not determined under the School Standards and Framework Act 1998 Sch 6 para 4 (as amended; prospectively further amended) whether to implement them; or (c) the Secretary of State has not made a decision as to whether or not to make an order under the Further and Higher Education Act 1992 s 16 (as amended) (see PARA 584 post) or s 27 (see PARA 598 post), as the case may be: School Standards and Framework Act 1998 Sch 6 para 4(4) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 89; and the Education Act 2005 Sch 21 para 115(1), (4)). When deciding under the School Standards

and Framework Act 1998 Sch 6 para 4(3) (as amended; prospectively further amended) whether any proposals are related to other proposals, the authority must have regard to any guidance given from time to time by the Secretary of State: Sch 6 para 4(4) (as so amended). As to community, foundation, voluntary schools or foundation special schools see PARA 102 et seq ante.

As from a day to be appointed, Sch 6 para 4(4) (as amended) is further amended so that the references to Sch 7 para 8 (as amended; prospectively repealed) (see PARA 171 post) and Sch 7 para 9 (as amended; prospectively repealed) (see PARA 172 post) (see head (a) supra) are substituted by references to the Education Act 2005 Sch 11 para 9 (not yet in force) (see PARA 180 post) and Sch 11 para 11 (not yet in force) (see PARA 181 post): School Standards and Framework Act 1998 Sch 6 para 4(4) (prospectively amended by the Education Act 2005 Sch 12 para 13(1), (5)(c)). At the date at which this volume states the law, no such day had been appointed.

The authority may, if it thinks it appropriate to do so, and subject to regulations, refer to the relevant committee any proposals which would otherwise fall to be determined by the authority under the School Standards and Framework Act 1998 Sch 6 para 4 (as amended; prospectively further amended): Sch 6 para 4(4A) (added by the Education Act 2002 Sch 10 paras 1, 4(1), (3)). Where, in the case of any proposals within the School Standards and Framework Act 1998 Sch 6 para 4(1) (as amended; prospectively further amended): (i) the authority fails to make a determination under Sch 6 para 4(1) (as amended; prospectively further amended) within the period mentioned in Sch 6 para 4(2) (see the text and notes 8-9 infra); or (ii) the requirement to make such a determination does not apply by virtue of Sch 6 para 4(3) (as amended; prospectively further amended); or (iii) the authority refers the proposals to the relevant committee, the proposals require approval under Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante): Sch 6 para 4(5) (amended by the Education Act 2002 s 215(2), Sch 10 paras 1, 4(1), (4), Sch 22 Pt 3). For the meaning of 'the relevant committee' see PARA 137 note 8 ante. 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under Sch 6 para 4 (as amended; prospectively further amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342). See also note 2 supra.

8 School Standards and Framework Act 1998 Sch 6 para 4(2). See also note 3 supra.

9 Ibid Sch 6 para 4(2). See also note 2 supra.

10 Ie published under ibid s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): Sch 6 para 9(1). See also note 2 supra.

11 Ie under ibid Sch 6 para 8 (prospectively amended): see PARA 138 ante.

12 As to the meaning of 'promoters' see PARA 132 ante.

13 School Standards and Framework Act 1998 Sch 6 paras 6, 9(1). See also note 2 supra.

14 See note 10 supra.

15 School Standards and Framework Act 1998 Sch 6 para 9(2). See also note 2 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

16 Ibid Sch 6 para 9(3). See also note 2 supra.

## UPDATE

### **139 Determination by local education authority whether to implement proposals**

TEXT AND NOTES 1-9--Repealed: Education and Inspections Act 2006 Sch 3 para 33(3), Sch 18. For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.

NOTE 13--1998 Act Sch 6 para 6 amended: 2006 Act Sch 3 para 33(5), Sch 18 Pt 3.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(A) Proposals under the School Standards and Framework Act 1998/140. Requirement to implement proposals.

#### **140. Requirement to implement proposals.**

Where any published proposals<sup>1</sup> which relate to a school<sup>2</sup> or proposed school<sup>3</sup> in England have been approved<sup>4</sup>, or a local education authority has determined<sup>5</sup> to implement any such proposals, then the proposals must be implemented<sup>6</sup> in the form in which they were so approved or determined<sup>7</sup>. However, if the relevant committee<sup>8</sup> is satisfied that implementation of the proposals would be unreasonably difficult, or that circumstances have so altered since approval was given<sup>9</sup> that implementation of the proposals would be inappropriate, the committee may determine that the requirement to implement proposals<sup>10</sup> is to cease to apply<sup>11</sup>. At the request of any prescribed<sup>12</sup> body or persons, the relevant committee: (1) may modify the proposals after consulting such persons or bodies as may be prescribed<sup>13</sup>; and (2) where any approval was given subject to the occurrence of a specified event by a specified date<sup>14</sup>, may specify a later date by which the event in question must occur<sup>15</sup>. If, by the end of such period as may be specified in or determined in accordance with regulations, the committee has not voted on any matter falling to be decided by it, and the body or promoters who published the proposals<sup>16</sup> requests the committee to refer that matter to the adjudicator, it must refer that matter to the adjudicator<sup>17</sup>. If the committee has voted on any matter which falls<sup>18</sup> to be decided by it by a unanimous decision, but has failed to reach such a decision on that matter, it must refer that matter to the adjudicator<sup>19</sup>. The committee may also, if it thinks it appropriate to do so, and subject to regulations, refer to the adjudicator any matter which would otherwise fall to be determined by the committee<sup>20</sup>. Where any matter is referred to the adjudicator<sup>21</sup>, he must consider the matter afresh<sup>22</sup>.

Where any published proposals<sup>23</sup> which relate to a school or proposed school in Wales have been approved<sup>24</sup>, or the body or promoters by whom such proposals were published has or have determined<sup>25</sup> to implement the proposals, then the proposals must be implemented<sup>26</sup> in the form in which they were so approved or determined<sup>27</sup>. If the National Assembly for Wales<sup>28</sup> is satisfied that implementation of the proposals would be unreasonably difficult, or that circumstances have so altered since approval was given<sup>29</sup> that implementation of the proposals would be inappropriate, it may determine that the requirement to implement proposals<sup>30</sup> is to cease to apply<sup>31</sup>. At the request of any prescribed body or persons, the National Assembly for Wales: (a) may modify the proposals after consulting such persons or bodies as may be prescribed<sup>32</sup>; and (b) where any approval was given subject to the occurrence of a specified event<sup>33</sup>, may specify a later date by which the event in question must occur<sup>34</sup>.

1     le published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): ss 28(8), 29(7), 31(8), Sch 6 para 5(1).

As from a day to be appointed, Sch 6 para 5(1) is amended so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 ante): Sch 6 para 5(1) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 13(1), (6)(a)). At the date at which this volume states the law, no such day had been appointed.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 Sch 6 para 5 (as amended; prospectively further amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (g). As to local education authorities see PARA 20 ante. For the meaning of 'England' see PARA 52 note 11 ante.

2    Ie the alteration or discontinuance of a school. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante. As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

3    Ie the establishment of a school. As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 142(8).

Regulations may make provision modifying any provision contained in Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 141 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For these purposes, 'regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

4    Ie under the School Standards and Framework Act 1998 Sch 6 para 3 (as amended; prospectively further amended): see PARA 138 ante.

5    Ie under *ibid* Sch 6 para 4 (as amended; prospectively further amended): see PARA 139 ante.

6    Ie in accordance with *ibid* Sch 6 Pt III (paras 11-15) (as amended; prospectively further amended): see PARA 141 et seq post.

7    Ibid Sch 6 para 5(1). See also notes 1, 3 *supra*.

Where an application has been confirmed by the school organisation committee, the board of trustees (in the case of a transition from an independent school to a voluntary aided school) has a statutory duty under the School Standards and Framework Act 1998 to give effect to the transition, the duty arising in public law out of the arrangements between the parties and being enforceable by judicial review proceedings: *R (on the application of Brent London Borough Council) v Fed 2000* [2005] EWHC 2679 (Admin), [2005] All ER (D) 291 (Oct). In the absence of any deferral by the school organisation committee pursuant to the School Standards and Framework Act 1998 Sch 6 para 5 (as amended), the transition takes effect at the date stipulated in the proposal adopted by the local education authority executive and the committee: *R (on the application of Brent London Borough Council) v Fed 2000* [2005] EWHC 2436 (QB), [2005] All ER (D) 58 (Nov).

8    For the meaning of 'the relevant committee' see PARA 137 note 7 ante.

9    Ie under the School Standards and Framework Act 1998 Sch 6 para 3 (as amended; prospectively further amended): see PARA 138 ante.

10   Ie *ibid* Sch 6 para 5(1) (prospectively amended): see the text and notes 1-7 *supra*.

11   Ibid Sch 6 para 5(3). Where, by virtue of Sch 6 para 5(3), Sch 6 para 5(1) (prospectively amended) (see the text and notes 1-7 *supra*) ceases to apply to any proposals, those proposals must be treated for the purposes of Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 141 et seq post) as if they had been rejected under Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante): Sch 6 para 5(9) (amended by the Education Act 2002 ss 75, 215(2), Sch 10 paras 1, 5(1), (4), Sch 22 Pt 3). See also notes 1, 3 *supra*.

The committee may only make a determination under the School Standards and Framework Act 1998 Sch 6 para 5(3) where proposals that it should do so have been published, in accordance with regulations, by the body or promoters who published the proposals referred to in Sch 6 para 5(1) (prospectively amended) (see the text and notes 1-7 *supra*): Sch 6 para 5(4). As to the meaning of 'promoters' see PARA 132 ante. Regulations may provide for any of the provisions of s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante), s 31 (prospectively amended) (see PARA 136 ante), and Sch 6 Pt I (paras 1-5) (as amended; prospectively further amended) (see PARA 137 et seq ante) to have effect in relation to any such further proposals with or without modifications: see Sch 6 para 5(4). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8). For these purposes, 'regulations'

means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under Sch 6 para 5 (as amended; prospectively further amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

As from a day to be appointed, the School Standards and Framework Act 1998 Sch 6 para 5(4) is amended so that regulations may provide also for any of the provisions of s 28A (prospectively added) (see PARA 133 ante) to have effect in relation to any such further proposals with or without modifications: Sch 6 para 5(4) (prospectively amended by the Education Act 2005 Sch 12 para 13(1), (6)(a)). At the date at which this volume states the law, no such day had been appointed.

12 'Prescribed' means prescribed by regulations: see the School Standards and Framework Act 1998 s 142(1).

13 Ibid Sch 6 para 5(2)(a). See also notes 1, 3 supra.

14 Ie where any approval was given in accordance with ibid Sch 6 para 3(3): see PARA 138 ante.

15 Ibid Sch 6 para 5(2)(b). Where any approval under Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante) was given in accordance with Sch 6 para 3(3) (see PARA 138 ante), and the event so specified does not occur by the date in question (whether as specified under Sch 6 para 3(3) or as specified under Sch 6 para 5(2)(b)), then the requirement to implement proposals (ie Sch 6 para 5(1) (prospectively amended): see the text and notes 1-7 supra) ceases to apply to the proposals: Sch 6 para 5(8). Where, by virtue of Sch 6 para 5(8), Sch 6 para 5(1) (prospectively amended) ceases to apply to any proposals approved by the relevant committee under Sch 6 para 3 (as amended; prospectively further amended), those proposals must be regarded as requiring fresh approval under Sch 6 para 3 (as amended; prospectively further amended): Sch 6 para 5(10) (added by the Education Act 2002 Sch 10 paras 1, 5(1), (5)). Where, by virtue of the School Standards and Framework Act 1998 Sch 6 para 5(8), Sch 6 para 5(1) (as amended; prospectively further amended) ceases to apply to any proposals approved by the adjudicator under Sch 6 para 3 (as amended; prospectively further amended), those proposals fall to be considered afresh by him under Sch 6 para 3 (as amended; prospectively further amended), and Sch 6 para 3(7) (as amended) (see PARA 138 ante) applies accordingly: Sch 6 para 5(11) (added by the Education Act 2002 Sch 10 paras 1, 5(1), (5)). For the meaning of 'adjudicator' see PARA 124 ante. See also notes 1, 3 supra.

As from a day to be appointed, the School Standards and Framework Act 1998 Sch 6 para 5(10) (as added) is amended so that proposals, rather than being regarded as requiring fresh approval, fall to be considered afresh by the committee under Sch 6 para 3 (as amended; prospectively further amended): Sch 6 para 5(10) (as so added; prospectively amended by the Education Act 2005 Sch 12 para 13(1), (6)(c)). At the date at which this volume states the law, no such day had been appointed.

16 Ie the proposals referred to in the School Standards and Framework Act 1998 Sch 6 para 1 (prospectively amended) (see the text and notes 1-7 supra).

17 Ibid Sch 6 para 5(5). See also notes 1, 3 supra.

18 Ie in accordance with regulations under ibid s 24(5), Sch 4 para 5 (as amended; prospectively further amended): see PARA 122 ante.

19 Ibid Sch 6 para 5(6). See also notes 1, 3 supra.

20 Ibid Sch 6 para 5(6A) (added by the Education Act 2002 Sch 10 paras 1, 5(1), (2)).

As from a day to be appointed, the committee must also refer the proposals to the adjudicator if by the end of such period as may be specified in regulations, the committee has not decided on any matter falling to be decided by it under the School Standards and Framework Act 1998 Sch 6 para 5 (as amended; prospectively further amended): Sch 6 para 5(6B) (prospectively added by the Education Act 2005 Sch 12 para 13(1), (6)(b)). At the date at which this volume states the law, no such day had been appointed. See also notes 1, 3 supra.

21 Ie under the School Standards and Framework Act 1998 Sch 6 para 5 (as amended; prospectively further amended): Sch 6 para 5(7) (amended by the Education Act 2002 Sch 10 paras 1, 5(1), (3)). See also notes 1, 3 supra.

22 School Standards and Framework Act 1998 Sch 6 para 5(7)(a). Such of the provisions of Sch 6 para 5(2)-(4) (prospectively amended) (see the text and notes 8-15 supra) as are relevant apply to the adjudicator in connection with his decision on that matter as they apply to the committee: Sch 6 para 5(7)(b). See also notes 1, 3 supra.

23    Ie published under *ibid* s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): Sch 6 para 10(1). See also notes 1, 3 *supra*.

24    Ie under *ibid* Sch 6 para 8 (prospectively amended): see PARA 138 ante.

25    Ie under *ibid* Sch 6 para 9: see PARA 139 ante.

26    Ie in accordance with *ibid* Sch 6 Pt III (as amended; prospectively further amended): see PARA 141 et seq post.

27    *Ibid* Sch 6 paras 6, 10(1). See also notes 1, 3 *supra*.

28    As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

29    Ie under the School Standards and Framework Act 1998 Sch 6 para 8 (prospectively amended): see PARA 138 ante.

30    Ie *ibid* Sch 6 para 10(1): see the text and notes 23-27 *supra*.

31    *Ibid* Sch 6 para 10(3).

Where, by virtue of Sch 6 para 10(3), Sch 6 para 10(1) (see the text and notes 23-27 *supra*) ceases to apply to any proposals, those proposals must be treated for the purposes of Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 141 et seq post) as if they had been rejected under Sch 6 para 8 (prospectively amended) (see PARA 138 ante): Sch 6 para 10(6) (amended by the Education Act 2002 Sch 10 paras 1, 6(1), (2), Sch 22 Pt 3). See also notes 1, 3 *supra*.

The National Assembly for Wales may only make a determination under the School Standards and Framework Act 1998 Sch 6 para 10(3) where proposals that it should do so have been published, in accordance with regulations, by the body or promoters who published the proposals referred to in Sch 6 para 10(3): Sch 6 para 10(4). Regulations may provide for any of the provisions of s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante), s 31 (prospectively amended) (see PARA 136 ante) and Sch 6 Pt II paras 6-10 (as amended; prospectively further amended) (see PARA 137 et seq ante) to have effect in relation to any such further proposals with or without modifications: Sch 6 para 10(4). As to the regulations that have been made under Sch 6 para 10 (as amended; prospectively further amended) see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).

32    School Standards and Framework Act 1998 Sch 6 para 10(2)(a). See also notes 1, 3 *supra*.

33    Ie where any approval was given in accordance with *ibid* Sch 6 para 8(3): see PARA 138 ante.

34    *Ibid* Sch 6 para 10(2)(b).

Where any approval was given in accordance with Sch 6 para 8(3) (see PARA 138 ante), and the event specified does not occur by the date in question (whether as specified under Sch 6 para 8(3) or as specified under Sch 6 para 10(2)(b)), then the requirement to implement proposals (ie Sch 6 para 10(1): see the text and notes 23-27 *supra*) ceases to apply to the proposals: Sch 6 para 10(5). Where, by virtue of Sch 6 para 10(5), the provisions of Sch 6 para 10(1) cease to apply to any proposals, those proposals must be treated as requiring fresh approval under Sch 6 para 8 (prospectively amended) (see PARA 138 ante): Sch 6 para 10(7) (added by the Education Act 2002 Sch 10 paras 1, 6(1), (3)). See also notes 1, 3 *supra*.

As from a day to be appointed, the School Standards and Framework Act 1998 Sch 6 para 10(7) (as added) is amended so that proposals, rather than being regarded as requiring fresh approval, fall to be considered afresh by the National Assembly for Wales under Sch 6 para 8 (prospectively amended): Sch 6 para 10(7) (prospectively amended by the Education Act 2005 Sch 12 para 13(1), (7)). At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### 140 Requirement to implement proposals



TEXT AND NOTES 1-22--Repealed: Education and Inspections Act 2006 Sch 3 para 33(3), Sch 18 Pt 3. For transitional provisions see s 31; School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355; and PARA 158-165.

NOTE 27--1998 Act Sch 6 para 6 amended: 2006 Act Sch 3 para 33, Sch 18 Pt 3.

NOTE 31--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/1780 further amended: see PARA 136 NOTE 4.

NOTE 34--Day now appointed: SI 2006/2129.

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#### **141. Manner of implementation of proposals relating to community or maintained nursery schools.**

Proposals<sup>1</sup> relating to a community<sup>2</sup> or maintained nursery school<sup>3</sup> or a proposed such school<sup>4</sup> must be implemented by the local education authority<sup>5</sup> by whom they were published<sup>6</sup>. In the case of proposals published by the governing body<sup>7</sup> of a community school<sup>8</sup>, the proposals must be implemented by the local education authority which maintains the school<sup>9</sup>.

1 The proposals falling to be implemented under the School Standards and Framework Act 1998 ss 28(8), 29(7), Sch 6 para 5 (as amended; prospectively further amended) or Sch 6 para 10 (as amended; prospectively further amended) (see PARA 140 ante): Sch 6 para 11.

2 As to community schools see PARA 102 et seq ante.

3 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Regulations may make provision modifying any provision contained in *ibid* Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 142 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

5 As to local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 Sch 6 para 12(1), (2). The publication of proposals mentioned in the text must occur under s 28(1) (as amended) (see PARA 132 ante) or s 29(1) (see PARA 134 ante): Sch 6 para 12(2). As from a day to be appointed, Sch 6 para 12(2) is amended so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 ante): Sch 6 para 12(2) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 13(1), (8)). At the date at which this volume states the law, no such day had been appointed. See also note 4 *supra*.

7 As to the governing bodies of maintained schools see PARA 203 et seq post.

8 The under the School Standards and Framework Act 1998 s 28(2)(b) (as amended) (see PARA 132 ante).

9 *Ibid* Sch 6 para 12(2) (amended by the Education Act 2002 s 215(1), Sch 21 para 115(1), (5)(b)). The amendment made by the Education Act 2002 Sch 21 para 115(1), (5)(b) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 June 2003 (see the Education Act 2002 (Commencement No 5 and Transitional and Saving Provisions) Order 2003, SI 2003/1115, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until the amendment is brought into force in Wales, the reference to proposals published by the governing body of a community school under the School Standards and Framework Act 1998 s 28(2)(b) (as amended) (see PARA

132 ante) having to be implemented by the local education authority who maintain the school must be read as not applying in Wales: see Sch 6 para 12(2) (as originally enacted). See also note 4 supra.

## **UPDATE**

### **141 Manner of implementation of proposals relating to community or maintained nursery schools**

NOTE 1--Reference to 1998 Act Sch 6 para 5 omitted: Sch 6 para 11 (amended by Education and Inspections Act 2006 Sch 3 para 33(10), Sch 18).

NOTE 4--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 6--Prospective amendment repealed: 2006 Act Sch 3 para 33(11), Sch 18 Pt 3.

NOTE 9--Day now appointed in relation to Wales: SI 2007/3611.

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#### **142. Manner of implementation of proposals relating to foundation or voluntary controlled schools.**

Where proposals<sup>1</sup> relating to a foundation or voluntary controlled school<sup>2</sup> or a proposed such school<sup>3</sup> were published<sup>4</sup> by a local education authority<sup>5</sup>, they must be implemented by the authority<sup>6</sup>.

Where proposals relating to the establishment of a new foundation or voluntary school were published by promoters<sup>7</sup>, or where proposals relating to the alteration of a foundation or voluntary school or of a community school maintained by a local education authority in England<sup>8</sup> were published by the governing body<sup>9</sup>, the proposals must be implemented by the local education authority and by the promoters or, as the case may be, the governing body, to such extent (if any) as the proposals provide for each of them to do so<sup>10</sup>.

Where proposals relating to the discontinuance of a foundation or voluntary controlled school were published by the governing body<sup>11</sup>, they must be implemented by the governing body<sup>12</sup> and by the local education authority as well<sup>13</sup>.

1    Ie proposals falling to be implemented under the School Standards and Framework Act 1998 ss 28(8), 29(7), Sch 6 para 5 (as amended; prospectively further amended) or Sch 6 para 10 (as amended; prospectively further amended) (see PARA 140 ante): Sch 6 para 11.

2    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 142(8). As to foundation schools and voluntary schools see PARA 102 et seq ante.

3    Regulations may make provision modifying any provision contained in *ibid* Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 143 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

4    Ie published under the School Standards and Framework Act 1998 s 28(1) (as amended) (see PARA 132 ante) or s 29(1) (see PARA 134 ante): Sch 6 para 13(2). As from a day to be appointed, Sch 6 para 13(2) is modified so that it applies also to proposals published under s 28A (prospectively added) (see PARA 133 ante): Sch 6 para 13(2) (prospectively amended by the Education Act 2005 s 72, Sch 12 para 13(1), (9)(a)). At the date at which this volume states the law, no such day had been appointed. See also note 3 supra.

5    As to local education authorities see PARA 20 ante.

6    School Standards and Framework Act 1998 Sch 6 para 13(1), (2). See also note 3 supra.

7     Ie under *ibid* s 28(2) (as amended; prospectively further amended): see PARA 132 ante. As to the meaning of 'promoters' see PARA 132 ante.

8     As to community schools see PARA 102 et seq ante. For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

9     Ie under the School Standards and Framework Act 1998 s 28(2) (as amended; prospectively further amended): see PARA 132 ante. As to the governing bodies of maintained schools see PARA 203 et seq post.

10    *Ibid* Sch 6 para 13(1), (3). See also note 3 *supra*.

As from a day to be appointed, Sch 6 para 13(3) is substituted so that it applies also to proposals published by promoters under s 28A(2) (prospectively added): Sch 6 para 13(3) (prospectively amended by the Education Act 2005 Sch 12 para 13(1), (9)(b)). At the date at which this volume states the law, no such day had been appointed.

11    Ie under the School Standards and Framework Act 1998 s 29(2): see PARA 134 ante.

12    *Ibid* Sch 6 para 13(1), (4)(a). See also note 3 *supra*.

13    *Ibid* Sch 6 para 13(1), (4)(b). See also note 3 *supra*.

## **UPDATE**

### **142 Manner of implementation of proposals relating to foundation or voluntary controlled schools**

NOTE 1--Reference to 1998 Act Sch 6 para 5 omitted: Sch 6 para 11 (amended by Education and Inspections Act 2006 Sch 3 para 33(10), Sch 18 Pt 3).

NOTE 3--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTES 4, 10--Prospective amendments repealed: 2006 Act Sch 3 para 33(12), Sch 18 Pt 3.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(A) Proposals under the School Standards and Framework Act 1998/143. Manner of implementation of proposals relating to voluntary aided schools.

### **143. Manner of implementation of proposals relating to voluntary aided schools.**

Where proposals<sup>1</sup> relating to a voluntary aided school<sup>2</sup> or a proposed such school<sup>3</sup> were published by the governing body<sup>4</sup>, they must be implemented:

- 271 (1) in the case of proposals<sup>5</sup> so far as relating to the provision of any playing fields<sup>6</sup> for the school, by the local education authority<sup>7</sup>;
- 272 (2) in the case of proposals for the discontinuance of a school<sup>8</sup>, by the governing body and the authority<sup>9</sup>; and
- 273 (3) otherwise, by the governing body<sup>10</sup>.

Where proposals relating to the establishment of a voluntary aided school or a proposed such school were published by promoters<sup>11</sup>, they must be implemented, so far as they relate to the provision of any playing fields for the school, by the local education authority<sup>12</sup>, and otherwise by the promoters<sup>13</sup>.

Where proposals relating to the discontinuance of a voluntary aided school or a proposed such school were published by a local education authority<sup>14</sup>, they must be implemented by the authority<sup>15</sup>.

1    Ie proposals falling to be implemented under the School Standards and Framework Act 1998 ss 28(8), 29(7), Sch 6 para 5 (as amended; prospectively further amended) or Sch 6 para 10 (as amended; prospectively further amended) (see PARA 140 ante): Sch 6 para 11.

2    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 142(8). As to voluntary schools see PARA 102 et seq ante.

3    Regulations may make provision modifying any provision contained in *ibid* Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 144 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

4    Ie under the School Standards and Framework Act 1998 s 28(2) (as amended; prospectively further amended) (see PARA 132 ante) or s 29(2) (see PARA 134 ante). As to the governing bodies of maintained schools see PARA 203 et seq post.

5    Ie proposals published under *ibid* s 28(2) (as amended; prospectively further amended): see PARA 132 ante.

6 For the meaning of 'playing fields' see PARA 1410 note 22 post.

7 School Standards and Framework Act 1998 Sch 6 para 14(1), (2)(a) (amended by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 11(a)). See also note 3 supra. As to local education authorities see PARA 20 ante.

8 Ie proposals published under the School Standards and Framework Act 1998 s 29(2): see PARA 134 ante.

9 Ibid Sch 6 para 14(1), (2)(b). See also note 3 supra.

10 Ibid Sch 6 para 14(1), (2)(c). See also note 3 supra.

11 Ie under ibid s 28(2) (as amended; prospectively further amended) (see PARA 132 ante): see Sch 6 para 14(1), (3)(a) (amended by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 11(a)). As to the meaning of 'promoters' see PARA 132 ante.

As from a day to be appointed, the School Standards and Framework Act 1998 Sch 6 para 14(3) (as amended) is further amended so that it applies also to proposals published by promoters under s 28A(2) (prospectively added): Sch 6 para 14(3) (as so amended; and prospectively amended by the Education Act 2005 s 72, Sch 12 para 13(1), (10)). At the date at which this volume states the law, no such day had been appointed.

12 School Standards and Framework Act 1998 Sch 6 para 14(1), (3)(a) (as amended and prospectively amended: see note 11 supra). Nothing in Sch 6 para 14(3) (as amended; prospectively further amended) requires a local education authority to provide any such playing fields where:

50 (1) the new voluntary aided school is to be established in place of one or more existing independent, foundation or voluntary schools falling to be discontinued on or before the date of implementation of the proposals (Sch 6 para 14(5)(a) (amended by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 11(c), (d))); and

51 (2) those playing fields: (a) were part of the premises of any of the existing schools, whether it was an independent school or a foundation or voluntary school; and (b) if it was a foundation or voluntary school, were not provided by the authority (School Standards and Framework Act 1998 Sch 6 para 14(5)(b) (amended by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 11(c), (d))).

See also note 3 supra. As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to independent schools see PARA 465 et seq post. As to foundation schools see PARA 102 et seq ante. As to school premises see PARA 1352 et seq post.

13 Ibid Sch 6 para 14(1), (3)(b). See also notes 3, 12 supra.

14 Ie under ibid s 29(1): see PARA 134 ante.

15 Ibid Sch 6 para 14(1), (6). See also note 3 supra.

## UPDATE

### 143 Manner of implementation of proposals relating to voluntary aided schools

NOTE 1--Reference to 1998 Act Sch 6 para 5 omitted: Sch 6 para 11 (amended by Education and Inspections Act 2006 Sch 3 para 33(10), Sch 18 Pt 3).

NOTE 3--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 11--Prospective amendment repealed: 2006 Act Sch 3 para 33(13), Sch 18 Pt 3.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(A) Proposals under the School Standards and Framework Act 1998/144. Manner of implementation of proposals relating to community or foundation special schools.

#### **144. Manner of implementation of proposals relating to community or foundation special schools.**

Where proposals<sup>1</sup> relating to a community or foundation special school<sup>2</sup> or a proposed such school<sup>3</sup> were published by a local education authority<sup>4</sup>, they must be implemented by the authority<sup>5</sup>.

Where proposals relating to the alteration of a community or foundation special school or a proposed such school were published by the governing body<sup>6</sup>, they must be implemented by the local education authority and by the governing body, to such extent (if any) as the proposals provide for each of them to do so<sup>7</sup>.

Where proposals relating to the discontinuance of a community or foundation special school or a proposed such school were published by the governing body<sup>8</sup>, they must be implemented by the governing body<sup>9</sup> and by the local education authority as well<sup>10</sup>.

1    Ie proposals falling to be implemented under the School Standards and Framework Act 1998 ss 28(8), 29(7), Sch 6 para 5 (as amended; prospectively further amended) or Sch 6 para 10 (as amended; prospectively further amended) (see PARA 140 ante); Sch 6 para 11.

2    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 142(8). For the meaning of 'community or foundation special school' see PARA 94 note 2 ante. As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post.

3    Regulations may make provision modifying any provision contained in *ibid* Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 145 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

4    Ie under the School Standards and Framework Act 1998 s 31(1): see PARA 136 ante. As to local education authorities see PARA 20 ante.

5    *Ibid* Sch 6 para 15(1), (2). See also note 3 supra.

6    Ie under *ibid* s 31(2)(a): see PARA 136 ante. As to the governing bodies of maintained schools see PARA 203 et seq post.

7    *Ibid* Sch 6 para 15(1), (3). See also note 3 supra.

8    Ie under *ibid* s 31(2)(b): see PARA 136 ante.



9 Ibid Sch 6 para 15(1), (4)(a). See also note 3 supra.

10 Ibid Sch 6 para 15(1), (4)(b). See also note 3 supra.

## **UPDATE**

### **144 Manner of implementation of proposals relating to community or foundation special schools**

NOTE 1--Reference to 1998 Act Sch 6 para 5 omitted: Sch 6 para 11 (amended by Education and Inspections Act 2006 Sch 3 para 33(10), Sch 18 Pt 3).

NOTE 3--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(A) Proposals under the School Standards and Framework Act 1998/145. Provision of site and buildings for foundation, voluntary controlled or foundation special school.

#### **145. Provision of site and buildings for foundation, voluntary controlled or foundation special school.**

Where a local education authority<sup>1</sup> is required to provide a site<sup>2</sup> for a foundation or voluntary controlled school<sup>3</sup> or a proposed such school<sup>4</sup>, or to provide a site<sup>5</sup> for a foundation special school<sup>6</sup>, the authority must transfer its interest in the site and in any buildings on the site which are to form part of the school premises<sup>7</sup> to the school's trustees, to be held by them on trust for the purposes of the school<sup>8</sup>, or, if the school has no trustees, to the school's foundation body<sup>9</sup> or (in the absence of such a body) to the governing body<sup>10</sup>, to be held by that body for the relevant purposes<sup>11</sup>. If any doubt or dispute arises as to the persons to whom the authority is required to make the transfer, it must be made to such persons as the Secretary of State<sup>12</sup> thinks proper<sup>13</sup>. The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer<sup>14</sup>. Where:

- 274 (1) such a transfer is made<sup>15</sup>; and
- 275 (2) the transfer is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises<sup>16</sup> which have been used for the purposes of the school<sup>17</sup>,

those persons must notify the local education authority that head (2) above applies to them; and they or their successors must pay to the local education authority so much of that sum as, having regard to the value of the interest transferred, may be determined to be just, either by agreement between them and the authority<sup>18</sup> or, in default of agreement, by the Secretary of State<sup>19</sup>.

1 As to local education authorities see PARA 20 ante.

2 I.e. by virtue of the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 13(2) (prospectively amended) or Sch 6 para 13(3) (prospectively substituted): see PARA 142 ante. For these purposes, 'site' does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question: Sch 6 para 16(10). For the meaning of 'playing fields' see PARA 1410 note 22 post. As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 142(8).

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 142(8). As to foundation schools and voluntary schools see PARA 102 et seq ante.

4 *Ibid* Sch 6 para 16(1)(a).

Regulations may make provision modifying any provision contained in Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 146 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to

the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

5 le by virtue of the School Standards and Framework Act 1998 Sch 6 para 15(2) or (3): see PARA 144 ante.

6 Ibid Sch 6 para 16(1)(b). See also note 4 supra. As to foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post.

7 Ibid Sch 6 para 16(2). See also note 4 supra.

8 Ibid Sch 6 para 16(2)(a). See also note 4 supra. As to land or other property held on trust, or by trustees, for the purposes of a school see PARA 104 note 6 ante.

9 For the meaning of 'foundation body' see PARA 104 note 6 ante.

10 As to the governing bodies of maintained schools see PARA 203 et seq post.

11 School Standards and Framework Act 1998 Sch 6 para 16(2)(b). For this purpose, 'the relevant purposes' means, in relation to a transfer to a school's foundation body, the purposes of the schools comprising the group for which that body acts (Sch 6 para 16(10)(a)) or, in relation to a transfer to a school's governing body, the purposes of the school (Sch 6 para 16(10)(b)). See also note 4 supra. For the meaning of 'the group' see PARA 104 note 6 ante. As to land and property transfers in relation to schools see PARA 1380 et seq post; and as to school land and premises generally see PARA 1352 et seq post.

12 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

13 School Standards and Framework Act 1998 Sch 6 para 16(3). See also note 4 supra.

14 Ibid Sch 6 para 16(4). See also note 4 supra.

15 Ibid Sch 6 para 16(5)(a). See also note 4 supra.

16 The reference to proceeds of the sale of other premises includes a reference to: (1) consideration for the creation or disposition of any kind of interest in other premises, including rent; and (2) interest which has accrued in respect of any such consideration: *ibid* Sch 6 para 16(6). See also note 4 supra.

17 Ibid Sch 6 para 16(5)(b). See also note 4 supra.

18 For the purposes of any agreed determination under *ibid* Sch 6 para 16(5), regard must be had to any guidance given from time to time by the Secretary of State: Sch 6 para 16(6). See also note 4 supra.

19 Ibid Sch 6 para 16(5). The provisions of Sch 6 para 16(5) apply for the purpose of compensating the authority notified under those provisions only in relation to such part of the sum mentioned in Sch 6 para 16(5) (b) (see head (2) in the text), if any, as remains after the application of s 76, Sch 22 paras 1-3 (as amended) (see PARAS 1364-1367 post) to that sum: Sch 6 para 16(9).

Any sum paid under Sch 6 para 16(5) must be treated for the purposes of the School Sites Act 1841 s 14 (as amended) (which relates to the sale or exchange of land held on trust for the purposes of a school: see PARA 1354 post) as a sum applied in the purchase of a site for the school: School Standards and Framework Act 1998 Sch 6 para 16(7).

A determination may be made under Sch 6 para 16(5) in respect of any property subject to a trust which has arisen under the Reverter of Sites Act 1987 s 1 (as amended) (right of reverter replaced by trust: see CHARITIES vol 8 (2010) PARA 70) if (and only if) the determination is made by the Secretary of State, and he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust: School Standards and Framework Act 1998 Sch 6 para 16(8). See also note 4 supra.

## UPDATE

### **145 Provision of site and buildings for foundation, voluntary controlled or foundation special school**

TEXT AND NOTES--These provisions now apply only in relation to Wales, and references to the Secretary of State are now to the National Assembly for Wales: see 1998 Act Sch 6 para 16 (amended by Education and Inspections Act 2006 Sch 3 para 33(14)).

NOTE 4--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(A) Proposals under the School Standards and Framework Act 1998/146. Grants in respect of certain expenditure relating to existing or proposed voluntary aided school.

#### **146. Grants in respect of certain expenditure relating to existing or proposed voluntary aided school.**

Where the governing body<sup>1</sup> of a voluntary aided school<sup>2</sup> is required<sup>3</sup> to implement proposals relating to a prescribed alteration<sup>4</sup> to the school<sup>5</sup>, the provisions relating to the payment of grants in respect of expenditure on premises or equipment<sup>6</sup> apply in relation to that school<sup>7</sup>.

Where any promoters<sup>8</sup> are required<sup>9</sup> to implement proposals involving the establishment<sup>10</sup> of a new voluntary aided school<sup>11</sup>, the provisions relating to the payment of grants in respect of expenditure on premises or equipment<sup>12</sup> apply in relation to the new voluntary aided school as they apply in relation to an existing voluntary aided school<sup>13</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq post.

2 As to voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ie by virtue of ibid ss 28(8), 29(7), 31(8), Sch 6 para 14(2) (as amended): see PARA 143 ante.

4 As to the meaning of 'alteration' see PARA 132 note 6 ante. As to alterations to schools see PARAS 132, 136 ante. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante.

5 Ibid Sch 6 para 17(1)(a).

6 Ie ibid s 22(7), Sch 3 para 5 (as amended): see PARA 309 post. As to school premises see PARA 1352 et seq post.

7 Ibid Sch 6 para 17(2)(a). As to grants in respect of voluntary aided schools see further the Education (Grants in Respect of Voluntary Aided Schools) Regulations 1999, SI 1999/2020 (as amended); and PARA 309 post.

8 As to the meaning of 'promoters' see PARA 132 ante.

9 Ie by virtue of the School Standards and Framework Act 1998 Sch 6 para 14(3) (as amended; prospectively further amended): see PARA 143 ante.

10 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 142(8).

Regulations may make provision modifying any provision contained in Sch 6 (as amended; prospectively further amended) (see PARAS 137 ante, 147 et seq post) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of

'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

11 School Standards and Framework Act 1998 Sch 6 para 17(1)(b). See also note 10 supra.

12 *Ibid* Sch 3 para 5 (as amended): see PARA 309 post.

13 *Ibid* Sch 6 para 17(2)(b). In the application of Sch 3 para 5 (as amended) in relation to a new voluntary aided school: (1) the references to the governing body, in relation to any time before the governing body is constituted, are to the promoters; and (2) where requirements are imposed in relation to grant paid by virtue of Sch 6 para 17 to the promoters, the requirements must be complied with by the governing body, when it is constituted, as well as by the promoters: Sch 6 para 17(3). See also note 10 supra.

## **UPDATE**

### **146 Grants in respect of certain expenditure relating to existing or proposed voluntary aided school**

NOTE 10--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(A) Proposals under the School Standards and Framework Act 1998/147. Assistance in respect of maintenance etc of voluntary aided school and in respect of new voluntary aided school.

**147. Assistance in respect of maintenance etc of voluntary aided school and in respect of new voluntary aided school.**

A local education authority<sup>1</sup> may give to the governing body<sup>2</sup> of a voluntary aided school<sup>3</sup> such assistance as the authority thinks fit in relation to the carrying out by the governing body of any obligation arising<sup>4</sup> in relation to proposals published by it<sup>5</sup> for the alteration of the school<sup>6</sup>.

A local education authority may give to persons required<sup>7</sup> to implement proposals involving the establishment<sup>8</sup> of a voluntary aided school such assistance as the authority thinks fit in relation to the carrying out by those persons of any obligation arising by virtue of that requirement<sup>9</sup>.

Where such assistance<sup>10</sup> consists of the provision of any premises<sup>11</sup> for use for the purposes of a school, the local education authority must transfer its interest in the premises to the trustees of the school to be held on trust for the purposes of the school<sup>12</sup> or, if the school has no trustees, to the school's foundation body<sup>13</sup> to be held by that body for the relevant purposes<sup>14</sup>. If any doubt or dispute arises as to the persons to whom the authority is required to make the transfer, it must be made to such persons as the Secretary of State<sup>15</sup> thinks proper<sup>16</sup>. The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer<sup>17</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq post. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 As to voluntary schools see PARA 102 et seq ante.

4 Ie by virtue of the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 14(2) (as amended): see PARA 143 ante.

5 Ie under ibid s 28 (as amended; prospectively further amended): see PARA 132 ante.

6 Ibid Sch 6 para 18.

7 Ie by virtue of ibid Sch 6 para 14(3) (as amended; prospectively further amended): see PARA 143 ante.

8 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 142(8).

Regulations may make provision modifying any provision contained in Sch 6 (as amended; prospectively further amended) (see PARA 137 ante) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

9 School Standards and Framework Act 1998 Sch 6 para 19. See also note 8 supra.

10 le under ibid Sch 6 para 18 (see the text and notes 1-6 supra) or Sch 6 para 19 (see the text and notes 7-9 supra).

11 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 142(8).

12 As to land or other property held on trust, or by trustees, for the purposes of a school see PARA 104 note 6 ante.

13 For the meaning of 'foundation body' see PARA 104 note 6 ante.

14 School Standards and Framework Act 1998 Sch 6 para 20(1). For this purpose, 'the relevant purposes' means, in relation to a transfer to a school's foundation body, the purposes of the schools comprising the group for which that body acts: Sch 6 para 20(4). For the meaning of 'the group' see PARA 104 note 6 ante. As to land and property transfers in relation to schools see PARA 1380 et seq post; and as to school land and premises generally see PARA 1352 et seq post. See also note 8 supra.

15 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

16 School Standards and Framework Act 1998 Sch 6 para 20(2). See also note 8 supra.

17 Ibid Sch 6 para 20(3). See also note 8 supra.

## UPDATE

### **147 Assistance in respect of maintenance etc of voluntary aided school and in respect of new voluntary aided school**

TEXT AND NOTES--These provisions now apply only in relation to Wales, and references to the Secretary of State are now to the National Assembly for Wales: see 1998 Act Sch 6 para 20 (amended by Education and Inspections Act 2006 Sch 3 para 33(15)).

NOTE 8--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.



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#### **148. Proposals for single-sex school to become co-educational.**

Where proposals are made<sup>1</sup> for a community, foundation or voluntary school<sup>2</sup> in England<sup>3</sup> to cease to be an establishment which admits pupils<sup>4</sup> of one sex only<sup>5</sup> and a copy of the published proposals is sent<sup>6</sup> to the school organisation committee<sup>7</sup>, or where such proposals are made<sup>8</sup> in respect of a community or foundation special school<sup>9</sup> in England and a copy of the published proposals is sent<sup>10</sup> to the school organisation committee<sup>11</sup>, then the sending of the published proposals to the school organisation committee is to be treated as an application by the responsible body<sup>12</sup> for the making by the school organisation committee of a transitional exemption order authorising discriminatory admissions during a specified transitional period<sup>13</sup>, and the committee may make such an order accordingly<sup>14</sup>. Where the school organisation committee has failed to reach a unanimous decision on whether to make a transitional exemption order, or the school organisation committee refers the proposals to the adjudicator<sup>15</sup>, the committee must refer the question whether to make a transitional exemption order to the adjudicator<sup>16</sup>. Where that question is referred to the adjudicator he must consider the matter afresh<sup>17</sup>, and he may make a transitional exemption order accordingly<sup>18</sup>.

Where proposals are made<sup>19</sup> for a community, foundation or voluntary school in Wales<sup>20</sup> to cease to be an establishment which admits pupils of one sex only and a copy of the published proposals is sent<sup>21</sup> to the National Assembly for Wales<sup>22</sup>, or where such proposals are made<sup>23</sup> in respect of a community or foundation special school in Wales and a copy of the published proposals is sent<sup>24</sup> to the Assembly<sup>25</sup>, the sending of the published proposals to the Assembly is to be treated as an application by the responsible body for the making by the Assembly of a transitional exemption order, and it may make such an order accordingly<sup>26</sup>.

1    Ie under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended): see PARA 132 ante.

2    As to community, foundation or voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

3    For the meaning of 'England' see PARA 52 note 11 ante.

4    For the meaning of 'pupil' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5    For these purposes, references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration in a school's admissions arrangements as is mentioned in the Sex Discrimination Act 1975 s 27(1) (single-sex establishments becoming co-educational: see DISCRIMINATION vol 13 (2007 Reissue) PARA 381); School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 21(6). As to sex discrimination in educational establishments see PARA 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARAS 378-381. As to admission arrangements see PARA 398 et seq post.

6    Ie in accordance with ibid s 28(6): see PARA 132 ante.

7    Ibid Sch 6 para 21(1), (2)(a). As to school organisation committees see PARA 118 et seq ante.

8    Ie under ibid s 31 (prospectively amended): see PARA 136 ante.

9 For the meaning of 'community or foundation special school' see PARA 94 note 2 ante. As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post.

10 Ie in accordance with the School Standards and Framework Act 1998 s 31(5): see PARA 136 ante.

11 Ibid Sch 6 para 21(1), (2)(b).

12 For these purposes, 'the responsible body' has the same meaning as in the Sex Discrimination Act 1975 s 22 (as amended) (see PARA 6 ante): School Standards and Framework Act 1998 Sch 6 para 21(6).

13 For these purposes, 'transitional exemption order' has the same meaning as in the Sex Discrimination Act 1975 s 27 (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 381): School Standards and Framework Act 1998 Sch 6 para 21(6).

14 Ibid Sch 6 para 21(3); Sex Discrimination Act 1975 s 27(1A) (added by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 6). For these purposes, 'make', in relation to a transitional exemption order, includes (so far as the context permits) vary or revoke: School Standards and Framework Act 1998 Sch 6 para 21(6).

15 Ie under ibid Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante) or Sch 6 para 5 (as amended; prospectively further amended) (see PARA 140 ante). For the meaning of 'adjudicator' see PARA 124 ante.

16 Ibid Sch 6 para 21(4).

17 Ibid Sch 6 para 21(5)(a).

18 Ibid Sch 6 para 21(5)(b).

19 Ie under ibid s 28 (as amended; prospectively further amended): see PARA 132 ante.

20 For the meaning of 'Wales' see PARA 52 note 13 ante.

21 Ie in accordance with the School Standards and Framework Act 1998 s 28(7): see PARA 132 ante.

22 Ibid Sch 6 para 22(1), (2)(a). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

23 Ie under ibid s 31 (prospectively amended): see PARA 136 ante.

24 Ie in accordance with ibid s 31(6): see PARA 136 ante.

25 Ibid Sch 6 para 22(1), (2)(b).

26 Ibid Sch 6 para 22(3); Sex Discrimination Act 1975 s 27(1A) (as added: see note 14 supra).

## **UPDATE**

### **148 Proposals for single-sex school to become co-educational**

TEXT AND NOTES 1-18--Repealed: Education and Inspections Act 2006 Sch 3 para 33(16), Sch 18 Pt 3.

TEXT AND NOTES 19-25--1998 Act Sch 6 para 22 amended: 2006 Act Sch 3 para 33(17), (18).

NOTE 26--1975 Act s 27(1A) substituted: 2006 Act Sch 3 para 3.

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**149. Direction requiring discontinuance of community or foundation special school.**

The Secretary of State<sup>1</sup> may, if he considers it expedient to do so in the interests of the health, safety or welfare of pupils<sup>2</sup> at a community or foundation special school<sup>3</sup>, give a direction to the local education authority<sup>4</sup> by whom the school is maintained requiring the school to be discontinued<sup>5</sup> on a date specified in the direction<sup>6</sup>. Such a direction may require the local education authority to notify any persons or class of persons specified in the direction<sup>7</sup>.

Before giving such a direction, the Secretary of State must consult:

- 276 (1) the local education authority<sup>8</sup>;
- 277 (2) any other local education authority which would in his opinion be affected by the discontinuance of the school<sup>9</sup>;
- 278 (3) in the case of a foundation special school which has a foundation<sup>10</sup>, the person who appoints the foundation governors<sup>11</sup>; and
- 279 (4) such other persons as the Secretary of State considers appropriate<sup>12</sup>.

On giving a such direction, the Secretary of State must give notice in writing of the direction to the governing body<sup>13</sup> of the school and its head teacher<sup>14</sup>.

Where a local education authority is given such a direction, it must discontinue the school in question on the date specified in the direction<sup>15</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For the meaning of 'community or foundation special school' see PARA 94 note 2 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 142(8). As to community special schools and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post.

4 As to local education authorities see PARA 20 ante.

5 As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

6 School Standards and Framework Act 1998 s 32(1). Section 32 does not apply to the closure of a school by a local education authority as directed by the Secretary of State under s 19(1) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (school requiring special measures: see PARA 1273 post): see s 19(4); and PARA 1273 post.

7 *Ibid* s 32(2).

8 *Ibid* s 32(3)(a).

9 *Ibid* s 32(3)(b).

10 For the meaning of 'foundation' see PARA 104 note 6 ante.

11 School Standards and Framework Act 1998 s 32(3)(c). For the meaning of 'foundation governor' see PARA 104 note 6 ante.

12 Ibid s 32(3)(d).

13 As to the governing bodies of maintained schools see PARA 203 et seq post.

14 School Standards and Framework Act 1998 s 32(4). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8).

15 Ibid s 32(5). Nothing in s 31 (prospectively amended) (see PARA 136 ante) or s 33 (as amended; prospectively further amended) (see PARA 131 ante) applies to any such discontinuance of the school under s 32: s 32(5).

## **UPDATE**

### **149 Direction requiring discontinuance of community or foundation special school**

TEXT AND NOTES--These provisions now apply only in relation to Wales, and references to the Secretary of State are now to the National Assembly for Wales: see 1998 Act s 32 (amended by Education and Inspections Act 2006 Sch 3 para 24). For similar provision in relation to England see the 2006 Act s 17; and PARA 165A.4.

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## (B) PROPOSALS FOR SCHOOLS IN ENGLAND UNDER THE

### **150. Local education authority's power to invite proposals for establishment of additional community, foundation or voluntary schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

A local education authority<sup>2</sup> in England<sup>3</sup> may publish a notice<sup>4</sup> inviting proposals for the establishment<sup>5</sup> of a community, foundation or voluntary school<sup>6</sup> as an additional secondary school<sup>7</sup>. Such a notice must: (1) identify a possible site for the school<sup>8</sup>; (2) specify a date, being a date after the prescribed<sup>9</sup> interval, by which proposals must be submitted<sup>10</sup>; (3) specify such other matters as may be prescribed<sup>11</sup>; and (4) be published in the prescribed manner<sup>12</sup>. Proposals made pursuant to such a notice must contain the prescribed information, and be submitted to the local education authority before the date specified in the notice<sup>13</sup>. After the date specified in a notice published by a local education authority, the authority: (a) must publish<sup>14</sup> any proposals submitted<sup>15</sup> pursuant to the notice<sup>16</sup>; and (b) may publish proposals of its own for the establishment of a community or foundation school as an additional secondary school<sup>17</sup>. Regulations may prescribe the manner in which proposals must be published, and the information which proposals within head (b) above must contain<sup>18</sup>.

1 The Education Act 2002 s 70 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b) and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 158 et seq post). At the date at which this volume states the law, no such day had been appointed.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 Ie under the Education Act 2002 s 70 (prospectively repealed).

5 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 212(2), (3).

6 As to community, foundation or voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3).

7 Ibid s 70(1), (2)(a)-(c). For these purposes, a school is 'additional' if it does not replace a community, foundation or voluntary school which has been or is to be discontinued; and in determining for the purposes of s 70 (prospectively repealed) whether one school replaces another regard must be had to any guidance given from time to time by the Secretary of State: s 70(2)(a)-(c), (7). 'Secondary school' does not include: (1) a middle school; or (2) a school which provides education suitable only to the requirements of persons above compulsory school age: s 70(8). See note 1 supra. For the meaning of 'middle school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 212(2), (3). As to the Secretary of State see PARA 52 ante. As to when a local education authority must exercise its power under s 70(1) (prospectively repealed) see PARA 157 post.

Proposals under the Education Act 2002 s 70 (prospectively repealed) for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post) (s 74(1), (3)); and regulations may make provision modifying any provision contained in s 70 (prospectively repealed) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school (Education Act 2002 s 74(2)). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1

June 2003 in relation to s 74(1) (see the Education Act 2002 (Commencement No 5 and Transitional and Saving Provisions) Order 2003, SI 2003/1115, art 3) and 1 April 2003 in relation to the Education Act 2002 s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (5)(a), the Education Act 2002 s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2, and the provisions of the Education Act 2002 s 74(1), (3) are re-enacted as the Education Act 2005 s 68 (not yet in force) (proposals for establishment of federated school: see PARA 133 ante). At the date at which this volume states the law, no such day had been appointed.

8 Education Act 2002 s 70(3)(a). See note 1 supra.

9 'Prescribed' means prescribed by regulations: *ibid* s 212(1). As to the regulations made under s 70 (prospectively repealed) see the Education (Additional Secondary School Proposals) Regulations 2003, SI 2003/1200 (amended by SI 2003/1421).

10 Education Act 2002 s 70(3)(b). See note 1 supra.

11 *Ibid* s 70(3)(c). See note 1 supra.

12 *Ibid* s 70(3)(d). See note 1 supra.

13 *Ibid* s 70(4). See note 1 supra.

14 *Ie* under *ibid* s 70 (prospectively repealed).

15 *Ie* in accordance with *ibid* s 70(4) (prospectively repealed): see the text and note 13 supra.

16 *Ibid* s 70(5)(a). See note 1 supra.

17 *Ibid* s 70(5)(b). See note 1 supra.

18 *Ibid* s 70(6). See note 1 supra.

## **UPDATE**

### **150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.

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### **151. Proposals for establishment of additional community, foundation or voluntary schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> must make provision for the submission of a proposal for additional community, foundation or voluntary schools in England<sup>3</sup> for decision by the Secretary of State after being considered and commented on by the school organisation committee<sup>4</sup>. Such regulations may in particular make provision:

- 280 (1) for the making of objections or comments to a local education authority in relation to proposals published by it<sup>5</sup>;
- 281 (2) for the submission of proposals to the school organisation committee<sup>6</sup>;
- 282 (3) for consultation by the school organisation committee<sup>7</sup>;
- 283 (4) for consideration of proposals by the school organisation committee, which may include provision for the committee to have regard to guidance given from time to time by the Secretary of State<sup>8</sup>;
- 284 (5) for the submission of proposals to the Secretary of State<sup>9</sup>;
- 285 (6) for the withdrawal of proposals<sup>10</sup>;
- 286 (7) requiring any of the following to provide such information to such persons at such times as the regulations may prescribe<sup>11</sup>: (a) the promoters<sup>12</sup> or, if the proposal was made by a local education authority, that authority; and (b) the school organisation committee<sup>13</sup>.

1 The Education Act 2002 s 70(9), Sch 8 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b) and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 158 et seq post). At the date at which this volume states the law, no such day had been appointed.

2 For these purposes, 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under Sch 8 para 2 (prospectively repealed) see the Education (Additional Secondary School Proposals) Regulations 2003, SI 2003/1200 (amended by SI 2003/1421).

3 I.e. a proposal under the Education Act 2002 s 70 (prospectively repealed): see PARA 150 ante. For the meaning of 'additional' for these purposes see PARA 150 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). As to community, foundation or voluntary schools see PARA 102 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante.

4 Ibid Sch 8 para 2(1). For these purposes, 'school organisation committee', in relation to a proposal, means the school organisation committee (within the meaning of the School Standards and Framework Act 1998 s 24(4): see PARA 118 note 3 ante) for the area of the local education authority which published the proposal: Education Act 2002 Sch 8 para 1. See note 1 supra. For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 212(2), (3). As to local education authorities see PARA 20 ante. As to the Secretary of State see PARA 52 ante.

5 Ibid Sch 8 para 2(2)(a). See note 1 supra.

6 Ibid Sch 8 para 2(2)(b). See note 1 supra.

7 Ibid Sch 8 para 2(2)(c). See note 1 supra.

8 Ibid Sch 8 para 2(2)(d). See note 1 supra.

9 Ibid Sch 8 para 2(2)(e). See note 1 supra.

10 Ibid Sch 8 para 2(2)(f). See note 1 supra.

11 Ibid Sch 8 para 2(2)(g). See note 1 supra.

12 Ibid Sch 8 para 2(2)(g)(i). For these purposes, 'promoters', in relation to a proposal, means the persons who made the proposal, but does not include a local education authority: Sch 8 para 1. See note 1 supra.

13 Ibid Sch 8 para 2(2)(g)(ii). See note 1 supra.

## **UPDATE**

### **150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.



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## **152. Approval of proposals.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the Secretary of State<sup>2</sup> receives a proposal<sup>3</sup> to establish<sup>4</sup> a community, foundation or voluntary school<sup>5</sup>, he must either reject the proposal<sup>6</sup>, approve it without modification<sup>7</sup>, or approve it with such modifications as he thinks desirable after consulting such persons as may be prescribed<sup>8</sup>. The Secretary of State must notify<sup>9</sup> the interested parties<sup>10</sup> and the local education authority<sup>11</sup> which published the proposal of any decision so made<sup>12</sup>.

Any approval so given may be expressed to take effect only if an event specified in the approval occurs by a date so specified<sup>13</sup>.

1 The Education Act 2002 s 70(9), Sch 8 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b) and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 158 et seq post). At the date at which this volume states the law, no such day had been appointed.

2 As to the Secretary of State see PARA 52 ante.

3 Ie under the Education Act 2002 Sch 8 para 2 (prospectively repealed): see PARA 151 ante.

4 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 212(2), (3).

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3). As to community, foundation or voluntary schools see PARA 102 et seq ante.

6 Ibid Sch 8 para 3(1)(a). See note 1 supra.

7 Ibid Sch 8 para 3(1)(b). See note 1 supra. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3).

8 Ibid Sch 8 para 3(1)(c). See note 1 supra. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations generally under the Education Act 2002 see PARA 79 note 2 ante. As to the regulations made under Sch 8 para 3 (prospectively repealed) see the Education (Additional Secondary School Proposals) Regulations 2003, SI 2003/1200 (amended by SI 2003/1421).

9 As to the service of notices see PARA 463 note 12 post; applied by virtue of the Education Act 2002 s 212(2), (3).

10 For these purposes, 'interested parties', in relation to a proposal, means the promoters of the proposal and any other person who made a proposal pursuant to the same notice under ibid s 70 (prospectively repealed) (see PARA 150 ante): Sch 8 para 1. See note 1 supra. For the meaning of 'promoters' see PARA 151 note 12 ante.

11 As to local education authorities see PARA 20 ante.

12 Education Act 2002 Sch 8 para 3(4). See note 1 supra.

13 Ibid Sch 8 para 3(2). Where the specified event does not occur by that date, or, where a later date is specified under Sch 8 para 5(2)(b) (prospectively repealed) (see PARA 153 post), by that later date, the proposal falls to be considered afresh under Sch 8 para 3(1) (prospectively repealed) (see the text and notes 1-8 supra): Sch 8 para 3(3). See note 1 supra.

**UPDATE**

**150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(B) Proposals for Schools in England under the Education Act 2002/153. Requirement to implement proposals.

### **153. Requirement to implement proposals.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where any proposal<sup>2</sup> to establish<sup>3</sup> a community, foundation or voluntary school<sup>4</sup> has been approved<sup>5</sup>, then the proposal must be implemented<sup>6</sup> in the form in which it was so approved<sup>7</sup>.

At the request of any prescribed<sup>8</sup> persons, the Secretary of State<sup>9</sup> may modify the proposal after consulting such persons as may be prescribed<sup>10</sup>, and, where any approval was given subject to the occurrence of a specified event by a specified date<sup>11</sup>, may specify a later date by which the event in question must occur<sup>12</sup>.

If, after consulting such persons as may be prescribed, the Secretary of State is satisfied:

- 287 (1) that implementation of the proposal would be unreasonably difficult<sup>13</sup>; or
- 288 (2) that circumstances have so altered since approval was given<sup>14</sup> that implementation of the proposal would be inappropriate<sup>15</sup>,

he may determine that the requirement to implement proposals<sup>16</sup> is to cease to apply to the proposal<sup>17</sup>.

1 The Education Act 2002 s 70(9), Sch 8 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b) and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 158 et seq post). At the date at which this volume states the law, no such day had been appointed.

2 Ie under the Education Act 2002 s 70 (prospectively repealed): see PARA 150 et seq ante.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 212(2), (3).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3). As to community, foundation or voluntary schools see PARA 102 et seq ante.

5 Ie under ibid Sch 8 para 3 (prospectively repealed) (see PARA 152 ante).

6 Ie subject to the provisions of ibid Sch 8 para 5 (prospectively repealed).

7 Ibid Sch 8 para 5(1). See note 1 supra.

8 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations generally under the Education Act 2002 see PARA 79 note 2 ante. As to the regulations made under Sch 8 para 5 (prospectively repealed) see the Education (Additional Secondary School Proposals) Regulations 2003, SI 2003/1200 (amended by SI 2003/1421).

9 As to the Secretary of State see PARA 52 ante.

10 Education Act 2002 Sch 8 para 5(2)(a). See note 1 supra. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3).

11 Ie in accordance with ibid Sch 8 para 3(2) (prospectively repealed): see PARA 152 ante.

12 Ibid Sch 8 para 5(2)(b). See note 1 supra.

13 Ibid Sch 8 para 5(3)(a). See note 1 supra.

- 14    le under ibid Sch 8 para 3 (prospectively repealed): see PARA 152 ante.
- 15    Ibid Sch 8 para 5(3)(b). See note 1 supra.
- 16    le ibid Sch 8 para 5(1) (prospectively repealed) (see the text and notes 1-6 supra).
- 17    Ibid Sch 8 para 5(3). See note 1 supra.

## **UPDATE**

### **150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(B) Proposals for Schools in England under the Education Act 2002/154. Manner of implementation of proposals relating to community schools.

#### **154. Manner of implementation of proposals relating to community schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

A proposal<sup>2</sup> to establish<sup>3</sup> a community school<sup>4</sup> which falls to be implemented<sup>5</sup> must be implemented by the local education authority<sup>6</sup> that made it<sup>7</sup>.

1 The Education Act 2002 s 70(9), Sch 8 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b) and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 158 et seq post). At the date at which this volume states the law, no such day had been appointed.

2 Ie under the Education Act 2002 s 70 (prospectively repealed): see PARA 150 et seq ante.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 212(2), (3).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3). As to community schools see PARA 102 et seq ante.

5 Ie under ibid s 70(9), Sch 8 para 5 (prospectively repealed): see PARA 153 ante.

6 As to local education authorities see PARA 20 ante.

7 Education Act 2002 Sch 8 para 6. See note 1 supra.

#### **UPDATE**

#### **150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(B) Proposals for Schools in England under the Education Act 2002/155. Manner of implementation of proposals relating to foundation or voluntary controlled schools.

### **155. Manner of implementation of proposals relating to foundation or voluntary controlled schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

A proposal<sup>2</sup> to establish<sup>3</sup> a foundation or voluntary controlled school<sup>4</sup> which falls to be implemented<sup>5</sup> and which was made by a local education authority<sup>6</sup> must be implemented by that authority<sup>7</sup>. In any other case, the proposal must be implemented by the local education authority which published it<sup>8</sup> and the promoters<sup>9</sup>, respectively, to such extent (if any) as the proposal provides for each of them to do so<sup>10</sup>.

Where a local education authority is required under the provisions above to provide a site<sup>11</sup> for a proposed foundation or voluntary controlled school, the relevant provisions of the School Standards and Framework Act 1998 apply<sup>12</sup>.

<sup>1</sup> The Education Act 2002 s 70(9), Sch 8 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b) and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 158 et seq post). At the date at which this volume states the law, no such day had been appointed.

<sup>2</sup> Ie under the Education Act 2002 s 70 (prospectively repealed): see PARA 150 et seq ante.

<sup>3</sup> As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 212(2), (3).

<sup>4</sup> For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3). As to foundation and voluntary controlled schools see PARA 102 et seq ante.

<sup>5</sup> Ie under ibid Sch 8 para 5 (prospectively repealed): see PARA 153 ante.

<sup>6</sup> As to local education authorities see PARA 20 ante.

<sup>7</sup> Education Act 2002 Sch 8 para 7(1), (2). See note 1 supra.

<sup>8</sup> Ie under ibid s 70 (prospectively repealed): see PARA 150 ante.

<sup>9</sup> For the meaning of 'promoters' see PARA 151 note 12 ante.

<sup>10</sup> Education Act 2002 Sch 8 para 7(3). See note 1 supra.

<sup>11</sup> As to the meaning of 'site' see PARA 145 note 2 ante.

<sup>12</sup> Education Act 2002 Sch 8 para 7(4). The relevant provisions of the School Standards and Framework Act 1998 mentioned in the text are ss 28(8), 29(7), 31(8), Sch 6 para 16 (provision of site and buildings for foundation, voluntary controlled or foundation special school: see PARA 145 ante) and they apply as they apply in the circumstances mentioned in Sch 6 para 16(1) (see PARA 145 ante): Education Act 2002 Sch 8 para 7(4). See note 1 supra.

### **UPDATE**

#### **150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(B) Proposals for Schools in England under the Education Act 2002/156. Manner of implementation of proposals relating to voluntary aided schools.

### **156. Manner of implementation of proposals relating to voluntary aided schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

A proposal<sup>2</sup> to establish<sup>3</sup> a voluntary aided school<sup>4</sup> which falls to be implemented<sup>5</sup> must be implemented<sup>6</sup>:

- 289 (1) so far as relating to the provision of any relevant premises<sup>7</sup> for the school, by the local education authority<sup>8</sup> which published the proposal<sup>9</sup>; and  
290 (2) otherwise, by the promoters<sup>10</sup>.

Where a local education authority is required, by virtue of head (1) above, to provide for a school the site specified in a notice inviting proposals<sup>11</sup>, the authority must transfer its interest in the site and in any buildings on the site which are to form part of the school premises<sup>12</sup> to the school's trustees, to be held by them on trust for the purposes of the school<sup>13</sup>, or, if the school has no trustees, to the school's foundation body<sup>14</sup> to be held by that body for the purposes of the schools comprising the group<sup>15</sup> for which that body acts<sup>16</sup>. If any doubt or dispute arises as to the persons to whom the authority is required to make the transfer, it must be made to such persons as the Secretary of State<sup>17</sup> thinks proper<sup>18</sup>. The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer<sup>19</sup>.

1 The Education Act 2002 s 70(9), Sch 8 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b) and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 158 et seq post). At the date at which this volume states the law, no such day had been appointed.

2 Ie under the Education Act 2002 s 70 (prospectively repealed): see PARA 150 et seq ante.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 212(2), (3).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3). As to voluntary aided schools see PARA 102 et seq ante.

5 Ie under ibid Sch 8 para 5 (prospectively repealed): see PARA 153 ante.

6 Ibid Sch 8 para 8(1), (2). See note 1 supra.

7 For these purposes, 'relevant premises' means: (1) in a case where it is proposed to establish the school at the site specified in the notice under ibid s 70 (prospectively repealed) (see PARA 150 ante), that site or playing fields; and (2) in any other case, playing fields: Sch 8 para 8(3). See note 1 supra. For the meaning of 'playing fields' see PARA 1410 note 22 post.

8 As to local education authorities see PARA 20 ante.

9 Education Act 2002 Sch 8 para 8(2)(a). See note 1 supra. Proposals are published under s 70 (prospectively repealed): see PARA 150 ante.

10 Ibid Sch 8 para 8(2)(b). For the meaning of 'promoters' see PARA 151 note 12 ante. The School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 17 (grants in respect of certain expenditure relating to voluntary aided schools: see PARA 145 ante) applies in relation to the obligation under the Education Act 2002 Sch 8 para 8(2)(b) (prospectively repealed) as it applies in relation to the obligations referred to in the School



Standards and Framework Act 1998 Sch 6 para 17(1)(b) (see PARA 145 ante): Education Act 2002 Sch 8 para 8(8). The School Standards and Framework Act 1998 Sch 6 para 19 (assistance in respect of voluntary aided schools: see PARA 147 ante) applies in relation to the obligation in the Education Act 2002 Sch 8 para 8(2)(b) (prospectively repealed) as it applies in relation to the obligations referred to in the School Standards and Framework Act 1998 Sch 6 para 19; and Sch 6 para 20 (duty on local education authorities to transfer interest in premises: see PARA 147 ante) applies accordingly: Education Act 2002 Sch 8 para 8(9). See note 1 supra.

11 Ibid Sch 8 para 8(4). See note 1 supra. A notice inviting proposals is published under s 70 (prospectively repealed): see PARA 150 et seq ante.

12 Ibid Sch 8 para 8(5). See note 1 supra. As to land and property transfers in relation to schools see PARA 1380 et seq post; and as to school land and premises generally see PARA 1352 et seq post.

13 Ibid Sch 8 para 8(5)(a). See note 1 supra. As to land or other property held on trust, or by trustees, for the purposes of a school see PARA 104 note 6 ante.

14 For the meaning of 'foundation body' see PARA 104 note 6 ante.

15 For the meaning of 'the group' see PARA 104 note 6 ante.

16 Education Act 2002 Sch 8 para 8(5)(b). See note 1 supra.

17 As to the Secretary of State see PARA 52 ante.

18 Education Act 2002 Sch 8 para 8(6). See note 1 supra.

19 Ibid Sch 8 para 8(7). See note 1 supra. As to expenses payable by the governing bodies of voluntary aided schools under Sch 8 para 8 (prospectively repealed) see PARA 320 post.

## **UPDATE**

### **150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(B) Proposals for Schools in England under the Education Act 2002/157. Direction requiring local education authority to secure proposals.

### **157. Direction requiring local education authority to secure proposals.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may give a direction<sup>3</sup> to a local education authority<sup>4</sup> in England<sup>5</sup> where he is of the opinion that the provision for primary<sup>6</sup> or secondary education<sup>7</sup> in the area of the authority<sup>8</sup> or in any part of that area<sup>9</sup>, is, or is likely to become, insufficient<sup>10</sup>. Where such a direction is given to a local education authority, the authority must, within the time specified in the direction, do either or both of the following as the authority thinks fit<sup>11</sup>:

- 291 (1) exercise its powers<sup>12</sup> to publish proposals for the establishment<sup>13</sup>, alteration<sup>14</sup> or discontinuance<sup>15</sup> of schools<sup>16</sup>; or
- 292 (2) exercise its power<sup>17</sup> to publish a notice inviting proposals for the establishment of additional secondary schools<sup>18</sup>.

A local education authority must comply with such a direction: (a) with a view to securing that provision is made for such additional number of pupils<sup>19</sup> in the area, or in any such part of the area, as may be specified in the direction<sup>20</sup>; and (b) applying such principles as may be specified in the direction<sup>21</sup>. Where the Secretary of State has given such a direction to a local education authority<sup>22</sup> and:

- 293 (i) the authority has not complied with the direction within the time specified in it<sup>23</sup>; or
- 294 (ii) the authority has complied with it, but the Secretary of State is not satisfied that the provision referred to in head (a) above will be secured<sup>24</sup>,

the Secretary of State may make any such proposals as might have been made by the authority under head (1) above or, by virtue of head (2) above, under the power<sup>25</sup> it has to publish proposals of its own for the establishment of a community or foundation school as an additional secondary school<sup>26</sup>. Proposals so made by the Secretary of State must contain the prescribed<sup>27</sup> information<sup>28</sup>, be published by the Secretary of State in the prescribed manner<sup>29</sup>, and be sent by the Secretary of State to the school organisation committee<sup>30</sup> for the area to which they relate<sup>31</sup>.

1 The Education Act 2002 s 71 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

2 As to the Secretary of State see PARA 52 ante.

3 ie under the Education Act 2002 s 71 (prospectively repealed).

4 As to local education authorities see PARA 20 ante.

5 For the meaning of 'England' see PARA 52 note 11 ante.

6 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

7 Ibid s 71(1). See note 1 supra. For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of s 212(2), (3).

The School Standards and Framework Act 1998 s 34, Sch 7 para 4 (as amended; prospectively further amended; prospectively repealed) (see PARA 168 post) applies in relation to the Education Act 2002 s 71 (prospectively repealed) as follows: (1) the provisions of the School Standards and Framework Act 1998 Sch 7 para 4(1)-(5) (as amended; prospectively repealed) (see PARA 168 post) apply in relation to a direction given under the Education Act 2002 s 71 (prospectively repealed), in relation to the whole or part of the area of a local education authority, as they apply in relation to an order made under the School Standards and Framework Act 1998 Sch 7 para 2(2) (prospectively amended) (see PARA 166 post) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 post), in relation to the area of such an authority; (2) the provisions of the School Standards and Framework Act 1998 Sch 7 para 4(6) (prospectively repealed) and Sch 7 para 4(7) (prospectively amended) (see PARA 168 post) apply in relation to proposals made by a local education authority in the exercise, pursuant to such a direction, of its powers under s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante), as they apply in relation to the proposals referred to in Sch 7 para 4(6) (prospectively repealed) and Sch 7 para 4(7) (prospectively amended): Education Act 2002 s 71(6). For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 212(2), (3). As to local education authorities see PARA 20 ante.

8 Ibid s 71(1)(a). See note 1 supra. See also note 7 supra.

9 Ibid s 71(1)(b). See note 1 supra. See also note 7 supra.

10 Ibid s 71(1). See note 1 supra. See also note 7 supra.

11 Ibid s 71(2). See note 1 supra. See also note 7 supra.

12 Ie under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante).

13 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

14 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of ibid s 212(2), (3).

15 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of ibid s 212(2), (3).

16 Ibid s 71(2)(a). See note 1 supra. See also note 7 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

17 Ie under ibid s 70(1) (prospectively repealed): see PARA 150 ante.

18 Ibid s 71(2)(b). See note 1 supra. See also note 7 supra. For the meaning of 'additional secondary schools' see PARA 150 note 7 ante.

19 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

20 Ibid s 71(3)(a). See note 1 supra. See also note 7 supra.

21 Ibid s 71(3)(b). See note 1 supra. See also note 7 supra.

22 Ibid s 71(4). See note 1 supra. See also note 7 supra.

23 Ibid s 71(4)(a). See note 1 supra. See also note 7 supra.

24 Ibid s 71(3)(b). See note 1 supra. See also note 7 supra.

25 Ie under ibid s 70(5)(b) (prospectively repealed): see PARA 150 ante.

26 Ibid s 71(4). As to community or foundation schools see PARA 102 et seq ante. The provisions of the School Standards and Framework Act 1998 Sch 7 paras 7-10 (as amended; prospectively repealed) (see PARAS 170-173 post) and Sch 7 para 16 (prospectively repealed) (see PARA 174 post) apply in relation to proposals

made by the Secretary of State under the Education Act 2002 s 71(4) (prospectively repealed) as they apply to proposals published under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended) (see PARA 169 post), but as if: (1) the reference in Sch 7 para 9(2) (prospectively repealed) to the order under Sch 7 para 2(2) (prospectively amended) (see PARA 166 post) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 post) were a reference to the direction under the Education Act 2002 s 71 (prospectively repealed); and (2) the reference in the School Standards and Framework Act 1998 Sch 7 para 16(2) (prospectively repealed) to Sch 7 para 5(3) (prospectively repealed) were a reference to the Education Act 2002 s 71(5)(c) (prospectively repealed) (see the text and notes 30-31 infra): s 71(7). See note 1 supra. See also note 7 supra.

27 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations generally under the Education Act 2002 see PARA 79 note 2 ante. As to the regulations made under s 71(5) (prospectively repealed) (where the proposals relate to a mainstream school) see the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213, regs 4-5 (amended by SI 2000/2198; SI 2003/1229).

28 Education Act 2002 s 71(5)(a). See note 1 supra. See also note 7 supra.

29 Ibid s 71(5)(b). See note 1 supra. See also note 7 supra.

30 As to school organisation committees see PARA 118 et seq ante.

31 Education Act 2002 s 71(5)(c). See note 1 supra. See also note 7 supra.

## **UPDATE**

### **150-157 Proposals for Schools in England under the Education Act 2002**

Repeal of these provisions now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/158. Local education authority's power to invite proposals for establishment of foundation or voluntary schools as secondary schools.

## (C) PROPOSALS FOR SCHOOLS IN ENGLAND UNDER THE

### **158. Local education authority's power to invite proposals for establishment of foundation or voluntary schools as secondary schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

A local education authority<sup>2</sup> in England<sup>3</sup> may publish a notice<sup>4</sup> inviting proposals for the establishment<sup>5</sup> of a foundation or voluntary school<sup>6</sup> as a secondary school<sup>7</sup>. Such a notice must: (1) identify a possible site for the school<sup>8</sup>; (2) specify a date, being a date after the prescribed interval, by which proposals must be submitted<sup>9</sup>; (3) specify such other matters as may be prescribed<sup>10</sup>; and (4) be published in the prescribed manner<sup>11</sup>. Before publishing such a notice, the local education authority must consult any prescribed persons, and such other persons as appear to the authority to be appropriate, about such of the relevant matters<sup>12</sup> as may be prescribed or, if none are prescribed, about such of the relevant matters as appear to the authority to be appropriate<sup>13</sup>. Regulations may prescribe requirements to be met by the local education authority in relation to such consultation<sup>14</sup>.

Proposals made pursuant to a notice inviting proposals for the establishment of a foundation or voluntary school as a secondary school must contain the prescribed information<sup>15</sup>, and be submitted to the local education authority before the date specified in the notice<sup>16</sup>. After the date specified in a notice published by a local education authority, the authority: (a) must publish<sup>17</sup> any proposals submitted<sup>18</sup> pursuant to the notice<sup>19</sup>; and (b) may publish proposals of its own for the establishment of a community<sup>20</sup> or foundation school as a secondary school<sup>21</sup>. Regulations may prescribe the time within which such proposals must be published<sup>22</sup>, the manner in which they must be published<sup>23</sup>, and the information which proposals within head (b) above must contain<sup>24</sup>. Regulations may require the local education authority to take prescribed steps for the purpose of promoting public awareness of any proposals published by it<sup>25</sup>.

1 The Education Act 2005 s 66 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 Ie under the Education Act 2005 s 66 (not yet in force).

5 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

6 As to foundation or voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

7 Ibid s 66(1), (2)(a), (b). For these purposes, 'secondary school' includes a middle school as respects which the relevant upper age is at least 16 years, but does not include a school which provides education suitable only to the requirements of persons above compulsory school age: s 66(11). See note 1 supra. For the meaning of 'middle school' see PARA 81 ante; definition applied by virtue of s 122(2), (3). For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 122(2), (3).

Proposals under s 66 (not yet in force) for the establishment of a new school may relate to the establishment of the school as a federated school: s 68(1). For these purposes, 'federated school' has the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post): Education Act 2005 s 68(2). Section 68 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

8 Ibid s 66(3)(a). Where any proposals published under s 66 (not yet in force) relate to a school which is proposed to be situated in an area other than that of the local education authority which published the notice under s 66 (not yet in force), the provisions of s 66(12), Sch 10 (not yet in force) (see PARA 159 et seq post) have effect in relation to the proposals with such modifications as may be prescribed: s 66(13). See note 1 supra. For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 122(2), (3). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 122(2), (3). For the purposes of Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 by the Secretary of State: s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for the purposes of s 66 (not yet in force).

9 Ibid s 66(3)(b). See note 1 supra.

10 Ibid s 66(3)(c). See note 1 supra.

11 Ibid s 66(3)(d). See note 1 supra.

12 For these purposes, 'the relevant matters' means the matters to be specified under ibid s 66(3)(a) (not yet in force) (see head (1) in the text) and s 66(3)(c) (not yet in force) (see head (3) in the text) in the notice: s 66(5). See note 1 supra.

13 Ibid s 66(4). See note 1 supra.

14 Ibid s 66(6). See note 1 supra.

15 Ibid s 66(7)(a). See note 1 supra.

16 Ibid s 66(7)(b). See note 1 supra.

17 Ie under ibid s 66 (not yet in force).

18 Ie in accordance with ibid s 66(7) (not yet in force): see the text and notes 15-16 supra.

19 Ibid s 66(8)(a). See note 1 supra.

20 As to community schools see PARA 102 et seq ante.

21 Education Act 2005 s 66(8)(b). See note 1 supra.

22 Ibid s 66(9)(a). See note 1 supra.

23 Ibid s 66(9)(b). See note 1 supra.

24 Ibid s 66(9)(c). See note 1 supra.

25 Ibid s 66(10). See note 1 supra.

## UPDATE

### 158-165 Proposals for Schools in England under the Education Act 2005

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/159. Proposals for establishment of foundation or voluntary schools as secondary schools.

### **159. Proposals for establishment of foundation or voluntary schools as secondary schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> must make provision for the submission of proposals<sup>3</sup> for the establishment<sup>4</sup> of foundation or voluntary schools<sup>5</sup> as secondary schools<sup>6</sup> in England<sup>7</sup> to the school organisation committee<sup>8</sup>. Such regulations may make provision: (1) for the making of objections or comments in relation to the proposals within a prescribed<sup>9</sup> period to the local education authority which published them<sup>10</sup>; and (2) for the sending by the local education authority to the school organisation committee within a prescribed period of copies of objections or comments received<sup>11</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 For the purposes of ibid Pt 2 (ss 64-73) (not yet in force), 'regulations' means regulations made under Pt 2 (not yet in force) by the Secretary of State: s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for the purposes of Pt 2 (not yet in force).

3 The proposals published under ibid s 66 (not yet in force) (see PARA 158 ante): Sch 10 para 1. See note 1 supra.

4 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3). As to foundation and voluntary schools see PARA 102 et seq ante.

6 For the meaning of 'secondary school' see PARA 158 note 7 ante.

7 For the meaning of 'England' see PARA 52 note 11 ante.

8 Education Act 2005 Sch 10 para 3(1). See note 1 supra. For these purposes, 'school organisation committee', in relation to proposals, means the school organisation committee (as defined by the School Standards and Framework Act 1998 s 24(4): see PARA 118 note 3 ante) for the area of the local education authority which published the proposals: Education Act 2005 s 73. For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 122(2), (3). As to local education authorities see PARA 20 ante.

9 For the purposes of ibid Pt 2, 'prescribed' means prescribed by regulations (see note 2 supra): s 73. See note 1 supra.

10 Ibid Sch 10 para 3(2)(a). See note 1 supra.

11 Ibid Sch 10 para 3(2)(b). See note 1 supra.

## **UPDATE**

### **158-165 Proposals for Schools in England under the Education Act 2005**

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/160. Approval of proposals.

## **160. Approval of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals<sup>2</sup> for the establishment<sup>3</sup> of foundation or voluntary schools<sup>4</sup> as secondary schools<sup>5</sup> in England<sup>6</sup> must be considered in the first instance by the school organisation committee<sup>7</sup>. The committee may<sup>8</sup> reject all the proposals<sup>9</sup>, approve any of the proposals without modification<sup>10</sup>, approve any of the proposals with such modifications as the committee thinks desirable after consulting such persons as may be prescribed<sup>11</sup>, or, if the committee think it appropriate to do so, and subject to regulations, refer to the adjudicator all the proposals with any comments on them made by the committee<sup>12</sup>. However, this does not prevent the promoters<sup>13</sup> or local education authority by whom any proposals have been made from withdrawing those proposals by notice<sup>14</sup> in writing to the school organisation committee (except in a case where the proposals have been referred to the adjudicator, when withdrawal is made by notice in writing to the adjudicator), at any time before the proposals are determined<sup>15</sup>. Any approval so given may be expressed to take effect only if an event specified in the approval occurs by a date so specified; and regulations may prescribe the events that may be so specified<sup>16</sup>. When deciding whether or not to give approval, the committee must have regard to any guidance given from time to time by the Secretary of State<sup>17</sup>.

Regulations may make provision requiring the school organisation committee in prescribed cases to refer to the adjudicator all the proposals with any comments made on them by the committee<sup>18</sup>. The Secretary of State may at any time give a direction to a school organisation committee requiring it to refer to the adjudicator<sup>19</sup>:

- 295 (1) any proposals which have been submitted to the committee<sup>20</sup> but which, at the time when the direction is given, have not been determined by the committee<sup>21</sup>; and
- 296 (2) all subsequent proposals submitted to the committee<sup>22</sup> until the direction is revoked<sup>23</sup>,

with any comments made on any of the proposals by the committee<sup>24</sup>.

Regulations may also, in relation to any proposals<sup>25</sup>, require any of the following, namely: (a) the authority or promoters who published the proposals; (b) the school organisation committee; and (c) the adjudicator, to provide such information relating to the proposals to such persons, and at such times, as may be prescribed<sup>26</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 I.e. proposals published under *ibid* s 66 (not yet in force) (see PARA 158 ante): Sch 10 para 1. See note 1 *supra*.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3). As to foundation and voluntary schools see PARA 102 et seq ante.

5 For the meaning of 'secondary school' see PARA 158 note 7 ante.

6 For the meaning of 'England' see PARA 52 note 11 ante.

7 Education Act 2005 Sch 10 para 4(1). See note 1 supra. For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

Regulations may make provision modifying the application of Sch 10 para 4(1) (not yet in force) in relation to proposals which are related to other proposals of a prescribed description; and regulations may require the committee, in deciding for the purposes of the regulations whether any proposals are related, to have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 4(4). For the purposes of Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 (not yet in force) by the Secretary of State: s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for the purposes of Pt 2 (not yet in force). As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 122(2), (3).

8 *Ie* except in any case where *ibid* Sch 10 para 5 (not yet in force) (see the text and notes 18-23 *infra*) requires the committee to refer the proposals to the adjudicator: Sch 10 para 4(3). For the meaning of 'adjudicator' see PARA 124 ante.

9 *Ibid* Sch 10 para 4(2)(a). See note 1 supra. Regulations may make provision modifying the application of Sch 10 para 4(2) (not yet in force) in relation to proposals which are related to other proposals of a prescribed description; and regulations may require the committee, in deciding for the purposes of the regulations whether any proposals are related, to have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 4(4). See note 7 supra.

10 *Ibid* Sch 10 para 4(2)(b). See notes 1, 9 supra.

11 *Ibid* Sch 10 para 4(2)(c). See notes 1, 9 supra.

12 *Ibid* Sch 10 para 4(2)(d). Where any proposals are referred to the adjudicator under Sch 10 para 4(2)(d) (not yet in force), then: (1) he must consider the proposals afresh; and (2) the provisions of Sch 10 para 4(2), (4)-(6) (not yet in force) (see the text and notes 9-11 supra, 16-17 *infra*), other than Sch 10 para 4(2)(d) (not yet in force), apply to him in connection with his decision on the proposals as they apply to the committee: Sch 10 para 6(1). See notes 1, 9 supra.

13 For these purposes, 'promoters', in relation to any proposals, means the persons who made the proposals (but does not include a local education authority): *ibid* Sch 10 para 1(2). As to local education authorities see PARA 20 ante.

14 As to the service of notices see PARA 463 note 12 post; applied by virtue of *ibid* s 122(2), (3).

15 *Ibid* Sch 10 para 4(7). See note 1 supra.

16 *Ibid* Sch 10 para 4(5). See note 1 supra.

17 *Ibid* Sch 10 para 4(6). See note 1 supra.

18 *Ibid* Sch 10 para 5(1). Where any proposals are referred to the adjudicator under Sch 10 para 5(1) (not yet in force), then: (1) he must consider the proposals afresh; and (2) the provisions of Sch 10 para 4(2), (4)-(6) (not yet in force) (see the text and notes 9-12, 16-17 supra), other than Sch 10 para 4(2)(d) (not yet in force) (see the text and note 12 supra), apply to him in connection with his decision on the proposals as they apply to the committee: Sch 10 para 6(1). Where a school organisation committee is required by regulations under Sch 10 para 5(1) (not yet in force) to refer any proposals ('the relevant proposals') to the adjudicator, the committee must also refer to the adjudicator any proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante) which relate to the area of the local education authority, if it is satisfied that the proposals are related to the relevant proposals: Education Act 2005 Sch 10 para 5(4). In deciding under Sch 10 para 5(4) (not yet in force) whether any proposals are related to other proposals the school organisation committee must have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 5(5). For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 122(2), (3). See also note 1 supra.

19 Ibid Sch 10 para 5(2). Where any proposals are referred to the adjudicator under Sch 10 para 5(2) (not yet in force), then: (1) he must consider the proposals afresh; and (2) the provisions of Sch 10 para 4(2), (4)-(6) (not yet in force) (see the text and notes 9-12, 16-17 supra), other than Sch 10 para 4(2)(d) (not yet in force) (see the text and note 12 supra), apply to him in connection with his decision on the proposals as they apply to the committee: Sch 10 para 6(1). Where a school organisation committee is required by a direction under Sch 10 para 5(2) (not yet in force) to refer any proposals ('the relevant proposals') to the adjudicator, the committee must also refer to the adjudicator any proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante) which relate to the area of the local education authority, if it is satisfied that the proposals are related to the relevant proposals: Education Act 2005 Sch 10 para 5(4). In deciding under Sch 10 para 5(4) (not yet in force) whether any proposals are related to other proposals the school organisation committee must have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 5(5). See note 1 supra.

Where a direction under Sch 10 para 5(2) (not yet in force) is given to a school organisation committee at a time when the committee is considering proposals which consist of or include proposals to establish an academy (see PARA 497 et seq post), the committee must complete any consultation required by Sch 10 para 7 (not yet in force) (see PARA 497 et seq post) before referring the proposals to the adjudicator: Sch 10 para 5(3). See note 1 supra.

20 Ie under ibid Sch 10 para 3 (not yet in force): see PARA 159 ante.

21 Ibid Sch 10 para 5(2)(a). See notes 1, 19 supra.

22 See note 20 supra.

23 Education Act 2005 Sch 10 para 5(2)(b). The revocation of a direction under Sch 10 para 5(2) (not yet in force) does not affect the determination by the adjudicator of any proposals referred to him before the revocation: Sch 10 para 6(2). See notes 1, 19 supra.

24 Ibid Sch 10 para 5(2). See notes 1, 19 supra.

25 Ie proposals published under ibid s 66 (not yet in force): see PARA 158 ante.

26 Ibid Sch 10 para 8. See note 1 supra.

## UPDATE

### 158-165 Proposals for Schools in England under the Education Act 2005

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/161. Determination by local education authority whether to implement proposals.

# **161. Determination by local education authority whether to implement proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the only proposals published in pursuance of a notice inviting proposals for the establishment<sup>2</sup> of a secondary school<sup>3</sup> in England<sup>4</sup> published<sup>5</sup> by a local education authority<sup>6</sup> are proposals published by that authority<sup>7</sup> for the establishment of a community or foundation school<sup>8</sup> as a secondary school and either<sup>9</sup>:

- 297 (1) no objections were made<sup>10</sup>; or
- 298 (2) all objections so made were withdrawn in writing within the period prescribed under the regulations as that within which any objections must be made<sup>11</sup>,

then the authority must determine whether the proposals should be implemented<sup>12</sup>. Any such determination must be made within the period of four months beginning with the date of publication of the proposals, as determined in accordance with regulations<sup>13</sup>. The local education authority must notify the school organisation committee and the Secretary of State of any such determination made by it<sup>14</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

3 For the meaning of 'secondary school' see PARA 158 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 Ie published under the Education Act 2005 s 66 (not yet in force): see PARA 158 ante.

6 As to local education authorities see PARA 20 ante.

7 Ie by virtue of the Education Act 2005 s 66(8)(b) (not yet in force): see PARA 158 ante.

8 As to community and foundation schools see PARA 102 et seq ante.

9 Education Act 2005 Sch 10 para 9(1). See note 1 supra.

10 Ibid Sch 10 para 9(1)(a). See note 1 supra. Objections made for this purpose must be made in accordance with regulations under Sch 10 para 3 (not yet in force): see PARA 159 ante.

11 Ibid Sch 10 para 9(1)(b). See note 1 supra.

12 Ibid Sch 10 para 9(1). See note 1 supra. The requirement to make a determination under Sch 10 para 9(1) (not yet in force) in the case of any proposals applies only if, at the time when the authority's determination falls to be so made, the authority is satisfied that the proposals are not related to any of the following, namely:

- 52 (1) any undetermined proposals published by the authority under the School Standards and Framework Act 1998 s 28(1) (as amended) (see PARA 132 ante) or s 28A(1) (prospectively added) (see PARA 133 ante) to establish a new community or foundation school in the area of the authority (Education Act 2005 Sch 10 para 9(3)(a));
- 53 (2) any undetermined proposals published under the School Standards and Framework Act 1998 s 28(2) (as amended; prospectively further amended) (see PARA 132 ante) or s 28A(2) (prospectively added) (see PARA 133 ante) to establish a new voluntary or foundation school in the area of the authority (Education Act 2005 Sch 10 para 9(3)(b));
- 54 (3) any undetermined proposals published under the Learning and Skills Act 2000 s 113 (as amended in relation to England; prospectively amended in relation to Wales), Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post) (Education Act 2005 Sch 10 para 9(3)(c));
- 55 (4) any undetermined proposals published under the Learning and Skills Act 2000 s 113A (as added) (see PARA 1277 et seq post), if those proposals are of a description prescribed for the purpose (Education Act 2005 Sch 10 para 9(3)(d));
- 56 (5) any undetermined proposals made under the Further and Higher Education Act 1992 s 51 (as amended) (see PARA 585 post), if those proposals are of a description so prescribed (Education Act 2005 Sch 10 para 9(3)(e)); or
- 57 (6) any direction under s 67, Sch 11 para 3(2) or 4(2) (see PARA 175 et seq post) (Sch 10 para 9(3)(f)).

For the purposes of Sch 10 para 9(3) (not yet in force), proposals are 'undetermined' if they have not been withdrawn and: (a) they have not been approved or rejected under Sch 10 para 4 (not yet in force) (see PARA 160 ante), Sch 11 para 9 (not yet in force) (see PARA 180 post), Sch 11 para 10 (not yet in force) (see PARA 180 post), the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), the Learning and Skills Act 2000 Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post) or s 113A(6), Sch 7A (both as added) (see PARA 1277 et seq post); or (b) the authority has not determined under the Education Act 2005 Sch 10 para 9 (not yet in force) whether to implement them; or (c) the Secretary of State has not made a decision as to whether or not to make an order under the Further and Higher Education Act 1992 s 16 (as amended) (see PARA 584 post) or s 27 (see PARA 598 post), as the case may be: Education Act 2005 Sch 10 para 9(4). When deciding under Sch 10 para 9(3) (not yet in force) whether proposals are related to other proposals the authority must have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 9(4). As to voluntary schools see PARA 102 et seq ante. For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 122(2), (3).

The authority may, if it thinks it appropriate to do so, and subject to regulations, refer to the school organisation committee any proposals which would otherwise fall to be determined by the authority under Sch 10 para 9 (not yet in force): Sch 10 para 9(5). Where, in the case of any proposals within Sch 10 para 9(1) (not yet in force): (i) the authority fails to make a determination under Sch 10 para 9(1) (not yet in force) within the period mentioned in Sch 10 para 9(2) (not yet in force) (see the text and notes 13-14 infra); or (ii) the requirement to make such a determination does not apply by virtue of Sch 10 para 9(3) (not yet in force) (see heads (1)-(6) supra); or (iii) the authority refers the proposals to the school organisation committee, the proposals must be considered afresh under Sch 10 para 4 (not yet in force) (see PARA 160 ante): Sch 10 para 9(6). For the meaning of 'school organisation committee' see PARA 159 note 8 ante. For these purposes, 'regulations' means regulations made under Pt 2 (not yet in force) by the Secretary of State: s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for the purposes of Pt 2 (not yet in force).

13 Ibid Sch 10 para 9(2). See note 1 supra.

14 Ibid Sch 10 para 9(2). See note 1 supra.

## UPDATE

### 158-165 Proposals for Schools in England under the Education Act 2005

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/162. Requirement to implement proposals.

## **162. Requirement to implement proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where any proposals<sup>2</sup> to establish<sup>3</sup> a community, foundation or voluntary school<sup>4</sup> as a secondary school<sup>5</sup> in England<sup>6</sup> have been approved<sup>7</sup>, or a local education authority<sup>8</sup> has determined<sup>9</sup> to implement any such proposals<sup>10</sup>, then the proposals must be implemented<sup>11</sup> in the form in which they were so approved or determined<sup>12</sup>.

At the request of any prescribed<sup>13</sup> person, the school organisation committee<sup>14</sup> may modify<sup>15</sup> the proposals after consulting such persons as may be prescribed<sup>16</sup>, and, where any approval was given subject to the occurrence of a specified event by a specified date<sup>17</sup>, may specify a later date by which the event in question must occur<sup>18</sup>. If, after consulting such persons as may be prescribed, the school organisation committee is satisfied:

- 299 (1) that implementation of the proposals would be unreasonably difficult<sup>19</sup>; or
- 300 (2) that circumstances have so altered since approval was given<sup>20</sup> that implementation of the proposals would be inappropriate<sup>21</sup>,

the committee may determine that the requirement to implement proposals<sup>22</sup> is to cease to apply to the proposals<sup>23</sup>. The committee may, if it thinks it appropriate to do so and subject to regulations, refer to the adjudicator any matter which would otherwise fall to be determined<sup>24</sup> by the committee<sup>25</sup>, and in prescribed cases must refer to the adjudicator any such matter<sup>26</sup>. Where any matter is referred to the adjudicator<sup>27</sup>, he must consider the matter afresh<sup>28</sup>, and such of the above provisions<sup>29</sup> as are relevant are to apply to him in connection with his decision on that matter as they apply to the committee<sup>30</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 I.e. proposals published under *ibid* s 66 (not yet in force) (see PARA 158 ante); Sch 10 para 1. See note 1 *supra*.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).

4 As to community, foundation and voluntary schools see PARA 102 *et seq* ante.

5 For the meaning of 'secondary school' see PARA 158 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

6 For the meaning of 'England' see PARA 52 note 11 ante.

7 Education Act 2005 Sch 10 para 10(1)(a). See note 1 *supra*. The approval of proposals mentioned in the text must be obtained under Sch 10 para 4 (not yet in force): see PARA 160 ante.

8 As to local education authorities see PARA 20 ante.

9 I.e. under the Education Act 2005 Sch 10 para 9 (not yet in force): see PARA 161 ante.

10 Ibid Sch 10 para 10(1)(b). See note 1 supra.

11 Ie in accordance with ibid Sch 10 Pt 4 paras 10-15 (not yet in force).

12 Ibid Sch 10 para 10(1). See note 1 supra.

13 For the purposes of ibid Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 (not yet in force) by the Secretary of State: s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for the purposes of Pt 2 (not yet in force).

14 For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

15 As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

16 Ibid Sch 10 para 10(2)(a). See note 1 supra.

17 Ie in accordance with ibid Sch 10 para 4(5) (not yet in force): see PARA 160 ante.

18 Ibid Sch 10 para 10(2)(b). See note 1 supra. Where any approval under Sch 10 para 4 (not yet in force) (see PARA 160 ante) was given in accordance with Sch 10 para 4(5) (not yet in force) (see PARA 160 ante), and the event specified under Sch 10 para 4(5) (not yet in force) does not occur by the date in question, whether as specified under Sch 10 para 4(5) (not yet in force) or as specified under Sch 10 para 10(2)(b) (not yet in force), then Sch 10 para 10(1) (not yet in force) (see the text and notes 1-12 supra) ceases to apply to the proposals: Sch 10 para 11(2). Where, by virtue of Sch 10 para 11(2) (not yet in force), Sch 10 para 10(1) (not yet in force) ceases to apply to any proposals approved by the school organisation committee under Sch 10 para 4 (not yet in force), those proposals must be considered afresh by the committee under Sch 10 para 4 (not yet in force): Sch 10 para 11(3). Where, by virtue of Sch 10 para 11(2) (not yet in force), Sch 10 para 10(1) (not yet in force) ceases to apply to any proposals approved by the adjudicator under Sch 10 para 4 (not yet in force), those proposals must be considered afresh by him under Sch 10 para 4 (not yet in force), and Sch 10 para 6 (not yet in force) (see PARA 160 ante) applies accordingly: Sch 10 para 11(4). For the meaning of 'adjudicator' see PARA 124 ante.

19 Ibid Sch 10 para 10(3)(a). See note 1 supra.

20 Ie under ibid Sch 10 para 4 (not yet in force): see PARA 160 ante.

21 Ibid Sch 10 para 10(3)(b). See note 1 supra.

22 Ie under ibid Sch 10 para 10(1) (not yet in force) (see the text and notes 1-12 supra).

23 Ibid Sch 10 para 10(3). See note 1 supra. Where, by virtue of Sch 10 para 10(3) (not yet in force), Sch 10 para 10(1) (not yet in force) ceases to apply to any proposals, those proposals are to be treated for the purposes of Sch 10 (not yet in force) as if they had been rejected under Sch 10 para 4 (not yet in force) (see PARA 160 ante): Sch 10 para 11(1).

The committee may only make a determination under Sch 10 para 10(3) (not yet in force) where proposals that it should do so have been published, in accordance with regulations, by the authority or promoters who published the proposals referred to in Sch 10 para 10(1) (not yet in force) (see the text and notes 1-12 supra): Sch 10 para 10(4). Regulations may provide for any of the provisions of Sch 10 Pt 1 (paras 1-2) (not yet in force) (see PARA 158 et seq ante) or Sch 10 Pt 2 (paras 3-8) (not yet in force) (see PARA 159 et seq ante) to have effect in relation to any such further proposals with or without modifications: Sch 10 para 10(4). For the meaning of 'promoters' see PARA 160 note 13 ante.

24 Ie under ibid Sch 10 para 10 (not yet in force).

25 Ibid Sch 10 para 5(a). See note 1 supra.

26 Ibid Sch 10 para 5(b). See note 1 supra.

27 Ie under ibid Sch 10 para 10 (not yet in force): see the text and notes 1-23 supra.

28 Ibid Sch 10 para 6(a). See note 1 supra.

29 Ie ibid Sch 10 para 10(2)-(4) (not yet in force): see the text and notes 1-23 supra.

30 Ibid Sch 10 para 6(b). See note 1 supra.



## **UPDATE**

### **158-165 Proposals for Schools in England under the Education Act 2005**

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/163. Manner of implementation of proposals relating to community schools.

### **163. Manner of implementation of proposals relating to community schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals<sup>2</sup> to establish<sup>3</sup> a community school<sup>4</sup> which fall to be implemented<sup>5</sup> must be implemented by the local education authority<sup>6</sup> that made them<sup>7</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 Ie proposals published under ibid s 66 (not yet in force) (see PARA 158 ante); Sch 10 para 1. See note 1 supra.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3). As to community schools see PARA 102 et seq ante.

5 Ie under ibid Sch 10 para 10 (not yet in force); see PARA 162 ante.

6 As to local education authorities see PARA 20 ante.

7 Education Act 2005 Sch 10 para 12. See note 1 supra.

### **UPDATE**

#### **158-165 Proposals for Schools in England under the Education Act 2005**

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/164. Manner of implementation of proposals relating to foundation or voluntary controlled schools.

#### **164. Manner of implementation of proposals relating to foundation or voluntary controlled schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals<sup>2</sup> to establish<sup>3</sup> a foundation or voluntary controlled school<sup>4</sup> which fall to be implemented<sup>5</sup> and which were made by a local education authority<sup>6</sup> must be implemented by that authority<sup>7</sup>. In any other case, the proposals must be implemented by the local education authority which published them and the promoters<sup>8</sup>, respectively, to such extent (if any) as the proposals provide for each of them to do so<sup>9</sup>.

Where a local education authority is required under the provisions above<sup>10</sup> to provide a site for a proposed foundation or voluntary controlled school, the relevant provisions of the School Standards and Framework Act 1998 apply<sup>11</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 I.e. proposals published under ibid s 66 (not yet in force) (see PARA 158 ante); Sch 10 para 1. See note 1 supra.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3). As to foundation and voluntary controlled schools see PARA 102 et seq ante.

5 I.e. under ibid Sch 10 para 10 (not yet in force); see PARA 162 ante.

6 As to local education authorities see PARA 20 ante.

7 Education Act 2005 Sch 10 para 13(1), (2). See note 1 supra.

8 For the meaning of 'promoters' see PARA 160 note 13 ante.

9 Education Act 2005 Sch 10 para 13(3). See note 1 supra.

10 I.e. under ibid Sch 10 para 10(2) or (3) (not yet in force) (see notes 1-7 supra).

11 Ibid Sch 10 para 13(4). The relevant provisions of the School Standards and Framework Act 1998 mentioned in the text are ss 28(8), 29(7), 31(8), Sch 6 para 16 (provision of site and buildings for foundation, voluntary controlled or foundation special school: see PARA 145 ante); and they apply as they apply in the circumstances mentioned in Sch 6 para 16(1) (see PARA 145 ante); Education Act 2005 Sch 10 para 13(4). See note 1 supra.

#### **UPDATE**

#### **158-165 Proposals for Schools in England under the Education Act 2005**

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional

provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/165. Manner of implementation of proposals relating to voluntary aided schools.

## **165. Manner of implementation of proposals relating to voluntary aided schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals<sup>2</sup> to establish<sup>3</sup> a voluntary aided school<sup>4</sup> which fall to be implemented<sup>5</sup> must be implemented<sup>6</sup>:

- 301 (1) so far as relating to the provision of any relevant premises<sup>7</sup> for the school, by the local education authority<sup>8</sup> which published the proposals<sup>9</sup>; and
- 302 (2) otherwise, by the promoters<sup>10</sup>.

Where a local education authority is required, by virtue of head (1) above, to provide for a school the site specified in a notice inviting proposals<sup>11</sup>, the authority must transfer its interest in the site and in any buildings on the site which are to form part of the school premises<sup>12</sup> to the school's trustees, to be held by them on trust for the purposes of the school<sup>13</sup>, or, if the school has no trustees, to the school's foundation body<sup>14</sup> to be held by that body for the purposes of the schools comprising the group<sup>15</sup> for which that body acts<sup>16</sup>. If any doubt or dispute arises as to the persons to whom the authority is required to make the transfer, it must be made to such persons as the Secretary of State thinks proper<sup>17</sup>. The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer<sup>18</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 I.e. proposals published under *ibid* s 66 (not yet in force) (see PARA 158 ante): Sch 10 para 1. See note 1 *supra*.

3 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3). As to voluntary aided schools see PARA 102 et seq ante.

5 I.e. under *ibid* Sch 10 para 10 (not yet in force): see PARA 162 ante.

6 *Ibid* Sch 10 para 13(1), (2). See note 1 *supra*.

7 For these purposes, 'relevant premises' means: (1) in a case where it is proposed to establish the school at the site specified in the notice under *ibid* s 66 (not yet in force) (see PARA 158 ante), that site or playing fields; and (2) in any other case, playing fields: Sch 10 para 14(3). See note 1 *supra*. For the meaning of 'playing fields' see PARA 1410 note 22 post; definition applied by virtue of s 122(2), (3).

8 As to local education authorities see PARA 20 ante.

9 Education Act 2005 Sch 10 para 14(2)(a). See note 1 *supra*.

10 *Ibid* Sch 10 para 14(2)(b). For the meaning of 'promoters' see PARA 160 note 13 ante. The provisions of the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 17 (grants in respect of certain expenditure relating to voluntary aided schools: see PARA 145 ante) apply in relation to the obligation under the Education Act 2005 Sch 10 para 14(2)(b) (not yet in force) as they apply in relation to the obligations referred to

in the School Standards and Framework Act 1998 Sch 6 para 17(1)(b) (see PARA 145 ante): Education Act 2005 Sch 10 para 14(8). The School Standards and Framework Act 1998 Sch 6 para 19 (assistance in respect of voluntary aided schools: see PARA 147 ante) applies in relation to the obligation in the Education Act 2005 Sch 10 para 14(2)(b) (not yet in force) as it applies in relation to the obligations referred to in the School Standards and Framework Act 1998 Sch 6 para 19; and Sch 6 para 20 (duty on local education authorities to transfer interest in premises: see PARA 147 ante) applies accordingly: Education Act 2005 Sch 10 para 14(9). See note 1 supra.

11 Ibid Sch 10 para 14(4). See note 1 supra. As to the notice inviting proposals see s 66 (not yet in force); and PARA 158 ante.

12 Ibid Sch 10 para 14(5). See note 1 supra. As to land and property transfers in relation to schools see PARA 1380 et seq post; and as to school land and premises generally see PARA 1352 et seq post.

13 Ibid Sch 10 para 14(5)(a). See note 1 supra. As to land or other property held on trust, or by trustees, for the purposes of a school see PARA 104 note 6 ante.

14 For the meaning of 'foundation body' see PARA 104 note 6 ante.

15 For the meaning of 'the group' see PARA 104 note 6 ante.

16 Education Act 2005 Sch 10 para 14(5)(b). See note 1 supra.

17 Ibid Sch 10 para 14(6). See note 1 supra.

18 Ibid Sch 10 para 14(7). See note 1 supra.

## **UPDATE**

### **158-165 Proposals for Schools in England under the Education Act 2005**

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/D. ESTABLISHMENT, ALTERATION OR DISCONTINUANCE OF SCHOOLS/(C) Proposals for Schools in England under the Education Act 2005/165A. Proposals for schools or academies in England under the Education and Inspections Act 2006.

## **165A. Proposals for schools or academies in England under the Education and Inspections Act 2006.**

### **1. Requirements as to proposals for the establishment, alteration or discontinuance of schools**

No maintained school<sup>1</sup> may be established<sup>2</sup> or discontinued<sup>3</sup>, nor may any prescribed alteration<sup>4</sup> be made to any such school<sup>5</sup>, except in pursuance of proposals falling to be implemented under specified legislation<sup>6</sup>. No alteration concerning the removal of the foundation of a foundation or foundation special school<sup>7</sup> or the alteration of the instrument of government<sup>8</sup>, except in pursuance of proposals falling to be implemented under specified legislation<sup>9</sup>.

1 'Maintained school' means any of the following schools in England: (1) a community, foundation or voluntary school; (2) a community or foundation special school; or (3) a maintained nursery school: Education and Inspections Act 2006 s 32(1). For the meaning of 'school' see PARA 81, definition applied by virtue of s 187(2), (3).

2 As to the meaning of 'establish' see PARA 132, definition applied by virtue of ibid s 187(2), (3).

3 Ibid s 28(1)(a). As to the meaning of 'discontinue' see PARA 165A.3 NOTE 1.

Section 28 does not apply to the closure of a school (1) by a local education authority as directed by the Secretary of State under s 17(1) or s 68(1) (see PARA 165A.4); or (2) by the governing body under the School Standards and Framework Act 1998 s 30(1) (see PARA 135): see s 30(9) (substituted by the 2006 Act Sch 3 para 21); ss 17(5), 28(3), 68(4).

4 'Prescribed alteration', in relation to a maintained school, means an alteration prescribed under ibid s 18 (see PARA 165A.5): s 28(2). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 by the Secretary of State: s 32(1).

5 Ibid s 28(1)(b).

6 Ie under ibid Pt 2 or the Learning and Skills Act 2000 Sch 7 or 7A (see PARAS 1275-1277): 2006 Act s 28(1).

7 As to foundation and foundation special schools see PARA 102 et seq.

8 Ie an alteration falling within s 25(4) (see PARA 165A.6): s 28(4).

9 Ie under ibid s 27 (see PARA 165A.6): s 28(4).

### **2. Local education authority's power to invite proposals for the establishment of new schools**

A local education authority in England may publish a notice inviting proposals from persons other than local education authorities for the establishment<sup>1</sup> of a foundation, voluntary or foundation special school<sup>2</sup>, other than one providing education suitable only to the requirements of persons above compulsory school age<sup>3</sup>, or an Academy<sup>4</sup>. Such a notice must: (1) identify a possible site for the school<sup>5</sup>; (2) state whether or not the proposed school is to be a special school<sup>6</sup>; (3) specify a date, being a date after the prescribed interval, by which proposals must be submitted<sup>7</sup>; (4) specify such other matters as may be prescribed<sup>8</sup>; and (5) be

published in the prescribed manner<sup>9</sup>. Before publishing such a notice, the local education authority must consult such persons as appear to the authority to be appropriate; and in discharging this duty the authority must have regard to any guidance given from time to time by the Secretary of State<sup>10</sup>. Regulations may require the local education authority to take prescribed steps for the purpose of promoting public awareness of any proposals which it has published<sup>11</sup>. After the date specified in a notice published by a local education authority, the authority: (a) must publish<sup>12</sup> any proposals submitted<sup>13</sup> pursuant to the notice<sup>14</sup>; and (b) may publish proposals of their own for the establishment of a foundation school or a foundation special school, or a community or community special school<sup>15</sup>.

A local education authority in England may with the consent of the Secretary of State publish its proposals to establish<sup>16</sup> a new community or community special school, other than one providing education suitable only to the requirements of persons above compulsory school age, or a new foundation or foundation special school, other than one providing education suitable only to the requirements of persons above compulsory school age<sup>17</sup>. Any persons ('proposers') may with the consent of the Secretary of State publish their proposals to establish<sup>18</sup> a new foundation, voluntary or foundation special school in England other than one providing education suitable only to the requirements of persons above compulsory school age<sup>19</sup>. Proposals published by a local education authority or proposers must contain such information, and be published in such manner, as may be prescribed<sup>20</sup>. Before publishing any such proposals, the local education authority or proposers must consult such persons as appear to them to be appropriate<sup>21</sup>.

Where a local education authority in England proposes to establish a new maintained nursery school, the authority must publish its proposals<sup>22</sup>. Where any persons ('proposers') propose to establish a new foundation, voluntary or foundation special school in England which (i) is to replace an independent school that is not an Academy, a city technology college or a city college for the technology of the arts<sup>23</sup>; or (ii) in the case of a new foundation special school, is to replace a non-maintained special school<sup>24</sup>, they must publish their proposals<sup>25</sup>. Proposals published by a local education authority or proposers must contain such information, and be published in such manner, as may be prescribed<sup>26</sup>. Before publishing any such proposals, the local education authority or proposers must consult such persons as appear to them to be appropriate<sup>27</sup>.

Proposals<sup>28</sup> must be considered by the relevant local education authority or adjudicator<sup>29</sup> and where they are approved they must be implemented<sup>30</sup>.

1 As to the meaning of 'establish' see PARA 132, definition applied by virtue of the Education and Inspections Act 2006 s 187(2), (3). Proposals under s 7, 10 or 11 for the establishment of a new school may relate to the establishment of the school as a federated school: s 12(1). For these purposes, 'federated school' has the meaning given by the Education Act 2002 s 24(2) (see PARA 213): 2006 Act s 12(2).

2 'Foundation', in relation to a foundation or voluntary school, has the meaning given by the School Standards and Framework Act 1998 s 21(3) (see PARA 104): 2006 Act s 32(1). As to foundation, voluntary and foundation special schools see PARA 102 et seq.

3 For the meaning of 'compulsory school age' see PARA 15, definition applied by virtue of ibid s 187(2), (3).

4 Ibid s 7(1), (2). As to Academies see PARA 496 et seq.

Proposals made pursuant to a notice under s 7 must contain the prescribed information and be submitted to the local education authority before the date specified in the notice: s 7(4). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 by the Secretary of State: s 32(1). Regulations may modify the provisions of ss 7-12 and Sch 2 in their application to cases where (1) in the case of proposals published under s 7, the school is proposed to be established in an area in England other than that of the local education authority which published the notice under s 7; or (2) in the case of proposals published under s 10 or 11, the school is proposed to be established in an area in England other than that of the local education authority who it is proposed should maintain the school: s 13. No proposals may be published under the 2006 Act Pt 2 (ss 7-32) or any other enactment for the establishment of a school in Wales which is proposed to be maintained by a local education authority in England: s 14.



The School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007, SI 2007/1288, regs 3, 6, Schs 1, 2 (Sch 1 amended by SI 2007/3464; Sch 2 amended by SI 2007/3464, SI 2009/1556) prescribe matters which must be specified and information which must be contained in a notice published under the 2006 Act s 7.

5 Ibid s 7(3)(a).

6 Ibid s 7(3)(b).

7 Ibid s 7(3)(c). The prescribed interval is four months from the date of publication of the notice published under s 7: School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007, SI 2007/1288, reg 4.

8 2006 Act s 7(3)(d).

9 Ibid s 7(3)(e). As to the prescribed manner of publication, see SI 2007/1288 reg 5, Sch 5 Pts 1, 2 (reg 5 amended by SI 2007/3464; Sch 5 amended by SI 2007/3464, SI 2009/1556).

10 2006 Act s 9(1). See SI 2007/1288 reg 30.

11 Ie under the 2006 Act s 7: s 9(2). See SI 2007/1288 reg 10.

12 Ie under the 2006 Act s 7.

13 Ie in accordance with ibid s 7(4): see NOTE 4.

14 Ibid s 7(5)(a).

15 Ibid s 7(5)(b). As to community and community special schools see PARA 102 et seq. A local education authority may not publish proposals within s 7(5)(b) for the establishment of a school providing education suitable only to the requirements of persons above compulsory school age: s 7(5A) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 126(3)). A local education authority may publish proposals for a community or community special school only in the circumstances specified in the 2006 Act s 8. Regulations may prescribe (1) the time within which proposals under s 7 must be published; (2) the manner in which they must be published; and (3) the information which proposals within s 7(5)(b) must contain: s 7(6).

See SI 2007/1288 regs 6-9, Sch 2, Sch 5 Pts 3, 4 (reg 8 amended by SI 2007/3464; reg 9 amended by SI 2009/2984; Schs 2, 5 amended by SI 2007/3464, SI 2009/1556).

16 Ie otherwise than pursuant to a notice under the 2006 Act s 7.

17 Ibid s 10(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 s 126(4)).

18 Ie otherwise than pursuant to a notice under the 2006 Act s 7.

19 Ibid s 10(2)(a). Further, the proposers may not publish such proposals for such a school in relation to which proposals fall to be published under s 11: s 10(2)(b). Where any proposals are published under s 10(2), the proposers must submit the proposals in accordance with regulations to the local education authority who it is proposed should maintain the school: s 10(5).

20 Ibid s 10(3). See SI 2007/1288 regs 11, 13, Sch 3, Sch 5 Pts 5, 6 (reg 13, Schs 3, 5 amended by SI 2007/3464, SI 2009/1556).

21 2006 Act s 10(4). In discharging their duty under s 10(4) the authority or proposers must have regard to any guidance given from time to time by the Secretary of State: s 10(4). See SI 2007/1288 reg 30.

22 2006 Act s 11(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 ss 126(2), (5), Sch 16 Pt 3).

23 2006 Act s 11(2)(b). See further s 11(3) (prospectively amended by Education and Skills Act 2008 Sch 1 para 38(2)).

24 2006 Act s 11(2)(c). See further s 11(4). 'Non-maintained special school' means a school which is approved by the Secretary of State under the Education Act 1996 s 342 (see PARAS 1028, 1029): 2006 Act s 11(9) (prospectively amended by Education and Skills Act 2008 Sch 1 para 38(3)).

25 2006 Act s 11(2) (amended by Apprenticeships, Skills, Children and Learning Act 2009 ss 126(5), 266, Sch 16 Pt 3). Where any proposals are published under the 2006 Act s 11(2), the proposers must submit the

proposals in accordance with regulations to the local education authority who it is proposed should maintain the school: s 11(7).

26 Ibid s 11(5). See SI 2007/1288 regs 12, 13, Sch 3 (reg 12 amended, reg 12A added by SI 2009/1556; reg 13, Sch 3 amended by SI 2007/3464, SI 2009/1556).

27 2006 Act s 11(6). In discharging their duty under s 11(6) the authority or proposers must have regard to any guidance given from time to time by the Secretary of State: s 11(6). See SI 2007/1288 reg 30.

28 Ie proposals under the 2006 Act s 7, 10 or 11.

29 See ibid ss 7(7), 10(6), 11(8), Sch 2 Pt 2. 'Adjudicator' is to be read in accordance with the School Standards and Framework Act 1998 s 25(3) (see PARA 124): 2006 Act s 32(1). See SI 2007/1288 regs 16-25, Sch 5 Pts 5, 6 (reg 20 amended by SI 2007/3224, SI 2007/3464, SI 2009/1556; Sch 5 amended by SI 2007/3464, SI 2009/1556).

30 See the 2006 Act ss 7(7), 10(6), 11(8), Sch 2 Pts 3, 4. As to the provision of premises and other assistance in connection with the establishment of a new school, see ss 7(7), 10(6), 11(8), Sch 2 Pt 4. See SI 2007/1288 regs 26-29, Schs 6, 7 (regs 26, 27 amended by SI 2007/3464).

### **3. Proposals for discontinuance of community, foundation, voluntary or maintained nursery school**

Where a local education authority in England proposes to discontinue<sup>1</sup> a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school<sup>2</sup>, the authority must publish its proposals<sup>3</sup>. Where the governing body of a foundation, voluntary or foundation special school in England proposes to discontinue the school, the governing body must publish its proposals<sup>4</sup>. The proposals must contain such information, and be published in such manner, as may be prescribed<sup>5</sup>. The matters to which the relevant body<sup>6</sup> must have regard in formulating any proposals in relation to a rural primary school<sup>7</sup> include (1) the likely effect of the discontinuance of the school on the local community<sup>8</sup>; (2) the availability, and likely cost to the local education authority, of transport to other schools<sup>9</sup>; (3) any increase in the use of motor vehicles which is likely to result from the discontinuance of the school, and the likely effects of any such increase<sup>10</sup>; and (4) any alternatives to the discontinuance of the school<sup>11</sup>, and in considering these matters the relevant body must have regard to any guidance given from time to time by the Secretary of State<sup>12</sup>.

Before publishing any proposals which relate to a school which is a rural primary school or a community or foundation special school, the relevant body must consult (a) the registered parents of registered pupils at the school<sup>13</sup>; (b) in the case of the rural primary school (i) the local education authority, (ii) where the local education authority are a county council, any district council for the area in which the school is situated, and (iii) any parish council for the area in which the school is situated<sup>14</sup>; (c) in the case of a community or foundation special school, any local education authority which maintain a statement of special educational needs<sup>15</sup> in respect of a registered pupil at the school<sup>16</sup>; and (d) such other persons as appear to the relevant body to be appropriate<sup>17</sup>. Before publishing any other proposals, the relevant body must consult such persons as appear to it to be appropriate<sup>18</sup>.

1 For the purposes of the Education and Inspections Act 2006 Pt 2 (ss 7-32), any reference to a local education authority discontinuing a school, or implementing proposals to discontinue a school (whether published by the authority or the governing body), is a reference to the authority ceasing to maintain the school: s 15(8). As to the meaning of 'school' see PARA 81; definition applied by virtue of s 187(2), (3). For the meaning of 'maintained school' see PARA 165A.1 NOTE 1. As to the governing bodies of maintained schools see PARA 203 et seq. As to community, foundation, voluntary schools, and community and foundation special schools see PARA 102 et seq. For the meaning of maintained nursery school see PARA 94.

2 'Foundation', in relation to a foundation or voluntary school, has the meaning given by the School Standards and Framework Act 1998 s 21(3) (see PARA 104): 2006 Act s 32(1).

3 Ibid s 15(1). As to the consideration, approval and implementation of proposals published under s 15, see s 15(6), Sch 2.

4 Ibid s 15(2). Where any proposals are published under s 15(2), the persons making the proposals must submit the proposals in accordance with regulations to the local education authority: s 15(5). 'Regulations' means regulations made under Pt 2 by the Secretary of State: s 32(1).

5 Ibid s 15(3). 'Prescribed' means prescribed by regulations: s 32(1). See the School Organisation (Establishment and Discontinuance of Schools) (England) Regulations 2007, SI 2007/1288, regs 14, 15, Sch 4, Sch 5 Pt 7 (reg 15 amended by SI 2007/3464; Sch 4 amended by SI 2009/1556; Sch 5 amended by SI 2007/3464, SI 2009/1556). No draft funding agreement is required as a condition precedent to a decision to discontinue a school: *R (on the application of Elphinstone) v Westminster City Council* [2008] EWCA Civ 1069, [2009] LGR 158. Local education authority must produce statement as to how decision to close school which although not a special school has number of pupils with special educational needs is to improve the standard of education for those pupils: *R (on the application of Parr) v Hetfordshire CC* [2008] EWHC 3379 (Admin), [2009] All ER (D) 268 (Jan).

6 'Relevant body' means the local education authority mentioned in the 2006 Act s 15(1) or the governing body mentioned in s 15(2), as the case may be: ss 15(7)(a), 16(4).

7 'Rural primary school' means a primary school designated as such for the purposes of ibid s 15 by an order made by the Secretary of State: ss 15(7)(b), 16(4). See the Designation of Rural Primary Schools (England) Order 2009, SI 2009/3346.

8 2006 Act s 15(4)(a).

9 Ibid s 15(4)(b).

10 Ibid s 15(4)(c).

11 Ibid s 15(4)(d).

12 Ibid s 15(4).

13 Ibid s 16(1)(a).

14 Ibid s 16(1)(b).

15 Ie under the Education Act 1996 s 324: see PARA 996.

16 2006 Act s 16(1)(c).

17 Ibid s 16(1)(d). In discharging its duty under s 16(1) or s 16(2) the relevant body must have regard to any guidance given from time to time by the Secretary of State: s 16(3).

18 Ibid s 16(2). See SI 2007/1288 reg 30.

#### **4. Direction requiring discontinuance of community or foundation special school**

The Secretary of State may, if he considers it expedient to do so in the interests of the health, safety or welfare of pupils<sup>1</sup> at a community or foundation special school<sup>2</sup> in England, give a direction to the local education authority by which the school is maintained requiring the school to be discontinued<sup>3</sup> on a date specified in the direction<sup>4</sup>. Such a direction may require the local education authority to notify any persons or class of persons specified in the direction<sup>5</sup>. Before giving such a direction, the Secretary of State must consult: (1) the local education authority<sup>6</sup>; (2) any other local education authority who would in his opinion be affected by the discontinuance of the school<sup>7</sup>; (3) in the case of a foundation special school which has a foundation<sup>8</sup>, the person who appoints the foundation governors<sup>9</sup>; and (4) such other persons as the Secretary of State considers appropriate<sup>10</sup>.

On giving such a direction, the Secretary of State must give notice in writing of the direction to the governing body<sup>11</sup> of the school and its head teacher<sup>12</sup>. Where a local education authority is given such a direction, it must discontinue the school in question on the date specified in the direction<sup>13</sup>.

1 For the meaning of 'pupil' see PARA 16; definition applied by virtue of the Education and Inspections Act 2006 s 187(2), (3).

2 For the meaning of 'community or foundation special school' see PARA 94 NOTE 2. For the meaning of 'school' see PARA 81, definition applied by virtue of *ibid* s 187(2), (3). As to community special schools and foundation special schools see PARA 102 et seq; and as to special schools see PARA 1027 et seq.

3 As to the meaning of 'discontinue' see PARA 165A.3 NOTE 1.

4 2006 Act s 17(1).

5 *Ibid* s 17(2).

6 *Ibid* s 17(3)(a).

7 *Ibid* s 17(3)(b).

8 'Foundation', in relation to a foundation or voluntary school, has the meaning given by the School Standards and Framework Act 1998 s 21(3) (see PARA 104): 2006 Act s 32(1).

9 *Ibid* s 17(3)(c).

10 *Ibid* s 17(3)(d).

11 As to the governing bodies of maintained schools see PARA 203 et seq. For the meaning of 'maintained school' see PARA 165A.1 NOTE 1.

12 2006 Act s 17(4). As to the meaning of 'head teacher' see PARA 93, definition applied by virtue of s 187(2), (3).

13 *Ibid* s 17(5). Where a local education authority is given such a direction, nothing in s 15 (see PARA 165A.3) or s 28 (see PARA 165A.1) applies to any such discontinuance of the school under s 17: ss 17(5), 28(3)(a).

## 5. Alterations to schools

Regulations<sup>1</sup> may prescribe<sup>2</sup> alterations to maintained schools<sup>3</sup> that may be implemented in pursuance of proposals<sup>4</sup>. The prescribed alterations must include any alteration that involves one or more of the following: (1) any change in the category within which the school falls<sup>5</sup>; (2) the acquisition by a foundation or foundation special school of a foundation<sup>6</sup>; (3) in the case of a school whose instrument of government does not provide for a majority of the governing body to be foundation governors, any change in the instrument of government which results in the majority of governors being foundation governors<sup>7</sup>. The prescribed alterations may include other alterations of any nature, except (a) any change in the religious character<sup>8</sup> of the school<sup>9</sup>; (b) any change whereby the school would acquire or lose a religious character<sup>10</sup>; (c) any change of category from foundation or voluntary school to community school<sup>11</sup>; (d) any change of category from foundation special school to community special school<sup>12</sup>; (e) any change of category from mainstream school (ie a community, foundation or voluntary school) to community or foundation special school or from community or foundation special school to mainstream school<sup>13</sup>; (f) any change from maintained nursery school to any other kind of maintained school, or from any other kind of maintained school to maintained nursery school<sup>14</sup>.

Where, in the case of a maintained school, the local education authority or governing body proposes to make such a prescribed alteration to the school, that authority or governing body must publish its proposals<sup>15</sup>. A prescribed alteration is capable of being proposed by a local education authority if (i) in the case of a community school, a community special school or a maintained nursery school, it is an alteration designated by regulations as one capable of being proposed by the local education authority<sup>16</sup>; (ii) in the case of a foundation or voluntary school, it consists of any one or more of the following (A) an enlargement of the premises, (B) an increase in the number of pupils in any relevant age group<sup>17</sup>, (C) the establishment or

discontinuance of educational provision for pupils with special educational needs, and (D) the establishment of educational provision suitable to the requirements of pupils over compulsory school age<sup>18</sup>; and (iii) in the case of a foundation special school, it consists of any one or more of the following (A) an enlargement of the premises, (B) an increase in the number of pupils for whom the school is organised to make provision, and (C) a change in the type of special educational needs for which the school is organised to make provision<sup>19</sup>.

Provision is made restricting the governing body's power to publish proposals for certain prescribed alterations<sup>20</sup>. Regulations may make provision about the publication and determination of proposals<sup>21</sup>, and regulations may make provision in connection with the implementation of proposals<sup>22</sup>.

1 'Regulations' means regulations made under Pt 2 by the Secretary of State: Education and Inspections Act 2006 s 32(1).

2 'Prescribed' means prescribed by regulations: *ibid* s 32(1).

3 For the meaning of 'maintained school' see PARA 165A.1 NOTE 1.

4 *Ie* proposals published under the 2006 Act s 19: s 18(1). See the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007, SI 2007/1289 (amended by SI 2007/3224, SI 2007/3464, SI 2009/1556).

5 2006 Act s 18(2)(a). Section 18(2)(a) only applies in the case of a school falling within any of the categories set out in the School Standards and Framework Act 1998 s 20(1) (see PARA 102): 2006 Act s 18(2)(a).

6 *Ibid* s 18(2)(b). 'Foundation', in relation to a foundation or voluntary school, has the meaning given by the School Standards and Framework Act 1998 s 21(3) (see PARA 104): 2006 Act s 32(1).

7 *Ibid* s 18(2)(c).

8 For the purposes of *ibid* Pt 2, a foundation or voluntary school has a religious character if it is designated by order under the School Standards and Framework Act 1998 s 69(3) (see PARA 951) as a school having such a character: 2006 Act s 32(2).

9 *Ibid* s 18(3), (4)(a).

10 *Ibid* s 18(3), (4)(b).

11 *Ibid* s 18(3), (4)(c).

12 *Ibid* s 18(3), (4)(d).

13 *Ibid* s 18(3), (4)(e), (5).

14 *Ibid* s 18(3), (4)(f).

15 See *ibid* s 19(1), (3). If at any time the governing body of a voluntary aided school is unable or unwilling to carry out its obligations under to the School Standards and Framework Act 1998 Sch 3 (funding of foundation, voluntary and foundation special schools: see PARA 304 *et seq*), it must publish proposals under the 2006 Act s 19 for the school to become either a voluntary controlled school or a foundation school, as the governing body may determine: s 19(4).

16 *Ibid* s 19(2)(a).

17 'Relevant age group' has the same meaning as in the School Standards and Framework Act 1998 (see PARA 396): 2006 Act s 19(6).

18 *Ibid* s 19(2)(b).

19 *Ibid* s 19(2)(c). Regulations may make provision about the publication and determination of proposals under s 19: see ss 21-23. Regulations may make provision in connection with the implementation of such proposals: see s 24. See also SI 2007/1289; and NOTE 4.

20 See the 2006 Act s 20.

21 See *ibid* ss 21-23. See also SI 2007/1289; and NOTE 4.

22 See the 2006 Act s 24. See also SI 2007/1289; and NOTE 4.

## 6. Removal of foundation or reduction in foundation governors

In the case of a foundation or foundation special school<sup>1</sup> having a foundation<sup>2</sup>, if the condition mentioned in head (1) or head (2) below, or both conditions, are met<sup>3</sup>, the governing body may at any time publish proposals for the removal of the foundation, or the alteration of the instrument of government in such a way that foundation governors will cease to constitute the majority of governors, or both<sup>4</sup>. The conditions are (1) the school was established, whether or not as a foundation or foundation special school, in pursuance of proposals falling to be implemented under the statutory provisions<sup>5</sup>; (2) the school acquired its foundation in pursuance of proposals falling to be implemented under regulations<sup>6</sup>.

Regulations may make provision about the publication and determination of proposals<sup>7</sup>, and regulations may make provision in connection with the implementation of proposals<sup>8</sup>.

1 As to foundation and foundation special schools see PARA 102 et seq.

2 'Foundation' means a foundation established otherwise than under the School Standards and Framework Act 1998: Education and Inspections Act 2006 s 25(8).

3 *Ibid* s 25(1).

4 *Ibid* s 25(4). A prescribed proportion of the governors may in the prescribed manner require the governing body of the school to publish proposals under s 25 for either or both of the alterations mentioned in s 25(4): s 25(5). See further s 25(6). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 by the Secretary of State: s 32(1). As to regulations made under ss 25-27 see the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, SI 2007/3475.

5 *Ie* under the Education and Inspections Act 2006 Sch 2: s 25(2).

6 *Ie* under regulations under *ibid* s 24: s 25(3).

7 See *ibid* s 26. As to regulations see NOTE 4.

8 See *ibid* s 27. As to regulations see NOTE 4.

### UPDATE

#### 158-165 Proposals for Schools in England under the Education Act 2005

Education Act 2005 s 66, Sch 10 repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18 Pt 3. See now Pt 2 (ss 7-32); and PARA 165A. For transitional provisions see the School Organisation (Transitional Provisions) (England) Regulations 2007, SI 2007/1355 (amended by SI 2007/3224, SI 2007/3464).

### UPDATE

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(a) Directions to bring forward Rationalisation Proposals/166. Directions to bring forward proposals to remedy excessive provision of school places.

## ***E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND***

### **(A) THE SYSTEM UNDER THE**

#### ***(a) Directions to bring forward Rationalisation Proposals***

#### **166. Directions to bring forward proposals to remedy excessive provision of school places.**

Where the Secretary of State<sup>1</sup> is of the opinion that the provision for primary<sup>2</sup> or secondary<sup>3</sup> education in maintained schools<sup>4</sup> in the area of any local education authority<sup>5</sup>, or in any part of such an area, is excessive<sup>6</sup>, then, for the purpose of remedying the excess, the Secretary of State may:

- 303 (1) by an order<sup>7</sup> direct the local education authority to exercise its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>8</sup>; and
- 304 (2) in the case of any foundation, voluntary or foundation special school<sup>9</sup> maintained by the authority, by an order<sup>10</sup> direct the governing body<sup>11</sup> to exercise its powers to make proposals for the alteration of its school<sup>12</sup>.

Such an order must require the proposals to be published not later than such date as may be specified in the order<sup>13</sup>, and require the proposals to apply such principles in giving effect to the direction as may be specified in the order<sup>14</sup>.

Where any proposals are published in pursuance of such an order, the body concerned must send a copy of the published proposals, and such information in connection with those proposals as may be prescribed<sup>15</sup>, to the Secretary of State<sup>16</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 184 et seq post. At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 175 et seq post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

4 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

5 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante.

6 Ibid Sch 7 para 2(1). See note 1 supra. See also note 8 infra.

7 le under ibid Sch 7 para 2 (prospectively amended). Orders under Sch 7 para 2 (prospectively amended) are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante.

8 Ibid Sch 7 para 2(2)(a). An order under Sch 7 para 2(2)(a) may not require the proposals to relate to any named school: Sch 7 para 2(4). For the purposes of Sch 7, 'powers to make proposals for the establishment, alteration or discontinuance of schools' means all or any of the powers of the local education authority to publish proposals under s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante): Sch 7 para 1(a). As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of s 142(8). As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of s 142(8). See note 1 supra.

Regulations may make provision modifying any provision contained in Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3): see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

9 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

10 See note 7 supra.

11 As to the governing bodies of maintained schools see PARA 203 et seq post.

12 School Standards and Framework Act 1998 Sch 7 para 2(2)(b). For the purposes of Sch 7 (as amended; prospectively further amended), 'powers to make proposals for the alteration of its school', in relation to the governing body of a foundation, voluntary or foundation special school, means its powers to publish proposals under s 28(2)(b) (as amended) (see PARA 132 ante) or s 31(2)(a) (see PARA 132 ante): Sch 7 para 1(b). See notes 1, 8 supra.

13 Ibid Sch 7 para 2(3)(a). See notes 1, 8 supra.

14 Ibid Sch 7 para 2(3)(b). See notes 1, 8 supra.

15 'Prescribed' means prescribed by regulations: ibid s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 2 (prospectively amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

16 School Standards and Framework Act 1998 Sch 7 para 2(5). This is in addition to complying with s 28(6) (see PARA 132 ante), s 29(5) (see PARA 124 ante) or s 31(5) (see PARA 136 ante), as the case may be: Sch 7 para 2(5). See notes 1, 8 supra.

Schedule 7 para 2(5) is repealed by the Education Act 2005 s 72, Sch 12 para 14(1), (4)(c), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### 166-168 Directions to bring forward Rationalisation Proposals

Day now appointed so that these provisions apply to Wales only (see PARA 166 NOTE 1): SI 2006/2129.



**166 Directions to bring forward proposals to remedy excessive provision of school places**

NOTE 8--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 15--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

TEXT AND NOTE 16--Repeal of School Standards and Framework Act 1998 Sch 7 para 2(5) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(a) Directions to bring forward Rationalisation Proposals/167. Directions to bring forward proposals to remedy insufficient provision of school places.

**167. Directions to bring forward proposals to remedy insufficient provision of school places.**

Where the Secretary of State<sup>1</sup> is of the opinion that the provision for primary<sup>2</sup> or secondary<sup>3</sup> education in maintained schools<sup>4</sup> in the area of any local education authority<sup>5</sup>, or in any part of such an area, is, or is likely to become, insufficient<sup>6</sup>, then the Secretary of State may:

- 305 (1) by an order<sup>7</sup> direct the local education authority to exercise its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>8</sup>; and
- 306 (2) in the case of any foundation, voluntary or foundation special school<sup>9</sup> maintained by the authority, by an order<sup>10</sup> direct the governing body<sup>11</sup> to exercise its powers to make proposals for the alteration of its school<sup>12</sup>,

with a view (in each case) to securing that provision is made for such additional number of pupils<sup>13</sup> in the area, or in any such part of the area, as may be specified in the order<sup>14</sup>. Such an order must require the proposals to be published not later than such date as may be specified in the order<sup>15</sup>, and must also require the proposals to apply such principles in giving effect to the direction as may be specified in the order<sup>16</sup>.

Where any proposals are published in pursuance of such an order, the body concerned must send a copy of the published proposals, and such information in connection with those proposals as may be prescribed<sup>17</sup>, to the Secretary of State<sup>18</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 184 et seq post. At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 175 et seq post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

4 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

5 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante.

6 Ibid Sch 7 para 3(1). See note 1 supra. See also note 8 infra.

7 Ie under ibid Sch 7 para 3 (prospectively amended). Orders under Sch 7 para 3 (prospectively amended) are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante.

8 Ibid Sch 7 para 3(2)(a). For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 166 note 8 ante. An order under Sch 7 para 3(2)(a) may not require the proposals to relate to any named school: Sch 7 para 3(4). See note 1 supra.

Regulations may make provision modifying any provision contained in Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3): see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

9 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

10 See note 7 supra.

11 As to the governing bodies of maintained schools see PARA 203 et seq post.

12 School Standards and Framework Act 1998 Sch 7 para 3(2)(b). See notes 1, 8 supra. For the meaning of 'powers to make proposals for the alteration of its school' see PARA 166 note 12 ante.

13 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

14 Ibid Sch 7 para 3(2). See notes 1, 8 supra.

15 Ibid Sch 7 para 3(3)(a). See notes 1, 8 supra.

16 Ibid Sch 7 para 3(3)(b). See notes 1, 8 supra.

17 'Prescribed' means prescribed by regulations: ibid s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 3 (prospectively amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

18 School Standards and Framework Act 1998 Sch 7 para 3(5). This is in addition to complying with s 28(6) (see PARA 132 ante), s 29(5) (see PARA 134 ante) or s 31(5) (see PARA 136 ante), as the case may be: Sch 7 para 3(5). See notes 1, 8 supra.

Schedule 7 para 3(5) is repealed by the Education Act 2005 s 72, Sch 12 para 14(1), (5)(c), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### 166-168 Directions to bring forward Rationalisation Proposals

Day now appointed so that these provisions apply to Wales only (see PARA 166 NOTE 1): SI 2006/2129.

### 167 Directions to bring forward proposals to remedy insufficient provision of school places

NOTE 8--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 17--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

TEXT AND NOTE 18--Repeal of School Standards and Framework Act 1998 Sch 7 para 3(5)  
now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(a) Directions to bring forward Rationalisation Proposals/168. Procedure after directions have been given.

### **168. Procedure after directions have been given.**

Where the Secretary of State<sup>1</sup> makes an order<sup>2</sup> in relation to the area of any local education authority<sup>3</sup> in England directing the making of proposals to remedy excessive or insufficient provision for primary<sup>4</sup> or secondary education<sup>5</sup> in maintained schools<sup>6</sup>, he must send a copy of the order to the school organisation committee<sup>7</sup> for the area<sup>8</sup>, and to any adjudicator<sup>9</sup> who appears to him to be likely to be considering proposals in relation to that area<sup>10</sup>. Where the school organisation committee or any adjudicator so receives a copy of the order, the committee or adjudicator must send to the Secretary of State: (1) a copy of all proposals<sup>11</sup> relating to the area which have been received by it or him but have not been determined<sup>12</sup> by the relevant time<sup>13</sup>; and (2) a copy of all proposals<sup>14</sup> relating to the area which it or he receives after the relevant time<sup>15</sup>. In such a case, then, unless the Secretary of State gives his consent:

- 307 (a) neither the school organisation committee nor the adjudicator may make any determination<sup>16</sup>; and
- 308 (b) the school organisation committee may not make any reference<sup>17</sup> to the adjudicator<sup>18</sup>,

in relation to any of those proposals during the period beginning with the relevant time and ending with the time when the Secretary of State notifies the committee or the adjudicator, as the case may be, that it or he may make any such determination or reference in relation to those proposals without the Secretary of State's consent<sup>19</sup>. At the end of that period the duty<sup>20</sup> of the school organisation committee or any adjudicator to send copies of proposals to the Secretary of State terminates<sup>21</sup>.

Where a local education authority publishes any proposals in pursuance of an order<sup>22</sup> which relates to an area in England, those proposals require approval<sup>23</sup>.

Proposals made in pursuance of an order<sup>24</sup> relating to an area in England may not be withdrawn without the consent of the Secretary of State; and such consent may be given on such conditions (if any) as the Secretary of State considers appropriate<sup>25</sup>.

Where the governing body<sup>26</sup> of a foundation, voluntary or foundation special school<sup>27</sup> makes any proposals in pursuance of an order<sup>28</sup> relating to an area in England, the local education authority must reimburse any expenditure reasonably incurred by the governing body in making the proposals<sup>29</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 para 4(1)-(6) is repealed, and Sch 7 (as amended) is further amended so as to apply only to Wales, by the Education Act 2005 ss 72, 123, Sch 12 para 14(1), (6)(a), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b): see PARA 184 et seq post. At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 175 et seq post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 le under the School Standards and Framework Act 1998 Sch 7 para 2(2) (prospectively amended) (see PARA 166 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 ante).

3 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante.

4 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of ibid s 142(8).

5 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

6 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

7 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

8 School Standards and Framework Act 1998 Sch 7 para 4(1)(a). See note 1 supra.

9 For the meaning of 'adjudicator' see PARA 124 ante.

10 School Standards and Framework Act 1998 Sch 7 para 4(1)(b). See note 1 supra.

11 For the purposes of ibid Sch 7 para 4(2), (3) (prospectively repealed), references to proposals are references to proposals made under s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante), s 31 (prospectively amended) (see PARA 136 ante), Sch 7 para 5 (prospectively amended) (see PARA 169 post) or the Learning and Skills Act 2000 s 113 (as amended in relation to England; prospectively amended in relation to Wales), Sch 7 (as amended; prospectively further amended) (see PARA 1275 et seq post): School Standards and Framework Act 1998 Sch 7 para 4(5)(b) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 90). See note 1 supra.

12 For the purposes of the School Standards and Framework Act 1998 Sch 7 para 4(2), (3) (prospectively repealed), references to the determination of any proposals are references to: (1) any determination whether or not to approve the proposals under ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), Sch 7 para 8 (as amended; prospectively repealed) (see PARA 171 post) or Sch 7 para 9 (as amended; prospectively repealed) (see PARA 172 post); (2) any determination whether or not to implement the proposals under Sch 6 para 4 (as amended; prospectively further amended) (see PARA 139 ante); or (3) any determination whether or not to approve the proposals under the Learning and Skills Act 2000 Sch 7 (as amended; prospectively further amended) (see PARA 1275 et seq post): School Standards and Framework Act 1998 Sch 7 para 4(5)(c) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 90, Sch 11). See note 1 supra.

13 School Standards and Framework Act 1998 Sch 7 para 4(2)(a). See note 1 supra. For the purposes of Sch 7 para 4(2), (3) (prospectively repealed), references to the relevant time, in relation to the school organisation committee or to any adjudicator, are references to the time when it or he receives the copy of the order under Sch 7 para 4(1) (prospectively repealed) (see the text and notes 1-10 supra): Sch 7 para 4(5)(a).

14 le other than any proposals made under ibid Sch 7 para 5 (prospectively amended): see PARA 169 post.

15 Ibid Sch 7 para 4(2)(b). See note 1 supra.

16 Ibid Sch 7 para 4(3)(a). See note 1 supra.

17 le under ibid Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante) or Sch 7 para 8 (as amended; prospectively repealed) (see PARA 171 post).

18 Ibid Sch 7 para 4(3)(b). See note 1 supra.

19 Ibid Sch 7 para 4(3). See note 1 supra.

20 le under ibid Sch 7 para 4(2) (prospectively repealed): see the text and notes 11-15 supra.

21 Ibid Sch 7 para 4(4). See note 1 supra.

22 le an order made under ibid Sch 7 para 2(2) (prospectively amended) (see PARA 166 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 ante).

23 Ibid Sch 7 para 4(6). The proposals must be approved under Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), despite anything in Sch 6 para 3(1)(a) (as amended) (see PARA 138 ante)

or Sch 6 para 4 (as amended; prospectively further amended) (see PARA 139 ante): Sch 7 para 4(6). See note 1 supra.

24     Ie an order made under *ibid* Sch 7 para 2(2) (prospectively amended) (see PARA 166 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 ante).

25     *Ibid* Sch 7 para 4(7). See note 1 supra.

26     As to the governing bodies of maintained schools see PARA 203 et seq post.

27     As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

28     Ie an order made under the School Standards and Framework Act 1998 Sch 7 para 2(2) (prospectively amended) (see PARA 166 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 ante).

29     *Ibid* Sch 7 para 4(8). Where proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of an order under Sch 7 para 2(2) (prospectively amended) (see PARA 166 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 ante) are approved or, as the case may be, determined to be implemented, or where proposals approved or adopted under Sch 7 para 8 (as amended; prospectively repealed) (see PARA 171 post) or Sch 7 para 9 (as amended; prospectively repealed) (see PARA 172 post) have effect as mentioned in Sch 7 para 10(b) (see PARA 173 post), then, despite anything in Sch 6 Pt III paras 11-15 (as amended; prospectively further amended) (see PARAS 141-144 ante), the local education authority must defray the cost of implementing the proposals: Sch 7 para 4(9). See note 1 supra.

## **UPDATE**

### **166-168 Directions to bring forward Rationalisation Proposals**

Day now appointed so that these provisions apply to Wales only (see PARA 166 NOTE 1): SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/169. Publication of proposals.

*(b) Procedure relating to Rationalisation Proposals*

**169. Publication of proposals.**

Where the Secretary of State<sup>1</sup> has, in relation to the area of any local education authority<sup>2</sup> or any part of such an area, made an order<sup>3</sup> directing the local education authority or the governing body<sup>4</sup> of a foundation, voluntary or foundation special school<sup>5</sup> to make proposals for the establishment, alteration or discontinuance of schools<sup>6</sup> or (as the case may be) for the alteration of its school<sup>7</sup>, and either any proposals have been published in pursuance of the order<sup>8</sup> or the time allowed under the order for the publication of the proposals has expired<sup>9</sup>, then he may make any such proposals as might have been made in accordance with the order relating to that area or that part of that area by the body to whom the directions were given<sup>10</sup>. Such proposals must contain such information, and be published in such manner, as may be prescribed<sup>11</sup>.

Where any proposals relate to an area in England, the Secretary of State must send a copy of the proposals to the school organisation committee<sup>12</sup> for the area<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 184 et seq post. At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 175 et seq post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to local education authorities see PARA 20 ante.

3 Ie under *ibid* Sch 7 para 2(2) (prospectively amended) (see PARA 166 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 ante).

4 As to the governing bodies of maintained schools see PARA 203 et seq post.

5 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 142(8). As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of s 142(8). See also PARA 132 note 2 ante.

Proposals under Sch 7 para 5 (prospectively amended) for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post) (s 74(1), (3)); and regulations may make provision modifying any provision contained in the School Standards and Framework Act 1998 Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school (Education Act 2002 s 74(2)). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 for the purposes of s 74(1) (see the Education Act 2002 (Commencement No 5 and Transitional and Saving Provisions) Order 2003, SI 2003/1115,



art 3) and 1 April 2003 for the purposes of the Education Act 2002 s 74(2), (3) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (5)(a), the Education Act 2002 s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2, and the provisions of the Education Act 2002 s 74(1), (3) are re-enacted as the Education Act 2005 s 68 (not yet in force) (proposals for establishment of federated school: see PARA 158 ante). At the date at which this volume states the law, no such day had been appointed.

7 School Standards and Framework Act 1998 Sch 7 para 5(1)(a). See notes 1, 6 supra.

8 Ibid Sch 7 para 5(1)(b)(i). See notes 1, 6 supra.

9 Ibid Sch 7 para 5(1)(b)(ii). See notes 1, 6 supra.

10 Ibid Sch 7 para 5(1). See notes 1, 6 supra.

11 Ibid Sch 7 para 5(2). See notes 1, 6 supra. 'Prescribed' means prescribed by regulations: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 5 (prospectively amended) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

12 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

13 School Standards and Framework Act 1998 Sch 7 para 5(3). See notes 1, 6 supra.

Schedule 7 para 5(3) is repealed by the Education Act 2005 s 72, Sch 12 para 14(1), (8)(b), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### 169 Publication of proposals

NOTE 6--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

NOTE 11--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

TEXT AND NOTE 13--Repeal of School Standards and Framework Act 1998 Sch 7 para 5(3) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/170. Objections to proposals.

## **170. Objections to proposals.**

Any person may make objections to or comments on any proposals<sup>1</sup> relating to an area in England<sup>2</sup> which are published<sup>3</sup> by the Secretary of State<sup>4</sup>. Such objections or comments must be sent to the school organisation committee<sup>5</sup> for the area to which those proposals relate within such period as may be prescribed<sup>6</sup>.

1     Ie proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 s 34, Sch 7 para 5 (prospectively amended): see PARA 169 ante.

2     For the meaning of 'England' see PARA 52 note 11 ante.

3     Ie published under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 169 ante.

4     Ibid Sch 7 paras 6, 7(1) (Sch 7 para 7(1) amended by the Education Act 2002 s 75, Sch 10 paras 7, 8(a)). The provisions of the School Standards and Framework Act 1998 Sch 7 Pt IV paras 6-10 (as amended) only apply in relation to proposals which relate to an area in England: see Sch 7 para 6. As to the Secretary of State see PARA 52 ante.

Schedule 7 Pt IV (as amended) is repealed by the Education Act 2005 ss 72, 123, Sch 12 para 14(1), (9), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 175 et seq post.

5     For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

6     School Standards and Framework Act 1998 Sch 7 paras 6, 7(2) (Sch 7 para 7(2) amended by the Education Act 2002 Sch 10 paras 7, 8(b)). See note 4 supra. 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 7 (as amended; prospectively repealed) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

## **UPDATE**

### **170 Objections to proposals**

NOTE 4--Day now appointed: SI 2006/2129.

NOTE 6--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/171. Requirement for approval of proposals.

### **171. Requirement for approval of proposals.**

Proposals<sup>1</sup> relating to an area in England<sup>2</sup> which are published<sup>3</sup> by the Secretary of State<sup>4</sup> require the approval of the school organisation committee<sup>5</sup> or of the adjudicator<sup>6</sup>. Where the school organisation committee receives a copy of the proposals, it must<sup>7</sup> either approve them without modification<sup>8</sup>, or approve them with such modifications as the committee thinks desirable and to which the Secretary of State consents<sup>9</sup>, or refer them to the adjudicator<sup>10</sup>. Any approval so given may, with the consent of the Secretary of State, be expressed to take effect only if an event specified in the approval occurs by a date so specified<sup>11</sup>; and regulations may prescribe the events that may be so specified<sup>12</sup>. When deciding whether or not to give any approval, the committee must have regard to any guidance given from time to time by the Secretary of State<sup>13</sup>.

If, by the end of such period as may be specified in or determined in accordance with regulations, the committee has not voted on the question whether to give any approval<sup>14</sup>, and the Secretary of State requests the committee to refer his proposals to the adjudicator<sup>15</sup>, the committee must refer his proposals to the adjudicator<sup>16</sup>. If the committee has voted on any matter which falls<sup>17</sup> to be decided by it by a unanimous decision but has failed to reach such a decision on that matter<sup>18</sup>, or has decided not to give any approval<sup>19</sup>, it must refer the Secretary of State's proposals to the adjudicator<sup>20</sup>. Where any proposals are referred to the adjudicator in this way, the school organisation committee must also refer to the adjudicator<sup>21</sup>:

- 309 (1) any other proposals published<sup>22</sup> in relation to the area of the local education authority<sup>23</sup> (and not withdrawn)<sup>24</sup>;
- 310 (2) any proposals made by that authority in the exercise of its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>25</sup> (and not withdrawn)<sup>26</sup>;
- 311 (3) any proposals made by the governing body<sup>27</sup> of any community, foundation, voluntary or foundation special school<sup>28</sup> in the area in the exercise of its powers to make proposals for the alteration of its school<sup>29</sup> (and not withdrawn)<sup>30</sup>; and
- 312 (4) any proposals published under the provisions relating to inadequate sixth forms<sup>31</sup> (and not withdrawn)<sup>32</sup>,

where those proposals are not determined before the adjudicator holds an inquiry<sup>33</sup>, and appear to the committee to be related to the proposals referred by it to the adjudicator under these provisions<sup>34</sup>.

1    le proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 s 34, Sch 7 para 5 (prospectively amended): see PARA 169 ante.

2    For the meaning of 'England' see PARA 52 note 11 ante.

3    le published under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 169 ante.

4    As to the Secretary of State see PARA 52 ante.

5 For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

6 School Standards and Framework Act 1998 Sch 7 paras 6, 8(1). The provisions of Sch 7 Pt IV paras 6-10 (as amended) only apply in relation to proposals which relate to an area in England: see Sch 7 para 6. For the meaning of 'adjudicator' see PARA 124 ante. As to approval by the adjudicator see Sch 7 para 9 (as amended; prospectively repealed); and PARA 172 post.

Schedule 7 Pt IV (as amended) is repealed by the Education Act 2005 ss 72, 123, Sch 12 para 14(1), (9), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 175 et seq post.

The School Standards and Framework Act 1998 Sch 7 para 8(1) does not prevent the Secretary of State from withdrawing any proposals published under Sch 7 para 5 (prospectively amended) (see PARA 169 ante) by notice in writing given to the school organisation committee at any time before the proposals are determined under Sch 7 para 8 (as amended; prospectively repealed) or Sch 7 para 9 (as amended; prospectively repealed) (see PARA 172 post): Sch 7 paras 6, 8(9). References in Sch 7 para 8 (as amended; prospectively repealed) to the determination of any proposals are references to: (1) any determination whether or not to approve the proposals under ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), Sch 7 para 8(2)(a) (prospectively repealed) (see the text and note 8 infra), Sch 7 para 8(2)(b) (prospectively repealed) (see the text and note 9 infra) or Sch 7 para 9(3) (prospectively repealed) (see PARA 172 post); (2) any determination whether or not to implement the proposals under Sch 6 para 4 (as amended; prospectively further amended) (see PARA 139 ante); or (3) any determination whether or not to approve the proposals under the Learning and Skills Act 2000 s 113 (as amended), Sch 7 (as amended) (see PARA 1275 et seq post): School Standards and Framework Act 1998 Sch 7 paras 6, 8(10) (amended by the Learning and Skills Act 2000 ss 149, 153, Sch 9 paras 1, 90, Sch 11). See note 25 infra.

7 Ie subject to the School Standards and Framework Act 1998 Sch 7 para 6 (prospectively repealed), Sch 7 para 8(2A) (as added; prospectively repealed): Sch 7 paras 6, 8(2) (amended by the Education Act 2002 s 75, Sch 10 paras 7, 9(1), (2)). See note 6 supra.

8 School Standards and Framework Act 1998 Sch 7 paras 6, 8(2)(a). See note 6 supra. See also note 25 infra. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

9 Ibid Sch 7 paras 6, 8(2)(b). See note 6 supra. See also note 25 infra.

10 Ibid Sch 7 paras 6, 8(2)(c). See note 6 supra. See also note 25 infra. As to referral to the adjudicator see Sch 7 para 8(5), (6) (prospectively repealed); and the text and notes 14-20 infra. The committee may, if it thinks it appropriate to do so and subject to regulations, refer to the adjudicator any proposals which would otherwise fall to be dealt with by it under Sch 7 para 6 (prospectively repealed), Sch 7 para 8(2) (as amended; prospectively repealed): Sch 7 para 8(2A) (added by the Education Act 2002 Sch 10 paras 7, 9(1), (3)). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no such regulations had been made for these purposes.

11 Ibid Sch 7 paras 6, 8(3). See note 6 supra. See also note 25 infra.

12 Ibid Sch 7 paras 6, 8(3). See note 6 supra. See also note 25 infra. As to the regulations that have been made under Sch 7 para 8 (as amended; prospectively repealed) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

13 School Standards and Framework Act 1998 Sch 7 paras 6, 8(4). See note 6 supra. See also note 25 infra.

14 Ibid Sch 7 paras 6, 8(5)(a). See note 6 supra. See also note 25 infra.

15 Ibid Sch 7 paras 6, 8(5)(b). See note 6 supra. See also note 25 infra.

16 Ibid Sch 7 paras 6, 8(5). See note 6 supra. See also note 25 infra.

17 Ie in accordance with regulations under ibid s 24(5), Sch 4 para 5 (as amended; prospectively further amended): see PARA 122 ante.

18 Ibid Sch 7 paras 6, 8(6)(a). See note 6 supra. See also note 25 infra.

19 Ibid Sch 7 paras 6, 8(6)(b). See note 6 supra. See also note 25 infra.

20 Ibid Sch 7 paras 6, 8(6). See note 6 supra. See also note 25 infra.

21 Ibid Sch 7 paras 6, 8(7) (amended by the Education Act 2002 Sch 10 paras 7, 9(1), (4)). See note 6 supra. See also note 25 infra.

22 Ie under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 169 ante.

23 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante.

24 Ibid Sch 7 paras 6, 8(7)(a). See note 6 supra. See also note 25 infra.

25 For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 166 note 8 ante.

Regulations may make provision modifying any provision contained in ibid Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2003 in relation to s 74(2), (3): see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

26 School Standards and Framework Act 1998 Sch 7 paras 6, 8(7)(b). See note 6 supra. See also note 25 supra.

27 As to the governing bodies of maintained schools see PARA 203 et seq post.

28 As to community schools, foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

29 For the meaning of 'powers to make proposals for the alteration of its school' see PARA 166 note 12 ante.

30 School Standards and Framework Act 1998 Sch 7 paras 6, 8(7)(c) (amended by the Education Act 2002 s 215(1), Sch 21 para 116). See note 6 supra. See also note 25 supra.

31 Ie the provisions of the Learning and Skills Act 2000 Sch 7 (as amended): see PARA 1275 et seq post.

32 School Standards and Framework Act 1998 Sch 7 paras 6, 8(7)(d) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 90). See note 6 supra. See also note 25 supra.

33 Ie under the School Standards and Framework Act 1998 Sch 7 para 9(1) (as amended; prospectively repealed): see PARA 172 post.

34 Ibid Sch 7 paras 6, 8(7). Schedule 7 para 8(7) applies to proposals whether or not the proposals have been previously referred to the adjudicator by the committee: Sch 7 paras 6, 8(8). See note 6 supra. See also note 25 supra.

## UPDATE

### 171 Requirement for approval of proposals

NOTE 6--Day now appointed: SI 2006/2129.

NOTE 12--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

NOTE 25--Repeal of Education Act 2002 s 74 now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/172. Local inquiry into proposals.

## **172. Local inquiry into proposals.**

Where any proposals<sup>1</sup> which relate to an area in England<sup>2</sup> are referred<sup>3</sup> to the adjudicator<sup>4</sup>, he must hold a local inquiry<sup>5</sup> to consider<sup>6</sup>: (1) those proposals<sup>7</sup>; (2) any additional proposals referred<sup>8</sup> to him<sup>9</sup>; (3) any objections or comments made<sup>10</sup> to any proposals within head (1) or head (2) above unless such objections or comments have been withdrawn<sup>11</sup>; and (4) any views expressed by the school organisation committee<sup>12</sup> on any such proposals<sup>13</sup>. After holding the inquiry, the adjudicator must, in the case of any proposals considered at the inquiry, either approve them with or without modifications<sup>14</sup>, or reject them<sup>15</sup>. Any approval so given may be expressed to take effect only if an event specified in the approval occurs by a date so specified<sup>16</sup>; and regulations may prescribe the events that may be so specified<sup>17</sup>. When deciding whether or not to give any approval, the adjudicator must have regard to any guidance given from time to time by the Secretary of State<sup>18</sup>.

1    Ie proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 s 34, Sch 7 para 5 (prospectively amended): see PARA 169 ante.

2    For the meaning of 'England' see PARA 52 note 11 ante.

3    Ie under the School Standards and Framework Act 1998 Sch 7 para 8 (as amended; prospectively repealed): see PARA 171 ante.

4    For the meaning of 'adjudicator' see PARA 124 ante.

5    It is not open to the inquiry to question the principles specified in the order under the School Standards and Framework Act 1998 Sch 7 para 2(2) (prospectively amended) (see PARA 166 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 167 ante): Sch 7 paras 6, 9(2). The provisions of Sch 7 Pt IV paras 6-10 (as amended) only apply in relation to proposals which relate to an area in England: see Sch 7 para 6.

Schedule 7 Pt IV (as amended) is repealed by the Education Act 2005 ss 72, 123, Sch 12 para 14(1), (9), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 203 et seq post.

6    School Standards and Framework Act 1998 Sch 7 paras 6, 9(1) (amended by the Education Act 2002 s 75, Sch 10 paras 7, 10(a)). See note 5 supra.

7    School Standards and Framework Act 1998 Sch 7 paras 6, 9(1)(a). See note 5 supra.

8    Ie under *ibid* Sch 7 para 8(7) (as amended; prospectively repealed): see PARA 171 ante.

9    *Ibid* Sch 7 paras 6, 9(1)(b). See note 5 supra.

10   Ie under *ibid* ss 28(8), 29(7), 31(8), Sch 6 para 2 (as amended; prospectively further amended) (see PARA 137 ante) or Sch 7 para 7 (as amended; prospectively repealed) (see PARA 170 ante).

11   *Ibid* Sch 7 paras 6, 9(1)(c) (amended by the Education Act 2002 Sch 10 paras 7, 10(b)). See note 5 supra.

12   For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

13   School Standards and Framework Act 1998 Sch 7 paras 6, 9(1)(d). See note 5 supra.

14   As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 142(8).

15 Ibid Sch 7 paras 6, 9(3). See note 5 supra.

16 Ibid Sch 7 paras 6, 9(4). See note 5 supra.

17 Ibid Sch 7 paras 6, 9(4). See note 5 supra. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 9 (as amended; prospectively repealed) see the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469); and the Education (School Organisation Proposals) (England) Regulations 1999, SI 1999/2213 (amended by SI 2000/2198; SI 2001/1405; SI 2003/1229; SI 2004/3052; SI 2005/1801; SI 2005/3342).

18 School Standards and Framework Act 1998 Sch 7 paras 6, 8(4), 9(5). See note 5 supra. As to the Secretary of State see PARA 52 ante.

## **UPDATE**

### **172 Local inquiry into proposals**

NOTE 5--Day now appointed: SI 2006/2129.

NOTE 17--SI 1999/2212, SI 1999/2213 revoked: SI 2007/1288.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/173. Implementation of proposals.

### **173. Implementation of proposals.**

In relation to England<sup>1</sup>, proposals<sup>2</sup> approved by the school organisation committee<sup>3</sup> or by the adjudicator<sup>4</sup> have effect as if they:

- 313 (1) had been made by the local education authority<sup>5</sup> under its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>6</sup>; or
- 314 (2) in any case where the proposals are for the alteration of a foundation, voluntary or foundation special school<sup>7</sup>, had been made by the governing body<sup>8</sup> under its powers to make proposals for the alteration of its school<sup>9</sup>,

and had been approved<sup>10</sup> under the provisions relating to the establishment, alteration or discontinuance of schools<sup>11</sup> by the school organisation committee or the adjudicator, as the case may be<sup>12</sup>.

1 For the meaning of 'England' see PARA 52 note 11 ante.

2 I.e. proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 169 ante.

3 I.e. under ibid Sch 7 para 8 (as amended; prospectively repealed): see PARA 171 ante. For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

4 I.e. under ibid Sch 7 para 9 (as amended; prospectively repealed): see PARA 172 ante. For the meaning of 'adjudicator' see PARA 124 ante.

5 As to local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 Sch 7 paras 6, 10(a). The provisions of Sch 7 Pt IV paras 6-10 (as amended) only apply in relation to proposals which relate to an area in England: see Sch 7 para 6. For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 166 note 8 ante.

Schedule 7 Pt IV (as amended) is repealed by the Education Act 2005 ss 72, 123, Sch 12 para 14(1), (9), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 203 et seq post.

Regulations may make provision modifying any provision contained in the School Standards and Framework Act 1998 Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day in relation to s 74(2), (3) is 1 June 2003: see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.



7 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

8 As to the governing bodies of maintained schools see PARA 203 et seq post.

9 School Standards and Framework Act 1998 Sch 7 paras 6, 10(b). See note 6 supra. For the meaning of 'powers to make proposals for the alteration of its school' see PARA 166 note 12 ante.

10 See under ibid ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended): see PARA 138 ante.

11 As to the establishment, alteration or discontinuance of schools see PARA 131 et seq ante.

12 School Standards and Framework Act 1998 Sch 7 paras 6, 10. See note 6 supra.

## **UPDATE**

### **173 Implementation of proposals**

NOTE 6--Repeals of School Standards and Framework Act 1998 Sch 7 Pt IV and Education Act 2002 s 74 now in force: SI 2006/2129.

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#### **174. Proposals for single-sex school to become co-educational.**

Where proposals are made<sup>1</sup> for a school<sup>2</sup> in England<sup>3</sup> to cease to be an establishment which admits pupils<sup>4</sup> of one sex only<sup>5</sup>, and the Secretary of State<sup>6</sup> sends<sup>7</sup> a copy of the published proposals to the school organisation committee<sup>8</sup>, then the sending of the published proposals to the school organisation committee by the Secretary of State is to be treated as an application by the responsible body<sup>9</sup> for the making by the school organisation committee of a transitional exemption order authorising discriminatory admissions during a specified transitional period<sup>10</sup>, and the committee may make such an order accordingly<sup>11</sup>. Where the school organisation committee has failed to reach a unanimous decision on whether to make a transitional exemption order<sup>12</sup>, or where the school organisation committee refers the proposals to the adjudicator<sup>13</sup>, the committee must refer the question whether to make a transitional exemption order to the adjudicator<sup>14</sup>. Where that question is referred to the adjudicator he must consider the matter afresh<sup>15</sup>, and he may make a transitional exemption order accordingly<sup>16</sup>.

1     Ie under the School Standards and Framework Act 1998 s 34, Sch 7 para 5 (prospectively amended): see PARA 169 ante.

2     For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 142(8).

3     For the meaning of 'England' see PARA 52 note 11 ante.

4     For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5     For the purposes of *ibid* Sch 7 para 16 (prospectively repealed), references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration in a school's admissions arrangements as is mentioned in the Sex Discrimination Act 1975 s 27(1) (single-sex establishments becoming co-educational: see DISCRIMINATION vol 13 (2007 Reissue) PARA 381): School Standards and Framework Act 1998 Sch 7 para 16(6). As to sex discrimination in educational establishments see PARA 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARAS 378-381. As to admission arrangements see PARA 398 et seq post.

The School Standards and Framework Act 1998 Sch 7 para 16 is repealed by the Education Act 2005 ss 72, 123, Sch 12 para 14(1), (14), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England under the Education Act 2005 see PARA 175 et seq post.

6     As to the Secretary of State see PARA 52 ante.

7     Ie in accordance with the School Standards and Framework Act 1998 Sch 7 para 5(3) (prospectively repealed): see PARA 169 ante.

8     *Ibid* Sch 7 para 16(1), (2). See note 5 supra. For the meaning of 'school organisation committee' see PARA 118 note 3 ante.

9     For these purposes, 'the responsible body' has the same meaning as in the Sex Discrimination Act 1975 s 22 (as amended) (see PARA 6 ante): School Standards and Framework Act 1998 Sch 7 para 16(6). See note 5 supra.

10 For these purposes, 'transitional exemption order' has the same meaning as in the Sex Discrimination Act 1975 s 27 (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 381): School Standards and Framework Act 1998 Sch 7 para 16(6). See note 5 supra.

11 Ibid Sch 7 para 16(3); Sex Discrimination Act 1975 s 27(1A) (added by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 6). For these purposes, 'make', in relation to a transitional exemption order, includes (so far as the context permits) vary or revoke: School Standards and Framework Act 1998 Sch 7 para 16(6). See note 5 supra.

12 Ibid Sch 7 para 16(4)(a). See note 5 supra.

13 Ibid Sch 7 para 16(4)(b). See note 5 supra. As to the reference of proposals to the adjudicator as mentioned in the text see Sch 7 para 8 (as amended; prospectively repealed); and PARA 171 ante. For the meaning of 'adjudicator' see PARA 124 ante.

14 Ibid Sch 7 para 16(4). See note 5 supra.

15 Ibid Sch 7 para 16(5)(a). See note 5 supra.

16 Ibid Sch 7 para 16(5)(b). See note 5 supra.

## **UPDATE**

### **174 Proposals for single-sex school to become co-educational**

NOTE 5--Day now appointed except in relation to repeal of School Standards and Framework Act 1998 Sch 7 para 16(6) (see NOTES 9-11): SI 2006/2129.

NOTE 11--1975 Act s 27(1A) substituted: Education and Inspections Act 2006 Sch 3 para 3.

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## (B) THE SYSTEM UNDER THE

### *(a) Directions to bring forward Rationalisation Proposals*

#### **175. Directions to bring forward proposals to remedy excessive provision of school places.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the Secretary of State<sup>2</sup> is of the opinion that the provision for primary<sup>3</sup> or secondary<sup>4</sup> education in maintained schools<sup>5</sup> in the area of any local education authority<sup>6</sup> in England<sup>7</sup>, or in any part of such an area, is excessive<sup>8</sup>, then, for the purpose of remedying the excess, the Secretary of State may:

- 315 (1) direct the local education authority to exercise its powers to make or invite proposals for the establishment, alteration or discontinuance of schools<sup>9</sup>; and
- 316 (2) in the case of any foundation, voluntary or foundation special school<sup>10</sup> maintained by the authority, direct the governing body<sup>11</sup> to exercise its powers to make proposals for the alteration of its school<sup>12</sup>.

Such a direction must require the direction to be complied with not later than such date as may be specified in the direction<sup>13</sup>, and require the body to whom the direction is given to apply such principles in giving effect to the direction as may be specified in the direction<sup>14</sup>.

Where any proposals<sup>15</sup> are published in pursuance of such a direction, the body concerned must<sup>16</sup> send a copy of the published proposals, and such information in connection with those proposals as may be prescribed<sup>17</sup>, to the Secretary of State<sup>18</sup>. Where a notice<sup>19</sup> is published in pursuance of such a direction, the local education authority concerned must send a copy of the published notice, and a copy of any proposals published<sup>20</sup> in pursuance of the notice, to the Secretary of State<sup>21</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to the Secretary of State see PARA 52 ante.

3 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

4 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 122(2), (3).

5 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

6 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 122(2), (3). As to local education authorities see PARA 20 ante.

7 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

8 Education Act 2005 Sch 11 para 3(1). See note 1 supra.

9 Ibid Sch 11 para 3(2)(a). A direction under Sch 11 para 3(2)(a) (not yet in force) may not require the proposals to relate to any named school: Sch 11 para 3(4). For the purposes of Sch 11 (not yet in force), 'powers to make or invite proposals for the establishment, alteration or discontinuance of schools' means all or any of the powers of the local education authority: (1) to publish proposals under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante); or (2) to publish a notice under the Education Act 2005 s 66 (not yet in force) (see PARA 158 ante) and then, if it thinks fit, proposals of its own under s 66(5)(b) (not yet in force) (see PARA 158 ante): Sch 11 paras 1, 2(a). See note 1 supra. As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of s 122(2), (3). As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of s 122(2), (3). As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of s 122(2), (3).

Any power conferred by the Education Act 2005 to give directions includes power, exercisable in the same manner and subject to the same conditions or limitations, to revoke or vary directions previously given: s 120(4).

10 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

11 As to the governing bodies of maintained schools see PARA 203 et seq post.

12 Education Act 2005 Sch 11 para 3(2)(b). See note 1 supra. For the purposes of Sch 11 (not yet in force), 'powers to make proposals for the alteration of its school', in relation to the governing body of a foundation, voluntary or foundation special school, means its powers to publish proposals under the School Standards and Framework Act 1998 s 28(2)(b) (as amended) (see PARA 132 ante) or s 31(2)(a) (see PARA 136 ante): Education Act 2005 Sch 11 paras 1, 2(b).

13 Ibid Sch 11 para 3(3)(a). See note 1 supra.

14 Ibid Sch 11 para 3(3)(b). See note 1 supra.

15 Ie under the School Standards and Framework Act 1998: see heads (1), (2) in the text.

16 Ie in addition to complying with ibid s 28(6) (see PARA 132 ante), s 28A(6) (prospectively added) (see PARA 133 ante), s 29(5) (see PARA 134 ante) or s 31(5) (see PARA 136 ante): Education Act 2005 Sch 11 para 3(5). See note 1 supra.

17 For the purposes of ibid Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 (not yet in force): s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

18 Ibid Sch 11 para 3(5). See note 1 supra.

19 Ie under ibid s 66 (not yet in force): see PARA 158 ante.

20 See note 19 supra.

21 Education Act 2005 Sch 11 para 3(6). See note 1 supra.

## **UPDATE**

### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

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### **176. Directions to bring forward proposals to remedy insufficient provision of school places.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the Secretary of State<sup>2</sup> is of the opinion that the provision for primary<sup>3</sup> or secondary<sup>4</sup> education in maintained schools<sup>5</sup> in the area of any local education authority<sup>6</sup> in England<sup>7</sup>, or in any part of such an area, is, or is likely to become, insufficient<sup>8</sup>, then the Secretary of State may:

- 317 (1) direct the local education authority to exercise its powers to make or invite proposals for the establishment, alteration or discontinuance of schools<sup>9</sup>; and
- 318 (2) in the case of any foundation, voluntary or foundation special school<sup>10</sup> maintained by the authority, direct the governing body<sup>11</sup> to exercise its powers to make proposals for the alteration of its school<sup>12</sup>,

with a view (in each case) to securing that provision is made for such additional number of pupils<sup>13</sup> in the area, or in any such part of the area, as may be specified in the direction<sup>14</sup>. Such a direction must require the direction to be complied with not later than such date as may be specified in the direction<sup>15</sup>, and require the body to whom the direction is given to apply such principles in giving effect to the direction as may be specified in the direction<sup>16</sup>.

Where any proposals<sup>17</sup> are published in pursuance of such a direction, the body concerned must<sup>18</sup> send a copy of the published proposals, and such information in connection with those proposals as may be prescribed<sup>19</sup>, to the Secretary of State<sup>20</sup>.

Where a notice<sup>21</sup> is published in pursuance of such a direction, the local education authority concerned must send a copy of the published notice, and a copy of any proposals published<sup>22</sup> in pursuance of the notice, to the Secretary of State<sup>23</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to the Secretary of State see PARA 52 ante.

3 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

4 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 122(2), (3).

5 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

6 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 122(2), (3). As to local education authorities see PARA 20 ante.

7 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

8 Education Act 2005 Sch 11 para 4(1). See note 1 supra.

9 Ibid Sch 11 para 4(2)(a). See note 1 supra. For the meaning of 'powers to make or invite proposals for the establishment, alteration or discontinuance of schools' see PARA 175 note 9 ante. A direction under Sch 11 para 4(2)(a) (not yet in force) may not require the proposals to relate to any named school: see Sch 11 para 4(4).

10 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

11 As to the governing bodies of maintained schools see PARA 203 et seq post.

12 Education Act 2005 Sch 11 para 4(2)(b). See note 1 supra. For the meaning of 'powers to make proposals for the alteration of its school' see PARA 175 note 12 ante.

13 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 122(2), (3).

14 Ibid Sch 11 para 4(2). See note 1 supra.

15 Ibid Sch 11 para 4(3)(a). See note 1 supra.

16 Ibid Sch 11 para 4(3)(b). See note 1 supra.

17 Ie under the School Standards and Framework Act 1998. As to rationalisation under the School Standards and Framework Act 1998 see PARA 166 et seq ante.

18 Ie in addition to complying with ibid s 28(6) (see PARA 132 ante), s 28A(6) (prospectively added) (see PARA 133 ante), s 29(5) (see PARA 134 ante) or s 31(5) (see PARA 136 ante): Education Act 2005 Sch 11 para 4(5). See note 1 supra.

19 For the purposes of ibid Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 (not yet in force): s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

20 Ibid Sch 11 para 4(5). See note 1 supra.

21 Ie under ibid s 66 (not yet in force): see PARA 158 ante.

22 See note 21 supra.

23 Education Act 2005 Sch 11 para 4(6). See note 1 supra.

## **UPDATE**

### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

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### **177. Procedure after directions have been given.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the Secretary of State<sup>2</sup> gives a direction<sup>3</sup> in relation to the area of any local education authority<sup>4</sup> in England<sup>5</sup> directing the making of proposals to remedy excessive or insufficient provision for primary<sup>6</sup> or secondary education<sup>7</sup> in maintained schools<sup>8</sup>, he must send a copy of the direction to the school organisation committee<sup>9</sup> for the area<sup>10</sup>, and to any adjudicator<sup>11</sup> who appears to him to be likely to be considering proposals in relation to that area<sup>12</sup>. Where the school organisation committee or any adjudicator so receives a copy of the direction, the committee or adjudicator must send to the Secretary of State: (1) a copy of all proposals<sup>13</sup> relating to the area which have been received by it or him but have not been determined<sup>14</sup> by the relevant time<sup>15</sup>; and (2) a copy of all proposals<sup>16</sup> relating to the area which it or he receives after the relevant time<sup>17</sup>. In such a case, then, unless the Secretary of State gives his consent:

- 319 (a) neither the school organisation committee nor the adjudicator may make any determination<sup>18</sup>; and
- 320 (b) the school organisation committee may not make any reference<sup>19</sup> to the adjudicator<sup>20</sup>,

in relation to any of those proposals during the period beginning with the relevant time and ending with the time when the Secretary of State notifies the committee or the adjudicator, as the case may be, that it or he may make any such determination or reference in relation to those proposals without the Secretary of State's consent<sup>21</sup>. At the end of that period, the duty<sup>22</sup> of the school organisation committee or any adjudicator to send copies of the proposals to the Secretary of State terminates<sup>23</sup>.

Where a local education authority publishes any proposals<sup>24</sup> in pursuance of a direction<sup>25</sup> which relates to an area in England, those proposals require approval<sup>26</sup>.

Proposals made by any person<sup>27</sup> in pursuance of a direction given to that person<sup>28</sup> may not be withdrawn without the consent of the Secretary of State, and such consent may be given on such conditions, if any, as the Secretary of State considers appropriate<sup>29</sup>.

Where the governing body<sup>30</sup> of a foundation, voluntary or foundation special school<sup>31</sup> makes any proposals in pursuance of a direction given to the governing body<sup>32</sup>, the local education authority must reimburse any expenditure reasonably incurred by the governing body in making the proposals<sup>33</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to the Secretary of State see PARA 52 ante.

3 I.e. under the Education Act 2005 Sch 11 para 3(2) (not yet in force) (see PARA 175 ante) or Sch 11 para 4(2) (not yet in force) (see PARA 176 ante).

4 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 122(2), (3). As to local education authorities see PARA 20 ante.



5 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

6 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

7 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 122(2), (3).

8 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

9 For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

10 Education Act 2005 Sch 11 para 5(1)(a). See note 1 supra.

11 For the meaning of 'adjudicator' see PARA 124 ante.

12 Education Act 2005 Sch 11 para 5(1)(b). See note 1 supra.

13 For the purposes of ibid Sch 11 para 5(2), (3) (not yet in force), references to proposals are references to proposals made under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante), s 31 (prospectively amended) (see PARA 136 ante), the Learning and Skills Act 2000 s 113 (as amended in relation to England; prospectively amended in relation to Wales), Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post), the Education Act 2005 s 66 (not yet in force) (see PARA 158 ante), or Sch 11 para 7 (not yet in force) (see PARA 178 post): Sch 11 paras 1, 5(5)(b). See note 1 supra.

14 For the purposes of ibid Sch 11 para 5(2), (3) (not yet in force), references to the determination of any proposals are references to: (1) any determination whether or not to approve the proposals under the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante); (2) any determination whether or not to approve the proposals under the Learning and Skills Act 2000 Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post); (3) any determination whether or not to approve the proposals under the Education Act 2005 s 66(12), Sch 10 para 4 (not yet in force) (see PARA 160 ante); or (4) any determination whether or not to approve the proposals under Sch 11 para 9 (not yet in force) (see PARA 180 post) or Sch 11 para 11 (not yet in force) (see PARA 181 post): Sch 11 paras 1, 5(5)(c). See note 1 supra.

15 Ibid Sch 11 para 5(2)(a). For the purposes of Sch 11 para 5(2), (3) (not yet in force), references to the relevant time, in relation to the school organisation committee or to any adjudicator, are references to the time when it or he receives the copy of the order under Sch 11 para 5(1) (not yet in force) (see the text and notes 1-12 supra): Sch 11 para 5(5)(a). See note 1 supra.

16 Ie other than any proposals made under ibid Sch 11 para 7 (not yet in force): see PARA 178 post.

17 Ibid Sch 11 para 5(2)(b). See note 1 supra.

18 Ibid Sch 11 para 5(3)(a). See note 1 supra.

19 Ie under the School Standards and Framework Act 1998 Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), the Education Act 2005 Sch 10 para 4(2)(d) (not yet in force) (see PARA 160 ante), Sch 10 para 5(1) (not yet in force) (see PARA 160 ante), or Sch 11 para 9 (not yet in force) (see PARA 180 post).

20 Ibid Sch 11 paras 1, 5(3)(b). See note 1 supra.

21 Ibid Sch 11 para 5(3). See note 1 supra.

22 Ie under ibid Sch 11 para 5(2) (not yet in force): see the text and notes 14-17 supra.

23 Ibid Sch 11 para 5(4). See note 1 supra.

24 Ie under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante).

25     Ie under the Education Act 2005 Sch 11 para 3(2) (not yet in force) (see PARA 175 ante) or Sch 11 para 4(2) (not yet in force) (see PARA 176 ante).

26     Ibid Sch 11 paras 1, 6(1). The proposals must be approved under the School Standards and Framework Act 1998 Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), despite anything in Sch 6 para 3(1)(a) (as amended) (see PARA 138 ante) or Sch 6 para 4 (as amended; prospectively further amended) (see PARA 139 ante): Education Act 2005 Sch 11 para 6(1). See note 1 supra.

27     See note 24 supra.

28     See note 25 supra.

29     Ibid Sch 11 paras 1, 6(2). See note 1 supra.

30     As to the governing bodies of maintained schools see PARA 203 et seq post.

31     As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

32     Ie under the Education Act 2005 Sch 11 para 3(2)(b) (not yet in force) (see PARA 175 ante) or Sch 11 para 4(2)(b) (not yet in force) (see PARA 176 ante).

33     Ibid Sch 11 para 6(3). Where proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of any such direction under Sch 11 para 3(2)(b) (not yet in force) (see PARA 175 ante) or Sch 11 para 4(2)(b) (not yet in force) (see PARA 176 ante) are approved or, as the case may be, determined to be implemented, or where proposals approved or adopted under Sch 11 para 9 (not yet in force) (see PARA 180 post) or Sch 11 para 11 (not yet in force) (see PARA 181 post) have effect as mentioned in Sch 11 para 13(b) (not yet in force) (see PARA 182 post), then, despite anything in the School Standards and Framework Act 1998 Sch 6 Pt III paras 11-15 (as amended; prospectively further amended) (see PARAS 141-144 ante), the local education authority must defray the cost of implementing the proposals: Education Act 2005 Sch 11 paras 1, 6(4). See note 1 supra.

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*(b) Procedure relating to Rationalisation Proposals*

**UPDATE**

**175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

**178. Publication of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, in relation to the area of any local education authority<sup>2</sup> in England<sup>3</sup> or any part of such an area, the Secretary of State<sup>4</sup> has given the local education authority a direction<sup>5</sup> to make proposals for the establishment<sup>6</sup>, alteration<sup>7</sup> or discontinuance<sup>8</sup> of schools<sup>9</sup>, or has given the governing body<sup>10</sup> of a foundation, voluntary or foundation special school<sup>11</sup> a direction<sup>12</sup> to make proposals for the alteration of its school<sup>13</sup>, and any of the specified conditions<sup>14</sup> is met<sup>15</sup>, then he may make any such proposals as might have been made in accordance with the direction relating to that area or that part of that area by the person to whom the directions was given<sup>16</sup>. Such proposals must contain such information, and be published in such manner, as may be prescribed<sup>17</sup>. The Secretary of State must send a copy of the proposals to the school organisation committee<sup>18</sup> for the area to which the proposals relate<sup>19</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of *ibid* s 122(2), (3). As to local education authorities see PARA 20 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

4 As to the Secretary of State see PARA 52 ante.

5 *Ie* under the Education Act 2005 Sch 11 para 3(2)(a) (not yet in force) (see PARA 175 ante) or Sch 11 para 4(2)(a) (not yet in force) (see PARA 176 ante).

6 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).

Proposals under Sch 11 para 7 (not yet in force) for the establishment of a new school may relate to the establishment of the school as a federated school: s 68(1). For these purposes, 'federated school' has the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post): Education Act 2005 s 68(2). Section 68 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

7 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of *ibid* s 122(2), (3). See also PARA 132 note 2 ante.

8 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).

9 Ibid Sch 11 para 7(1)(a)(i). See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 122(2), (3).

10 As to the governing bodies of maintained schools see PARA 203 et seq post.

11 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

12 Ie under the Education Act 2005 Sch 11 para 3(2)(b) (not yet in force) (see PARA 175 ante) or Sch 11 para 4(2)(b) (not yet in force) (see PARA 176 ante).

13 Ibid Sch 11 para 7(1)(a)(ii). See note 1 supra.

14 The conditions referred to in ibid Sch 11 para 7(1)(b) (not yet in force) are: (1) that the person to whom the direction was given has failed to publish within the time specified in the direction proposals under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante) or a notice under the Education Act 2005 s 66 (not yet in force) (see PARA 158 ante) (Sch 11 paras 1, 7(3)(a)); (2) that the person to whom the direction was given has published proposals under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended), s 28A (prospectively added), s 29 (prospectively amended) or s 31 (prospectively amended) but it appears to the Secretary of State that the proposals are inadequate (Education Act 2005 Sch 11 paras 1, 7(3)(b)); (3) that a notice under s 66 (not yet in force) has been published in pursuance of the direction but the period within which proposals must be published under s 66(8)(a) (not yet in force) or s 66(8)(b) (not yet in force) (see PARA 158 ante) has passed without any proposals being published (Sch 11 para 7(3)(c)); or (4) that proposals have been published under s 66(8)(a) (not yet in force) or s 66(8)(b) (not yet in force) in pursuance of a notice published in pursuance of the direction but either every set of proposals has been withdrawn, or every set of proposals, apart from any that has been withdrawn, appears to the Secretary of State to be inadequate (Sch 11 para 7(3)(d)). See note 1 supra.

15 Ibid Sch 11 para 7(1)(b). See note 1 supra.

16 Ibid Sch 11 para 7(1). In determining for the purposes of Sch 11 para 7(1) (not yet in force) what proposals might have been made by a local education authority under the School Standards and Framework Act 1998 s 28A (prospectively added) (see PARA 133 ante), it is to be assumed that no notice under the Education Act 2005 s 66 (not yet in force) (see PARA 158 ante) has been published and that the Secretary of State consents to the publication of the proposals under the School Standards and Framework Act 1998 s 28A (prospectively added): Education Act 2005 Sch 11 paras 1, 7(2). See note 1 supra.

17 Ibid Sch 11 para 7(4). See note 1 supra. For the purposes of Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 (not yet in force): s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

18 For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

19 Education Act 2005 Sch 11 para 7(5). See note 1 supra.

## **UPDATE**

### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(B) The System under the Education Act 2005/(b) Procedure relating to Rationalisation Proposals/179. Objections to proposals.

### **179. Objections to proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Any person may make objections to or comments on any proposals for the establishment<sup>2</sup>, alteration<sup>3</sup> or discontinuance<sup>4</sup> of schools<sup>5</sup> relating to an area in England<sup>6</sup> which are published<sup>7</sup> by the Secretary of State<sup>8</sup>. Such objections or comments must be sent to the school organisation committee<sup>9</sup> for the area to which those proposals relate within such period as may be prescribed<sup>10</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

3 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of ibid s 122(2), (3). See also PARA 132 note 2 ante.

4 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

6 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

7 Under the Education Act 2005 Sch 11 para 7 (not yet in force): see PARA 178 ante.

8 Ibid Sch 11 para 8(1). See note 1 supra. As to the Secretary of State see PARA 52 ante.

9 For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

10 Education Act 2005 Sch 11 para 8(2). See note 1 supra. For the purposes of Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 (not yet in force): s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

### **UPDATE**

#### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(B) The System under the Education Act 2005/(b) Procedure relating to Rationalisation Proposals/180. Requirement for approval of proposals.

### **180. Requirement for approval of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals for the establishment<sup>2</sup>, alteration<sup>3</sup> or discontinuance<sup>4</sup> of schools<sup>5</sup> relating to an area in England<sup>6</sup> which are published<sup>7</sup> by the Secretary of State<sup>8</sup> require the approval of the school organisation committee<sup>9</sup> or of the adjudicator<sup>10</sup>. Where the school organisation committee receives a copy of the proposals, it must<sup>11</sup> either approve them without modification<sup>12</sup>, or approve them with such modifications as the committee thinks desirable and to which the Secretary of State consents<sup>13</sup>, or refer them to the adjudicator<sup>14</sup>. Any approval so given may, with the consent of the Secretary of State, be expressed to take effect only if an event specified in the approval occurs by a date so specified<sup>15</sup>; and regulations may prescribe the events that may be so specified<sup>16</sup>. When deciding whether or not to give any approval, the committee must have regard to any guidance given from time to time by the Secretary of State<sup>17</sup>.

If, by the end of such period as may be specified in or determined in accordance with regulations, the committee has not voted on the question whether to give any approval<sup>18</sup>, and the Secretary of State requests the committee to refer his proposals to the adjudicator<sup>19</sup>, the committee must refer his proposals to the adjudicator<sup>20</sup>. If the committee has voted on any matter which<sup>21</sup> falls to be decided by it by a unanimous decision but has failed to reach such a decision on that matter<sup>22</sup>, or has decided not to give any approval<sup>23</sup>, it must refer the Secretary of State's proposals to the adjudicator<sup>24</sup>. The Secretary of State may at any time give a direction to a school organisation committee requiring it to refer to the adjudicator any proposals which have been submitted to the committee but which, at the time when the direction is given, have not been determined by the committee<sup>25</sup>, and all subsequent proposals submitted to it until the direction is revoked<sup>26</sup>. Where a school organisation committee refers any proposals to the adjudicator<sup>27</sup>, it must also refer to him any comments of the committee on the proposals<sup>28</sup>.

Where any proposals are referred to the adjudicator in this way<sup>29</sup>, the school organisation committee must also refer to him<sup>30</sup>:

- 321 (1) any other proposals published<sup>31</sup> in relation to the area of the local education authority<sup>32</sup> (and not withdrawn)<sup>33</sup>;
- 322 (2) any proposals made by that authority in the exercise of its powers to make or invite proposals for the establishment, alteration or discontinuance of schools<sup>34</sup> (and not withdrawn)<sup>35</sup>;
- 323 (3) any proposals published by that authority<sup>36</sup> (and not withdrawn)<sup>37</sup>;
- 324 (4) any proposals made by the governing body<sup>38</sup> of any community, foundation, voluntary or foundation special school<sup>39</sup> in the area in the exercise of its powers to make proposals for the alteration of its school<sup>40</sup> (and not withdrawn)<sup>41</sup>; and
- 325 (5) any proposals published under the provisions relating to inadequate sixth forms<sup>42</sup> (and not withdrawn)<sup>43</sup>,

where those proposals are not determined<sup>44</sup> before the adjudicator holds an inquiry<sup>45</sup>, and appear to the committee to be related to the proposals referred by it to the adjudicator under the provisions<sup>46</sup> relating to the giving of approval<sup>47</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

3 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of ibid s 122(2), (3). See also PARA 132 note 2 ante.

4 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

6 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

7 Ie under the Education Act 2005 Sch 11 para 7 (not yet in force): see PARA 178 ante.

8 As to the Secretary of State see PARA 52 ante.

9 Ie under the Education Act 2005 Sch 11 para 9 (not yet in force). For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

10 Ibid Sch 11 para 9(1). See note 1 supra. For the meaning of 'adjudicator' see PARA 124 ante. As to approval by the adjudicator see Sch 11 para 11 (not yet in force); and PARA 181 post.

Schedule 11 para 9(1) does not prevent the Secretary of State from withdrawing any proposals published under Sch 11 para 7 (not yet in force) (see PARA 178 ante) by notice in writing given to the school organisation committee at any time before the proposals are determined under Sch 11 para 9 (not yet in force) or Sch 11 para 11 (not yet in force): Sch 11 para 9(10).

11 Ie subject to ibid Sch 11 para 9(3) (not yet in force) (see note 14 infra) and Sch 11 para 9(8) (not yet in force) (see the text and notes 25-26 infra).

12 Ibid Sch 11 para 9(2)(a). See note 1 supra. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 122(2), (3).

13 Ibid Sch 11 para 9(2)(b). See note 1 supra.

14 Ibid Sch 11 para 9(2)(c). See note 1 supra. As to referral to the adjudicator see Sch 11 para 9(6), (7) (not yet in force); and the text and notes 18-24 infra. The committee may, if it thinks it appropriate to do so, and subject to regulations, refer to the adjudicator any proposals which would otherwise fall to be dealt with by it under Sch 11 para 9(2) (not yet in force): Sch 11 para 9(3). For the purposes of Pt 2 (ss 64-73) (not yet in force), 'regulations' means regulations made under Pt 2 (not yet in force): s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

15 Ibid Sch 11 para 9(4). See note 1 supra.

16 Ibid Sch 11 para 9(4). See note 1 supra.

17 Ibid Sch 11 para 9(5). See note 1 supra.

18 Ibid Sch 11 para 9(6)(a). See note 1 supra.

19 Ibid Sch 11 para 9(6)(b). See note 1 supra.

20 Ibid Sch 11 para 9(6). See note 1 supra.

21 Ie in accordance with regulations under the School Standards and Framework Act 1998 s 24(5), Sch 4 para 5 (as amended; prospectively further amended): see PARA 122 ante.

22 Education Act 2005 Sch 11 paras 1, 9(7)(a). See note 1 supra.

- 23 Ibid Sch 11 para 9(7)(b). See note 1 supra.
- 24 Ibid Sch 11 para 9(7). See note 1 supra.
- 25 Ibid Sch 11 para 9(8)(a). See note 1 supra.
- 26 Ibid Sch 11 para 9(8)(b). See note 1 supra.
- 27 Ie under ibid Sch 11 para 9(6)-(8) (not yet in force) (see the text and notes 18-26 supra).
- 28 Ibid Sch 11 para 9(9). See note 1 supra.
- 29 Ie under ibid Sch 11 para 9 (not yet in force) (see the text and notes 1-28 supra).
- 30 Ibid Sch 11 para 10(1). See note 1 supra.
- 31 Ie published under ibid Sch 11 para 7 (not yet in force): see PARA 178 ante.
- 32 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 122(2), (3). As to local education authorities see PARA 20 ante.
- 33 Ibid Sch 11 para 10(1)(a). See note 1 supra.
- 34 For the meaning of 'powers to make or invite proposals for the establishment, alteration or discontinuance of schools' see PARA 175 note 9 ante.
- 35 Education Act 2005 Sch 11 para 10(1)(b). See note 1 supra.
- 36 Ie under ibid s 66(8)(a) (not yet in force): see PARA 158 ante. Regulations may provide that, where proposals are referred to the adjudicator under Sch 11 para 10(1) (not yet in force) which consist of or include proposals to establish an academy, the adjudicator must within the prescribed period consult the Secretary of State, in accordance with regulations, before taking any decision under Sch 11 para 10 (not yet in force): Sch 11 para 12(1). 'Regulations' means regulations made under Pt 2 (not yet in force) by the Secretary of State: s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes. As to proposals under the Education Act 2005 to establish academies see PARA 498 et seq post.
- 37 Ibid Sch 11 para 10(1)(c). See note 1 supra.
- 38 As to the governing bodies of maintained schools see PARA 203 et seq post.
- 39 As to community schools, foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.
- 40 For the meaning of 'powers to make proposals for the alteration of its school' see PARA 175 note 12 ante.
- 41 Education Act 2005 Sch 11 para 10(1)(d). See note 1 supra.
- 42 Ie under the provisions of the Learning and Skills Act 2000 s 113 (as amended in relation to England; prospectively amended in relation to Wales), Sch 7 (as amended; prospectively further amended in relation to Wales): see PARA 1275 et seq post.
- 43 Education Act 2005 Sch 11 para 10(1)(e). See note 1 supra.
- 44 In ibid Sch 11 para 10 (not yet in force), references to the determination of any proposals are references to: (1) any determination whether or not to approve the proposals under the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended) (see PARA 138 ante), the Education Act 2005 s 66(12), Sch 10 para 4 (not yet in force) (see PARA 160 ante), Sch 11 para 9(2)(a), (b) (not yet in force) (see the text and notes 11-13 supra) or Sch 11 para 11(3) (not yet in force) (see PARA 181 post); or (2) any determination whether or not to approve the proposals under the Learning and Skills Act 2000 Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post): Education Act 2005 Sch 11 paras 1, 10(3). See note 1 supra.
- 45 Ie under ibid Sch 11 para 11(1) (not yet in force): see PARA 181 post.
- 46 Ie the provisions of ibid Sch 11 para 9 (not yet in force) (see the text and notes 1-28 supra).



47 Ibid Sch 11 para 10(1). Schedule 11 para 10(1) (not yet in force) applies to proposals whether or not the proposals have been previously referred to the adjudicator by the committee: Sch 7 para 10(2). See note 1 *supra*.

## **UPDATE**

### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(B) The System under the Education Act 2005/(b) Procedure relating to Rationalisation Proposals/181. Local inquiry into proposals.

### **181. Local inquiry into proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where any proposals for the establishment<sup>2</sup>, alteration<sup>3</sup> or discontinuance<sup>4</sup> of schools<sup>5</sup> relating to an area in England<sup>6</sup> are referred to the adjudicator<sup>7</sup>, he must hold a local inquiry<sup>8</sup> to consider<sup>9</sup>: (1) those proposals<sup>10</sup>; (2) any additional proposals referred<sup>11</sup> to him<sup>12</sup>; (3) any objections or comments made<sup>13</sup> to any proposals within head (1) or head (2) above unless such objections or comments have been withdrawn<sup>14</sup>; and (4) any views expressed by the school organisation committee<sup>15</sup> on any such proposals<sup>16</sup>. After holding the inquiry, the adjudicator must, in the case of any proposals considered at the inquiry, either approve them with or without modifications<sup>17</sup>, or reject them<sup>18</sup>. Any approval so given may be expressed to take effect only if an event specified in the approval occurs by a date so specified<sup>19</sup>; and regulations may prescribe<sup>20</sup> the events that may be so specified<sup>21</sup>. When deciding whether or not to give any approval, the adjudicator must have regard to any guidance given from time to time by the Secretary of State<sup>22</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).

3 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of *ibid* s 122(2), (3). See also PARA 132 note 2 ante.

4 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3).

6 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

7 *Ie* under the Education Act 2005 Sch 11 para 9 (not yet in force): see PARA 180 ante. For the meaning of 'adjudicator' see PARA 124 ante.

8 It is not open to the inquiry to question the principles specified in the direction under *ibid* Sch 11 para 3(2) (not yet in force) (see PARA 175 ante) or Sch 11 para 4(2) (not yet in force) (see PARA 176 ante): Sch 11 para 11(2). See note 1 *supra*.

9 *Ibid* Sch 11 para 11(1). See note 1 *supra*.

10 *Ibid* Sch 11 para 11(1)(a). See note 1 *supra*.

11 *Ie* under *ibid* Sch 11 para 10(1) (not yet in force): see PARA 180 ante.

12 *Ibid* Sch 11 para 11(1)(b). See note 1 *supra*.

13 *Ie* under the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 2 (as amended; prospectively further amended) (see PARA 138 ante), the Education Act 2005 s 66(12), Sch 10 para 3 (not yet in force) (see PARA 159 ante) or Sch 11 para 8 (not yet in force) (see PARA 179 ante).

14 *Ibid* Sch 11 paras 1, 11(1)(c). See note 1 *supra*.

15 For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

16 Education Act 2005 Sch 11 para 11(1)(d). See note 1 supra.

17 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 122(2), (3).

18 *Ibid* Sch 11 para 11(3). See note 1 supra. The adjudicator may not approve under Sch 11 para 11 (not yet in force) proposals to establish an academy unless the Secretary of State, on being consulted under Sch 11 para 12(1) (not yet in force) (see PARA 180 note 36 ante), has indicated in accordance with regulations that, if the proposals were approved, he would be willing to commence negotiations with a view to entering into an agreement under the Education Act 1996 s 482 (as substituted) (see PARA 496 post) for the establishment of an academy: Education Act 2005 Sch 11 para 12(2). Approval under Sch 11 para 11 (not yet in force) of proposals to establish an academy does not oblige the Secretary of State to enter into, or seek to enter into, an agreement under the Education Act 1996 s 482 (as substituted): Education Act 2005 Sch 11 para 12(3). 'Regulations' means regulations made under Pt 2 (not yet in force): s 73. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes. As to proposals under the Education Act 2005 to establish academies see PARA 498 et seq post. As to the Secretary of State see PARA 52 ante.

19 *Ibid* Sch 11 para 11(4). See note 1 supra.

20 For the purposes of *ibid* Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations (see note 18 supra): s 73. At the date at which this volume states the law, no such regulations had been made.

21 *Ibid* Sch 11 para 11(4). See note 1 supra.

22 *Ibid* Sch 11 paras 9(5), 11(5). See note 1 supra.

## **UPDATE**

### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(B) The System under the Education Act 2005/(b) Procedure relating to Rationalisation Proposals/182. Implementation of proposals.

## **182. Implementation of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals for the establishment<sup>2</sup>, alteration<sup>3</sup> or discontinuance<sup>4</sup> of schools<sup>5</sup> relating to an area in England<sup>6</sup> which are approved by the school organisation committee<sup>7</sup> or by the adjudicator<sup>8</sup> have effect as if they:

- 326 (1) had been made by the local education authority<sup>9</sup> under its powers to make or invite proposals for the establishment, alteration or discontinuance of schools<sup>10</sup>; or
- 327 (2) in any case where the proposals are for the alteration of a foundation, voluntary or foundation special school<sup>11</sup>, had been made by the governing body<sup>12</sup> under its powers to make proposals for the alteration of its school<sup>13</sup>,

and had been approved by the school organisation committee or the adjudicator, as the case may be, under the provisions<sup>14</sup> relating to the establishment, alteration or discontinuance of schools<sup>15</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

3 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of ibid s 122(2), (3). See also PARA 132 note 2 ante.

4 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

6 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 et seq post.

7 Ie under the Education Act 2005 Sch 11 para 9 (not yet in force): see PARA 180 ante. For the meaning of 'adjudicator' see PARA 124 ante.

8 Ie under ibid Sch 11 para 11 (not yet in force): see PARA 181 ante. For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

9 As to local education authorities see PARA 20 ante.

10 Education Act 2005 Sch 11 para 13(a). See note 1 supra. For the meaning of 'powers to make or invite proposals for the establishment, alteration or discontinuance of schools' see PARA 175 note 9 ante.

11 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

12 As to the governing bodies of maintained schools see PARA 203 et seq post.

13 Education Act 2005 Sch 11 para 13(b). See note 1 supra. For the meaning of 'powers to make proposals for the alteration of its school' see PARA 175 note 12 ante.

14     le under the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 para 3 (as amended; prospectively further amended): see PARA 138 ante.

15     Education Act 2005 Sch 11 para 13. See note 1 supra. Proposals for the establishment, alteration or discontinuance of schools relating to an area in England which are approved by the school organisation committee or by the adjudicator have effect as mentioned in heads (1) and (2) in the text in the case of proposals to establish an academy (see PARA 498 post) under Sch 10 para 4 (not yet in force) (see PARA 499 post): Sch 11 para 13.

## **UPDATE**

### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/E. RATIONALISATION OF SCHOOL PLACES IN ENGLAND/(B) The System under the Education Act 2005/(b) Procedure relating to Rationalisation Proposals/183. Proposals for single-sex school to become co-educational.

### **183. Proposals for single-sex school to become co-educational.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where proposals are made<sup>2</sup> for a school<sup>3</sup> in England<sup>4</sup> to cease to be an establishment which admits pupils<sup>5</sup> of one sex only<sup>6</sup>, and the Secretary of State<sup>7</sup> sends<sup>8</sup> a copy of the published proposals to the school organisation committee<sup>9</sup>, then the sending of the published proposals to the school organisation committee by the Secretary of State is to be treated as an application by the responsible body<sup>10</sup> for the making by the school organisation committee of a transitional exemption order<sup>11</sup> authorising discriminatory admissions during a specified transitional period, and the committee may make such an order accordingly<sup>12</sup>. Where the school organisation committee has failed to reach a unanimous decision on whether to make a transitional exemption order<sup>13</sup>, or where the school organisation committee refers the proposals to the adjudicator<sup>14</sup>, the committee must refer the question whether to make a transitional exemption order to the adjudicator<sup>15</sup>. Where that question is referred to the adjudicator he must consider the matter afresh<sup>16</sup>, and he may make a transitional exemption order accordingly<sup>17</sup>.

1 The Education Act 2005 s 67, Sch 11 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 *Ie* under *ibid* Sch 11 para 7 (not yet in force): see PARA 178 ante.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 122(2), (3).

4 For the meaning of 'England' see PARA 52 note 11 ante. As to the rationalisation of school places in Wales see PARA 193 *et seq* post.

5 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

6 For the purposes of *ibid* Sch 11 para 14 (not yet in force), references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration of a school's admissions arrangements as is mentioned in the Sex Discrimination Act 1975 s 27(1) (single-sex establishments becoming co-educational: see DISCRIMINATION vol 13 (2007 Reissue) PARA 381): Education Act 2005 Sch 11 para 14(6). See note 1 *supra*. As to sex discrimination in educational establishments see PARA 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARAS 378-381. As to admission arrangements see PARA 398 *et seq* post.

7 As to the Secretary of State see PARA 52 ante.

8 *Ie* in accordance with the Education Act 2005 Sch 11 para 7(5) (not yet in force): see PARA 178 ante.

9 *Ibid* Sch 11 para 14(1), (2). See note 1 *supra*. For the meaning of 'school organisation committee' see PARA 159 note 8 ante.

10 For these purposes, 'the responsible body' has the same meaning as in the Sex Discrimination Act 1975 s 22 (as amended) (see PARA 6 ante): Education Act 2005 Sch 11 para 14(6). See note 1 *supra*.

11 For these purposes, 'transitional exemption order' has the same meaning as in the Sex Discrimination Act 1975 s 27 (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 381): Education Act 2005 Sch 11 para 14(6). See note 1 *supra*.

12 Ibid Sch 11 para 14(3); Sex Discrimination Act 1975 s 27(1A) (added by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 6). For these purposes, 'make', in relation to a transitional exemption order, includes (so far as the context permits) vary or revoke: Education Act 2005 Sch 11 para 14(6). See note 1 supra.

13 Ibid Sch 11 para 14(4)(a). See note 1 supra.

14 Ibid Sch 11 para 14(4)(b). See note 1 supra. As to the reference of proposals to the adjudicator as mentioned in the text see Sch 11 para 9 (not yet in force); and PARA 180 ante. For the meaning of 'adjudicator' see PARA 124 ante.

15 Ibid Sch 11 para 14(4). See note 1 supra.

16 Ibid Sch 11 para 14(5)(a). See note 1 supra.

17 Ibid Sch 11 para 14(5)(b). See note 1 supra.

## **UPDATE**

### **175-183 The System under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(a) Directions to bring forward Rationalisation Proposals/184. Directions to bring forward proposals to remedy excessive provision of school places in Wales.

## **F. RATIONALISATION OF SCHOOL PLACES IN WALES**

### **(A) THE SYSTEM UNDER THE**

#### *(a) Directions to bring forward Rationalisation Proposals*

#### **184. Directions to bring forward proposals to remedy excessive provision of school places in Wales.**

Where the National Assembly for Wales<sup>1</sup> is of the opinion that the provision for primary<sup>2</sup> or secondary<sup>3</sup> education in maintained schools<sup>4</sup> in the area of any local education authority<sup>5</sup>, or in any part of such an area, is excessive<sup>6</sup>, then, for the purpose of remedying the excess, the Assembly may:

- 328 (1) by an order direct the local education authority to exercise its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>7</sup>; and
- 329 (2) in the case of any foundation, voluntary or foundation special school<sup>8</sup> maintained by the authority, by an order direct the governing body<sup>9</sup> to exercise its powers to make proposals for the alteration of its school<sup>10</sup>.

Such an order must require the proposals to be published not later than such date as may be specified in the order<sup>11</sup>, and require the proposals to apply such principles in giving effect to the direction as may be specified in the order<sup>12</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 193 et seq post. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

4 For the meaning of 'maintained school' see PARA 94 ante.

5 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to local education authorities see PARA 20 ante.

6 Ibid s 34, Sch 7 para 2(1). See note 1 supra.

7 Ibid Sch 7 para 2(2)(a). An order under Sch 7 para 2(2)(a) may not require the proposals to relate to any named school: Sch 7 para 2(4). Orders under Sch 7 para 2 are not made by statutory instrument: see s 138(2)



(as amended); and PARA 82 note 15 ante. For the purposes of Sch 7 (as amended), 'powers to make proposals for the establishment, alteration or discontinuance of schools' means all or any of the powers of the local education authority to publish proposals under s 28 (see PARA 132 ante), s 29 (see PARA 134 ante) or s 31 (see PARA 136 ante): Sch 7 para 1(a). See note 1 supra.

Regulations may make provision modifying any provision contained in Sch 7 (as amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

8 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

9 As to the governing bodies of maintained schools see PARA 203 et seq post.

10 School Standards and Framework Act 1998 Sch 7 para 2(2)(b). For the purposes of Sch 7 (as amended), 'powers to make proposals for the alteration of its school', in relation to the governing body of a foundation, voluntary or foundation special school, means its powers to publish proposals under s 28(2)(b) (see PARA 132 ante) or s 31(2)(a) (see PARA 136 ante): Sch 7 para 1(b). See note 1 supra.

11 Ibid Sch 7 para 2(3)(a). See note 1 supra.

12 Ibid Sch 7 para 2(3)(b). See note 1 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(a) Directions to bring forward Rationalisation Proposals/185. Directions to bring forward proposals to remedy insufficient provision of school places in Wales.

**185. Directions to bring forward proposals to remedy insufficient provision of school places in Wales.**

Where the National Assembly for Wales<sup>1</sup> is of the opinion that the provision for primary<sup>2</sup> or secondary<sup>3</sup> education in maintained schools<sup>4</sup> in the area of any local education authority<sup>5</sup>, or in any part of such an area, is, or is likely to become, insufficient<sup>6</sup>, then the Assembly may:

- 330 (1) by an order direct the local education authority to exercise its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>7</sup>; and
- 331 (2) in the case of any foundation, voluntary or foundation special school<sup>8</sup> maintained by the authority, by an order direct the governing body<sup>9</sup> to exercise its powers to make proposals for the alteration of its school<sup>10</sup>,

with a view (in each case) to securing that provision is made for such additional number of pupils<sup>11</sup> in the area, or in any such part of the area, as may be specified in the order<sup>12</sup>. Such an order must require the proposals to be published not later than such date as may be specified in the order<sup>13</sup>, and must also require the proposals to apply such principles in giving effect to the direction as may be specified in the order<sup>14</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 203 et seq post. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

4 For the meaning of 'maintained school' see PARA 94 ante.

5 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to local education authorities see PARA 20 ante.

6 Ibid s 34, Sch 7 para 3(1). See note 1 supra.

7 Ibid Sch 7 para 3(2)(a). Orders under Sch 7 para 3 are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante. For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 166 note 8 ante. An order under Sch 7 para 3(2)(a) may not require the proposals to relate to any named school: Sch 7 para 3(4). See note 1 supra.

Regulations may make provision modifying any provision contained in Sch 7 (as amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made

under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

8 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

9 As to the governing bodies of maintained schools see PARA 203 et seq post.

10 School Standards and Framework Act 1998 Sch 7 para 3(2)(b). See note 1 supra. For the meaning of 'powers to make proposals for the alteration of its school' see PARA 166 note 12 ante.

11 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

12 Ibid Sch 7 para 3(2). See note 1 supra.

13 Ibid Sch 7 para 3(3)(a). See note 1 supra.

14 Ibid Sch 7 para 3(3)(b). See note 1 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(a) Directions to bring forward Rationalisation Proposals/186. Procedure after directions have been given.

## **186. Procedure after directions have been given.**

Proposals to remedy deficiencies in the provision of school places made in pursuance of an order<sup>1</sup> relating to an area in Wales<sup>2</sup> may not be withdrawn without the consent of the National Assembly for Wales<sup>3</sup>; and such consent may be given on such conditions (if any) as the Assembly considers appropriate<sup>4</sup>.

Where the governing body<sup>5</sup> of a foundation, voluntary or foundation special school<sup>6</sup> makes any proposals in pursuance of an order<sup>7</sup> relating to an area in Wales, the local education authority<sup>8</sup> must reimburse any expenditure reasonably incurred by the governing body in making the proposals<sup>9</sup>.

1     le an order made under the School Standards and Framework Act 1998 s 34, Sch 7 para 2(2) (see PARA 166 ante) or Sch 7 para 3(2) (see PARA 167 ante).

2     For the meaning of 'Wales' see PARA 52 note 13 ante.

3     School Standards and Framework Act 1998 Sch 7 para 4(7). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

Section 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 193 et seq post. At the date at which this volume states the law, no such day had been appointed. As to the rationalisation of school places in England see PARA 166 et seq ante.

4     School Standards and Framework Act 1998 Sch 7 para 4(7). See note 3 supra.

5     As to the governing bodies of maintained schools see PARA 203 et seq post.

6     As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

7     le an order made under the School Standards and Framework Act 1998 Sch 7 para 2(2) (see PARA 166 ante) or Sch 7 para 3(2) (see PARA 167 ante).

8     As to local education authorities see PARA 20 ante.

9     School Standards and Framework Act 1998 Sch 7 para 4(8). Where proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of an order under Sch 7 para 2(2) (see PARA 166 ante) or Sch 7 para 3(2) (see PARA 167 ante) are approved or, as the case may be, determined to be implemented, or where proposals approved or adopted under Sch 7 para 14 (see PARA 190 post) have effect as mentioned in Sch 7 para 15(b) (see PARA 173 ante), then, despite anything in Sch 6 Pt III paras 11-15 (see PARAS 141-144 ante), the local education authority must defray the cost of implementing the proposals: Sch 7 para 4(9). See note 3 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/187. Publication of proposals relating to an area in Wales.

*(b) Procedure relating to Rationalisation Proposals*

**187. Publication of proposals relating to an area in Wales.**

Where the National Assembly for Wales<sup>1</sup> has, in relation to the area of any local education authority<sup>2</sup> or any part of such an area, made an order<sup>3</sup> directing the local education authority or the governing body<sup>4</sup> of a foundation, voluntary or foundation special school<sup>5</sup> to make proposals for the establishment, alteration or discontinuance of schools<sup>6</sup> or (as the case may be) for the alteration of its school, and any proposals have been published in pursuance of the order or the time allowed under the order for the publication of the proposals has expired, then it may make any such proposals as might have been made in accordance with the order relating to that area or that part of that area by the body to whom the directions were given<sup>7</sup>. Such proposals must contain such information, and be published in such manner, as may be prescribed<sup>8</sup>.

Where any proposals relate to an area in Wales, a copy of the proposals must be sent to the local education authority for the area<sup>9</sup>, and to the governing body of each school to which the proposals relate<sup>10</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 193 et seq post. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

5 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to local education authorities see PARA 20 ante.

3 le under ibid s 34, Sch 7 para 2(2) (see PARA 166 ante) or Sch 7 para 3(2) (see PARA 167 ante).

4 As to the governing bodies of maintained schools see PARA 203 et seq post.

5 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

6 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante. As to the meaning of 'discontinue' see PARA 134 note 2 ante; and see also PARA 132 note 2 ante.

Proposals under Sch 7 para 5 (prospectively amended) for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post) (s 74(1), (3)); and regulations may make provision modifying any provision contained in the School Standards and Framework Act 1998 Sch 7 (as amended) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school (Education Act 2002 s 74(2)). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been

made for the purposes of s 74. As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (5)(a), the Education Act 2002 s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2, and the provisions of the Education Act 2002 s 74(1), (3) are re-enacted as the Education Act 2005 s 68 (not yet in force) (proposals for establishment of federated school). At the date at which this volume states the law, no such day had been appointed.

7 School Standards and Framework Act 1998 Sch 7 para 5(1). See note 1 supra.

8 Ibid Sch 7 para 5(2). See note 1 supra. 'Prescribed' means prescribed by regulations: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 5 (prospectively amended) see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).

9 School Standards and Framework Act 1998 Sch 7 para 5(4)(a). See note 1 supra.

10 Ibid Sch 7 para 5(4)(b). See note 1 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

### **187 Publication of proposals relating to an area in Wales**

NOTE 8--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/1780 further amended: see PARA 136 NOTE 4.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/188. Objections to proposals relating to an area in Wales.

### **188. Objections to proposals relating to an area in Wales.**

Any person may make objections to any proposals to remedy deficiencies in the provision of school places<sup>1</sup> relating to an area in Wales<sup>2</sup> which are published<sup>3</sup> by the National Assembly for Wales<sup>4</sup>. Such objections must be sent to the National Assembly for Wales within such period as may be prescribed<sup>5</sup>.

1     Ie proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 s 34, Sch 7 para 5 (prospectively amended): see PARA 169 ante.

2     For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

3     Ie published under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 169 ante.

4     Ibid Sch 7 paras 11, 12(1). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

Schedule 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 193 et seq post. At the date at which this volume states the law, no such day had been appointed.

5     School Standards and Framework Act 1998 Sch 7 paras 11, 12(2)(a), (b). See note 4 supra. 'Prescribed' means prescribed by regulations: see s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 12 see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

### **188 Objections to proposals relating to an area in Wales**

NOTE 5--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/1780 further amended: see PARA 136 NOTE 4.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/189. Local inquiry into proposals relating to an area in Wales.

### **189. Local inquiry into proposals relating to an area in Wales.**

Where, in relation to the area of any local education authority<sup>1</sup>, the National Assembly for Wales<sup>2</sup> has made proposals to remedy deficiencies in the provision of school places<sup>3</sup> which it has not withdrawn<sup>4</sup>, and objections have been made<sup>5</sup> within the prescribed period<sup>6</sup>, then, unless all those objections have been withdrawn in writing within that period, the Assembly must cause a local inquiry to be held to consider its proposals, any proposals it refers to the inquiry and any such objections<sup>7</sup>. Any proposals referred to a local inquiry in this way require the approval of the Assembly<sup>8</sup>. Where the Assembly has a duty to cause such a local inquiry to be held, it must refer to the inquiry:

- 332 (1) any other proposals published<sup>9</sup> in relation to the area of the local education authority (and not withdrawn)<sup>10</sup>;
- 333 (2) any proposals made by that authority in the exercise of its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>11</sup> (and not withdrawn)<sup>12</sup>;
- 334 (3) any proposals made by the governing body<sup>13</sup> of any foundation, voluntary or foundation special school<sup>14</sup> in the area in the exercise of its powers to make proposals for the alteration of its school<sup>15</sup> (and not withdrawn)<sup>16</sup>; and
- 335 (4) any proposals published under the provisions relating to inadequate sixth forms<sup>17</sup> (and not withdrawn)<sup>18</sup>,

where those proposals are not determined<sup>19</sup> before the Assembly causes the inquiry to be held and appear to it to be related to the proposals<sup>20</sup> in respect of which it is required to cause the inquiry to be held<sup>21</sup>. If, before the Assembly causes the inquiry to be held, it forms the opinion that any proposals ought to be implemented, the provisions described above do not require it to refer those proposals to the inquiry unless before the proceedings on the inquiry are concluded, or (if earlier) the proposals are determined, the Assembly subsequently forms a different opinion<sup>22</sup>.

1 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to local education authorities see PARA 20 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

Ibid s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 193 et seq post. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

3 Ie proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended) (see PARA 169 ante), otherwise than in pursuance of Sch 7 para 14(1) (see PARA 190 post).

4 Ibid Sch 7 paras 11, 13(1). See note 2 supra.

5 le under *ibid* Sch 7 para 12(1): see PARA 170 ante.

6 le the period prescribed in accordance with *ibid* Sch 7 para 12(2)(b): see PARA 170 ante. 'Prescribed' means prescribed by regulations: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

7 *Ibid* Sch 7 paras 11, 13(2). It is not open to the inquiry to question the principles specified in the order under Sch 7 para 2(2) (see PARA 166 ante) or Sch 7 para 3(2) (see PARA 167 ante): Sch 7 paras 11, 13(6). See note 2 supra.

8 *Ibid* Sch 7 paras 11, 13(3). This provision applies if the proposals would not otherwise require such approval: Sch 7 para 13(3). See note 2 supra.

9 le under *ibid* Sch 7 para 5 (prospectively amended): see PARA 169 ante.

10 *Ibid* Sch 7 paras 11, 13(4)(a). See note 2 supra.

11 For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 166 note 8 ante.

Regulations may make provision modifying any provision contained in *ibid* Sch 7 (as amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

12 School Standards and Framework Act 1998 Sch 7 paras 11, 13(4)(b). See note 2 supra.

13 As to the governing bodies of maintained schools see PARA 293 et seq post.

14 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

15 For the meaning of 'powers to make proposals for the alteration of its school' see PARA 166 note 12 ante.

16 School Standards and Framework Act 1998 Sch 7 paras 11, 13(4)(c). See note 2 supra.

17 le the Learning and Skills Act 2000 s 113, Sch 7 (as amended in relation to England; prospectively amended in relation to Wales): see PARA 1275 et seq post.

18 School Standards and Framework Act 1998 Sch 7 paras 11, 13(4)(d) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 90). See note 2 supra.

19 References in the School Standards and Framework Act 1998 Sch 7 para 13 (as amended) to the determination of any proposals are references to: (1) any determination whether or not to approve or adopt the proposals under Sch 6 para 8 (see PARA 138 ante) or Sch 7 para 14 (see PARA 190 post) (Sch 7 paras 11, 13(7)(a)); (2) any determination whether or not to implement the proposals under Sch 6 para 9 (see PARA 139 ante) (Sch 7 paras 11, 13(7)(b)); or (3) any determination whether or not to approve the proposals under the Learning and Skills Act 2000 Sch 7 (as amended; prospectively further amended) (see PARA 1275 et seq post) (School Standards and Framework Act 1998 Sch 7 paras 11, 13(7)(c) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 90)). See note 2 supra.

20 le made under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 187 ante.

21 *Ibid* Sch 7 paras 11, 13(4). See note 2 supra.

22 *Ibid* Sch 7 paras 11, 13(5). See note 2 supra.

## UPDATE

**184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/190. Adoption of proposals relating to an area in Wales.

### **190. Adoption of proposals relating to an area in Wales.**

Where the National Assembly for Wales<sup>1</sup> has published<sup>2</sup> proposals to remedy deficiencies in the provision of school places<sup>3</sup> which relate to an area in Wales and in respect of which it is required to cause a local inquiry<sup>4</sup> to be held, it may, when it has considered the report of the person appointed to hold the inquiry, do one or more of the following<sup>5</sup>:

- 336 (1) adopt, with or without modifications, or determine not to adopt the proposals or any other proposals made by it<sup>6</sup> which it referred to the inquiry<sup>7</sup>;
- 337 (2) approve, with or without modifications, or reject any other proposals which it referred to the inquiry<sup>8</sup>; and
- 338 (3) make any such further proposals<sup>9</sup> as might have been made in accordance with the order or orders relating to the area of the local education authority<sup>10</sup> concerned by the body to whom the directions<sup>11</sup> were given<sup>12</sup>.

Where the Assembly has published proposals<sup>13</sup> in respect of which it is not required to cause a local inquiry to be held and which it is not required to refer to such an inquiry, it may, after considering any objections made<sup>14</sup> (and not withdrawn) within the prescribed period<sup>15</sup>, adopt the proposals with or without modifications, or determine not to adopt the proposals<sup>16</sup>. Any such adoption of proposals may be expressed to take effect only if an event specified in the adoption occurs by a date so specified<sup>17</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales: see PARA 193 et seq post. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 Ie under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 169 ante.

3 Ie proposals for the rationalisation of school places made under ibid Sch 7 para 5 (prospectively amended): see PARA 169 ante.

4 As to local inquiries see PARA 172 ante.

5 School Standards and Framework Act 1998 Sch 7 paras 11, 14(1). See note 1 supra.

6 Ie under ibid Sch 7 para 5 (prospectively amended): see PARA 169 ante.

7 Ibid Sch 7 paras 11, 14(1)(a). See note 1 supra.

8 Ibid Sch 7 paras 11, 14(1)(b). See note 1 supra.

9 Ie under ibid Sch 7 para 5 (prospectively amended): see PARA 169 ante.

10 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of *ibid* s 142(8). As to local education authorities see PARA 20 ante.

11 As to directions for the rationalisation of school places see PARAS 166-168 ante.

12 School Standards and Framework Act 1998 Sch 7 paras 11, 14(1)(c). See note 1 *supra*.

13 *Ie* under *ibid* Sch 7 para 5 (prospectively amended): see PARA 169 ante.

14 *Ie* under *ibid* Sch 7 para 12(1): see PARA 170 ante.

15 *Ie* the period prescribed in accordance with *ibid* Sch 7 para 12(2)(b): see PARA 170 ante. 'Prescribed' means prescribed by regulations: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

16 *Ibid* Sch 7 para 14(2). See note 1 *supra*.

17 *Ibid* Sch 7 para 14(3). See note 1 *supra*.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/191. Implementation of proposals relating to an area in Wales.

### **191. Implementation of proposals relating to an area in Wales.**

In relation to Wales<sup>1</sup>, proposals to remedy deficiencies in the provision of school places<sup>2</sup> adopted<sup>3</sup> by the National Assembly for Wales<sup>4</sup> have effect as if they:

- 339 (1) had been made by the local education authority<sup>5</sup> under its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>6</sup>; or
- 340 (2) in any case where the proposals are for the alteration of a foundation, voluntary or foundation special school, had been made by the governing body under its powers to make proposals for the alteration of its school<sup>7</sup>,

and had been approved<sup>8</sup> under the provisions relating to the establishment, alteration or discontinuance of schools by the Assembly<sup>9</sup>.

1 For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 Ie proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 s 34, Sch 7 para 5 (prospectively amended): see PARA 178 ante.

3 Ie under ibid Sch 7 para 14: see PARA 190 ante.

4 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

As from a day to be appointed, ibid Sch 7 (as amended) is further amended by the Education Act 2005 ss 125(4), 126(1), (3)(b) so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed.

5 As to local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 Sch 7 paras 11, 15(a). See note 4 supra.

Regulations may make provision modifying any provision contained in Sch 7 (as amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

7 School Standards and Framework Act 1998 Sch 7 paras 11, 15(b). See note 4 supra.

8 Ie under ibid Sch 6 para 8: see PARA 138 ante.

9 Ibid Sch 7 paras 11, 15. See note 4 supra.

**UPDATE**

**184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(A) The System under the School Standards and Framework Act 1998/(b) Procedure relating to Rationalisation Proposals/192. Proposals for single-sex school in Wales to become co-educational.

## **192. Proposals for single-sex school in Wales to become co-educational.**

Where proposals are made<sup>1</sup> for a school<sup>2</sup> in Wales<sup>3</sup> to cease to be an establishment which admits pupils of one sex only<sup>4</sup>, then the responsible body<sup>5</sup> is to be treated as having made an application to the National Assembly for Wales<sup>6</sup> for the making of a transitional exemption order<sup>7</sup>, and the Assembly may make such an order accordingly<sup>8</sup>.

1 Under the School Standards and Framework Act 1998 s 34, Sch 7 para 5 (prospectively amended): see PARA 169 ante.

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

3 For the meaning of 'Wales' see PARA 52 note 13 ante. As to proposals for single-sex schools in England to become co-educational under the Education Act 2005 see PARA 183 ante.

4 For the purposes of the School Standards and Framework Act 1998 Sch 7 para 17, references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration in a school's admissions arrangements as is mentioned in the Sex Discrimination Act 1975 s 27(1) (as amended) (single-sex establishments becoming co-educational: see DISCRIMINATION vol 13 (2007 Reissue) PARA 381); School Standards and Framework Act 1998 s 34, Sch 7 para 16(6). As to sex discrimination in educational establishments see PARA 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARAS 378-381. As to admission arrangements see PARA 398 et seq post. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 For these purposes, 'the responsible body' has the same meaning as in the Sex Discrimination Act 1975 s 22 (as amended) (see PARA 6 ante): School Standards and Framework Act 1998 Sch 7 para 16(6).

6 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 For these purposes, 'transitional exemption order' has the same meaning as in the Sex Discrimination Act 1975 s 27 (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 381); and 'make', in relation to a transitional exemption order, includes (so far as the context permits) vary or revoke: School Standards and Framework Act 1998 Sch 7 para 16(6).

8 Ibid Sch 7 para 17(1), (2); Sex Discrimination Act 1975 s 27(1A) (added by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 6).

As from a day to be appointed, the School Standards and Framework Act 1998 Sch 7 para 17 is amended by the Education Act 2005 s 72, Sch 12 para 14(1), (15): see PARA 201 post. At the date at which this volume states the law, no such day had been appointed.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.



**192 Proposals for single-sex school in Wales to become co-educational**

NOTE 8--1975 Act s 27(1A) substituted: Education and Inspections Act 2006 Sch 3 para 3.

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## (B) THE SYSTEM UNDER THE

### *(a) Directions to bring forward Rationalisation Proposals*

#### **193. Directions to bring forward proposals to remedy excessive provision of school places in Wales.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the National Assembly for Wales<sup>2</sup> is of the opinion that the provision for primary<sup>3</sup> or secondary<sup>4</sup> education in maintained schools<sup>5</sup> in the area of any local education authority<sup>6</sup> in Wales, or in any part of such an area, is excessive<sup>7</sup>, then, for the purpose of remedying the excess, the Assembly may<sup>8</sup>:

- 341 (1) by an order<sup>9</sup> direct the local education authority to exercise its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>10</sup>; and
- 342 (2) in the case of any foundation, voluntary or foundation special school<sup>11</sup> maintained by the authority, by an order<sup>12</sup> direct the governing body<sup>13</sup> to exercise its powers to make proposals for the alteration of its school<sup>14</sup>.

Such an order must require the proposals to be published not later than such date as may be specified in the order<sup>15</sup>, and require the proposals to apply such principles in giving effect to the direction as may be specified in the order<sup>16</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

5 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

6 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante.

7 Ibid Sch 7 para 1A (added by the Education Act 2005 s 72, Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 para 2(1) (amended by the Education Act 2005 Sch 12 para 14(1), (4)). See notes 1 supra, 10 infra.

8 School Standards and Framework Act 1998 Sch 7 para 2(2) (amended by the Education Act 2005 Sch 12 para 14(1), (4)(a)). See notes 1 supra, 10 infra.

9     Ie under the School Standards and Framework Act 1998 Sch 7 para 2 (prospectively amended). Orders under Sch 7 para 2 (prospectively amended) are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante.

10    Ibid Sch 7 para 2(2)(a). For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 184 note 7 ante. An order under Sch 7 para 2(2)(a) may not require the proposals to relate to any named school: Sch 7 para 2(4). See note 1 supra.

Regulations may make provision modifying any provision contained in Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

11    As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

12    See note 9 supra.

13    As to the governing bodies of maintained schools see PARA 203 et seq post.

14    School Standards and Framework Act 1998 Sch 7 para 2(2)(b). For the meaning of 'powers to make proposals for the alteration of its school' see PARA 184 note 10 ante. See notes 1, 10 supra.

15    Ibid Sch 7 para 2(3)(a). See notes 1, 10 supra.

16    Ibid Sch 7 para 2(3)(b). See notes 1, 10 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(B) The System under the School Standards and Framework Act 1998 modified for Wales/(a) Directions to bring forward Rationalisation Proposals/194. Directions to bring forward proposals to remedy insufficient provision of school places in Wales.

#### **194. Directions to bring forward proposals to remedy insufficient provision of school places in Wales.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the National Assembly for Wales<sup>2</sup> is of the opinion that the provision for primary<sup>3</sup> or secondary<sup>4</sup> education in maintained schools<sup>5</sup> in the area of any local education authority<sup>6</sup> in Wales, or in any part of such an area, is, or is likely to become, insufficient<sup>7</sup>, then the Assembly may<sup>8</sup>:

- 343 (1) by an order<sup>9</sup> direct the local education authority to exercise its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>10</sup>; and
- 344 (2) in the case of any foundation, voluntary or foundation special school<sup>11</sup> maintained by the authority, by an order<sup>12</sup> direct the governing body<sup>13</sup> to exercise its powers to make proposals for the alteration of its school<sup>14</sup>,

with a view (in each case) to securing that provision is made for such additional number of pupils<sup>15</sup> in the area, or in any such part of the area, as may be specified in the order<sup>16</sup>. Such an order must require the proposals to be published not later than such date as may be specified in the order<sup>17</sup>, and must also require the proposals to apply such principles in giving effect to the direction as may be specified in the order<sup>18</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

5 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

6 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante.

7 Ibid Sch 7 para 1A (added by the Education Act 2005 s 72, Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 para 3(1) (amended by the Education Act 2005 Sch 12 para 14(1), (5)). See notes 1 supra, 10 infra.

8 School Standards and Framework Act 1998 Sch 7 para 3(2) (amended by the Education Act 2005 Sch 12 para 14(1), (5)(a)). See notes 1 supra, 10 infra.

9 le under the School Standards and Framework Act 1998 Sch 7 para 3 (prospectively amended). Orders under Sch 7 para 3 (prospectively amended) are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante.

10 Ibid Sch 7 para 3(2)(a). For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 193 note 10 ante. An order under Sch 7 para 3(2)(a) may not require the proposals to relate to any named school: Sch 7 para 3(4). See note 1 supra.

Regulations may make provision modifying any provision contained in Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

11 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

12 See note 9 supra.

13 As to the governing bodies of maintained schools see PARA 203 et seq post.

14 School Standards and Framework Act 1998 Sch 7 para 3(2)(b). See notes 1, 10 supra. For the meaning of 'powers to make proposals for the alteration of its school' see PARA 193 note 14 ante.

15 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

16 Ibid Sch 7 para 3(2). See notes 1, 10 supra.

17 Ibid Sch 7 para 3(3)(a). See notes 1, 10 supra.

18 Ibid Sch 7 para 3(3)(b). See notes 1, 10 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(B) The System under the School Standards and Framework Act 1998 modified for Wales/(a) Directions to bring forward Rationalisation Proposals/195. Procedure after directions have been given.

## 195. Procedure after directions have been given.

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals made in pursuance of an order<sup>2</sup> directing the local education authority<sup>3</sup> to make proposals for the establishment<sup>4</sup>, alteration<sup>5</sup> or discontinuance<sup>6</sup> of schools<sup>7</sup> or the governing body<sup>8</sup> of a foundation, voluntary or foundation special school<sup>9</sup> to make proposals for the alteration of its school<sup>10</sup>, may not be withdrawn without the consent of the National Assembly for Wales<sup>11</sup>; and such consent may be given on such conditions (if any) as the Assembly considers appropriate<sup>12</sup>. Where the governing body of a foundation, voluntary or foundation special school makes any proposals in pursuance of any such order, the local education authority must reimburse any expenditure reasonably incurred by the governing body in making the proposals<sup>13</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 Ie an order made under the School Standards and Framework Act 1998 Sch 7 para 2(2) (prospectively amended) (see PARA 184 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 185 ante).

3 As to local education authorities see PARA 20 ante.

4 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

Regulations may make provision modifying any provision contained in Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

5 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). See also PARA 132 note 2 ante.

6 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of ibid s 142(8).

7 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

8 As to the governing bodies of maintained schools see PARA 203 et seq post.

9 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

10     le an order made under the School Standards and Framework Act 1998 Sch 7 para 2(2) (prospectively amended) (see PARA 184 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 185 ante). For the meaning of 'powers to make proposals for the alteration of its school' see PARA 193 note 14 ante.

11     Ibid Sch 7 para 1A (added by the Education Act 2005 s 72, Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 para 4(7) (amended by the Education Act 2005 s 123, Sch 12 para 14(1), (6)(b)). See note 1 supra. As to the National Assembly for Wales see PARA 53 ante.

12     School Standards and Framework Act 1998 Sch 7 para 4(7) (as amended: see note 11 supra).

13     Ibid Sch 7 para 4(8). Where proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of an order under Sch 7 para 2(2) (prospectively amended) (see PARA 184 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 185 ante) are approved or, as the case may be, determined to be implemented, or where proposals adopted under Sch 7 para 14 (prospectively amended) (see PARA 199 post) have effect as mentioned in Sch 7 para 15(b) (prospectively amended) (see PARA 200 post), then, despite anything in ss 28(8), 29(7), 31(8), Sch 6 Pt III paras 11-15 (as amended; prospectively further amended) (see PARAS 141-144 ante), the local education authority must defray the cost of implementing the proposals: Sch 7 para 4(9) (amended by the Education Act 2005 Sch 12 para 14(1), (6)(c)). See note 1 supra.

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*(b) Procedure relating to Rationalisation Proposals*

**UPDATE**

**184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

**196. Publication of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the National Assembly for Wales<sup>2</sup> has, in relation to the area of any local education authority<sup>3</sup> or any part of such an area, made an order<sup>4</sup> directing the local education authority or the governing body<sup>5</sup> of a foundation, voluntary or foundation special school<sup>6</sup> to make proposals for the establishment, alteration or discontinuance of schools<sup>7</sup> or (as the case may be) for the alteration of its school<sup>8</sup>, and either any proposals have been published in pursuance of the order<sup>9</sup> or the time allowed under the order for the publication of the proposals has expired<sup>10</sup>, then the Assembly may make any such proposals as might have been made in accordance with the order relating to that area or that part of that area by the body to whom the directions were given<sup>11</sup>. Such proposals must contain such information, and be published in such manner, as may be prescribed<sup>12</sup>. The Assembly must send a copy of the proposals to the local education authority for the area, and to the governing body of each school to which the proposals relate<sup>13</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to local education authorities see PARA 20 ante.

4 le under ibid Sch 7 para 2(2) (prospectively amended) (see PARA 184 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 185 ante).

5 As to the governing bodies of maintained schools see PARA 203 et seq post.

6 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

7 For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 193 note 10 ante. As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied



by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of s 142(8). As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of s 142(8). See also PARA 132 note 2 ante.

Proposals under Sch 7 para 5 (prospectively amended) for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post) (s 74(1), (3)); and regulations may make provision modifying any provision contained in the School Standards and Framework Act 1998 Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school (Education Act 2002 s 74(2)). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (5)(a), the Education Act 2002 s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2, and the provisions of the Education Act 2002 s 74(1), (3) are re-enacted as the Education Act 2005 s 68 (not yet in force) (proposals for establishment of federated school). At the date at which this volume states the law, no such day had been appointed.

8 School Standards and Framework Act 1998 Sch 7 para 1A (added by the Education Act 2005 s 72, Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 para 5(1)(a) (amended by the Education Act 2005 Sch 12 para 14(1), (8)(a)(ii)). See notes 1, 7 supra.

9 School Standards and Framework Act 1998 Sch 7 para 5(1)(b)(i). See notes 1, 7 supra.

10 Ibid Sch 7 para 5(1)(b)(ii). See notes 1, 7 supra.

11 Ibid Sch 7 para 5(1) (amended by the Education Act 2005 Sch 12 para 14(1), (8)(a)(ii)). See notes 1, 7 supra.

12 School Standards and Framework Act 1998 Sch 7 para 5(2). See notes 1, 7 supra. 'Prescribed' means prescribed by regulations: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 5 (prospectively amended) see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).

13 School Standards and Framework Act 1998 Sch 7 para 5(4) (amended by the Education Act 2005 Sch 12 para 14(1), (8)(c)). See notes 1, 7 supra.

## UPDATE

### 184-201 Rationalisation of School Places in Wales

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

### 196 Publication of proposals

NOTE 12--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/1780 further amended: see PARA 136 NOTE 4.

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## **197. Objections to proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Any person may make objections to any proposals<sup>2</sup> relating to an area in Wales<sup>3</sup> which are published<sup>4</sup> by the National Assembly for Wales<sup>5</sup>. Such objections must be sent to the Assembly within such period as may be prescribed<sup>6</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 Ie proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 187 ante.

3 For the meaning of 'Wales' see PARA 52 note 13 ante.

4 Ie published under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 187 ante.

5 Ibid Sch 7 para 1A (added by the Education Act 2005 s 72, Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 paras 11, 12(1). See note 1 supra. As to the National Assembly for Wales see PARA 53 ante.

6 Ibid Sch 7 paras 11, 12(2) (Sch 7 para 12(2) amended by the Education Act 2005 Sch 12 para 14(1), (10)). See note 1 supra. 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 7 para 12 (prospectively amended) see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908); and the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710).

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

## **197 Objections to proposals**

NOTE 6--SI 1999/1671 further amended: see PARA 132 NOTE 5. SI 1999/1780 further amended: see PARA 136 NOTE 4.

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### **198. Local inquiry into proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, in relation to the area of any local education authority<sup>2</sup>, the National Assembly for Wales<sup>3</sup> has made proposals<sup>4</sup> which it has not withdrawn<sup>5</sup>, and objections have been made<sup>6</sup> within the prescribed period<sup>7</sup>, then, unless all those objections have been withdrawn in writing within that period, the Assembly must cause a local inquiry to be held to consider its proposals, any proposals it refers to the inquiry and any such objections<sup>8</sup>. Any proposals referred to a local inquiry in this way require the approval of the Assembly<sup>9</sup>.

Where the Assembly has a duty to cause such a local inquiry to be held, it must refer to the inquiry<sup>10</sup>:

- 345 (1) any other proposals published<sup>11</sup> in relation to the area of the local education authority (and not withdrawn)<sup>12</sup>;
- 346 (2) any proposals made by that authority in the exercise of its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>13</sup> (and not withdrawn)<sup>14</sup>;
- 347 (3) any proposals made by the governing body<sup>15</sup> of any foundation, voluntary or foundation special school<sup>16</sup> in the area in the exercise of its powers to make proposals for the alteration of its school<sup>17</sup> (and not withdrawn)<sup>18</sup>; and
- 348 (4) any proposals published under the provisions relating to inadequate sixth forms<sup>19</sup> (and not withdrawn)<sup>20</sup>,

where those proposals are not determined<sup>21</sup> before the Assembly causes the inquiry to be held and appear to it to be related to the proposals<sup>22</sup> in respect of which it is required to cause the inquiry to be held<sup>23</sup>. If, before the Assembly causes the inquiry to be held, it forms the opinion that any proposals ought to be implemented, the provisions described above<sup>24</sup> do not require it to refer those proposals to the inquiry unless before the proceedings on the inquiry are concluded, or (if earlier) the proposals are determined, the Assembly subsequently forms a different opinion<sup>25</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to local education authorities see PARA 20 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 I.e proposals for the rationalisation of school places made under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended) (see PARA 187 ante), otherwise than in pursuance of Sch 7 para 14(1) (prospectively amended) (see PARA 190 ante).

5 Ibid Sch 7 paras 11, 13(1) (Sch 7 para 13(1) amended by the Education Act 2005 s 72, Sch 12 para 14(1), (11)(a)). See notes 1 supra, 13 infra.

6 Ie under the School Standards and Framework Act 1998 Sch 7 para 12(1): see PARA 170 ante.

7 Ie the period prescribed in accordance with ibid Sch 7 para 12(2)(b): see PARA 188 ante.

8 Ibid Sch 7 para 1A (added by the Education Act 2005 Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 paras 11, 13(2) (Sch 7 para 13(2) amended by the Education Act 2005 Sch 12 para 14(1), (11)(b)). It is not open to the inquiry to question the principles specified in the order under the School Standards and Framework Act 1998 Sch 7 para 2(2) (prospectively amended) (see PARA 184 ante) or Sch 7 para 3(2) (prospectively amended) (see PARA 185 ante): Sch 7 paras 11, 13(6). See notes 1 supra, 13 infra.

9 Ibid Sch 7 paras 11, 13(3) (Sch 7 para 13(3) amended by the Education Act 2005 Sch 12 para 14(1), (11)(c)). This provision applies if the proposals would not otherwise require such approval: see the School Standards and Framework Act 1998 Sch 7 para 13(3) (as so amended). See notes 1 supra, 13 infra.

10 Ibid Sch 7 para 1A (as added: see note 8 supra), Sch 7 paras 11, 13(4) (Sch 7 para 13(4) amended by the Education Act 2005 Sch 12 para 14(1), (11)(d)).

11 Ie under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 187 ante.

12 Ibid Sch 7 paras 11, 13(4)(a). See notes 1 supra, 13 infra.

13 For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 193 note 10 ante.

Regulations may make provision modifying any provision contained in ibid Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

14 School Standards and Framework Act 1998 Sch 7 paras 11, 13(4)(b). See notes 1, 13 supra.

15 As to the governing bodies of maintained schools see PARA 203 et seq post.

16 As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

17 For the meaning of 'powers to make proposals for the alteration of its school' see PARA 193 note 14 ante.

18 School Standards and Framework Act 1998 Sch 7 paras 11, 13(4)(c). See notes 1, 13 supra.

19 Ie the Learning and Skills Act 2000 s 113 (prospectively amended), Sch 7 (as amended; prospectively further amended) (see PARA 1283 et seq post).

20 School Standards and Framework Act 1998 Sch 7 paras 11, 13(4)(d) (Sch 7 para 13(4)(d) added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 90). See notes 1, 13 supra.

21 References in the School Standards and Framework Act 1998 Sch 7 para 13 (as amended; prospectively further amended) to the determination of any proposals are references to: (1) any determination whether or not to approve or adopt the proposals under ss 28(8), 29(7), 31(8), Sch 6 para 8 (prospectively amended) (see PARA 138 ante) or Sch 7 para 14 (prospectively amended) (see PARA 190 ante) (Sch 7 paras 11, 13(7)(a)); (2) any determination whether or not to implement the proposals under Sch 6 para 9 (see PARA 139 ante) (Sch 7 paras 11, 13(7)(b)); or (3) any determination whether or not to approve the proposals under the Learning and Skills Act 2000 Sch 7 (as amended; prospectively amended) (see PARA 1283 et seq post) (School Standards and Framework Act 1998 Sch 7 paras 11, 13(7)(c) (Sch 7 para 13(7)(c) added by the Learning and Skills Act 2000 Sch 9 paras 1, 90). See notes 1, 13 supra.

22     le made under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 187 ante.

23     Ibid Sch 7 paras 11, 13(4) (Sch 7 para 13(4) amended by the Education Act 2005 Sch 12 para 14(1), (11) (d)). See notes 1, 13 supra.

24     le the School Standards and Framework Act 1998 Sch 7 paras 11, 13(4) (prospectively amended): see the text and notes 21-23 supra.

25     Ibid Sch 7 paras 11, 13(5) (Sch 7 para 13(5) amended by the Education Act 2005 Sch 12 para 14(1), (11) (e)). See notes 1, 13 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(B) The System under the School Standards and Framework Act 1998 modified for Wales/(b) Procedure relating to Rationalisation Proposals/199. Adoption of proposals.

### **199. Adoption of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the National Assembly for Wales<sup>2</sup> has published<sup>3</sup> proposals<sup>4</sup> which relate to an area in Wales and in respect of which it is required to cause a local inquiry<sup>5</sup> to be held, it may, when it has considered the report of the person appointed to hold the inquiry, do one or more of the following<sup>6</sup>:

- 349 (1) adopt, with or without modifications<sup>7</sup>, or determine not to adopt the proposals or any other proposals made by it<sup>8</sup> which it referred to the inquiry<sup>9</sup>;
- 350 (2) approve, with or without modifications, or reject any other proposals which it referred to the inquiry<sup>10</sup>; and
- 351 (3) make any such further proposals<sup>11</sup> as might have been made in accordance with the order or orders relating to the area of the local education authority<sup>12</sup> concerned by the body to whom the directions<sup>13</sup> were given<sup>14</sup>.

Where the National Assembly for Wales has published proposals<sup>15</sup> in respect of which it is not required to cause a local inquiry to be held and which it is not required to refer to such an inquiry, it may, after considering any objections made<sup>16</sup> (and not withdrawn) within the prescribed period<sup>17</sup>, adopt the proposals with or without modifications, or determine not to adopt the proposals<sup>18</sup>. Any such adoption of proposals may be expressed to take effect only if an event specified in the adoption occurs by a date so specified<sup>19</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 As to the National Assembly for Wales: see PARA 53 ante.

3 Ie under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 187 ante.

4 Ie proposals for the rationalisation of school places made under ibid Sch 7 para 5 (prospectively amended): see PARA 187 ante.

5 As to local inquiries see PARA 189 ante.

6 School Standards and Framework Act 1998 Sch 7 para 1A (added by the Education Act 2005 s 72, Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 paras 11, 14(1) (Sch 7 para 14(1) amended by the Education Act 2005 Sch 12 para 14(1), (12)(a)). See note 1 supra.

7 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ie under ibid Sch 7 para 5 (prospectively amended): see PARA 169 ante.

- 9 Ibid Sch 7 paras 11, 14(1)(a) (Sch 7 para 14(1)(a) as amended: see note 6 supra). See note 1 supra.
- 10 Ibid Sch 7 paras 11, 14(1)(b) (Sch 7 para 14(1)(b) as amended: see note 6 supra). See note 1 supra.
- 11 Ie under ibid Sch 7 para 5 (prospectively amended): see PARA 187 ante.
- 12 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of ibid s 142(8). As to local education authorities see PARA 20 ante.
- 13 As to directions for the rationalisation of school places see PARAS 184-186 ante.
- 14 School Standards and Framework Act 1998 Sch 7 paras 11, 14(1)(c). See note 1 supra.
- 15 Ie under ibid Sch 7 para 5 (prospectively amended): see PARA 187 ante.
- 16 Ie under ibid Sch 7 para 12(1): see PARA 188 ante.
- 17 Ie the period prescribed in accordance with ibid Sch 7 para 12(2)(b): see PARA 188 ante. 'Prescribed' means prescribed by regulations: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made for these purposes.
- 18 Ibid Sch 7 para 1A (as added: see note 6 supra), Sch 7 para 14(2) (amended by the Education Act 2005 Sch 12 para 14(1), (12)(b)). See note 1 supra.
- 19 School Standards and Framework Act 1998 Sch 7 para 14(3). See note 1 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(B) The System under the School Standards and Framework Act 1998 modified for Wales/(b) Procedure relating to Rationalisation Proposals/200. Implementation of proposals.

## **200. Implementation of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Proposals<sup>2</sup> adopted<sup>3</sup> by the National Assembly for Wales<sup>4</sup> have effect as if they<sup>5</sup>:

- 352 (1) had been made by the local education authority<sup>6</sup> under its powers to make proposals for the establishment<sup>7</sup>, alteration<sup>8</sup> or discontinuance<sup>9</sup> of schools<sup>10</sup>; or
- 353 (2) in any case where the proposals are for the alteration of a foundation, voluntary or foundation special school<sup>11</sup>, had been made by the governing body<sup>12</sup> under its powers to make proposals for the alteration of its school<sup>13</sup>,

and had been approved<sup>14</sup> under the provisions relating to the establishment, alteration or discontinuance of schools by the Assembly<sup>15</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 Ie proposals for the rationalisation of school places published under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended) which relate to an area in Wales: see PARA 187 ante.

3 Ie under ibid Sch 7 para 14 (prospectively amended): see PARA 190 ante.

4 As to the National Assembly for Wales: see PARA 53 ante.

5 School Standards and Framework Act 1998 Sch 7 para 1A (added by the Education Act 2005 s 72, Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 paras 11, 15 (Sch 7 para 15 amended by the Education Act 2005 Sch 12 para 14(1), (13)). See notes 1 supra, 7 infra.

6 As to local education authorities see PARA 20 ante.

7 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

Regulations may make provision modifying any provision contained in Sch 7 (as amended; prospectively further amended) in its application to proposals to establish a school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 post), or to the establishment of a school as a federated school: s 74(2), (3). Section 74 is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no regulations had been made for the purposes of s 74.

Section 74(2) is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (5)(a). At the date at which this volume states the law, no such day had been appointed.

8 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). See also PARA 132 note 2 ante.



9 As to the meaning of 'discontinue' see PARA 134 note 2 ante; definition applied by virtue of *ibid* s 142(8).

10 *Ibid* Sch 7 para 15(a). See notes 1, 7 *supra*. For the meaning of 'powers to make proposals for the establishment, alteration or discontinuance of schools' see PARA 193 note 10 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8).

11 As to foundation schools, voluntary schools and foundation special schools see PARA 102 *et seq* ante. As to special schools see PARA 1027 *et seq* post.

12 As to the governing bodies of maintained schools see PARA 203 *et seq* post.

13 School Standards and Framework Act 1998 Sch 7 para 15(b). See notes 1, 7 *supra*. For the meaning of 'powers to make proposals for the alteration of its school' see PARA 193 note 14 ante.

14 *Ie* under *ibid* ss 28(8), 29(7), 31(8), Sch 6 para 8 (prospectively amended): see PARA 138 ante.

15 *Ibid* Sch 7 para 1A (as added: see note 5 *supra*), Sch 7 para 15 (as amended: see note 5 *supra*). See notes 1, 7 *supra*.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1): SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA 174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/F. RATIONALISATION OF SCHOOL PLACES IN WALES/(B) The System under the School Standards and Framework Act 1998 modified for Wales/(b) Procedure relating to Rationalisation Proposals/201. Proposals for single-sex school to become co-educational.

## **201. Proposals for single-sex school to become co-educational.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where proposals are made<sup>2</sup> for a school in Wales to cease to be an establishment which admits pupils<sup>3</sup> of one sex only<sup>4</sup>, then the responsible body<sup>5</sup> is to be treated as having made an application to the National Assembly for Wales<sup>6</sup> for the making of a transitional exemption order<sup>7</sup>, and the Assembly may make<sup>8</sup> such an order accordingly<sup>9</sup>.

1 The School Standards and Framework Act 1998 s 34, Sch 7 (as amended) is further amended by the Education Act 2005 s 72, Sch 12 para 14 as from a day to be appointed under ss 125(4), 126(1), (3)(b), so as to apply only to Wales. At the date at which this volume states the law, no such day had been appointed. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the rationalisation of school places in England see PARA 166 et seq ante.

2 The proposals for the rationalisation of school places published under the School Standards and Framework Act 1998 Sch 7 para 5 (prospectively amended): see PARA 187 ante.

3 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

4 For the purposes of ibid Sch 7 para 17, references to proposals for a school to cease to be an establishment which admits pupils of one sex only are references to proposals which are or include proposals for such an alteration in a school's admissions arrangements as is mentioned in the Sex Discrimination Act 1975 s 27(1) (single-sex establishments becoming co-educational: see DISCRIMINATION vol 13 (2007 Reissue) PARA 381): School Standards and Framework Act 1998 Sch 7 para 16(6). As to sex discrimination in educational establishments see PARA 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARAS 378-381. As to admission arrangements see PARA 398 et seq post.

Schedule 7 para 16 is repealed by the Education Act 2005 ss 72, 123, Sch 12 para 14(1), (14), Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

5 For these purposes, 'the responsible body' has the same meaning as in the Sex Discrimination Act 1975 s 22 (as amended) (see PARA 6 ante): School Standards and Framework Act 1998 Sch 7 para 16(6). See notes 1, 4 supra.

6 As to the National Assembly for Wales see PARA 53 ante.

7 For these purposes, 'transitional exemption order' has the same meaning as in the Sex Discrimination Act 1975 s 27 (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 381): School Standards and Framework Act 1998 Sch 7 para 16(6). See notes 1, 4 supra.

8 For these purposes, 'make', in relation to a transitional exemption order, includes (so far as the context permits) vary or revoke: ibid Sch 7 para 16(6). See notes 1, 4 supra.

9 Ibid Sch 7 para 1A (added by the Education Act 2005 Sch 12 para 14(1), (3)), School Standards and Framework Act 1998 Sch 7 para 17(1), (2) (Sch 7 para 17(2) amended by the Education Act 2005 Sch 12 para 14(1), (15)); Sex Discrimination Act 1975 s 27(1A) (added by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 6). See note 1 supra.

## **UPDATE**

### **184-201 Rationalisation of School Places in Wales**

Day now appointed so that these provisions apply to Wales only (see PARA 184 NOTE 1):  
SI 2006/2129. Repeal of Education Act 2002 s 74 and all amendments to School  
Standards and Framework Act 1998 Sch 7 (except repeal of Sch 7 para 16(6)) (see PARA  
174 NOTES 9-11) now in force: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iii) Organisation of Schools/G. NEW SCHOOLS/202. New schools.

## **G. NEW SCHOOLS**

### **202. New schools.**

A 'new school' is a school<sup>1</sup> or proposed school: (1) for which there is a temporary governing body<sup>2</sup>; or (2) for which there is no such body but for which such a body is required to be constituted<sup>3</sup> or may be so constituted in accordance with anticipatory arrangements<sup>4</sup>.

Regulations<sup>5</sup> may make provision for:

- 354 (a) the staffing and conduct of a new school in advance of the school opening date<sup>6</sup>;
- 355 (b) the determination of matters in connection with a new school in advance of that date<sup>7</sup>;
- 356 (c) the taking of decisions by a temporary governing body<sup>8</sup>, or (where power to do so is delegated to him) by the head teacher<sup>9</sup>, as to expenditure in connection with a new school at a time when it does not have a delegated budget<sup>10</sup>;
- 357 (d) such other matters relating to new schools as the Secretary of State considers appropriate<sup>11</sup>.

Such regulations may, in connection with any matters falling within heads (a) to (d) above, apply any provision of the Education Acts<sup>12</sup> with or without modification<sup>13</sup>.

1 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 Ie constituted under *ibid* s 44 (repealed) or under the Education Act 2002 s 34 (see PARA 212 post): School Standards and Framework Act 1998 s 72(3) (amended by the Education Act 2002 s 215(1), Sch 21 para 106).

3 Ie by virtue of the School Standards and Framework Act 1998 s 44(1) (repealed) or the Education Act 2002 s 34(1) (see PARA 212 post).

4 School Standards and Framework Act 1998 s 72(3) (as amended: see note 2 supra). The anticipatory arrangements referred to in the text are such arrangements as are mentioned in s 44(5)(a) (repealed) or in the Education Act 2002 s 34(5)(a) (see PARA 212 post).

5 For these purposes, 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under the School Standards and Framework Act 1998 s 72 (as amended) see the Education (New Schools) (Wales) Regulations 1999, SI 1999/2243 (largely revoked by SI 2005/2912); the New Schools (Admissions) (Wales) Regulations 1999, SI 1999/2800; the New School (Admissions) (England) Regulations 2003, SI 2003/1041; the New Schools (General) (England) Regulations 2003, SI 2003/1558 (amended by SI 2004/450; SI 2004/696; SI 2004/3264; SI 2005/52; SI 2005/1730); and the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912. As to admission to schools see PARA 392 et seq post.

6 School Standards and Framework Act 1998 s 72(1)(a). For the meaning of 'school opening date' see PARAS 102 note 11, 131 note 2 ante.

As to the general conduct of new schools see the New Schools (General) (England) Regulations 2003, SI 2003/1558, Pt 6 (regs 29-52); and the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, Pt 6 (regs 28-36). Matters covered by the regulations include:

- 58 (1) the conduct of the school on, before or after the opening date (see the New Schools (General) (England) Regulations 2003, SI 2003/1558, regs 31-32; and the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, regs 30-31);
- 59 (2) execution of documents (see the New Schools (General) (England) Regulations 2003, SI 2003/1558, reg 33; and the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, reg 32);
- 60 (3) preparation of the curriculum (see the New Schools (General) (England) Regulations 2003, SI 2003/1558, reg 34; and the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, reg 33);
- 61 (4) school terms, holidays and sessions (see the New Schools (General) (England) Regulations 2003, SI 2003/1558, reg 35; and the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, reg 34);
- 62 (5) reports and information (see the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, reg 35); and
- 63 (6) consultation on expenditure by a local education authority (see the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, reg 36).

As to the staffing of new schools see the School Staffing (England) Regulations 2003, SI 2003/1963, Pt 5 (regs 33-37); the Education (New Schools) (Wales) Regulations 1999, SI 1999/2243, Pt VI (regs 45-52); and PARA 381 et seq post.

7 School Standards and Framework Act 1998 s 72(1)(b).

8 As to temporary governing bodies see PARA 212 post.

9 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

10 Ibid s 72(1)(c). As to delegated budgets see PARA 320 et seq post.

11 Ibid s 72(1)(d).

12 For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

13 Ibid s 72(2). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

## **UPDATE**

### **202 New schools**

NOTES 5, 6--SI 2003/1558 replaced: School Governance (New Schools) (England) Regulations 2007, SI 2007/958 (amended by SI 2007/3464, SI 2009/1924).

NOTE 5--SI 1999/2800 replaced: New School (Admissions) (Wales) Regulations 2006, SI 2006/175.

NOTE 6--SI 2003/1963 Pt 5 replaced: School Staffing (England) Regulations 2009, SI 2009/2680, Pt 5 (regs 40-44). SI 1999/2243 Pt VI replaced: Staffing of Maintained Schools (Wales) Regulations 2006, SI 2006/873, Pt 4 (regs 35-39). SI 2006/873 applied, with modifications, in relation to pupil referral units by the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 14).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/A. GOVERNANCE OF SCHOOLS IN ENGLAND/(A) Constitution of Governing Bodies/203. Governing bodies.

#### **(iv) Governance of Schools**

### **A. GOVERNANCE OF SCHOOLS IN ENGLAND**

#### **(A) CONSTITUTION OF GOVERNING BODIES**

##### **203. Governing bodies.**

Each maintained school in England<sup>1</sup> must have a governing body<sup>2</sup>, which is a body corporate<sup>3</sup>. Regulations<sup>4</sup> must provide for a governing body to consist of:

- 358 (1) persons elected or appointed as parent governors<sup>5</sup>;
- 359 (2) persons elected or appointed as staff governors<sup>6</sup>;
- 360 (3) persons appointed as LEA (local education authority) governors<sup>7</sup>;
- 361 (4) except in the case of a voluntary aided school<sup>8</sup>, persons appointed as community governors<sup>9</sup>;
- 362 (5) in the case of a foundation school, a foundation special school or a voluntary school<sup>10</sup>, persons appointed as foundation governors<sup>11</sup> or partnership governors<sup>12</sup>; and
- 363 (6) such other persons as may be prescribed<sup>13</sup>.

Regulations<sup>14</sup> may also make provision as to:

- 364 (a) the number of governors, or of governors falling within any category<sup>15</sup>;
- 365 (b) the person or persons by whom, and the manner in which, governors are to be elected or appointed<sup>16</sup>;
- 366 (c) eligibility for election or appointment as governors of any category, or for voting in an election of such governors<sup>17</sup>;
- 367 (d) the term of office of governors<sup>18</sup>;
- 368 (e) resignation or removal from office of governors<sup>19</sup>;
- 369 (f) the payment of allowances to governors<sup>20</sup>;
- 370 (g) meetings and proceedings of governing bodies<sup>21</sup>;
- 371 (h) the election by the governors of a chairman and vice-chairman of the governing body<sup>22</sup>;
- 372 (i) the establishment by a governing body of committees<sup>23</sup>;
- 373 (j) the appointment of persons other than governors to serve on committees of governing bodies<sup>24</sup>;
- 374 (k) the delegation of functions<sup>25</sup> by governing bodies<sup>26</sup>; and
- 375 (l) other matters relating to the constitution or procedure of governing bodies<sup>27</sup>.

In discharging any function conferred by such regulations, a local education authority or the governing body of a maintained school must have regard to any guidance given from time to time by the Secretary of State<sup>28</sup>.

The governing body<sup>29</sup> is to be known as 'The governing body of . . .' with the addition of the name of the school as for the time being set out in the school's instrument of government<sup>30</sup>.

If the school is discontinued, the governing body is dissolved<sup>31</sup> on the discontinuance date<sup>32</sup>, or on such later date as the Secretary of State may specify by order made before the discontinuance date<sup>33</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'England' see PARA 52 note 11 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 le a governing body constituted in accordance with regulations (see heads (1)-(6), (a)-(l) in the text). The governing body of a maintained school is a public authority for the purposes of the Human Rights Act 1998: *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382 at [36]-[38], [2004] QB 1231 at [36]-[38], [2004] 4 All ER 628 at [36]-[38] per Sedley LJ. As to the significance of a body being designated a public authority for these purposes see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 6; CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Education Act 2002 s 19(1). Section 19(1) has effect subject to s 24 (federations of schools: see PARA 213 post): s 19(8).

4 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 19(2) (in relation to England) see the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (amended by SI 2003/1916; SI 2003/1558; SI 2004/450; SI 2004/696; SI 2004/3264; SI 2005/1730); the School Governance (Transition from an Interim Executive Board) (England) Regulations 2004, SI 2004/530; the School Governance (Federations) (England) Regulations 2004, SI 2004/2042 (amended by SI 2005/1730); and the Education (Company Directors Disqualification Act 1986: Amendments to Disqualification Provisions) (England) Regulations 2004, SI 2004/3264.

Regulations under the Education Act 2002 s 19 may include provision with respect to the governing bodies of federations (s 19(8)); but must not apply to any temporary governing body (s 34(8)). As to federations see PARA 213 post; and as to temporary governing bodies see PARA 212 post. See note 3 supra.

5 Ibid s 19(2)(a).

6 Ibid s 19(2)(b).

7 Ibid s 19(2)(c). Functions exercisable by or on behalf of a local education authority under regulations made under s 19, so far as relating to the appointment of persons as LEA (local education authority) governors, are relevant functions for the purposes of the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 ante): s 127(6)(m) (added by the Education Act 2002 s 215(1), Sch 21 para 110(1), (3)(c)). As to local education authorities see PARA 20 ante.

8 As to voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

9 Ibid s 19(2)(d).

10 As to foundation schools and foundation special schools see PARA 102 et seq ante. As to special schools see also PARA 1027 et seq post.

11 As to foundation governors see PARA 205 et seq post.

12 Education Act 2002 s 19(2)(e).

13 Ibid s 19(2)(f). 'Prescribed' means prescribed by regulations: s 212(1). See note 4 supra.

14 As to the regulations made under ibid s 19(3) see the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (amended by SI 2003/1916; SI 2003/1558; SI 2004/450; SI 2004/696; SI 2004/3264; SI 2005/1730); the Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523; the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377 (amended by SI 2003/1916; SI 2003/1558; SI 2003/1963; SI 2004/450); the School Governance (Collaboration) (England) Regulations 2003, SI 2003/1962; the School Governance (Transition from an Interim Executive Board) (England) Regulations 2004, SI 2004/530; the School Governance (Federations) (England) Regulations 2004, SI 2004/2042 (amended by SI 2005/1730); and the Education (Company Directors Disqualification Act 1986: Amendments to Disqualification Provisions) (England) Regulations 2004, SI 2004/3264. See also notes 4 supra, 15 infra. As to the regulations made see further PARA 238 post.

15 Education Act 2002 s 19(3)(a). Regulations made by virtue of the Education Act 2002 s 19(3)(a) must also secure that the majority of the governors of a voluntary aided school are persons appointed as foundation governors: s 19(4). Accordingly, the instrument of government of a school must specify the size of the membership of the governing body, which must be no fewer than nine or more than 20 governors: School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 12(1). In determining the size of its membership, the governing body must not include any sponsor governors, or additional foundation governors appointed in accordance with reg 16(2)(b) (see PARA 207 post): reg 12(2). Subject to regs 13-16 (see PARAS 204-207 post), the instrument of government must specify the numbers of governors from each of the following categories of governor to be elected or appointed: (1) parent governor; (2) staff governor; (3) LEA (local education authority) governor; (4) community governor; (5) foundation governor; (6) partnership governor; (7) sponsor governor: reg 12(3). In calculating the number of governors required in each category in accordance with regs 13-16, the number must be rounded up or down to the nearest whole number; and regs 13-16 must be interpreted subject to this provision: reg 12(4) (amended by SI 2003/1916). In calculating the number of staff governors required, the head teacher must be included whether or not he has resigned his governorship: School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 12(5). As to surplus governors see PARA 210 post. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). As to instruments of government see PARA 241 et seq post. For the meaning of 'parent governor' see PARA 204 note 5 post; for the meaning of 'staff governor' see PARA 204 note 6 post; for the meaning of 'LEA (local education authority) governor' see PARA 204 note 7 post; for the meaning of 'community governor' see PARA 204 note 8 post; for the meaning of 'foundation governor' see PARA 205 note 7 post; for the meaning of 'partnership governor' see PARA 205 note 9 post; and for the meaning of 'sponsor governor' see PARA 204 note 9 post. As to the meaning of 'head teacher' see PARA 93 note 13 ante.

16 Education Act 2002 s 19(3)(b).

17 Ibid s 19(3)(c).

18 Ibid s 19(3)(d).

19 Ibid s 19(3)(e).

20 Ibid s 19(3)(f). Nothing in the School Standards and Framework Act 1998 s 50(3) (effect of financial delegation: see PARA 321 post) is to be read as authorising the payment of allowances to governors otherwise than in accordance with regulations under the Education Act 2002 s 19: School Standards and Framework Act 1998 s 50(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 101).

21 Education Act 2002 s 19(3)(g). See PARA 238 post.

22 Ibid s 19(3)(h). See PARA 238 post.

23 Ibid s 19(3)(i). See PARA 238 post.

24 Ibid s 19(3)(j). See PARA 238 post.

25 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

26 Ibid s 19(3)(k). Section 19(3)(k) has effect subject to the provisions of any scheme under the School Standards and Framework Act 1998 s 48 (as amended) (local education authorities' financial schemes: see PARA 318 post) which relates to the school: Education Act 2002 s 19(5). See PARA 238 post.

27 Ibid s 19(3)(l).

28 Ibid s 19(7). As to the publication of the guidance mentioned in the text see PARA 54 ante; applied by virtue of s 212(2), (3). As to the Secretary of State see PARA 52 ante.

29 Ie the governing body of a maintained school incorporated under ibid s 19(1) (see the text and notes 1-3 supra): s 19(6), Sch 1 para 1.

30 Ibid Sch 1 para 2(1).

31 Ie by virtue of ibid Sch 1 para 5.

32 For these purposes, 'the discontinuance date' means: (1) the date on which proposals for discontinuing the school are implemented under the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 Pt III paras 11-15 (as amended; prospectively further amended) (see PARAS 141-144 ante), or under the Learning



and Skills Act 2000 Sch 7 (as amended; prospectively further amended in relation to Wales) (see PARA 1275 et seq post) or s 113A(6), Sch 7A (both as added) (see PARA 1282 post); (2) the date on which the school is discontinued under the School Standards and Framework Act 1998 s 30 (as amended) (see PARA 135 ante); or (3) the date specified in a direction given under s 19(1) (as substituted; further substituted in relation to England) (school requiring special measures: see PARA 1273 post) or s 32(1) (see PARA 149 ante), as the case may be: Education Act 2002 Sch 1 paras 1, 5(2).

33 Ibid Sch 1 para 5(1). See note 32 supra. The power to make an order under Sch 1 para 5 is not exercisable by statutory instrument: see s 210(2); and PARA 77 note 7 ante.

## UPDATE

### 203 Governing bodies

NOTE 2--*Lord Grey School*, cited, reversed sub nom *Ali v Head Teacher and Governors of Lord Grey School* [2006] UKHL 14, [2006] 2 All ER 457.

NOTES 4, 14, 15--SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

NOTES 4, 14--SI 2003/1962, SI 2004/530 amended: SI 2007/957. SI 2004/2042 replaced: School Governance (Federations) (England) Regulations 2007, SI 2007/960 (amended by SI 2007/3464, SI 2009/1556).

NOTE 7--1998 Act s 127(6) repealed: Education and Inspections Act 2006 s 58(6), Sch 18 Pt 2.

NOTE 14--SI 2003/1377 further amended: SI 2007/959, SI 2007/3464, SI 2009/2680. See further the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, SI 2007/3475.

NOTE 29--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 11, 20.

NOTE 32--Now, 'the discontinuance date' means whichever of the following is relevant: (a) the date on which proposals for discontinuing the school are implemented under the 2006 Act Sch 2 Pt 3 or under the Learning and Skills Act 2000 Sch 7 or 7A; (b) the date on which the school is discontinued under the School Standards and Framework Act 1998 s 30; or (c) the date specified in a direction given under the 2006 Act s 17(1) or 68(1): 2002 Act Sch 1 para 5(2) (substituted by 2006 Act Sch 3 para 48).

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#### **204. Constitution of governing bodies of community schools, maintained nursery schools and community special schools.**

The governing body<sup>1</sup> of a community school<sup>2</sup>, a maintained nursery school<sup>3</sup> or a community special school<sup>4</sup> must be comprised as follows:

- 376 (1) one-third or more must be parent governors<sup>5</sup>;
- 377 (2) at least two but no more than one-third must be staff governors<sup>6</sup>;
- 378 (3) one-fifth must be LEA (local education authority) governors<sup>7</sup>; and
- 379 (4) one-fifth or more must be community governors<sup>8</sup>.

The governing body may in addition appoint up to two sponsor governors<sup>9</sup>, or, where the school is a secondary school<sup>10</sup>, up to four sponsor governors<sup>11</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to community schools see PARA 102 et seq ante.

3 As to maintained nursery schools see PARA 94 ante.

4 As to community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

5 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 13(1)(a). Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For these purposes, 'parent governor' means: (1) a person who is elected in accordance with reg 4, Sch 1 paras 4-8 (as amended) (see PARA 216 post) as a governor by parents of registered pupils at the school and is himself such a parent at the time when he is elected (reg 4(1)(a)); or (2) where a school is a maintained nursery school, a person who is elected as a governor either by parents of registered pupils at the school, or by parents of children for whom educational or other provision is made on the premises of the school, including any such provision made by the governing body under the Education Act 2002 s 27 (power to provide community facilities etc: see PARA 232 post), and is himself such a parent at the time when he is elected (School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 4(1)(aa) (added by SI 2004/450)); or (3) a person appointed as a parent governor in accordance with the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 1 paras 9-11 (see PARA 216 post) (reg 4(1)(b)). For these purposes, 'parent' includes any individual who has or has had parental responsibility for, or cares, or has cared for, a child or young person under the age of 18: reg 3(1). As to the meaning of 'parent' generally see PARA 510 note 1 post. For the meaning of 'registered pupil' see PARA 512 post; for the meaning of 'child' see PARA 16 note 2 ante; and for the meaning of 'young person' see PARA 38 note 4 ante. A person is disqualified from election or appointment as a parent governor of a school if he is: (a) an elected member of the local education authority; or (b) paid to work at the school for more than 500 hours in any 12-month period commencing on 1 August and finishing on 31 July: reg 4(2). A person is not disqualified from continuing to hold office as a parent governor when he ceases to be a parent of a registered pupil at the school or to fulfil any of the requirements set out in Sch 1 para 10 and Sch 1 para 11 (see PARA 216 post), as the case may be, unless he is otherwise disqualified under the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended): reg 4(3). For these purposes, any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante.

The School Governance (Constitution) (England) Regulations 2003, SI 2003/348 Pts 2-5 (regs 4-33) (as amended) do not apply to a governing body constituted under an instrument of government that is in effect prior to 1 September 2003: reg 3(3) (added by SI 2003/1916). As to instruments of government see PARA 241 et seq post.

6 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 13(1)(b). For these purposes, 'staff governor' means: (1) the head teacher, who is a staff governor by virtue of his office unless he resigns the position in accordance with reg 22(1) (see PARA 222 post) (reg 5(1)(a)); or (2) a person who is elected in accordance with reg 5, Sch 2 (see PARA 217 post) as a governor by persons who are paid to work at the school and who is himself a person so working at the time when he is elected (reg 5(1)(b)). At least one staff governor (in addition to the head teacher) must be a school teacher unless no school teacher stands for election: reg 5(2). Where the school's instrument of government specifies that there are to be three or more staff governors, at least one staff governor must be a person who is not a school teacher, unless no such person stands for election: reg 5(3). 'School teacher' must be interpreted in accordance with the Education Act 2002 s 122 (see PARA 864 post): School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 5(4). Upon ceasing to work at the school, a staff governor of a school is disqualified from continuing to hold office as such a governor: reg 5(5). As to the meaning of 'head teacher' see PARA 93 note 13 ante. See also note 5 supra.

7 Ibid reg 13(1)(c). For these purposes, 'LEA (local education authority) governor' means a person who is appointed as a governor by the local education authority: reg 6(1). A person is disqualified from appointment as a LEA (local education authority) governor of a school if he is eligible to be a staff governor of the school: reg 6(2). See also note 5 supra.

8 Ibid reg 13(1)(d). For these purposes, 'community governor' means a person who is appointed as a governor by the governing body and who is: (1) a person who lives or works in the community served by the school (reg 7(1)(a)); or (2) a person who, in the opinion of the governing body, is committed to the good government and success of the school (reg 7(1)(b)). In the case of a community special school the governing body must appoint as one of the community governors a person nominated in accordance with reg 7(2), Sch 3 (see PARA 218 post): reg 7(2). A person is disqualified from appointment as a community governor of a school if he is: (a) a registered pupil at the school; (b) eligible to be a staff governor of the school; or (c) an elected member of the local education authority: reg 7(3). See also note 5 supra.

9 For these purposes, 'sponsor governor' means a person who is nominated as a sponsor governor and is appointed as such by the governing body in accordance with ibid reg 10, Sch 5 (see PARA 220 post): reg 10. See also note 5 supra.

10 For the meaning of 'secondary school' see PARA 81 ante.

11 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 13(2) (amended by SI 2005/1730). Where any person makes an appointment or nominates a person to be appointed to the governing body, he must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person appointed or nominated: School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 17. If the instrument of government of a school provides for one or more governors to be nominated or appointed by persons acting jointly, and those persons fail to make an agreed nomination or appointment, the nomination or appointment is to be made by, or in accordance with a direction given by, the Secretary of State: reg 18. As to the Secretary of State see PARA 52 ante. As to the clerk to the governing body see PARA 226 post; and as to instruments of government see PARA 241 et seq post. As to the application of regs 17-18, with modifications, in relation to the governing body of a federation and its members, see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7.

## UPDATE

### **204-210 Constitution of governing bodies of community schools, maintained nursery schools and community special schools ... Surplus governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

### **204 Constitution of governing bodies of community schools, maintained nursery schools and community special schools**

NOTE 11--SI 2003/348 reg 17 now School Governance (Constitution) (England) Regulations 2007, SI 2007/957, reg 19, which applies, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/A. GOVERNANCE OF SCHOOLS IN ENGLAND/(A) Constitution of Governing Bodies/205. Constitution of governing bodies of foundation schools and foundation special schools.

## **205. Constitution of governing bodies of foundation schools and foundation special schools.**

The governing body<sup>1</sup> of a foundation school or a foundation special school<sup>2</sup> must be comprised as follows:

- 380 (1) one-third or more must be parent governors<sup>3</sup>;
- 381 (2) at least two but no more than one-third must be staff governors<sup>4</sup>;
- 382 (3) at least one but no more than one-fifth must be LEA (local education authority) governors<sup>5</sup>;
- 383 (4) one-tenth or more must be community governors<sup>6</sup>; and
- 384 (5) at least two but no more than one-quarter must be foundation governors<sup>7</sup> or, where the school does not have a foundation<sup>8</sup>, partnership governors<sup>9</sup>.

The governing body may in addition appoint up to two sponsor governors<sup>10</sup> or, where the school is a secondary school<sup>11</sup>, up to four sponsor governors<sup>12</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). As to the governing bodies of maintained schools in England see PARA 203 ante. For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to foundation schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

3 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 14(1)(a). Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 204 note 5 ante.

The School Governance (Constitution) (England) Regulations 2003, SI 2003/348 Pts 2-5 (regs 4-33) (as amended) do not apply to a governing body constituted under an instrument of government that is in effect prior to 1 September 2003: reg 3(3) (added by SI 2003/1916). As to instruments of government see PARA 241 et seq post.

4 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 14(1)(b). See also note 3 supra. For the meaning of 'staff governor' see PARA 204 note 6 ante.

5 Ibid reg 14(1)(c). See also note 3 supra. For the meaning of 'LEA (local education authority) governor' see PARA 204 note 7 ante.

6 Ibid reg 14(1)(d). For the meaning of 'community governor' see PARA 204 note 8 ante. In the case of a foundation special school the governing body must appoint as one of the community governors a person nominated in accordance with reg 7(2), Sch 3 (see PARA 218 post): reg 7(2). See also note 3 supra. As to the need for notification of appointments and nominations, and as to joint appointments, see PARA 204 note 11 ante.

7 For these purposes, 'foundation governor' means a person who is appointed as a governor otherwise than by the local education authority and who: (1) where the school has a particular religious character, is appointed for the purpose of securing that that character is preserved and developed (reg 8(1)(a)); (2) where there is a trust relating to the school, is appointed for the purpose of securing that the school is conducted in accordance with that trust (reg 8(1)(b)); or (3) where the school does not have a religious character and there is no trust

relating to it, is appointed as a foundation governor of the school (reg 8(1)(c)). For these purposes, any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). See also note 3 *supra*. As to local education authorities see PARA 20 *ante*. As to foundation schools having a particular religious character see PARA 953 *post*. As to educational trusts see PARA 1430 *et seq post*.

8 For the meaning of 'foundation' see PARA 104 note 6 *ante*.

9 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 14(1)(e). For these purposes, 'partnership governor' means a person who is nominated as a partnership governor and appointed as such in accordance with reg 9, Sch 4 (see PARA 219 *post*): reg 9(1). A person is disqualified from nomination or appointment as a partnership governor of a school if he is: (1) a parent of a registered pupil at the school; (2) a registered pupil at the school; (3) eligible to be a staff governor of the school; (4) an elected member of the local education authority; or (5) employed by the local education authority in connection with its functions as a local education authority: reg 9(2). See also note 3 *supra*. As to the meaning of 'parent' see PARA 204 note 5 *ante*. For the meaning of 'registered pupil' see PARA 512 *post*.

10 For the meaning of 'sponsor governor' see PARA 204 note 9 *ante*.

11 For the meaning of 'secondary school' see PARA 81 *ante*.

12 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 14(2) (amended by SI 2005/1730). See also note 3 *supra*.

## **UPDATE**

### **204-210 Constitution of governing bodies of community schools, maintained nursery schools and community special schools ... Surplus governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced:  
School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

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## **206. Constitution of governing bodies of voluntary controlled schools.**

The governing body<sup>1</sup> of a voluntary controlled school<sup>2</sup> must be comprised as follows:

- 385 (1) one-third or more must be parent governors<sup>3</sup>;
- 386 (2) at least two but no more than one-third must be staff governors<sup>4</sup>;
- 387 (3) at least one but no more than one-fifth must be LEA (local education authority) governors<sup>5</sup>;
- 388 (4) one-tenth or more must be community governors<sup>6</sup>; and
- 389 (5) at least two but no more than one-quarter must be foundation governors<sup>7</sup>.

The governing body may in addition appoint up to two sponsor governors<sup>8</sup> or, where the school is a secondary school<sup>9</sup>, up to four sponsor governors<sup>10</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to voluntary controlled schools see PARA 102 et seq ante.

3 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 15(1)(a). Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 204 note 5 ante.

The School Governance (Constitution) (England) Regulations 2003, SI 2003/348 Pts 2-5 (regs 4-33) (as amended) do not apply to a governing body constituted under an instrument of government that is in effect prior to 1 September 2003: reg 3(3) (added by SI 2003/1916). As to instruments of government see PARA 241 et seq post.

4 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 15(1)(b). See also note 3 supra. For the meaning of 'staff governor' see PARA 204 note 6 ante.

5 Ibid reg 15(1)(c). See also note 3 supra. For the meaning of 'LEA (local education authority) governor' see PARA 204 note 7 ante.

6 Ibid reg 15(1)(d). For the meaning of 'community governor' see PARA 204 note 8 ante. See also note 3 supra.

7 Ibid reg 15(1)(e). For the meaning of 'foundation governor' in relation to England see PARA 205 note 7 ante. See also note 3 supra.

8 For the meaning of 'sponsor governor' see PARA 204 note 9 ante.

9 For the meaning of 'secondary school' see PARA 81 ante.

10 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 15(2) (amended by SI 2005/1730). See also note 3 supra. As to the need for notification of appointments, and as to joint appointments, see PARA 204 note 11 ante.

## **UPDATE**

**204-210 Constitution of governing bodies of community schools, maintained nursery schools and community special schools ... Surplus governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced:  
School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended  
by SI 2009/1924).



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## **207. Constitution of governing bodies of voluntary aided schools.**

The governing body<sup>1</sup> of a voluntary aided school<sup>2</sup> must be comprised as follows:

- 390 (1) at least one but no more than one-tenth must be LEA (local education authority) governors<sup>3</sup>;
- 391 (2) at least two but no more than one-third must be staff governors<sup>4</sup>;
- 392 (3) at least one must be a parent governor<sup>5</sup>;
- 393 (4) such number of foundation governors<sup>6</sup> as outnumber by two all the other governors listed in heads (1) to (3) above<sup>7</sup>; and
- 394 (5) such number of duly appointed<sup>8</sup> foundation governors as, when they are counted with the parent governors, comprise one-third or more of the total membership of the governing body<sup>9</sup>.

In addition, the governing body may appoint up to two sponsor governors<sup>10</sup>, or, where the school is a secondary school<sup>11</sup>, up to four sponsor governors<sup>12</sup>; and the person who is entitled to appoint foundation governors may appoint such number of additional foundation governors (up to two or, where the school is a secondary school, up to four) as are required to preserve their majority<sup>13</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to voluntary aided schools see PARA 102 et seq ante.

3 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 16(1)(a). Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'LEA (local education authority) governor' see PARA 204 note 7 ante.

The School Governance (Constitution) (England) Regulations 2003, SI 2003/348 Pts 2-5 (regs 4-33) (as amended) do not apply to a governing body constituted under an instrument of government that is in effect prior to 1 September 2003: reg 3(3) (added by SI 2003/1916). As to instruments of government see PARA 241 et seq post.

4 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 16(1)(b). See also note 3 supra. For the meaning of 'staff governor' see PARA 204 note 6 ante.

5 Ibid reg 16(1)(c). See also note 3 supra. For the meaning of 'parent governor' see PARA 204 note 5 ante.

6 For the meaning of 'foundation governor' in relation to England see PARA 205 note 7 ante. One-fifth or more of the persons appointed to the governing body of a voluntary aided school as foundation governors must be persons who are eligible for election or appointment as parent governors: ibid reg 8(2). See also note 3 supra.

7 Ibid reg 16(1)(d). See also note 3 supra.

8 Ie appointed in accordance with ibid reg 8(2) (see the text and note 6 supra).

9 Ibid reg 16(1)(e). See also note 3 supra.

10 For the meaning of 'sponsor governor' see PARA 204 note 9 ante.

11 For the meaning of 'secondary school' see PARA 81 ante.

12 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 16(2)(a) (amended by SI 2005/1730). See also note 3 supra.

13 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 16(2)(b) (amended by SI 2005/1730). See also note 3 supra. As to the need for notification of appointments, and as to joint appointments, see PARA 204 note 11 ante.

## **UPDATE**

### **204-210 Constitution of governing bodies of community schools, maintained nursery schools and community special schools ... Surplus governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced:  
School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

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## **208. Associate members.**

An 'associate member' is a person appointed by the governing body<sup>1</sup> as a member of any committee established by it but who is not a governor<sup>2</sup>. An associate member may hold office for a period of four years, or such shorter period (not being less than one year) as may be determined by the governing body at the date of his appointment<sup>3</sup>, and may be re-appointed at the expiration of his term of office<sup>4</sup>. Any person who is disqualified from holding office as a governor of a school<sup>5</sup> is likewise disqualified<sup>6</sup> from holding or continuing to hold office as an associate member of the governing body<sup>7</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 Ibid reg 11(1). Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b).

3 Ibid reg 11(2).

4 Ibid reg 11(3).

5 Ie under ibid reg 20, Sch 6 (as amended) (see PARA 221 post).

6 Ie save as provided in ibid Sch 6 para 1 (see PARA 221 post).

7 Ibid reg 11(4).

## **UPDATE**

### **204-210 Constitution of governing bodies of community schools, maintained nursery schools and community special schools ... Surplus governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/A. GOVERNANCE OF SCHOOLS IN ENGLAND/(A) Constitution of Governing Bodies/209. Substitutes for ex officio foundation governors.

## **209. Substitutes for ex officio foundation governors.**

A 'substitute governor' is a foundation governor<sup>1</sup> appointed to act in the place of an ex officio foundation governor<sup>2</sup> who is unwilling or unable to act as a governor or has been removed from office<sup>3</sup>.

1 For the meaning of 'foundation governor' in relation to England see PARA 205 note 7 ante. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 For these purposes, 'ex officio foundation governor' means a foundation governor who is the holder of an office by virtue of which he is entitled to be a foundation governor: *ibid* reg 8(1). An ex officio foundation governor will, upon ceasing to hold the office from which his governorship derives, be disqualified from continuing to hold office as such a governor: reg 8(3). As to governors of foundation or voluntary schools acting as ex officio trustees see PARA 250 post.

3 *Ibid* reg 8(1). An ex officio foundation governor may be removed from office as mentioned in the text under reg 23(2) (see PARA 223 note 4 post).

## **UPDATE**

### **204-210 Constitution of governing bodies of community schools, maintained nursery schools and community special schools ... Surplus governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

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## **210. Surplus governors.**

Where a maintained school<sup>1</sup> has more governors<sup>2</sup> of a particular category<sup>3</sup> than are provided for by the instrument of government<sup>4</sup> for the school, a governor of that category may serve out his term of office<sup>5</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante; and for the meaning of 'school' see PARA 81 ante.

2 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 As to the categories of governor see PARA 203 note 15 ante.

4 As to instruments of government see PARA 241 et seq post.

5 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 19.

## **UPDATE**

### **204-210 Constitution of governing bodies of community schools, maintained nursery schools and community special schools ... Surplus governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

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**211. Powers where there is no properly constituted governing body.**

Where it appears to the Secretary of State<sup>1</sup> that, by reason of the default of any person, there is no properly constituted governing body<sup>2</sup> of any community, foundation or voluntary school or any community or foundation special school<sup>3</sup>, the Secretary of State may make such appointments and give such directions as he thinks desirable for the purpose of securing that there is a properly constituted governing body of that school<sup>4</sup>. He may also give directions rendering valid any acts or proceedings which in his opinion are invalid or otherwise defective by reason of the default<sup>5</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

4 Education Act 1996 s 498(1)(a), (2) (s 498(2) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 131).

5 Education Act 1996 s 498(1)(b).

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## **212. Arrangements for government of new schools.**

Where proposals for the establishment of a maintained school<sup>1</sup> fall to be implemented under any enactment<sup>2</sup>, the local education authority<sup>3</sup> must make arrangements providing for the constitution of a temporary governing body for the school<sup>4</sup>. Once constituted<sup>5</sup>, the temporary governing body continues in existence until such time as the governing body is constituted for the school under an instrument of government<sup>6</sup>. The local education authority must secure that the governing body is so constituted before such date as may be determined in accordance with regulations<sup>7</sup>.

The temporary governing body of a school must be treated for the purposes of the Education Acts<sup>8</sup> as if it were the governing body during the period beginning with the school opening date<sup>9</sup> and ending with the time when the governing body is constituted for the school under an instrument of government<sup>10</sup>.

Regulations<sup>11</sup> may make provision with respect to:

- 395 (1) the making and termination of arrangements for the constitution of temporary governing bodies<sup>12</sup>;
- 396 (2) the constitution, meetings and proceedings of temporary governing bodies, the payment of allowances to temporary governors<sup>13</sup>, and the appointment of clerks to such bodies<sup>14</sup>;
- 397 (3) the exercise by a temporary governing body before the school opening date of the power to provide community facilities<sup>15</sup>;
- 398 (4) the transition from a temporary governing body to a governing body constituted under an instrument of government<sup>16</sup>; and
- 399 (5) such other matters relating to temporary governing bodies as the Secretary of State considers appropriate<sup>17</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 As to the implementation of proposals for the establishment of a maintained school see PARA 173 ante.

3 As to local education authorities see PARA 20 ante.

4 Education Act 2002 s 34(1). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

5 In accordance with arrangements made under *ibid* s 34(1): see the text and notes 1-4 supra.

6 *Ibid* s 34(2). The requirement for there to be an instrument of government for a school, imposed by s 20 (see PARA 241 post), takes effect in relation to a school falling within s 34(1) (see the text and notes 1-4 supra) as from the date determined under s 34(3) (see the text and note 7 infra): s 34(4). As to instruments of government see PARA 241 et seq post.

7 *Ibid* s 34(3). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 34(3).

8 For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

9 For the purposes of *ibid* s 34, 'school opening date', in relation to a new maintained school, means the date when the school first admits pupils: s 34(9). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 212(2), (3).

10 *Ibid* s 34(7). For the purposes of s 30(3) (see PARA 296 post) and the Education Act 1996 ss 495-498 (general default powers of the Secretary of State: see PARAS 56 et seq ante, 262 post), the temporary governing body of a school is also so treated at any time falling before the school opening date: Education Act 2002 s 34(7). Despite s 34(7), nothing in any of the following provisions, namely:

64 (1) s 20(1) (see PARA 241 post);

65 (2) subject to any regulations made under s 34(5) (see the text and notes 11-17 infra), s 19(6), Sch 1 (see PARA 203 ante); or

66 (3) subject to any regulations made under s 34(5) (see the text and notes 11-17 infra), regulations made under s 19 (see PARA 203 ante), s 20 (see PARA 241 post) or s 23 (see PARA 226 post),

applies to any temporary governing body: s 34(8). See note 4 supra.

11 Regulations made under *ibid* s 34(5) may, in connection with any matters falling within s 34(5): (1) modify any provision made under any of s 19 (see PARA 203 ante), s 20 (see PARA 241 post) or s 23 (see PARA 226 post) or by Sch 1 (see PARA 203 ante); (2) apply any such provision with or without modifications; (3) make provision corresponding or similar to any such provision: s 34(6). As to the meanings of 'modify' and 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). As to the regulations made under s 34(5), (6) see the New Schools (General) (England) Regulations 2003, SI 2003/1558 (amended by SI 2004/450; SI 2004/696; SI 2004/3264; SI 2005/1730); the School Staffing (England) Regulations 2003, SI 2003/1963 (amended by SI 2003/2725); the School Governance (Federations) (England) Regulations 2004, SI 2004/2042 (amended by SI 2005/1730); and the Education (Company Directors Disqualification Act 1986: Amendments to Disqualification Provisions) (England) Regulations 2004, SI 2004/3264. The Education (School Government) (Terms of Reference) (England) Regulations 2000, SI 2000/2122, have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 34(5)(e) (see head (5) in the text).

For regulations relating to arrangements for the incorporation of temporary governing bodies see the New Schools (General) (England) Regulations 2003, SI 2003/1558, Pt 2 (regs 8-9). For regulations relating to the categories of temporary governor see the New Schools (General) (England) Regulations 2003, SI 2003/1558, Pt 3 (regs 10-17) (reg 10 amended by SI 2004/450; New Schools (General) (England) Regulations 2003, SI 2003/1558, reg 16 amended by SI 2005/1730). For regulations relating to the composition of temporary governing bodies see the New Schools (General) (England) Regulations 2003, SI 2003/1558, Pt 4 (regs 18-22) (regs 19-22 amended by SI 2005/1730). For regulations relating to qualifications and tenure of office of temporary governors see the New Schools (General) (England) Regulations 2003, SI 2003/1558, Pt 5 (regs 23-28). For regulations relating to the transition from a temporary governing body to a permanent governing body see regs 53-57.

12 Education Act 2002 s 34(5)(a). The arrangements mentioned in the text include such arrangements made in anticipation of proposals falling to be implemented as are mentioned in s 34(1) (see the text and notes 1-4 supra): s 34(5)(a).

13 In the case of temporary governors of a new school, nothing in the School Standards and Framework Act 1998 s 50(3) (effect of financial delegation: see PARA 321 post) is to be read as authorising the payment of allowances to governors otherwise than in accordance with regulations under the Education Act 2002 s 34(5): School Standards and Framework Act 1998 s 50(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 101). For the meaning of 'new school' see PARA 202 ante.

14 Education Act 2002 s 34(5)(b).

15 *Ibid* s 34(5)(c). The power to provide community facilities is conferred by s 27: see PARA 276 post.

16 *Ibid* s 34(5)(d).

17 *Ibid* s 34(5)(e). As to the Secretary of State see PARA 52 ante.

## UPDATE



## **212 Arrangements for government of new schools**

NOTE 11--SI 2003/1558 replaced: School Governance (New Schools) (England) Regulations 2007, SI 2007/958 (amended by SI 2007/3464, SI 2009/1924). SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. SI 2004/2042 replaced: School Governance (Federations) (England) Regulations 2007, SI 2007/960 (amended by SI 2007/3464, SI 2009/1556). SI 2000/2122 amended: SI 2006/2661. See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 25.

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### **213. Federations of schools.**

In prescribed<sup>1</sup> cases, the governing bodies<sup>2</sup>:

- 400 (1) of two or more maintained schools<sup>3</sup>;
- 401 (2) of an existing federation<sup>4</sup> and of one or more maintained schools<sup>5</sup>; or
- 402 (3) of two or more existing federations<sup>6</sup>,

may, after complying with prescribed conditions, and in accordance with prescribed procedure, provide for their respective schools to be federated<sup>7</sup>. Where any schools are so federated<sup>8</sup>, they must have a single governing body constituted under a single instrument of government<sup>9</sup>, and, in prescribed cases, be treated as a single school for the purposes of such enactments<sup>10</sup> as may be prescribed<sup>11</sup>. Regulations<sup>12</sup> may make provision:

- 403 (a) as to the dissolution of governing bodies on the formation of a federation<sup>13</sup>;
- 404 (b) enabling the governing body of a federation to continue in existence as a body corporate<sup>14</sup> when one or more schools join or leave the federation<sup>15</sup>;
- 405 (c) as to the circumstances in which and manner in which a federation may be dissolved, or one or more schools may leave a federation<sup>16</sup>;
- 406 (d) enabling the governing body of a federation that is dissolved to be replaced either by governing bodies for each of the constituent schools or by governing bodies which include the governing body of a new federation<sup>17</sup>;
- 407 (e) as to the transition from one governing body to another<sup>18</sup>;
- 408 (f) as to the transfer of property, rights and liabilities between governing bodies, or between local education authorities<sup>19</sup> and governing bodies<sup>20</sup>; and
- 409 (g) as to such other matters relating to federations, federated schools or the formation or dissolution of federations as the Secretary of State considers appropriate<sup>21</sup>.

If such regulations<sup>22</sup> allow the formation of a federation comprising schools within different categories<sup>23</sup>, the regulations may make provision modifying any enactment which relates to schools within a particular category, or to the governing bodies of schools within a particular category, in the application of the enactment to schools forming part of such a federation or to the governing bodies of such federations<sup>24</sup>. Regulations may also make provision modifying certain provisions of the School Standards and Framework Act 1998<sup>25</sup> in the application of those provisions to federated schools or their governing bodies<sup>26</sup>.

In any enactment: (i) any reference to the governing body or governors<sup>27</sup> of a school is to be construed, in relation to a federated school, as a reference to the governing body or governors of the federation<sup>28</sup>; and (ii) any reference to the instrument of government of a school is to be construed, in relation to a federated school, as a reference to the instrument of government of the federation<sup>29</sup>.

1 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA

79 note 2 ante. As to the regulations made under s 24 see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042 (amended by SI 2005/1730).

2 As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 Education Act 2002 s 24(1)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

4 For the purposes of ibid Pt 3 Ch 1 (ss 19-40), 'federation' means a group of schools that are federated by virtue of s 24; and 'federated school' means a school forming part of a federation: s 24(2).

5 Ibid s 24(1)(b).

6 Ibid s 24(1)(c).

7 Ibid s 24(1). The text refers to schools being federated for the purposes of Pt 3 Ch 1.

8 Ie by virtue of ibid s 24.

9 Ibid s 24(3)(a). As to instruments of government see PARA 241 et seq post.

10 Ie other than any enactment contained in the School Standards and Framework Act 1998 Pt 2 Ch 2 (ss 28-35) (as amended) (establishment, alteration or discontinuance of schools: see PARA 131 et seq ante) or in Pt 3 (ss 84-109) (as amended) (school admissions: see PARA 393 et seq post): Education Act 2002 s 24(3)(b).

11 Ibid s 24(3)(b).

12 See note 1 supra.

13 Education Act 2002 s 24(4)(a).

14 As to bodies corporate generally see CORPORATIONS.

15 Education Act 2002 s 24(4)(b).

16 Ibid s 24(4)(c).

17 Ibid s 24(4)(d).

18 Ibid s 24(4)(e).

19 As to local education authorities see PARA 20 ante.

20 Education Act 2002 s 24(4)(f). Regulations made by virtue of head (f) in the text in relation to the transfer of property, rights and liabilities may: (1) provide for prescribed matters to be determined by the Secretary of State; (2) apply with modifications any provision of the Education Reform Act 1988 ss 198, 228, Sch 10 (as amended) (supplementary provisions with respect to transfers: see PARA 1389 et seq post); or (3) make provision equivalent to that made by any provision of the Education Reform Act 1988 Sch 10: Education Act 2002 s 24(5). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). As to the Secretary of State see PARA 52 ante.

21 Ibid s 24(4)(g).

22 Ie regulations made by virtue of ibid s 24.

23 For this purpose, references to categories of maintained schools are references to the categories set out in the School Standards and Framework Act 1998 s 20(1) (see PARA 102 ante): Education Act 2002 s 25(4).

24 Ibid s 25(3).

25 Ie any provision contained in: (1) the School Standards and Framework Act 1998 Pt 1 Ch 4 (ss 14-19A) (as amended) (intervention in schools causing concern: see PARA 1264 et seq post) (Education Act 2002 s 25(1)(a)); or (2) the School Standards and Framework Act 1998 ss 49-51, Sch 15 (as amended) (financial delegation: see PARA 320 et seq post) (Education Act 2002 s 25(1)(b)).

26 Ibid s 25(1). The modifications that may be made by virtue of s 25(1) include, in particular, modifications: (1) enabling powers conferred by the provisions referred to in s 25(1) (see note 25 supra) to be exercised in

relation to all the schools in a federation even though the circumstances by reference to which the powers are exercisable exist only in relation to one or more of those schools; and (2) requiring the apportionment of any costs or expenses incurred by the governing body of a federation: s 25(2).

As to the regulations made under s 25 see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042 (amended by SI 2005/1730).

27 As to the constitution of governing bodies of a school see PARA 204 et seq ante.

28 Education Act 2002 s 24(6)(a).

29 Ibid s 24(6)(b).

## **UPDATE**

### **213 Federations of schools**

NOTES 2, 26--SI 2004/2042 replaced: School Governance (Federations) (England) Regulations 2007, SI 2007/960 (amended by SI 2007/3464, SI 2009/1556).

NOTE 25--Now head (1) the Education and Inspections Act 2006 Pt 4 (ss 59-73) (see PARA 1264 et seq): 2002 Act s 25(1)(za) (added by 2006 Act Sch 7 para 19).

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## **214. Collaboration between schools.**

Regulations<sup>1</sup> may:

- 410 (1) enable the governing bodies<sup>2</sup> of two or more maintained schools<sup>3</sup> to arrange for any of their functions<sup>4</sup> to be discharged jointly or by a joint committee of theirs<sup>5</sup>;
- 411 (2) provide for the appointment by two or more governing bodies of a joint committee of those governing bodies for the purposes of discharging any functions in pursuance of any such arrangements<sup>6</sup>; and
- 412 (3) provide that any enactment relating to those functions or the governing bodies by whom they are to be discharged is to have effect subject to all necessary modifications<sup>7</sup> in its application in relation to those functions and the governing bodies by whom they are to be discharged<sup>8</sup>.

1 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 26 see the School Governance (Collaboration) (England) Regulations 2003, SI 2003/1962; and the School Staffing (England) Regulations 2003, SI 2003/1963 (amended by SI 2003/2725) (cited in PARA 333 et seq post).

2 As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

5 Ibid s 26(a).

6 Ibid s 26(b).

7 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

8 Ibid s 26(c).

## **UPDATE**

### **214 Collaboration between schools**

TEXT AND NOTES--As to collaboration between maintained schools and further education bodies see PARA 597A.

NOTE 1--SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. SI 2003/1962 amended: SI 2007/957.

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## **215. Governing bodies consisting of interim executive members.**

Where a notice has been given in respect of any maintained school<sup>1</sup> either by the local education authority<sup>2</sup> or by the Secretary of State<sup>3</sup> that, as from the date specified in the notice, the governing body<sup>4</sup> is to consist of interim executive members<sup>5</sup>, the following provisions<sup>6</sup> have effect<sup>7</sup>. The governing body of the school must consist of members appointed by the appropriate authority<sup>8</sup>. The governing body as so constituted<sup>9</sup> is referred to as 'the interim executive board'<sup>10</sup>, and the members of the governing body as so constituted are referred to as 'interim executive members'<sup>11</sup>. On the date specified in the notice given either by the local education authority<sup>12</sup> or by the Secretary of State<sup>13</sup>, the existing governors<sup>14</sup> must vacate office<sup>15</sup>.

During the interim period<sup>16</sup>, the interim executive board must conduct the school so as to secure, so far as is practicable to do so, the provision of a sound basis for future improvement in the conduct of the school<sup>17</sup>. During the same period, the local education authority may not exercise any power to appoint additional governors<sup>18</sup>, nor may the Secretary of State<sup>19</sup>. At any time during the interim period, the interim executive board may, if it thinks fit, make a report to the local education authority and the Secretary of State recommending that the school be discontinued<sup>20</sup>, and stating the reasons for that recommendation<sup>21</sup>. Where during the interim period, the Secretary of State gives a direction to close the school<sup>22</sup> or gives a direction requiring the discontinuance of a community or foundation special school<sup>23</sup>, or where the local education authority determines to discontinue the school<sup>24</sup>, the interim period continues until the discontinuance date<sup>25</sup>, even where it would otherwise end before that date<sup>26</sup>. However, where such a direction is not given by the Secretary of State and where the local education authority does not make such a determination to discontinue the school and where the notice stating that the governing body is to consist of interim executive members<sup>27</sup> did not specify the duration of the interim period, the appropriate authority may give notice to the specified persons specifying a date on which the governing body is to become a normally constituted governing body<sup>28</sup>. The persons specified for this purpose are: (1) every interim executive member<sup>29</sup>; (2) where the local education authority is the appropriate authority, the Secretary of State<sup>30</sup>; (3) where the Secretary of State is the appropriate authority, the local education authority<sup>31</sup>; (4) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority<sup>32</sup>; and (5) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed<sup>33</sup>.

The interim executive members must vacate office: (a) on the discontinuance date<sup>34</sup>; (b) at the end of the specified period<sup>35</sup>; and (c) in any other case, on the date specified<sup>36</sup> as the date on which the governing body is to become a normally constituted governing body<sup>37</sup>. However, this does not prevent the termination of the appointment of an interim executive member at any earlier time<sup>38</sup> or in accordance with the terms of his appointment<sup>39</sup>. Where interim executive members are to vacate office on the date referred to in head (b) or head (c) above, the local education authority must make arrangements providing for the constitution of the governing body on and after that date<sup>40</sup>.

Regulations<sup>41</sup> may make provision with respect to the transition from an interim executive board to a normally constituted governing body<sup>42</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante.

2 Ie under the School Standards and Framework Act 1998 s 16A (as added and amended in relation to England): see PARA 1270 post. As to local education authorities see PARA 20 ante.

3 Ie under ibid s 18A (as added and amended in relation to England): see PARA 1272 post. As to the Secretary of State see PARA 52 ante.

4 As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

5 For the meaning of 'interim executive members' see the text and note 11 infra.

6 Ie the School Standards and Framework Act 1998 Sch 19A, Sch 1A (both as added in relation to England).

7 Ibid s 19A (added by the Education Act 2002 s 59(1)).

The School Standards and Framework Act 1998 s 19A, Sch 1A (both as added) come into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 2 September 2002 (see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

8 School Standards and Framework Act 1998 Sch 1A para 2(1) (Sch 1A added by the Education Act 2002 s 59(2), Sch 6). See note 7 supra. For the purposes of the School Standards and Framework Act 1998 Sch 1A (as added in relation to England), 'the appropriate authority' means: (1) where Sch 1A (as added in relation to England) applies by virtue of a notice under s 16A(1) (as added in relation to England) (see PARA 1270 post), the local education authority which gave the notice; and (2) where Sch 1A (as added in relation to England) applies by virtue of a notice under s 18A(1) (as added and amended in relation to England) (see PARA 1272 post), the Secretary of State: Sch 1A para 1(1) (as so added). The text refers to a governing body constituted in accordance with Sch 1A (as added in relation to England) instead of being constituted in accordance with regulations made by virtue of the Education Act 2002 s 19 (see PARA 203 ante): School Standards and Framework Act 1998 Sch 1A para 2(1) (as so added).

9 Ie constituted in accordance with ibid Sch 1A (as added in relation to England).

10 Regulations made by virtue of the Education Act 2002 s 19(2) or (3) (see PARA 203 ante) do not apply in relation to the interim executive board: School Standards and Framework Act 1998 Sch 1A para 13(1) (as added: see note 8 supra). See note 7 supra. The instrument of government of the school does not, so far as it relates to the constitution of the governing body, have effect in relation to the interim executive board: Sch 1A para 13(2) (as so added).

The interim executive board may determine its own procedure (Sch 1A para 11(1) (as so added)); and may make such arrangements as it thinks fit for the discharge of its functions by any other person (Sch 1A para 11(2) (as so added)).

11 Ibid Sch 1A para 2(2) (as added: see note 8 supra). See note 7 supra.

The number of interim executive members must not be less than two: Sch 1A para 4(1) (as so added). The initial appointment of interim executive members must be made so as to take effect on the date specified in the notice under s 16A(1) (as added in relation to England) (see PARA 1270 post) or s 18A(1) (as added and amended in relation to England) (see PARA 1272 post): Sch 1A para 4(2) (as so added). The appropriate authority may appoint further interim executive members at any time during the interim period: Sch 1A para 4(3) (as so added). For the meaning of 'the interim period' see note 16 infra.

Every appointment of an interim executive member must be made by an instrument in writing setting out the terms of his appointment: Sch 1A para 5(1) (as so added). An interim executive member holds office in accordance with the terms of his appointment and subject to Sch 1A para 18 (as added in relation to England) (see the text and notes 34-39 infra) (Sch 1A para 5(2)(a) (as so added)), and may at any time be removed from office by the appropriate authority for incapacity or misbehaviour (Sch 1A para 5(2)(b) (as so added)). The terms of appointment of an interim executive member may provide for his appointment to be terminable by the appropriate authority by notice: Sch 1A para 5(3) (as so added).

The appropriate authority must give a copy of the notice under s 16A(1) (as added in relation to England) or s 18A(1) (as added and amended in relation to England) and of every instrument of appointment of an interim executive member: (1) to every interim executive member; (2) to every existing governor of the school; (3) where the local education authority is the appropriate authority, to the Secretary of State; (4) where the Secretary of State is the appropriate authority, to the local education authority; (5) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, to the appropriate diocesan authority, and (6) in the case of any other foundation or voluntary school, to the person or persons by whom the foundation governors are appointed: Sch 1A para 6(1) (as so added). A

failure to comply with Sch 1A para 6(1) (as added) does not invalidate the notice or appointment: Sch 1A para 6(2) (as so added). For the meanings of 'Church of England school', 'Church in Wales school', 'Roman Catholic Church school' and 'appropriate diocesan authority' see PARA 42 note 15 ante. As to foundation and voluntary schools see PARA 102 et seq ante.

The appropriate authority may nominate one of the interim executive members to be chairman of the interim executive board (Sch 1A para 8 (as so added)); and may pay to any interim executive member such remuneration and allowances as the appropriate authority may determine (Sch 1A para 9 (as so added)).

12 See note 2 supra.

13 See note 3 supra.

14 'Existing governors', in relation to a school in respect of which a notice under the School Standards and Framework Act 1998 s 16A(1) (as added in relation to England) (see PARA 1270 post) or s 18A(1) (as added and amended in relation to England) (see PARA 1272 post) has been given, means the governors who hold office immediately before the governing body becomes constituted in accordance with Sch 1A (as added in relation to England): Sch 1A para 1(1) (as added: see note 8 supra). See note 7 supra.

15 Ibid Sch 1A para 3(1) (as added: see note 8 supra). See note 7 supra. Schedule 1A para 3(1) (as added in relation to England) does not prevent the appointment of an existing governor as an interim executive member: Sch 1A para 3(2) (as so added).

If immediately before the date specified in a notice under s 16A(1) (as added in relation to England) (see PARA 1270 post) or s 18A(1) (as added and amended in relation to England) (see PARA 1272 post) the school does not have a delegated budget, the suspension of the governing body's right to a delegated budget is revoked with effect from that date: Sch 1A para 12(1) (as so added). Schedule 1A para 12(1) (as added in relation to England) is to be construed in accordance with s 49(7) (see PARA 320 post): Sch 1A para 12(4) (as so added). If a notice under s 51, Sch 15 para 1 (suspension of delegated budget for mismanagement: see PARA 322 post) has been given to the governing body before the date specified in a notice under s 16A(1) (as added in relation to England) or s 18A(1) (as added and amended in relation to England) but has not yet taken effect, the notice ceases to have effect on that date: Sch 1A para 12(2) (as so added). During the interim period, the local education authority may not exercise the power conferred by s 17 (as amended in relation to England) (power to suspend right to delegated budget: see PARA 1269 post): Sch 1A para 12(3) (as so added).

16 For these purposes, 'the interim period', in relation to a school in respect of which a notice under ibid s 16A(1) (as added in relation to England) (see PARA 1270 post) or s 18A(1) (as added and amended in relation to England) (see PARA 1272 post) has been given, means the period during which the governing body is constituted in accordance with Sch 1A (as added in relation to England): Sch 1A para 1(1) (as added: see note 8 supra). See note 7 supra. During the interim period, any reference in any provision contained in, or made under, the Education Acts to a governor or foundation governor of a school has effect, in relation to the school, as a reference to an interim executive member (School Standards and Framework Act 1998 Sch 1A para 3(3) (as so added)); and s 83 (modification of provisions making governors of foundation or voluntary school ex officio trustees: see PARA 250 post) has effect in relation to the school with the substitution for s 83(1)(a)-(c) of a reference to the interim executive members: (Sch 1A para 3(4) (as so added)). The appropriate authority may in the notice under s 16A(1) (as added in relation to England) or s 18A(1) (as added and amended in relation to England) specify the duration of the interim period: Sch 1A para 7 (as so added). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

17 Ibid Sch 1A para 10(1) (as added: see note 8 supra). See note 7 supra. Schedule 1A para 10(1) (as added) is without prejudice to the other duties of the interim executive board as governing body: Sch 1A para 10(2) (as so added).

18 Ibid Sch 1A para 14(a) (as added: see note 8 supra). See note 7 supra. The power to appoint additional governors referred to in the text is the power under s 16 (as amended in relation to England) (see PARA 1268 post).

19 Ibid Sch 1A para 14(b) (as added: see note 8 supra). See note 7 supra. The power to appoint additional governors referred to in the text is the power under s 18 (as amended in relation to England) (see PARA 1271 post).

20 In ibid Sch 1A (as added in relation to England), any reference to the discontinuance of a maintained school is a reference to the local education authority ceasing to maintain it: Sch 1A para 1(2) (as added: see note 8 supra). See note 7 supra.

21 Ibid Sch 1A para 15(1) (as added: see note 8 supra). See note 7 supra. However, the interim executive board may not: (1) publish under s 29(2) (proposals for discontinuance of community, foundation, voluntary or maintained nursery school: see PARA 134 ante) proposals to discontinue the school; or (2) serve notice under s



30(2) (notice by governing body to discontinue foundation or voluntary school: see PARA 135 ante): Sch 1A para 15(2) (as so added).

22    Ie under ibid s 19(1) (as substituted; further substituted in relation to England) (see PARA 1273 post).

23    Ibid Sch 1A para 16(1)(a) (as added: see note 8 supra). See note 7 supra. The text refers to a direction given under s 32(1) (see PARA 149 ante).

24    Ibid Sch 1A para 16(1)(b) (as added: see note 8 supra). See note 7 supra.

25    In ibid Sch 1A para 16 (as added in relation to England), 'the discontinuance date' means: (1) the date on which proposals for discontinuing the school are implemented under ss 28(8), 29(7), 31(8), Sch 6 Pt 3 paras 11-15 (as amended) (see PARAS 141-144 ante); (2) the date on which the school is discontinued under s 30 (as amended) (notice by governing body to discontinue foundation or voluntary school: see PARA 135 ante); or (3) the date specified in the direction under s 19(1) (as substituted; further substituted in relation to England) (see PARA 1273 post) or s 32(1) (see PARA 149 ante), as the case may be: Sch 1A para 16(2) (as added: see note 8 supra). See note 7 supra.

26    Ibid Sch 1A para 16(1) (as added: see note 8 supra). See note 7 supra.

27    Ie the notice under ibid s 16A(1) (as added in relation to England) (see PARA 1270 post) or under s 18A(1) (as added and amended in relation to England) (see PARA 1272 post).

28    Ibid Sch 1A para 17(1) (as added: see note 8 supra). See note 7 supra. For these purposes, 'a normally constituted governing body' means a governing body constituted in accordance with regulations made by virtue of the Education Act 2002 s 19 (see PARA 203 ante): School Standards and Framework Act 1998 Sch 1A para 1(1) (as so added).

29    Ibid Sch 1A para 17(2)(a) (as added: see note 8 supra). See note 7 supra.

30    Ibid Sch 1A para 17(2)(b) (as added: see note 8 supra). See note 7 supra.

31    Ibid Sch 1A para 17(2)(c) (as added: see note 8 supra). See note 7 supra.

32    Ibid Sch 1A para 17(2)(d) (as added: see note 8 supra). See note 7 supra.

33    Ibid Sch 1A para 17(2)(e) (as added: see note 8 supra). See note 7 supra.

34    Ibid Sch 1A para 18(1)(a) (as added: see note 8 supra). See note 7 supra. The date referred to in the text is the discontinuance date within the meaning of Sch 1A para 16 (as added in relation to England) (see note 25 supra), in a case where Sch 1A para 16 (as added in relation to England) (see the text and notes 22-26 supra) applies: Sch 1A para 18(1)(a) (as so added).

35    Ibid Sch 1A para 18(1)(b) (as added: see note 8 supra). See note 7 supra. The period referred to in the text is the period specified in a case where Sch 1A para 16 (as added in relation to England) (see the text and notes 22-26 supra) does not apply and the notice under s 16A(1) (as added in relation to England) (see PARA 1270 post) or under s 18A(1) (as added and amended in relation to England) (see PARA 1272 post) specified the duration of the interim period: Sch 1A para 18(1)(b) (as so added).

36    Ie the date specified under ibid Sch 1A para 17(1) (as added in relation to England) (see the text and notes 27-28 supra).

37    Ibid Sch 1A para 18(1)(c) (as added: see note 8 supra). See note 7 supra.

38    Ie under ibid Sch 1A para 5(2)(b) (as added in relation to England) (see note 11 supra).

39    Ibid Sch 1A para 18(2) (as added: see note 8 supra). See note 7 supra.

40    Ibid Sch 1A para 19(1) (as added: see note 8 supra). See note 7 supra.

41    'Regulations' means regulations made by the Secretary of State: ibid s 142(1). Such regulations may in connection with that transition: (1) modify any provision made under any of the Education Act 2002 s 19 (governing bodies: see PARA 203 ante), s 20 (instruments of government: see PARA 241 post) and s 23 (clerk to the governing body: see PARA 226 post) or by s 19(6), Sch 1 (incorporation and powers of governing body: see PARA 228 post); (2) apply any such provision with or without modifications; and (3) make provision corresponding to or similar to any such provision: School Standards and Framework Act 1998 Sch 1A para 19(2) (as added: see note 8 supra). See note 7 supra. As to the exclusion of certain provisions in relation to the

shadow governing body see the School Governance (Transition from an Interim Executive Board) (England) Regulations 2004, SI 2004/530, reg 3.

42 School Standards and Framework Act 1998 Sch 1A para 19(2) (as added: see note 8 supra). See note 7 supra. The provision that may be made by virtue of Sch 1A para 19(2) (as added in relation to England) includes, in particular, provision enabling governors to be elected or appointed, and to exercise functions, before the end of the interim period: Sch 1A para 19(3) (as so added). As to the composition, establishment and conduct of a shadow governing body see the School Governance (Transition from an Interim Executive Board) (England) Regulations 2004, SI 2004/530, Pt 2 (regs 4-15). As to the transition to a normally constituted governing body see Pt 3 (regs 16-17).

## **UPDATE**

### **215 Governing bodies consisting of interim executive members**

TEXT AND NOTES--In relation to England, 1998 Act s 19A, Sch 1A now Education and Inspections Act 2006 s 70, Sch 6. Section 70, Sch 6 are identical to the 1998 Act s 19A, Sch 1A, except that references to the National Assembly for Wales are to the Secretary of State, references to a Church in Wales school are omitted and references to the provisions of the 1998 Act which are no longer applicable in England are now to the corresponding provisions of the 2006 Act (see further PARAS 1264-1273).

NOTE 7--Day now appointed in relation to Wales: SI 2007/3611.

NOTE 42--SI 2004/530 reg 16 amended: SI 2007/957.

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## (B) THE GOVERNORS AND CLERK

### **216. Election and appointment of parent governors.**

The appropriate authority<sup>1</sup> must make all the necessary arrangements for the election of parent governors<sup>2</sup>. Any election which is contested must be held by ballot<sup>3</sup>, and the necessary arrangements so made must provide for every person who is entitled to vote to have an opportunity to do so by post<sup>4</sup>, although the arrangements may provide also for every person who is entitled to vote to have an opportunity to do so by electronic means<sup>5</sup>. Where a vacancy for a parent governor arises, the appropriate authority must take such steps as are reasonably practicable to secure that every person who is known to it to be a parent<sup>6</sup> of a registered pupil<sup>7</sup> at the school, and, where the school is a maintained nursery school, a parent of a child for whom educational or other provision is made<sup>8</sup> on the premises of the school<sup>9</sup>, is informed of the vacancy and that it is required to be filled by election<sup>10</sup>, is informed that he is entitled to stand as a candidate and vote in the election<sup>11</sup>, and is given the opportunity to do so<sup>12</sup>.

The number of parent governors required must be made up by parent governors appointed by the governing body, if one or more vacancies for parent governors arises and either:

- 413 (1) the number of parents standing for election is less than the number of vacancies<sup>13</sup>;
- 414 (2) at least 50 per cent of the registered pupils at the school are boarders<sup>14</sup> and it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors<sup>15</sup>; or
- 415 (3) in the case of a school which is a community special or foundation special school established in a hospital, it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors<sup>16</sup>.

The governing body must appoint as a parent governor a parent of a registered pupil at the school<sup>17</sup>, a parent of a former registered pupil at the school<sup>18</sup>, or a parent of a child under or of compulsory school age<sup>19</sup>. However, where the school is a community special school or a foundation special school, the governing body must appoint a parent of a registered pupil at the school<sup>20</sup>, a parent of a former registered pupil at the school<sup>21</sup>, a parent of a child under or of compulsory school age with special educational needs<sup>22</sup> for which the school is approved<sup>23</sup>, or a parent with experience of educating a child with special educational needs<sup>24</sup>.

1 For this purpose, 'appropriate authority' means: (1) in relation to a community school, a community special school, a maintained nursery school or a voluntary controlled school, the local education authority; (2) in relation to a voluntary aided school, foundation school or foundation special school, the governing body: School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 4(4) (added by SI 2003/1916), School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 1 para 1. Where a local education authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under Sch 1 (as amended): Sch 1 para 2. The local education authority may be the appropriate authority in relation to a school within head (2) supra if the governing body and the local education authority so agree: Sch 1 para 3. In the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended): (a) any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)); and

(b) any reference to the local education authority is a reference to the local education authority that maintains the school (reg 3(2)(c)). As to the governing bodies of maintained schools in England see PARA 203 ante; and as to local education authorities see PARA 20 ante. As to community schools, foundation schools, voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante. For the meaning of 'school' see PARA 81 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante.

As to the governance of schools in Wales see PARA 251 et seq post.

2 Ibid Sch 1 para 4. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 204 note 5 ante. The power conferred by Sch 1 para 4 does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected: Sch 1 para 5.

3 Ibid Sch 1 para 6.

4 Ibid Sch 1 para 7(1). For this purpose, 'post' includes delivery by hand: Sch 1 para 7(2).

5 Ibid Sch 1 para 7(3).

6 As to the meaning of 'parent' see PARA 204 note 5 ante.

7 For the meaning of 'registered pupil' see PARA 512 post.

8 Ie including any such provision made by the governing body under the Education Act 2002 s 27 (see PARA 232 post).

9 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 1 para 8 (amended by SI 2004/450). As to school premises see PARA 1352 et seq post.

10 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 1 para 8(a).

11 Ibid Sch 1 para 8(b).

12 Ibid Sch 1 para 8(c).

13 Ibid Sch 1 para 9(a).

14 As to the meaning of 'boarder' see PARA 26 note 16 ante.

15 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 1 para 9(b).

16 Ibid Sch 1 para 9(c).

17 Ibid Sch 1 para 10(1)(a).

18 Ibid Sch 1 para 10(1)(b). The governing body may only appoint a person referred to in Sch 1 para 10(1)(b) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 10(1)(a) (see the text and note 17 supra): Sch 1 para 10(2). As to the need for notification of appointments, and as to joint appointments, see PARA 204 note 11 ante.

19 Ibid Sch 1 para 10(1)(c). As to the meaning of 'compulsory school age' see PARA 15 ante. The governing body may only appoint a person referred to in Sch 1 para 10(1)(c) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 10(1)(b) (see the text and note 18 supra): Sch 1 para 10(2).

20 Ibid Sch 1 para 11(1)(a).

21 Ibid Sch 1 para 11(1)(b). The governing body may only appoint a person referred to in Sch 1 para 11(1)(b) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 11(1)(a) (see the text and note 20 supra): Sch 1 para 11(2).

22 For the meaning of 'special educational needs' see PARA 984 post.

23 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 1 para 11(1)(c). As to the approval of non-maintained special schools see PARA 1028 post. The governing body may only appoint a person referred to in Sch 1 para 11(1)(c) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 11(1)(b) (see the text and note 21 supra): Sch 1 para 11(2).

24 Ibid Sch 1 para 11(1)(d). The governing body may only appoint a person referred to in Sch 1 para 11(d) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 11(c) (see the text and notes 22-23 supra): Sch 1 para 11(2).

## **UPDATE**

### **216-223 Election and appointment of parent governors ... Removal of governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced:  
School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended  
by SI 2009/1924).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/A. GOVERNANCE OF SCHOOLS IN ENGLAND/(B) The Governors and Clerk/217. Election and appointment of staff governors.

## **217. Election and appointment of staff governors.**

The appropriate authority<sup>1</sup> must make all the necessary arrangements for the election of staff governors<sup>2</sup>. Any election which is contested must be held by ballot<sup>3</sup>.

1 In the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 5(1), Sch 2, 'appropriate authority' has the same meaning as in reg 4(4) (as added), Sch 1 (as amended) (see PARA 216 ante); Sch 2 para 1. Where an authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under Sch 2: Sch 2 para 2. For the meaning of 'school' see PARA 81 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante.

As to the governance of schools in Wales see PARA 251 et seq post.

2 Ibid Sch 2 para 3. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). As to the governing bodies of maintained schools in England see PARA 203 ante. For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'staff governor' see PARA 204 note 6 ante. The power conferred by Sch 2 para 3 includes the power to make provision as to qualifying dates, but does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected: Sch 2 para 4.

3 Ibid Sch 2 para 5.

## **UPDATE**

### **216-223 Election and appointment of parent governors ... Removal of governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/A. GOVERNANCE OF SCHOOLS IN ENGLAND/(B) The Governors and Clerk/218. Election and appointment of community governors at community special schools and foundation special schools.

## **218. Election and appointment of community governors at community special schools and foundation special schools.**

The governing body<sup>1</sup> of a community special school or a foundation special school<sup>2</sup> must appoint<sup>3</sup> community governors<sup>4</sup>. In relation to a community special school or foundation special school established in a hospital, the governing body must invite the appropriate body<sup>5</sup> to nominate a person to be appointed<sup>6</sup> as one of the community governors<sup>7</sup>. The governing body of a community special school or a foundation special school not established in a hospital must appoint as one of its community governors:

- 416 (1) if a voluntary organisation is designated by the local education authority, in relation to the school, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised, a person nominated by that organisation<sup>8</sup>; or
- 417 (2) if two or more voluntary organisations are so designated as appropriate voluntary organisations concerned with such matters, a person nominated by those organisations acting jointly<sup>9</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to community special schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

3 Ie in accordance with the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 7(1) (see PARA 204 ante).

4 Ibid reg 7(2), Sch 3 para 1. As to the need for notification of appointments, and as to joint appointments, see PARA 204 note 11 ante.

5 In relation to a community special school or foundation special school established in a hospital, the local education authority must designate: (1) one or more primary care trusts; or (2) the National Health Service trust or NHS foundation trust with which the school is most closely connected, as the appropriate body: ibid Sch 3 para 2(1) (amended by SI 2004/696). For this purpose, 'National Health Service trust' means a body established by the Secretary of State under the National Health Service and Community Care Act 1990 s 5 (as amended); 'NHS foundation trust' has the same meaning as in the Health and Social Care (Community Health and Standards) Act 2003 s 1(1) (see HEALTH SERVICES vol 54 (2008) PARA 174); and 'primary care trust' means a body established under the National Health Service Act s 16A (as added) (see HEALTH SERVICES vol 54 (2008) PARA 111 et seq); School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 3 para 2(3) (amended by SI 2004/696). In the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended), any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante; and as to the Secretary of State see PARA 52 ante.

6 Ie in accordance with ibid reg 7(2) (see PARA 204 ante). As to the need for notification of nominations see PARA 204 note 11 ante.

7 Ibid Sch 3 para 2(2). Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which

the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'community governor' see PARA 204 note 8 ante.

8 Ibid Sch 3 para 3(a).

9 Ibid Sch 3 para 3(b).

## **UPDATE**

### **216-223 Election and appointment of parent governors ... Removal of governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/A. GOVERNANCE OF SCHOOLS IN ENGLAND/(B) The Governors and Clerk/219. Appointment of partnership governors.

## 219. Appointment of partnership governors.

Where a partnership governor<sup>1</sup> is required, the governing body<sup>2</sup> must seek nominations from parents<sup>3</sup> of registered pupils<sup>4</sup> at the school, and from such other persons in the community served by the school as it considers appropriate<sup>5</sup>. No person may nominate for appointment, or appoint, a person as a partnership governor unless that person would be eligible for appointment by the governing body as a community governor<sup>6</sup>; and no governor may nominate a person for appointment as a partnership governor<sup>7</sup>.

The governing body must appoint such number of partnership governors as is required by the instrument of government<sup>8</sup> from among eligible nominees<sup>9</sup>. If the number of eligible nominees is less than the number of vacancies, the number of partnership governors required may be made up by persons selected by the governing body<sup>10</sup>.

The governing body must make all necessary arrangements for and determine all other matters relating to the nomination and appointment of partnership governors<sup>11</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'partnership governor' see PARA 205 note 9 ante.

2 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 As to the meaning of 'parent' see PARA 204 note 5 ante.

4 For the meaning of 'registered pupil' see PARA 512 post.

5 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 9(1), Sch 4 para 1. As to the need for notification of nominations see PARA 204 note 11 ante.

6 Ibid Sch 4 para 2. For the meaning of 'community governor' see PARA 204 note 8 ante.

7 Ibid Sch 4 para 3. This provision is subject to Sch 4 para 4(2) (see the text and note 10 infra). As to the need for notification of appointments, and as to joint appointments, see PARA 204 note 11 ante.

8 As to instruments of government see PARA 241 et seq post.

9 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 4 para 4(1).

10 Ibid Sch 4 para 4(2). Where the governing body makes an appointment under Sch 4 para 4(2), having rejected any person nominated under Sch 4 para 1 (see the text and notes 1-6 supra), it must give written reasons for its decision to the local education authority and to the person rejected: Sch 4 para 5. In the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended), any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante.

11 Ibid Sch 4 para 6.

## UPDATE

## **216-223 Election and appointment of parent governors ... Removal of governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

## **219 Appointment of partnership governors**

TEXT AND NOTES 1-5--Replaced. Where a partnership governor is required in relation to a school which is designated under the School Standards and Framework Act 1998 s 69(3) as having a religious character, the governing body must seek nominations from (1) in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority; and (2) in any other case, the appropriate religious body: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 Sch 4 para 1. For the meaning of 'appropriate diocesan authority' and 'appropriate religious body' see reg 28, Sch 4 para 8; and PARA 243. Where a partnership governor is required in relation to a school which does not have a religious character, the governing body must seek nominations from parents of registered pupils at the school, and from such other persons in the community served by the school as they consider appropriate: Sch 4 para 2.

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## **220. Election and appointment of sponsor governors.**

Where a school<sup>1</sup> has one or more sponsors<sup>2</sup>, the governing body may determine that the instrument of government<sup>3</sup> will provide for the governing body to appoint such number of sponsor governors, not exceeding two (or four, as the case may be)<sup>4</sup>. The governing body must seek nominations for such appointments from the sponsor (or, as the case may be, from one or more of the sponsors)<sup>5</sup>.

1 For the meaning of 'school' see PARA 81 ante.

2 For the purposes of the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 10, Sch 5 (as amended), 'sponsor', in relation to a school, means: (1) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the school other than pursuant to statutory obligation; or (2) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school: Sch 5 para 1. Any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 As to instruments of government see PARA 241 et seq post.

4 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 5 para 2 (amended by SI 2005/1730). As to the need for notification of appointments, and as to joint appointments, see PARA 204 note 11 ante.

5 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 5 para 3. As to the need for notification of nominations see PARA 204 note 11 ante.

## **UPDATE**

### **216-223 Election and appointment of parent governors ... Removal of governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/A. GOVERNANCE OF SCHOOLS IN ENGLAND/(B) The Governors and Clerk/221. Qualifications and disqualifications.

## **221. Qualifications and disqualifications.**

No person is qualified to be a governor<sup>1</sup> unless he is aged 18 or over<sup>2</sup> at the date of his election or appointment<sup>3</sup>. Save as otherwise provided<sup>4</sup>, the fact that a person is qualified to be elected or appointed as a governor of a particular category<sup>5</sup> at a school<sup>6</sup> does not disqualify him from election or appointment or from continuing as a governor of any other category at that school<sup>7</sup>. However, no person may at any time hold the office of more than one governor of the same school<sup>8</sup>.

Any governor who is not a governor by virtue of his office and who, without the consent of the governing body, has failed to attend meetings for a continuous period of six months beginning with the date of the first such meeting he failed to attend, is, on the expiry of that period, disqualified from continuing to hold office as a governor of that school<sup>9</sup>.

A person is also disqualified from holding, or from continuing to hold, office as a governor of a school:

- 418 (1) at any time when he is detained under the Mental Health Act 1983<sup>10</sup>;
- 419 (2) if he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded<sup>11</sup>, or if he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it<sup>12</sup>;
- 420 (3) at any time when he is subject to a disqualification order or disqualification undertaking in relation to company directorship<sup>13</sup> or is subject to an order made<sup>14</sup> for failure to pay under a county court administration order<sup>15</sup>;
- 421 (4) if he has been removed from the office of trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or to which he contributed or which he facilitated by his conduct<sup>16</sup>;
- 422 (5) at any time when his employment is subject to certain restrictions or prohibitions<sup>17</sup> associated with the protection of children<sup>18</sup>;
- 423 (6) where, subject to certain conditions, he has been convicted, whether in the United Kingdom<sup>19</sup> or elsewhere, of any offence and has had passed on him a sentence of imprisonment<sup>20</sup>, or has been convicted under the provisions relating to nuisance and disturbance on educational premises<sup>21</sup> of an offence and has been sentenced to a fine<sup>22</sup>; or
- 424 (7) at any time when he refuses a request by the clerk to the governing body<sup>23</sup> to make an application<sup>24</sup> for a criminal records certificate<sup>25</sup>.

Where, by virtue of any of heads (2) to (6) above, a person is disqualified from holding, or from continuing to hold, office as a governor of a school, and he is, or is proposed to become, a governor, he must give notice of that fact to the clerk to the governing body<sup>26</sup>.

<sup>1</sup> Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision

applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 A person attains a particular age expressed in years at the commencement of the relevant anniversary of the date of his birth: see the Family Law Reform Act 1969 s 9; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 2.

3 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 20, Sch 6 para 1(1). This provision does not apply to an associate member appointed under reg 11 (see PARA 208 ante): Sch 6 para 11(2). As to the election and appointment of governors see PARA 216 et seq ante; and as to the need for notification of appointments see PARA 204 note 11 ante.

As to the application of reg 20 and Sch 6, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7.

4 Ie by the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended).

5 As to the different categories of governor see PARAS 204-205 ante.

6 For the meaning of 'school' see PARA 81 ante.

7 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 3. See note 3 supra.

8 Ibid Sch 6 para 2. See note 3 supra.

9 Ibid Sch 6 para 5(1), (2). A foundation governor (other than an ex officio foundation governor), LEA (local education authority) governor, community governor, partnership governor or sponsor governor who has been disqualified as a governor of a school under Sch 6 para 5(2) is not qualified for election, nomination or appointment as a governor of any category at that school during the 12 months immediately following his disqualification under Sch 6 para 5(2): Sch 6 para 5(3). See note 3 supra. For the meaning of 'foundation governor' see PARA 205 note 7 ante; for the meaning of 'ex officio foundation governor' see PARA 209 note 2 ante; for the meaning of 'LEA (local education authority) governor' see PARA 204 note 7 ante; for the meaning of 'community governor' see PARA 204 note 8 ante; for the meaning of 'partnership governor' see PARA 205 note 9 ante; and for the meaning of 'sponsor governor' see PARA 204 note 9 ante.

10 Ibid Sch 6 para 4 (substituted by SI 2004/450). As to detention under the Mental Health Act 1983 see MENTAL HEALTH. See note 3 supra.

11 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 6(a). See note 3 supra. As to the making of bankruptcy orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 195 et seq; and as to discharge from bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 629 et seq.

12 Ibid Sch 6 para 6(b). See note 3 supra. As to compositions and arrangements with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 859 et seq.

13 Ie a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1578 et seq).

14 Ie an order made under the Insolvency Act 1986 s 429(2)(b) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 910).

15 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 7 (substituted by SI 2004/3264). See note 3 supra.

16 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 8. See note 3 supra. As to the removal from office of a charity trustee or a trustee for a charity see CHARITIES vol 8 (2010) PARAS 294, 566. As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

17 The restrictions and prohibitions mentioned in the text apply when a person is: (1) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under the Protection of Children Act 1999 s 1 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 648 et seq); (2) subject to a direction of the Secretary of State under the Education Act 2002 s 142 (see PARA 782 post); (3) disqualified from working with children under the Criminal Justice and Court Services Act 2000 ss

28, 29 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 663-664); or (4) by virtue of an order made under the Education Act 1996 s 470 (repealed) or s 471 (repealed), disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school: School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 9(a)-(d). See note 3 supra. For the meaning of 'child' see PARA 16 note 2 ante; for the meaning of 'young person' see PARA 38 note 4 ante; for the meaning of 'proprietor' see PARA 60 note 7 ante; and for the meaning of 'independent school' see PARA 465 post. As to the Secretary of State see PARA 52 ante.

18 Ibid Sch 6 para 9. See note 3 supra.

19 For the meaning of 'United Kingdom' see PARA 63 note 3 ante.

20 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 10(1)-(5). This provision applies to a person if he has been convicted of an offence as mentioned in the text:

- 67 (1) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office, or since his appointment or election as governor or, as the case may be, since he became a governor by virtue of his office, and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine (Sch 6 para 10(1), (2));
- 68 (2) within the period of 20 years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office, and has had passed on him a sentence of imprisonment for a period of not less than two and a half years (Sch 6 para 10(1), (3)); and
- 69 (3) he has had passed on him a sentence of imprisonment for a period of not less than five years (Sch 6 para 10(1), (4)).

For the purposes of heads (1)-(3) supra, any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom must be disregarded: Sch 6 para 10(5). See note 3 supra.

21 Ie under the Education Act 1996 s 547 (as amended) (see PARA 1416 post) or under the Further and Higher Education Act 1992 s 85A (as added) (see PARA 1417 post).

22 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 10(6). This provision applies to a person if he has been convicted of an offence relating to nuisance and disturbance on educational premises and been sentenced to a fine: (1) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office; or (2) since his appointment or election as governor or, as the case may be, since he became a governor by virtue of his office: Sch 6 para 10(6). See note 3 supra.

23 As to the clerk to the governing body see PARA 226 post.

24 Ie under the Police Act 1997 s 113 (as amended; prospectively further amended; prospectively repealed).

25 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, Sch 6 para 11. See note 3 supra.

26 Ibid Sch 6 para 12. See note 3 supra.

## UPDATE

### 216-223 Election and appointment of parent governors ... Removal of governors

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

## **221 Qualifications and disqualifications**

NOTE 3--SI 2003/348 reg 20, Sch 6 now SI 2007/957 reg 21, Sch 6 (Sch 6 amended by SI 2009/1924), which apply, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).

TEXT AND NOTES 11, 12--Now, head (2) if his estate has been sequestrated and the sequestration has not been discharged, annulled or reduced, or if he is the subject of a bankruptcy restrictions order or an interim order: SI 2007/957 Sch 6 para 6.

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## **222. Tenure of office.**

A governor<sup>1</sup> holds office for a fixed period of four years from the date of his election or appointment<sup>2</sup>. However, the instrument of government<sup>3</sup> may specify a shorter term of office for a particular category of governor<sup>4</sup>, not being less than one year<sup>5</sup>. These provisions do not prevent a governor from:

- 425 (1) being elected or appointed for a further term<sup>6</sup>;
- 426 (2) resigning his office<sup>7</sup>;
- 427 (3) being removed from office<sup>8</sup>; or
- 428 (4) being disqualified<sup>9</sup> from holding or continuing to hold office<sup>10</sup>.

A governor may at any time resign his office by giving written notice to the clerk to the governing body<sup>11</sup>.

The governing body may by resolution suspend a governor for all or any meetings of the governing body, or of a committee, for a fixed period of up to six months on one or more of certain grounds<sup>12</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 Ibid reg 21(1). However, this provision does not apply: (1) to any staff governor who is the head teacher of the school, or to any ex officio foundation governor, who may hold office for as long as he holds the position from which his governorship derives (reg 21(2)); or (2) to any additional governor, additional foundation governor or interim executive member appointed under the School Standards and Framework Act 1998 s 16 (as amended in relation to England) (see PARA 1268 post), s 16A (as added and amended in relation to England) (see PARA 1270 post), s 18 (as amended in relation to England) (see PARA 1271 post), s 18A (as added and amended in relation to England) (see PARA 1272 post), whose term of office is determined by the person who appointed him, up to a maximum of four years (School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 21(3)). For the meaning of 'staff governor' see PARA 204 note 6 ante; and for the meaning of 'ex officio foundation governor' see PARA 209 note 2 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante. As to the election and appointment of governors see PARA 216 et seq ante; and as to the need for notification of appointments see PARA 204 note 11 ante.

As to the application of reg 21, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 1.

3 As to instruments of government see PARA 241 et seq post.

4 As to the different categories of governor see PARAS 204-205 ante. A substitute governor may hold office until the earlier of the following: (1) the expiry of four years from the date when his appointment takes effect; (2) the date when the original governor, not having been removed from office under the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 23(2) (see PARA 223 post), gives written notice to the clerk to the governing body to the effect that he is able and willing to act as a foundation governor; or (3) the date when a person other than the original governor takes office in the post by virtue of which the ex officio foundation governorship exists: reg 21(5). For this purpose, 'the original governor' means the ex officio foundation governor in whose place the substitute governor is appointed to act: reg 21(7). See note 2 supra. For



the meaning of 'substitute governor' see PARA 209 ante; for the meaning of 'foundation governor' see PARA 205 note 7 ante; and for the meaning of 'ex officio foundation governor' see PARA 209 note 2 ante. As to the clerk to the governing body see PARA 226 post.

5 Ibid reg 21(4). See note 2 supra.

6 Ibid reg 21(6)(a). See note 2 supra. This provision does not apply if the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) provide otherwise.

7 Ibid reg 21(6)(b). See note 2 supra. As to resignation of office see reg 22(1); and the text and note 11 infra.

8 Ibid reg 21(6)(c). See note 2 supra. As to removal of a governor from office see regs 23-26; and PARA 223 post.

9 le by virtue of any provision of the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended): see PARA 221 ante.

10 Ibid reg 21(6)(d). See note 2 supra.

11 Ibid reg 22(1). The head teacher may withdraw his resignation at any time by giving written notice to the clerk to the governing body: reg 22(2). An ex officio foundation governor may resign as governor either permanently or temporarily, but his resignation does not prejudice the ex officio governorship of his successor in the office from which the ex officio governorship derives: reg 22(3). See note 2 supra. As to the meaning of 'head teacher' see PARA 93 note 13 ante.

As to the application of reg 22, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7.

12 See the School Governance (Procedure) (England) Regulations 2003, SI 2003/1377, reg 15.

As to the application of reg 15, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 3, 8.

## **UPDATE**

### **216-223 Election and appointment of parent governors ... Removal of governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

### **222 Tenure of office**

NOTES 1-10--SI 2003/348 reg 21 now School Governance (Constitution) (England) Regulations 2007, SI 2007/957 reg 22, which applies, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).

NOTE 11--SI 2003/348 reg 22 now SI 2007/957 reg 23 which applies, with modifications, in relation to the governing body of a federation and its members: SI 2007/960 reg 30 Sch 7 (Sch 7 amended by SI 2007/3464).

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## **223. Removal of governors.**

Any LEA (local education authority) governor<sup>1</sup> or foundation governor<sup>2</sup> may be removed from office by the person who appointed him, who must give written notice thereof to the clerk to the governing body<sup>3</sup> and to the governor so removed<sup>4</sup>.

Any community governor<sup>5</sup> or sponsor governor<sup>6</sup> may be removed from office by the governing body in accordance with the procedure set out in heads (1) to (4) below<sup>7</sup>.

Any parent governor<sup>8</sup> appointed by the governing body<sup>9</sup> may be removed by the governing body in accordance with the procedure set out in heads (1) to (4) below<sup>10</sup>.

A resolution to remove a governor from office<sup>11</sup> which is passed at a meeting of the governing body does not have effect unless:

- 429 (1) in relation to the removal of any ex officio foundation governor at the request of the person entitled to make such a request<sup>12</sup>, or in relation to the removal of any community governor or any sponsor governor at the request of the nominating body<sup>13</sup>, before the governing body resolves to remove the governor from office, the clerk to the governing body gives the reasons for removal provided by the person<sup>14</sup> or by the nominating body (as appropriate) and the governor whom it is proposed to remove is given an opportunity to make a statement in response<sup>15</sup>;
- 430 (2) in relation to the removal by the governing body of a community governor or a sponsor governor<sup>16</sup> or of a parent governor<sup>17</sup>, before the governing body resolves to remove the governor from office, the governor or governors proposing his removal at that meeting state their reasons for doing so and the governor whom it is proposed to remove is given an opportunity to make a statement in response<sup>18</sup>;
- 431 (3) it is confirmed by a resolution passed at a second meeting of the governing body held not less than 14 days after the first meeting<sup>19</sup>; and
- 432 (4) the matter of the governor's removal from office is specified as an item of business on the agenda for each of those meetings<sup>20</sup>.

1 For the meaning of 'LEA (local education authority) governor' see PARA 204 note 7 ante. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 For the meaning of 'foundation governor' in relation to England see PARA 205 note 7 ante. See also note 1 supra.

3 As to the clerk to the governing body see PARA 226 post.

4 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 23(1). The governing body may, in accordance with the procedure set out in reg 26 (see heads (1)-(4) in the text), remove any ex officio foundation governor at the request of the person named in the instrument of government as the person entitled to make such a request, if the governing body thinks fit: reg 23(2). A person proposing the removal of an ex officio foundation governor must inform the clerk to the governing body and the governor in question in writing of the reasons why he is proposing his removal: reg 23(3). For the meaning of 'ex officio foundation governor' see PARA 209 note 2 ante. As to instruments of government see PARA 241 et seq post.

As to the application of reg 23, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7.

5 For the meaning of 'community governor' see PARA 204 note 8 ante. See also note 1 supra.

6 For the meaning of 'sponsor governor' see PARA 204 note 9 ante. See also note 1 supra.

7 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 24(1). The governing body may, in accordance with the procedure set out in reg 26 (see heads (1)-(4) in the text), remove any community governor appointed in accordance with reg 7(2), Sch 3 (see PARA 218 ante), or any sponsor governor at the request of the nominating body, if the governing body thinks fit: reg 24(2). A nominating body proposing the removal of such a governor must inform the clerk to the governing body and the governor in question in writing of the reasons why it is proposing his removal: reg 24(3). For the purpose of Pt 4 (regs 20-26), 'nominating body' means any person from whom nominations were sought for the purpose of appointing, and who nominated, the governor in question: reg 24(4). As to the need for notification of appointments and nominations see PARA 204 note 11 ante.

As to the application of reg 24, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7.

8 For the meaning of 'parent governor' see PARA 204 note 5 ante. See also note 1 supra.

9 Ie under the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 4(4) (as added), Sch 1 paras 9-11: see PARA 216 ante.

10 Ibid reg 25. As to the application of reg 25, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 2.

11 Ie in relation to the removal of a governor from office in accordance with the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 23(2) (see note 4 supra), reg 24 (see the text and notes 5-7 supra) or reg 25 (see the text and notes 8-10 supra): reg 26(1).

As to the application of reg 26, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7.

12 Ie under the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 23(2) (see note 4 supra).

13 Ie under ibid reg 24(2) (see note 7 supra).

14 Ie the person referred to in ibid reg 23(2) (see note 4 supra).

15 Ibid reg 26(2)(a). See note 11 supra.

16 Ie under ibid reg 24(1) (see the text and notes 5-7 supra).

17 Ie under ibid reg 25 (see the text and notes 8-10 supra).

18 Ibid reg 26(2)(b). See note 11 supra.

19 Ibid reg 26(2)(c). See note 11 supra.

20 Ibid reg 26(2)(d). See note 11 supra.

## UPDATE

### **216-223 Election and appointment of parent governors ... Removal of governors**

School Governance (Constitution) (England) Regulations 2003, SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924).

### **223 Removal of governors**

TEXT AND NOTES--SI 2003/348 regs 23-26 now School Governance (Constitution) (England) Regulations 2007, SI 2007/957 regs 24-27, which apply, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).

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## **224. Governors' allowances.**

The governing body of a maintained school<sup>1</sup> which has a delegated budget<sup>2</sup> may determine<sup>3</sup> to pay to a member of that governing body or any associate member thereof payments by way of allowance<sup>4</sup> in respect of expenditure necessarily incurred by that person for the purpose of enabling him to perform any duty as a governor or as an associate member being either travel payments for private vehicles<sup>5</sup> or payments at a rate determined by the governing body and made on provision of a receipt<sup>6</sup> for the relevant amount<sup>7</sup>.

A local education authority<sup>8</sup> may pay<sup>9</sup> prescribed<sup>10</sup> allowances to:

- 433 (1) a governor of a maintained school which does not have a delegated budget<sup>11</sup>;
- 434 (2) a person appointed to represent the local education authority on the governing body of any institution providing higher education<sup>12</sup> or further education<sup>13</sup> (or both)<sup>14</sup>;
- 435 (3) a person appointed to represent the local education authority on the governing body of any independent school<sup>15</sup> or special school<sup>16</sup> which is not maintained by that authority<sup>17</sup>.

The payments prescribed by way of allowance are in respect of expenditure necessarily incurred by a person listed in heads (1) to (3) above for the purpose of enabling him to perform any duty as a governor or as a person appointed to represent the local education authority, being either travel payments for private vehicles<sup>18</sup> or payments at a rate determined by the authority and made on provision of a receipt for the relevant amount<sup>19</sup>.

Where a maintained school does not have a delegated budget, the local education authority may pay to an associate member of the governing body<sup>20</sup>, payments by way of allowance in respect of expenditure necessarily incurred by that person for the purposes of enabling him to perform any duty as an associate member, being either travel payments for private vehicles<sup>21</sup> or payments at a rate determined by the authority and made on provision of a receipt for the relevant amount<sup>22</sup>.

Payments for travel expenses incurred through the use of private cars, pedal cycles and motorcycles must be at a rate not exceeding the HM Revenue and Customs authorised mileage rate, as published from time to time<sup>23</sup>.

1 For these purposes, 'governing body' in relation to a maintained school includes a temporary governing body constituted under the Education Act 2002 s 34 (see PARA 212 ante): Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 2(1). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to delegated budgets see PARA 320 et seq post.

3 In accordance with the provisions of a scheme made by it for the purposes of the Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523 (as amended). Such a scheme may not make different provision in relation to members of the governing body and associate members thereof or in relation to different categories of governor: reg 4(3). For these purposes, 'associate member' means a person appointed by the governing body as a member of one or more of its committees but who is not a member of the governing body for the purposes of the Education Act 2002 s 19 (see PARA 202 ante); and 'governor' in relation to a

maintained school includes a member of a temporary governing body: Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 2(1). Regulation 2(1) refers to the Education Act 2002 s 18 (repeal of specific grant-making powers: see PARA 65 note 6 ante), but it is submitted that the reference should be a reference to s 19 (governing bodies). As to the different categories of governor see PARAS 204-205 ante; and as to temporary governing bodies see PARA 212 ante.

4 Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 4(1).

5 *Ie* under *ibid* reg 7 (see the text and note 23 *infra*).

6 For these purposes, a reference to 'receipt' includes a reference to other evidence establishing the amount of the expenditure: *ibid* reg 2(2).

7 *Ibid* reg 4(2).

8 As to local education authorities see PARA 20 ante.

9 *Ie* in accordance with the provisions of a scheme made by it for the purposes of the Education Act 1996 s 519 (as amended) (travelling and subsistence allowances for governors of schools and further or higher education institutions: see PARA 46 ante).

10 *Ie* prescribed in the Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 5(2) (see the text and notes 18-19 *infra*).

11 *Ibid* reg 5(1)(a).

12 For the meaning of 'higher education' see PARA 19 ante.

13 For the meaning of 'further education' see PARA 18 ante.

14 Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 5(1)(b).

15 As to independent schools see PARA 465 *et seq post*.

16 As to special schools see PARA 1027 *et seq post*.

17 Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 5(1)(c). For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

18 *Ie* under *ibid* reg 7 (see the text and note 23 *infra*).

19 *Ibid* reg 5(2).

20 *Ie* in accordance with the provisions of a scheme made by the authority for the purpose: see note 9 *supra*.

21 *Ie* under the Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 7 (see the text and note 23 *infra*).

22 *Ibid* reg 6(1), (2).

23 *Ibid* reg 7.

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## **225. Training and support of governors.**

The local education authority<sup>1</sup> must:

- 436 (1) to the extent that it is not otherwise required to secure the provision of such information, secure that every governor<sup>2</sup> is provided, free of charge, with such information as it considers appropriate in connection with the discharge of his functions<sup>3</sup> as governor<sup>4</sup>; and
- 437 (2) secure that there is made available to every governor, free of charge, such training as it considers necessary for the effective discharge of those functions<sup>5</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the appointment of governors see PARA 203 et seq ante.

3 As to the general powers and duties of governing bodies see PARA 227 et seq post.

4 Education Act 2002 s 22(a).

5 Ibid s 22(b).

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## **226. Appointment etc of clerk.**

Regulations<sup>1</sup> may make provision:

- 438 (1) requiring the appointment of a clerk to the governing body of a maintained school<sup>2</sup> and authorising or requiring the appointment of clerks to committees of the governing body<sup>3</sup>;
- 439 (2) prescribing<sup>4</sup> the body by whom any such appointment is to be made and any restrictions or other requirements relating to any such appointment<sup>5</sup>;
- 440 (3) as to the dismissal of any such clerk and the procedure to be followed in connection with his dismissal<sup>6</sup>;
- 441 (4) authorising the governing body or a committee of the governing body, where the clerk fails to attend a meeting, to appoint one of its members to act as clerk for the purposes of the meeting<sup>7</sup>.

1 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 23 see the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, regs 8-9; and the School Governance (Collaboration) (England) Regulations 2003, SI 2003/1962, reg 5 (clerks to joint committees).

As to the application of the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 8, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 3, 5, 7.

As to the governance of schools in Wales see PARA 251 et seq post.

2 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 Ibid s 23(a).

4 'Prescribed' means prescribed by regulations (see note 1 supra): ibid s 212(1).

5 Ibid s 23(b). See note 3 supra.

6 Ibid s 23(c). See note 3 supra.

7 Ibid s 23(d). See note 3 supra.

## **UPDATE**

### **226 Appointment etc of clerk**

NOTE 1--SI 2003/1377 reg 6 amended: SI 2007/3464. SI 2003/1377 reg 9 amended: SI 2007/959. SI 2004/2042 reg 29, Sch 8 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 31, Sch 8.



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## (C) GENERAL POWERS AND DUTIES OF GOVERNING BODIES

### **227. General responsibility of governing body for conduct of school.**

The conduct of a maintained school<sup>1</sup> is under the direction of the school's governing body<sup>2</sup>. The governing body must conduct the school with a view to promoting high standards of educational achievement at the school<sup>3</sup>.

Regulations<sup>4</sup> may: (1) set out terms of reference for governing bodies of maintained schools<sup>5</sup>; (2) define the respective roles and responsibilities of the local education authority<sup>6</sup>, the governing body and the head teacher<sup>7</sup> of such schools, whether generally or with respect to particular matters, in relation to the conduct of such schools<sup>8</sup>; and (3) confer functions on governing bodies and head teachers of such schools<sup>9</sup>.

The governing body of a maintained school must, in discharging its functions, comply with the instrument of government<sup>10</sup> and any trust deed<sup>11</sup> relating to the school<sup>12</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3).

2 Ibid s 21(1). This is subject to any other statutory provision: s 21(1). In Pt 3 Ch 1 (ss 19-40), 'statutory provision' means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1232): Education Act 2002 s 39(1). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 Ibid s 21(2).

4 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 21(3) see the Education (Review of Staffing Structure) (England) Regulations 2005, SI 2005/1032. The Education (School Government) (Terms of Reference) (England) Regulations 2000, SI 2000/2122, also have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 21(3).

5 Ibid s 21(3)(a).

6 As to local education authorities see PARA 20 ante.

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

8 Ibid s 21(3)(b).

9 Ibid s 21(3)(c).

10 Ibid s 21(4)(a). As to instruments of government see PARA 241 et seq post.

11 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of ibid s 212(2), (3).

12 Ibid s 21(4)(b). This is subject to any other statutory provision: see s 21(4)(b). See note 2 supra.

## **UPDATE**

## **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

### **227 General responsibility of governing body for conduct of school**

TEXT AND NOTES--The governing body of a maintained school must, in discharging its functions relating to the conduct of the school (1) promote the well-being of pupils at the school (Education Act 2002 s 21(5)(a) (s 21(5)-(9) added by the Education and Inspections Act 2006 s 38(1)); (2) promote community cohesion (2002 Act s 21(5)(b)); (3) have regard to any relevant children and young people's plan (s 21(6)); and (4) have regard to any views expressed by parents of registered pupils (s 21(7)). 'Well-being' means the well-being of pupils so far as relating to the matters mentioned in the Children Act 2004 s 10(2) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 187); 2002 Act s 21(8)(a). 'Relevant children and young people's plan' means, in relation to a school in England, any plan published by the relevant children's trust board under Children Act 2004 s 17 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 190); 2002 Act s 21(9)(a) (s 21(9)(a) substituted, s 21(10) added by Apprenticeships, Skills, Children and Learning Act 2009 s 194(9)). 'The relevant children's trust board' means the children's trust board established by arrangements made under Children Act 2004 s 10 by the local education authority in their capacity as a children's services authority (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 188A); 2002 Act s 21(10).

See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 12.

NOTE 4--SI 2000/2122 amended: see PARA 212. See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 25. SI 2005/1032 revoked: SI 2009/2680.

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## 228. Powers of governing body.

The governing body of a maintained school<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the conduct of the school<sup>2</sup> or the provision<sup>3</sup> of community facilities or services<sup>4</sup>. The governing body may also provide advice or assistance to the governing body of any other maintained school, whether or not maintained by the same local education authority<sup>5</sup>, or to any local education authority<sup>6</sup>.

The powers so conferred include, in particular, the power to:

- 442 (1) borrow such sums as the governing body thinks fit and, in connection with such borrowing, grant any mortgage, charge or other security over any land or other property of the governing body<sup>7</sup>;
- 443 (2) acquire and dispose of land and other property<sup>8</sup>;
- 444 (3) enter into contracts<sup>9</sup>;
- 445 (4) invest any sums not immediately required for the purposes of carrying on any activities it has power to carry on<sup>10</sup>;
- 446 (5) accept gifts of money, land or other property and apply it, or hold and administer it on trust, for any of those purposes<sup>11</sup>; and
- 447 (6) do anything incidental to the conduct of the school, the provision of advice or assistance, or the provision of community facilities or services<sup>12</sup>.

Regulations<sup>13</sup> may make further provision as to the general powers of the governing body<sup>14</sup>, and as to other matters relating to it as a body corporate<sup>15</sup>.

The governing body of a maintained school<sup>16</sup> may require registered pupils<sup>17</sup> to attend at any place outside the school premises<sup>18</sup> for the purposes of receiving any instruction or training included in the secular curriculum for the school<sup>19</sup>.

1 le the governing body of a maintained school incorporated under the Education Act 2002 s 19(1) (see PARA 203 ante): s 19(6), Sch 1 para 1. For the meaning of 'maintained school' see PARA 98 note 3 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to the general responsibility of the governing body for the conduct of a school see PARA 227 ante.

3 le under the Education Act 2002 s 27 (see PARA 232 post).

4 Ibid Sch 1 para 3(1). The provisions of Sch 1 para 3(1)-(3) (see the text and notes 5-12 infra) have effect subject to: (1) any provisions of the school's instrument of government (Sch 1 para 3(8)(a)); and (2) any provisions of a scheme under the School Standards and Framework Act 1998 s 48 (as amended) (see PARA 318 post) which relates to the school (Education Act 2002 Sch 1 para 3(8)(b)). As to instruments of government see PARA 241 et seq post.

5 Ibid Sch 1 para 3(2)(a). As to local education authorities see PARA 20 ante.

6 Ibid Sch 1 para 3(2)(b).

7 Ibid Sch 1 para 3(3)(a). The power to borrow money and grant security mentioned in Sch 1 para 3(2)(a) may only be exercised with the written consent of the Secretary of State or, if an order under Sch 1 para 3(5) so

provides, of the local education authority: Sch 1 para 3(4). Any such consent may be given for particular borrowing or for borrowing of a particular class: Sch 1 para 3(4). The Secretary of State may by order make provision for his function of giving consent under Sch 1 para 3(4) to be instead exercisable in the case of all maintained schools, or in the case of any class of such schools specified in the order, by the local education authorities by whom those schools are maintained: Sch 1 para 3(5). In exercising that function those authorities must comply with any directions contained in an order made by the Secretary of State: Sch 1 para 3(6). The power to make an order under Sch 1 para 3(6) is not exercisable by statutory instrument: see s 210(2); and PARA 77 note 7 ante. At the date at which this volume states the law, no order had been made under Sch 1 para 3. As to the Secretary of State see PARA 52 ante.

8 Ibid Sch 1 para 3(3)(b). As to the acquisition and disposal of land see PARA 1356 et seq post.

9 Ibid Sch 1 para 3(3)(c). Where the school is a foundation, voluntary aided or foundation special school, the power to enter into contracts mentioned in Sch 1 para 3(3)(c) includes power to enter into contracts for the employment of teachers and other staff; but no such contracts may be entered into by the governing body of a community, voluntary controlled or community special school or of a maintained nursery school: Sch 1 para 3(7). For the meaning of 'maintained nursery school' see PARA 98 note 3 ante. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to the employment of teachers, and staffing generally, see PARA 354 et seq post.

10 Ibid Sch 1 para 3(3)(d).

11 Ibid Sch 1 para 3(3)(e). As to land or other property held on trust, or by trustees, for the purposes of a school see PARA 104 note 6 ante.

12 Ibid Sch 1 para 3(3)(f).

13 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under Sch 1 para 4 see the School Governance (Contracts) (England) Regulations 2005, SI 2005/1508.

14 Education Act 2002 Sch 1 para 4(a).

15 Ibid Sch 1 para 4(b). As to bodies corporate generally see CORPORATIONS.

16 For this purpose, 'maintained school' does not include a maintained nursery school: ibid s 29(4).

17 For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of ibid s 212(2), (3).

18 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

19 Ibid s 29(3) (amended by the Education Act 2005 s 115). The Education Act 2002 s 29(3) (as amended) applies in relation to pupil referral units as it applies in relation to maintained schools: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 7. For the meaning of 'pupil referral unit' see PARA 457 post.

## UPDATE

### 227-237 General Powers and Duties of Governing Bodies

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

### 228 Powers of governing body

NOTE 19--2002 Act s 29(3) also applies in relation to pupil referral units in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 7. SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 14.



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## **229. Power of governing body to provide higher education.**

The governing body of a maintained school<sup>1</sup> has the power to arrange the provision to pupils<sup>2</sup> at the school, whether by teachers at the school or other persons, of: (1) courses in preparation for professional examinations at a higher level<sup>3</sup>; or (2) courses providing education at a higher level (whether or not in preparation for an examination)<sup>4</sup>. A governing body may exercise this power in relation to a particular pupil only if it is satisfied that the provision to that pupil of the course in question will not to any significant extent interfere with the other education with which he is being provided at the school<sup>5</sup>.

The power so conferred<sup>6</sup> has effect notwithstanding the fact that nothing in the Education Act 1996 confers any functions with respect to higher education<sup>7</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

3 I.e. courses falling within the Education Reform Act 1988 s 120(1), Sch 6 para 1(g) (see PARAS 19 ante, 726 post).

4 Education Act 2002 s 28A(1) (s 28A added by the Education Act 2005 s 105). The courses providing education at a higher level mentioned in the text are courses falling within the Education Reform Act 1988 Sch 6 para 1(h) (see PARAS 19 ante, 726 post).

5 Education Act 2002 s 28A(2) (as added: see note 4 supra).

6 I.e. under ibid s 28A (as added).

7 Ibid s 28A(5) (as added: see note 4 supra). For the meaning of 'higher education' see PARA 19 ante. As to the Education Act 1996 and higher education see s 1(4); and PARA 14 ante.

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

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### **230. Power of governing body to provide further education.**

The governing body of any maintained school<sup>1</sup> is responsible for determining whether or not to provide part-time education suitable to the requirements of persons of any age over compulsory school age<sup>2</sup>.

<sup>1</sup> For the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

The governing body of a community or foundation special school may not determine to provide, or to cease to provide, education under the School Standards and Framework Act 1998 s 80 without the consent of the local education authority: see s 80(1); and PARA 607 post. As to local education authorities see PARA 20 ante.

<sup>2</sup> See ibid s 80(1); and PARA 607 post.

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

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**231. Power of governing body to form or invest in companies to provide services etc.**

The governing body of a maintained school<sup>1</sup> may form, or participate in forming, companies<sup>2</sup> to:

- 448 (1) provide services or facilities<sup>3</sup> for any schools<sup>4</sup>;
- 449 (2) exercise relevant local education authority functions<sup>5</sup>; or
- 450 (3) make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons<sup>6</sup>.

The governing body of a maintained school may, with a view to securing or facilitating:

- 451 (a) the provision by a company of services or facilities for any schools<sup>7</sup>;
- 452 (b) the exercise by a company of relevant local education authority functions<sup>8</sup>; or
- 453 (c) the making by any person of arrangements of the kind referred to in head (3) above<sup>9</sup>,

invest<sup>10</sup> in the company which is to provide the services or facilities or exercise the functions or by which the arrangements are to be made or facilitated<sup>11</sup>. The governing body of a maintained school may form, or participate in forming, companies to purchase services or facilities for that school and other participating schools<sup>12</sup>. The governing body of a maintained school may, with a view to securing or facilitating the purchase by a company of services or facilities for that school and other participating schools, become a member of the company<sup>13</sup>.

The above provisions are without prejudice to any powers of the governing body of a maintained school which are exercisable otherwise<sup>14</sup>.

The governing body of a maintained school may not exercise any of the above powers<sup>15</sup> except with the consent of the local education authority<sup>16</sup>, and at a time when the school has a delegated budget<sup>17</sup>. A governing body may not exercise any of those powers in relation to a company unless the company satisfies any applicable requirements of regulations under heads (i) and (ii) below<sup>18</sup>, and may not<sup>19</sup> remain a member of a company at any time when the company fails to satisfy any such requirements<sup>20</sup>.

Regulations:

- 454 (i) must provide that, except in such cases as may be prescribed<sup>21</sup>, the company is to be prohibited by its constitution from admitting to its membership any person who is not of a prescribed description<sup>22</sup>;
- 455 (ii) may impose requirements with respect to the constitution of the company, and any other matter connected with the company's affairs<sup>23</sup>;
- 456 (iii) must provide that where one or more governing bodies have invested in a company<sup>24</sup>, a local education authority must be designated as the supervising authority for the company<sup>25</sup>;
- 457 (iv) must specify the persons by whom and the manner in which the power of designation is, or is in specified circumstances, exercisable<sup>26</sup>;



- 458 (v) must make provision about the duties of a local education authority who are for the time being designated as the supervising authority for a company<sup>27</sup>.

Regulations may also: (A) require that, where a local education authority is for the time being designated as the supervising authority for a company, the company must provide prescribed information relating to its financial affairs to it at such times and in such manner as may be prescribed<sup>28</sup>; (B) provide that in prescribed circumstances a local education authority who is for the time being so designated may direct any participating governing body<sup>29</sup> to cease to be a member of the company or to take any other prescribed action in relation to the company<sup>30</sup>; and (C) prescribe the procedure for making such a direction<sup>31</sup>.

1 For these purposes, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: Education Act 2002 s 11(9). For the meaning of 'maintained nursery school' see PARA 94 note 4 ante; definition applied by virtue of s 212(2), (3). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 For these purposes, 'company' means a company registered under the Companies Act 1985 as a company limited by shares or a company limited by guarantee (see COMPANIES vol 14 (2009) PARA 102): Education Act 2002 s 11(9). As to the Secretary of State's powers in relation to companies see PARA 54 ante.

3 For these purposes, 'facilities' includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus: *ibid* s 11(9). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 212(2), (3).

4 *Ibid* s 11(1)(a).

5 *Ibid* s 11(1)(b). For these purposes, 'relevant local education authority functions', in relation to a company, means any such functions of any local education authority as are or may become exercisable by the company in accordance with an authorisation given or direction made by virtue of any enactment: s 11(9). As to local education authorities see PARA 20 ante.

6 *Ibid* s 11(1)(c).

7 *Ibid* s 11(2)(a).

8 *Ibid* s 11(2)(b).

9 *Ibid* s 11(2)(c).

10 References to investing in a company include references to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise: *ibid* s 11(10).

11 *Ibid* s 11(2).

12 *Ibid* s 11(3). 'Participating school', in relation to a company, means a school whose governing body is, or is to be, a member of the company: s 11(9).

13 *Ibid* s 11(4). The governing body of a maintained school may provide staff to any company in relation to which it has exercised a power conferred by any of s 11(1)-(4): s 11(5). The provisions of s 11(1)-(4) have effect subject to s 12 (see the text and notes 15-31 *infra*): s 11(6). In exercising the power conferred by s 11(5), the governing body of a maintained school must have regard to any guidance given from time to time by the Secretary of State: s 11(7). As to the Secretary of State see PARA 52 ante.

14 *Ibid* s 11(8).

15 *Ie* powers conferred by any of *ibid* s 11(1)-(4) (see the text and notes 1-13 *supra*).

16 *Ibid* s 12(1)(a). Regulations may restrict the circumstances in which a local education authority may refuse to give any consent applied for under s 12(1): s 12(8). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 12(8) see the School Companies Regulations 2002, SI

2002/2978, Pt 3 (regs 15-16); and the School Companies (Private Finance Initiative Companies) Regulations 2002, SI 2002/3177, Pt 3 (regs 7-8).

17 Education Act 2002 s 12(1)(b). The text refers to a delegated budget within the meaning of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) (see PARA 320 post).

18 Education Act 2002 s 12(2)(a).

19 Ie by virtue of ibid s 11 (see the text and notes 1-14 supra).

20 Ibid s 12(2)(b).

21 'Prescribed' means prescribed by regulations: ibid s 212(1).

22 Ibid s 12(3)(a). As to the regulations so made see the School Companies Regulations 2002, SI 2002/2978, reg 5, Sch 1 (amended by SI 2004/3264); and the Education (Company Directors Disqualification Act 1986: Amendments to Disqualification Provisions) (England) Regulations 2004, SI 2004/3264.

23 Education Act 2002 s 12(3)(b). Without prejudice to the generality of head (ii) in the text, regulations under that head may require that the company be prohibited by its constitution from borrowing money, except with the consent of a prescribed person: s 12(4). As to the regulations so made see the School Companies Regulations 2002, SI 2002/2978, Pt 2 (regs 5-14) (amended by SI 2003/2049).

24 Ie by virtue of the Education Act 2002 s 11 (see the text and notes 1-14 supra).

25 Ibid s 12(5)(a). As to the regulations so made see the School Companies Regulations 2002, SI 2002/2978, Pt 4 (regs 17-34).

26 Education Act 2002 s 12(5)(b). See note 25 supra.

27 Ibid s 12(5)(c). See note 25 supra.

28 Ibid s 12(6)(a). See note 25 supra.

29 For this purpose, 'participating governing body', in relation to a company, means any governing body of a maintained school who is a member of the company: ibid s 12(7).

30 Ibid s 12(6)(b). See note 25 supra.

31 Ibid s 12(6)(c). See note 25 supra.

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

### **231 Power of governing body to form or invest in companies to provide services etc**

NOTE 2--Education Act 2002 s 11(9) amended: SI 2009/1941.

NOTE 16--SI 2002/3177 reg 8A added, Sch 1 amended: SI 2006/2198 (England), SI 2009/1924 (England).

NOTE 22--SI 2002/2978 Sch 1 further amended: SI 2006/2198 (England).

NOTE 23--SI 2002/2978 reg 8A added: SI 2009/1924 (England).

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### **232. Power of governing body to provide community facilities etc.**

The governing body of a maintained school<sup>1</sup> has the power to provide any facilities or services whose provision furthers any charitable purpose for the benefit of pupils<sup>2</sup> at the school or their families, or people who live or work in the locality in which the school is situated<sup>3</sup>. This power<sup>4</sup> includes, in particular, power for a governing body to: (1) incur expenditure<sup>5</sup>; (2) enter into arrangements or agreements with any person<sup>6</sup>; (3) co-operate with, or facilitate or co-ordinate the activities of, any person<sup>7</sup>; and (4) provide staff, goods, services and accommodation to any person<sup>8</sup>. A governing body may charge for any services or facilities so provided<sup>9</sup>.

However, the power to provide community facilities<sup>10</sup> does not enable a governing body to do anything which it is unable to do by virtue of any prohibition, restriction or limitation on its powers which is contained in the school's instrument of government<sup>11</sup>, or any local education authority's financial scheme<sup>12</sup> which relates to the school<sup>13</sup>. Regulations<sup>14</sup> may make provision preventing governing bodies from doing<sup>15</sup> anything which is specified, or is of a description specified, in the regulations<sup>16</sup>. A governing body must exercise the power to provide community facilities<sup>17</sup> only if, and to the extent that, it is satisfied that anything which it proposes to do will not to a significant extent interfere with the performance of any duty imposed on it either in relation to its general responsibility to conduct the school with a view to promoting high standards of educational achievement<sup>18</sup>, or by any other provision of the Education Acts<sup>19</sup>.

Before exercising the power to provide community facilities, a governing body:

- 459 (a) must consult the local education authority, the staff of the school, and the parents<sup>20</sup> of registered pupils<sup>21</sup> of the school<sup>22</sup>;
- 460 (b) where the proposed exercise of the power would affect registered pupils of the school and the governing body considers it appropriate in view of their age and understanding to consult all or some of them, must consult the registered pupils or such of them as the governing body considers it appropriate to consult<sup>23</sup>; and
- 461 (c) must consult such other persons as the governing body considers appropriate<sup>24</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

3 Ibid s 27(1).

4 Ie the power under ibid s 27(1) (see the text and notes 1-3 supra).

5 Ibid s 27(2)(a). Expenditure incurred by the governing body of a maintained school in the exercise of the power conferred by s 27 is, as against third parties, to be treated as part of the expenses of maintaining the school under the School Standards and Framework Act 1998 s 22 (as amended) (see PARA 302 et seq post), but if met by the local education authority may be recovered by it from the governing body: s 51A(1) (s 51A added by the Education Act 2002 s 40, Sch 3 para 4). Except as provided by regulations under the School Standards and Framework Act 1998 s 50(3)(b) (see PARA 321 post), no expenditure incurred by the governing body of a maintained school in the exercise of the power referred to in s 51A(1) (as added) is to be met from the school's budget share for any funding period: s 51A(2) (as so added; amended by the Education Act 2005 s 117, Sch 18

para 9). The School Standards and Framework Act 1998 s 51A(2) (as added and amended) applies at a time when the school does not have a delegated budget by virtue of any suspension under s 17 (as amended) (see PARA 1269 post) or s 51, Sch 15 (as amended) (see PARA 322 et seq post), as well as a time when it does have a delegated budget: s 51A(3) (as so added). As to delegated budgets see PARA 320 et seq post. As to the requirement for maintained schools to have budget shares see PARA 312 post. As to local education authorities see PARA 20 ante.

6 Education Act 2002 s 27(2)(b).

7 Ibid s 27(2)(c).

8 Ibid s 27(2)(d). Regulations under ss 35(4), 36(4) (see PARAS 333, 343 post) may make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of the provision of facilities and services under s 27, or any other activities which are not school activities but are carried on on the school premises under the management or control of the governing body: see ss 35(5)(c), 36(5)(c); and PARAS 333, 343 post.

9 Ibid s 27(3). Section 27(3) is subject to the provisions of the Education Act 1996 Pt VI Ch III (ss 449-462) (as amended) (charges in connection with education at maintained schools: see PARA 443 et seq post): Education Act 2002 s 27(3).

10 le ibid s 27(1) (see the text and notes 1-3 supra).

11 As to instruments of government see PARA 241 et seq post.

12 le any scheme under the School Standards and Framework Act 1998 s 48 (as amended) (see PARA 318 post).

13 Education Act 2002 s 28(1).

14 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 28.

15 le by virtue of ibid s 27(1) (see the text and notes 1-3 supra).

16 Ibid s 28(2).

17 le conferred by ibid s 27(1) (see the text and notes 1-3 supra).

18 le imposed by ibid s 21(2) (see PARA 227 ante).

19 Ibid s 28(3). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of s 212(2), (3).

20 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 212(2), (3).

21 For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of ibid s 212(2), (3).

22 Ibid s 28(4)(a). In exercising the power under s 27(1) (see the text and notes 1-3 supra) or consulting under s 28(4), a governing body must have regard: (1) to any guidance given from time to time by the Secretary of State; and (2) to any advice given to it from time to time by the local education authority: s 28(5). As to the Secretary of State see PARA 52 ante.

23 Ibid s 28(4)(b). See also note 22 supra.

24 Ibid s 28(4)(c). See also note 22 supra.

## UPDATE

### 227-237 General Powers and Duties of Governing Bodies

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

## **232 Power of governing body to provide community facilities etc**

TEXT AND NOTES--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 13.

TEXT AND NOTES 1-9--The governing body of any qualifying school must establish in accordance with regulations a body to be known as a parent council, the purpose of which is to advise the governing body on matters relating to the conduct of the school and the exercise by the governing body of its powers under the 2002 Act s 27: s 23A(2), (3) (s 23A added by the Education and Inspections Act 2006 s 34). A school is a 'qualifying school' if (1) it is a foundation or foundation special school; (2) it has a foundation established otherwise than under the School Standards and Framework Act 1998; and (3) the instrument of government for the school provides that the majority of governors are to be foundation governors: 2002 Act s 23A(1). Regulations may make provision as to membership of the parent council and may confer functions relating to parent councils on the governing bodies: see s 23A(4)-(6). See the School Governance (Parent Council) (England) Regulations 2007, SI 2007/1330.

TEXT AND NOTES 10-24--In exercising the power under the 2002 Act s 27(1), the governing body of a maintained school must have regard to any relevant children and young people's plan: s 28(4A) (s 28(4A)-(4C) added by the 2006 Act s 38(2)). For the meaning of 'relevant children and young people's plan' see PARA 227 (definition applied by the 2002 Act s 28(4B)). In exercising the power under s 27(1), the governing body of a maintained school in England must also have regard to any views expressed by parents of registered pupils in circumstances where s 28(4)(a)(iii) does not apply: s 28(4C).

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### **233. Duty of governing body in relation to complaints procedures.**

The governing body of a maintained school<sup>1</sup> must:

- 462 (1) establish procedures for dealing with all complaints relating to the school or to the provision of facilities or services<sup>2</sup>, other than complaints falling to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of any other<sup>3</sup> statutory provision<sup>4</sup>; and
- 463 (2) publicise the procedures so established<sup>5</sup>.

In establishing or publicising such procedures<sup>6</sup>, the governing body must have regard to any guidance given from time to time by the Secretary of State<sup>7</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 Ie under ibid s 27 (see PARA 232 ante).

3 Ie other than ibid s 29 (as amended) (see also PARAS 228 ante, 234 post).

4 Ibid s 29(1)(a). For the meaning of 'statutory provision' see PARA 227 note 2 ante.

5 Ibid s 29(1)(b).

6 Ie under ibid s 29(1).

7 Ibid s 29(2). As to the Secretary of State see PARA 52 ante.

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

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### **234. Duty of governing body in relation to health and safety.**

The governing body<sup>1</sup> and head teacher<sup>2</sup> of a community or voluntary controlled school<sup>3</sup>, a community special school<sup>4</sup>, or a maintained nursery school<sup>5</sup>, must comply with any direction given to it by the local education authority<sup>6</sup> concerning the health and safety of persons on the school's premises<sup>7</sup> or taking part in any school activities elsewhere<sup>8</sup>.

1 As to the governing bodies of schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3). As to community and voluntary schools see PARA 102 et seq ante.

4 As to community special schools see PARAS 102 et seq ante, 1027 et seq post.

5 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

6 As to local education authorities see PARA 20 ante.

7 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to health and safety on school premises see also PARA 1418 post.

8 Ibid s 29(5).

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

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### **235. Duty of governing body in relation to the welfare of children.**

The governing body<sup>1</sup> of a maintained school<sup>2</sup> must make arrangements for ensuring that its functions<sup>3</sup> relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children<sup>4</sup> who are pupils<sup>5</sup> at the school<sup>6</sup>. Such a body must, in considering what arrangements are required to be made by it, have regard to any guidance given from time to time by the Secretary of State<sup>7</sup>.

1 As to the governing bodies of schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 For this purpose, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: Education Act 2002 s 175(5). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 ante. As to special schools see also PARA 1027 et seq post. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

3 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

4 For this purpose, 'child' means a person under the age of 18: ibid s 175(5).

5 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

6 Ibid s 175(2).

7 Ibid s 175(4). As to the publication of guidance as mentioned in the text see PARA 54 ante; applied by virtue of s 212(2), (3). As to the Secretary of State see PARA 52 ante.

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.



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### **236. Consultation with pupils.**

It is the duty of:

- 464 (1) a local education authority<sup>1</sup>, in the exercise of any of its schools functions<sup>2</sup>; and
- 465 (2) the governing body of a maintained school<sup>3</sup>, in the exercise of any function relating to the conduct of the school<sup>4</sup>,

to have regard to any guidance given from time to time by the Secretary of State<sup>5</sup> about consultation with pupils<sup>6</sup> in connection with the taking of decisions affecting them<sup>7</sup>. Any such guidance must provide for a pupil's views to be considered in the light of his age and understanding<sup>8</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 2002 s 176(1)(a). For this purpose, 'schools functions', in relation to a local education authority, means functions relating to: (1) maintained schools; (2) pupil referral units; or (3) the provision of education for children of compulsory school age otherwise than at school: s 176(3). 'Maintained school' means a community, foundation or voluntary school or a community or foundation special school: s 176(3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 ante. As to special schools see also PARA 1027 et seq post. As to pupil referral units see PARA 457 et seq post. For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 212(2), (3). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 212(2), (3).

3 As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

4 Education Act 2002 s 176(1)(b).

5 As to the publication of guidance as mentioned in the text see PARA 54 ante; applied by virtue of ibid s 212(2), (3). As to the Secretary of State see PARA 52 ante.

6 For this purpose, 'pupil' does not include a child who is being provided with nursery education (whether at a school or elsewhere): ibid s 176(3). As to nursery education see PARA 85 et seq ante.

7 Ibid s 176(1).

8 Ibid s 176(2).

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

### **236 Consultation with pupils**

TEXT AND NOTES 2, 4, 7--Education Act 2002 s 176(1) amended and repealed in part: Education and Skills Act 2008 s 158, Sch 2 (not yet in force).

NOTES 2, 6--'Maintained school' also means a maintained nursery school; definition of 'pupil' omitted: 2002 Act s 176(3), Sch 18 Pt 6 (amended by the Education and Inspections Act 2006 s 167 (in force in relation to England: SI 2007/1801)).

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### **237. Control of school premises by governing body.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> may make provision relating to the control by the governing body of a maintained school<sup>3</sup> of the occupation and use of school premises<sup>4</sup>.

<sup>1</sup> The Education Act 2002 s 31 is to be brought into force by order made under s 216(4) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. Until such a day is appointed, in relation to the control of school premises, see the School Standards and Framework Act 1998 s 40, Sch 13 (prospectively repealed); and PARAS 1420-1427 post.

<sup>2</sup> 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 31.

<sup>3</sup> For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 212(2), (3). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

<sup>4</sup> *Ibid* s 31. As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of *ibid* s 212(2), (3).

### **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

### **237 Control of school premises by governing body**

TEXT AND NOTE 1--Day appointed in relation to Wales for purpose of making regulations: SI 2007/3611.

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**237A. Power of governing body in England: educational provision for improving behaviour.**

The following provisions are in force on 30 March 2010 for the purpose of making regulations and 1 September 2010 for remaining purposes: SI 2010/1093.

The governing body of a maintained school in England may require any registered pupil to attend at any place outside the school premises for the purpose of receiving educational provision which is intended to improve the behaviour of the pupil: Education Act 2002 s 29A(1) (s 29A added by Education and Skills Act 2008 s 154). In the Education Act 2002 s 29A(1) 'maintained school' does not include a maintained nursery school: s 29A(2). Regulations must make provision (1) requiring prescribed persons to be given prescribed information relating to the imposition of any requirement under s 29A(1), and (2) requiring the governing body of the school to keep under review the imposition of any such requirement: s 29A(3). Regulations under s 29A may also make provision (a) requiring a governing body exercising functions under s 29A(1) or under the regulations to have regard to any guidance given from time to time by the Secretary of State, (b) prohibiting a governing body from exercising the power conferred by s 29A(1) in such a way that any pupil is required to receive educational provision outside the school premises for a greater number of days in a school year than is specified in the regulations, (c) requiring the governing body to request prescribed persons to participate in any review of the imposition of a requirement under s 29A(1), (d) about the time within which the first review must be held and the intervals at which subsequent reviews must be held, and (e) in relation to any other matter relating to the exercise of the power conferred by s 29A(1): s 29A(4).

**UPDATE**

**227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

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### **237B. Governing body to invite and consider pupils' views.**

The following provisions are not yet in force.

The governing body of a maintained school must invite the views of pupils about prescribed matters: Education Act 2002 s 29B(1) (s 29B added by Education and Skills Act 2008 s 157). In the Education Act 2002 s 29B, 'prescribed' means in relation to England, prescribed by the Secretary of State and in relation to Wales, prescribed by the Welsh Ministers: s 29B(6). In exercising any of their functions relating to the conduct of the school, the governing body of a maintained school must consider any relevant views of registered pupils at the school about matters prescribed under s 29B(1) (whether expressed by virtue of that provision or otherwise) and, in doing so, must have regard to the age and understanding of the pupils who expressed them: s 29B(2). For the purposes of s 29B(1), a governing body invites the views of pupils about a matter if they invite the views of (1) all registered pupils at the school, (2) such of those pupils as appear to the governing body to be affected by the matter, or (3) pupils appearing to the governing body to be representative of pupils within head (1) or (2): s 29B(3). The following are the matters that may be prescribed under s 29B(1) (a) the exercise, or proposed exercise, of a function of the governing body of a maintained school relating to the conduct of the school; (b) the exercise, or proposed exercise, of such a function in a particular way: s 29B(4). In discharging their duties under s 29B(1) and (2), the governing body of a maintained school must have regard to any guidance given from time to time (i) in relation to England, by the Secretary of State, or (ii) in relation to Wales, by the Welsh Ministers: s 29B(5). Nothing in s 29B affects any power or duty relating to consulting pupils which a governing body of a maintained school have otherwise than under s 29B: s 29B(7).

See also Education Act 2002 s 210A (added by Education and Skills Act 2008 Sch 1 para 79) (regulations under power conferred on Welsh Ministers after implementation of Government of Wales Act 2006) (not yet in force).

## **UPDATE**

### **227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

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**237C. Duty to designate a member of staff for pupils looked after by a local authority.**

The governing body of a maintained school must designate a member of the staff at the school as having responsibility for promoting the educational achievement of registered pupils at the school who are being looked after by a local authority for the purposes of the Children Act 1989 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867) or is a relevant child or former relevant child under s 23A or 23C (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 928, 930): see the Children and Young Persons Act 2008 s 20(1), (5), (6). The governing body must ensure that the designated person undertakes appropriate training: s 20(2). The appropriate national authority (ie in relation to a governing body of a school in England, the Secretary of State, or, in relation to such a body of a school in Wales, the Welsh Ministers) may make regulations requiring the governing body of a maintained school to ensure that the designated person has prescribed qualifications or experience (or both): s 20(3), (7). In exercising its functions under s 20, a governing body of a maintained school must have regard to any guidance issued by the Secretary of State: s 20(4). See the Designated Teacher (Looked After Pupils etc) (England) Regulations 2009, SI 2009/1538.

**UPDATE**

**227-237 General Powers and Duties of Governing Bodies**

As to educational provision for improving the behaviour of pupils see PARA 237A. As to the duty to invite and consider pupils' views see PARA 237B. As to the duty to designate a member of staff for pupils looked after by a local authority see PARA 237C.

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## (D) MEETINGS AND PROCEEDINGS

### 238. Meetings and proceedings.

Regulations<sup>1</sup> may make provision as to the meetings and proceedings of governing bodies<sup>2</sup>, and in particular in relation to:

- 466 (1) the election of the chair and vice-chair<sup>3</sup>;
- 467 (2) the delegation of functions to the chair or vice-chair in cases of urgency<sup>4</sup>;
- 468 (3) the right of persons to attend meetings of the governing body<sup>5</sup>;
- 469 (4) convening meetings of the governing body<sup>6</sup>;
- 470 (5) proceedings of the governing body<sup>7</sup>;
- 471 (6) minutes and papers of the governing body<sup>8</sup>;
- 472 (7) restrictions on persons taking part in proceedings<sup>9</sup>;
- 473 (8) the delegation of functions<sup>10</sup> by the governing body and restrictions on such delegation<sup>11</sup>;
- 474 (9) reporting to the governing body following the exercise of delegated functions<sup>12</sup>;
- 475 (10) the establishment of committees by the governing body and the appointment of persons other than governors to serve on them<sup>13</sup>.

1 The regulations made under the Education Act 2002 s 19(3)(g)-(k) (see PARA 203 ante). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations that have been made under s 19(3)(g)-(k) see the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377 (as amended); and heads (1)-(10) in the text.

As to the application of these regulations, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 para 7.

2 As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

3 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 5. As to the removal of the chair or vice-chair from office see reg 7.

As to the application of reg 5, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 2-3.

4 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 6. See also *R v Birmingham City Council, ex p McKenna* (1991) 156 LG Rev 486, (1991) Times, 16 May (decided under previous legislation).

As to the application of the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 6, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 3, 6.

5 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 10.

As to the application of reg 10, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 para 4.

As regards the withdrawal of a governor from a meeting over the matter of a pecuniary interest see *Noble v Inner London Education Authority* (1983) 82 LGR 291, CA; *Bostock v Kay* (1989) 87 LGR 583, 153 JP 549, CA; *R v Governors of Small Heath School, ex p Birmingham City Council* [1990] COD 23, (1990) Independent, 3 August, CA; *R v Governors of Bacon's School, ex p Inner London Education Authority* [1990] COD 414, DC (all cases decided under previous legislation).

6 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 11.

As to the application of reg 11, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 6-7.

7 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 12 (amended by SI 2004/450).

As to the application of the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 12, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 para 6.

8 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 13.

As to the application of reg 13, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 3, 6.

9 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 14, Schedule (both substituted by SI 2003/1916).

As to the application of the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 14, Schedule, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 3, 7, 10.

10 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 16 (amended by SI 2003/1963).

As to the application of the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 16, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 para 7.

11 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 17.

As to the application of reg 17, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 para 6.

12 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, reg 18.

As to the application of reg 18, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 para 7.

13 See the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, Pt 4 (regs 19-24). See also *R v Secretary of State for Education, ex p Prior* [1994] ELR 231, [1994] ICR 877 (decided under previous legislation).

As to the application of the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377, Pt 4, with modifications, in relation to the procedure of governing bodies of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 29, Sch 8 paras 3-4, 6-7, 9.

## UPDATE

### 238 Meetings and proceedings

NOTES--SI 2003/1377 regs 5, 7, 12 amended: SI 2007/959. SI 2003/1377 reg 6 amended: SI 2007/3464. SI 2003/1377 reg 11 amended: SI 2007/959, SI 2007/3464. SI 2003/1377 reg 16 amended: SI 2009/2680. SI 2003/1377 reg 17 amended: SI 2007/959, SI 2009/2680. SI 2004/2042 reg 29, Sch 8 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 31, Sch 8.





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**239. Documentary evidence.**

In any legal proceedings, a document purporting to be an extract from the minutes of the proceedings of the governing body of a maintained school<sup>1</sup>, and to be signed by the chairman of the governing body or by its clerk<sup>2</sup>, is to be received in evidence and treated, without further proof, as the document which it purports to be and as having been signed by the person by whom it purports to have been signed, unless the contrary is proved<sup>3</sup>.

1 As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to the clerk to the governing body see PARA 226 ante.

3 Education Act 1996 s 566(1)(b) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 173). In any legal proceedings, any such extract as is mentioned in the Education Act 1996 s 566(1)(b) is evidence of the matters stated in it: s 566(2). As to rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

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#### **240. Seal of governing body.**

The application of the seal of the governing body<sup>1</sup> must be authenticated by the signature of:

- 476 (1) the chairman of the governing body<sup>2</sup>; or
- 477 (2) some other member authorised either generally or specially by the governing body to act for that purpose<sup>3</sup>,

together with the signature of any other member<sup>4</sup>.

Every document purporting to be an instrument made or issued by or on behalf of the governing body and to be duly executed under the seal of the governing body<sup>5</sup>, or to be signed or executed by a person authorised by the governing body to act in that behalf<sup>6</sup>, is to be received in evidence and to be treated, without further proof, as being so made or issued unless the contrary is shown<sup>7</sup>.

<sup>1</sup> I.e. the governing body of a maintained school incorporated under the Education Act 2002 s 19(1) (see PARA 203 ante): s 19(6), Sch 1 para 1. For the meaning of 'maintained school' see PARA 98 note 3 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

<sup>2</sup> Ibid Sch 1 para 2(2)(a).

<sup>3</sup> Ibid Sch 1 para 2(2)(b).

<sup>4</sup> Ibid Sch 1 para 2(2).

<sup>5</sup> Ibid Sch 1 para 2(3)(a).

<sup>6</sup> Ibid Sch 1 para 2(3)(b).

<sup>7</sup> Ibid Sch 1 para 2(3). As to the rules of civil evidence see generally CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

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## (E) INSTRUMENTS OF GOVERNMENT

### **241. Instruments of government.**

For every maintained school<sup>1</sup> there must be an instrument ('the instrument of government')<sup>2</sup> which determines the constitution of the governing body<sup>3</sup> and other matters relating to the school<sup>4</sup>.

Regulations<sup>5</sup> must make provision with respect to the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments<sup>6</sup>.

The governing body of a maintained school must not conduct the school under a name other than the one for the time being set out in the school's instrument of government<sup>7</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante.

2 As to the form and content of instruments of government see PARA 242 post; and as to the procedure for making instruments of government see PARA 243 post.

3 As to the constitution of governing bodies of schools in England see PARA 203 et seq ante. As to the governance of schools in Wales see PARA 251 et seq post.

4 Education Act 2002 s 20(1). Section 20(1) has effect subject to s 24 (federations of schools: see PARA 213 ante): s 20(4).

A local education authority must make an instrument of government in accordance with the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) for each school which is maintained by it, no later than 31 August 2006: reg 33. For these purposes, any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante.

5 'Regulations' means regulations made under the Education Act 2002: s 212(1). Regulations under s 20(2) may require any person responsible for the making, review or variation of an instrument of government to have regard to any guidance given from time to time by the Secretary of State: s 20(3). Regulations under s 20(2) may also include provision with respect to instruments of government for federations: s 20(4). See note 4 supra. For the meaning of 'federation' see PARA 213 note 4 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 20(2)-(4) see the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (amended by SI 2003/1916; SI 2003/1558; SI 2004/450; SI 2004/696; SI 2004/3264; SI 2005/1730); and the School Governance (Federations) (England) Regulations 2004, SI 2004/2042 (amended by SI 2005/1730).

6 Education Act 2002 s 20(2).

7 Ibid s 20(5).

## **UPDATE**

### **241 Instruments of government**

NOTES 4, 5--SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924). The governing body or the

local education authority may now review the instrument of government at any time after it is made: see SI 2007/957 reg 32.

NOTE 5--SI 2004/2042 replaced: School Governance (Federations) (England) Regulations 2007, SI 2007/960 (amended by SI 2007/3464, SI 2009/1556).

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## 242. Contents and form of instrument of government.

The instrument of government<sup>1</sup> for a maintained school<sup>2</sup> must set out:

- 478 (1) the name of the school<sup>3</sup>;
  - 479 (2) the category of school<sup>4</sup> to which the school belongs<sup>5</sup>;
  - 480 (3) the name of the governing body of the school<sup>6</sup>;
  - 481 (4) the manner in which the governing body is to be constituted<sup>7</sup>, specifying the number of governors in each category of governor<sup>8</sup> and the total number of governors<sup>9</sup>;
  - 482 (5) where the term of office for a category of governor is to be less than four years, the length of that term of office<sup>10</sup>;
  - 483 (6) where the school has foundation governors<sup>11</sup>:
- 9
13. (a) the name of any person who is entitled to appoint such governors and, if there is more than one such person, the basis on which such appointments are to be made<sup>12</sup>;
  14. (b) details of any foundation governorship to be held ex officio<sup>13</sup> by the holder of a named office<sup>14</sup>; and
  15. (c) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor<sup>15</sup>;
- 10
- 484 (7) where the school has sponsor governors<sup>16</sup>, the name of any sponsor who is entitled to nominate persons for appointment<sup>17</sup> as such governors<sup>18</sup>;
  - 485 (8) where the school is a maintained special school<sup>19</sup>, the name of any body entitled to nominate a person for appointment<sup>20</sup> as a community governor<sup>21</sup>;
  - 486 (9) where there is a trust relating to the school<sup>22</sup>, that fact<sup>23</sup>;
  - 487 (10) where the school is a foundation or a voluntary school<sup>24</sup> designated as having a religious character<sup>25</sup>, a description of the religious ethos of the school<sup>26</sup>; and
  - 488 (11) the date when the instrument of government takes effect<sup>27</sup>.

The instrument must comply with any trust deed<sup>28</sup> relating to the school<sup>29</sup>.

1 As to the requirement for an instrument of government see PARA 241 ante.

2 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante.

3 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(1)(a).

As to the application of the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 4.

4 As to categories of school see PARA 102 ante.

5 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(1)(b). See note 3 supra.

6 Ibid reg 29(1)(c). See note 3 supra. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

7 Ie in accordance with ibid Pt 3 (regs 12-19) (as amended) (see PARA 203 et seq ante). The manner in which the governing body is to be constituted, as set out in accordance with reg 29(1)(d), must accord with the provisions of the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) as they apply to a school of the category to which the school belongs: reg 29(2). See note 3 supra.

8 Ibid reg 29(1)(d)(i). See note 3 supra. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). As to the constitution of the governing bodies of maintained schools see PARA 203 et seq ante.

9 Ibid reg 29(1)(d)(ii). See note 3 supra.

10 Ibid reg 29(1)(e). See note 3 supra.

11 For the meaning of 'foundation governor' see PARA 205 note 7 ante.

12 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(1)(f)(i). See note 3 supra. As to the appointment of foundation governors see PARA 205 ante. As to the need for notification of appointments see PARA 204 note 11 ante.

13 For the meaning of 'ex officio foundation governor' see PARA 209 note 2 ante.

14 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(1)(f)(ii). See note 3 supra.

15 Ibid reg 29(1)(f)(iii). See note 3 supra. As to the removal of ex officio foundation governors see PARA 209 ante.

16 For the meaning of 'sponsor governor' see PARA 204 note 9 ante.

17 Ie under the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 10, Sch 5 (see PARA 220 ante).

18 Ibid reg 29(1)(g). See note 3 supra. As to the need for notification of nominations see PARA 204 note 11 ante.

19 As to maintained special schools see PARA 102 note 15 ante.

20 Ie under the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 10, Sch 3 (see PARA 218 ante).

21 Ibid reg 29(1)(h). See note 3 supra. For the meaning of 'community governor' see PARA 204 note 8 ante.

22 As to educational trusts see PARA 1430 et seq post.

23 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(1)(i). See note 3 supra.

24 As to foundation and voluntary schools see PARA 104 et seq ante.

25 Ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post). As to foundation and voluntary schools having a religious character see PARAS 953-954 post.

26 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(1)(j) (amended by SI 2005/1730). See note 3 supra.

27 See the School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(1)(k). See note 3 supra.

28 As to the meaning of 'trust deed' generally see PARA 104 note 6 ante.

29 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 29(3). This is subject to any statutory provision: reg 29(3). See note 3 *supra*.

## **UPDATE**

### **242 Contents and form of instrument of government**

TEXT AND NOTES--SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924). SI 2003/348 reg 29 now SI 2007/957 reg 30, which applies, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).



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### **243. Procedure for making of instruments of government.**

The governing body<sup>1</sup> of a maintained school must prepare a draft of the instrument of government<sup>2</sup> and submit it to the local education authority<sup>3</sup>. Where the school has foundation governors<sup>4</sup>, the governing body may not submit the draft to the authority unless it has been approved by: (1) the foundation governors<sup>5</sup>; (2) any trustees of any trust<sup>6</sup> relating to the school<sup>7</sup>; (3) in the case of a Church of England school<sup>8</sup> or Roman Catholic Church school<sup>9</sup>, the appropriate diocesan authority<sup>10</sup>; and (4) in the case of any other school designated as having a religious character<sup>11</sup>, the appropriate religious body<sup>12</sup>.

On receiving the draft, the local education authority must consider whether it complies with all applicable statutory provisions<sup>13</sup>, and if the authority is content that the draft so complies<sup>14</sup>, or if there is agreement between the authority, the governing body and (if the school has foundation governors) the persons mentioned in heads (1) to (4) above that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions<sup>15</sup>, then the instrument must be made by the authority in the form of the draft or, as the case may be, in the form of the revised draft<sup>16</sup>. If, in the case of a school which has foundation governors, there is at any time disagreement as to the contents of the draft among the persons mentioned in heads (1) to (4) above, any of those persons may refer the draft to the Secretary of State<sup>17</sup>. The Secretary of State must then give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs<sup>18</sup>.

If, in the case of a school which does not have foundation governors, the local education authority is not content with the draft<sup>19</sup> and there is no agreement as to the revision of the draft<sup>20</sup>, the authority must: (a) inform the governing body of the reasons why it is not content with the draft instrument<sup>21</sup>; and (b) give the governing body a reasonable opportunity to reach agreement with the authority on revising the draft<sup>22</sup>. The instrument must be made by the local education authority either in the form of a revised draft agreed between the authority and the governing body or, in the absence of such agreement, in such form as the authority thinks fit having regard, in particular, to the category of school to which the school belongs<sup>23</sup>.

In respect of the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local education authorities must have regard to any guidance given from time to time by the Secretary of State<sup>24</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante; and for the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to the requirement for an instrument of government see PARA 241 ante.

3 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 30(1). In the case of a maintained nursery school, the local education authority must prepare and make the first instrument of government, which must comply with all statutory provisions: reg 30(6). For these purposes, any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2) (c). As to local education authorities see PARA 20 ante. As to maintained nursery schools see PARA 94 et seq ante.

As to the application of reg 30, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 5.

4 For the meaning of 'foundation governor' see PARA 205 note 7 ante. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). As to the constitution of the governing bodies of maintained schools see PARA 203 et seq ante.

5 Ibid reg 30(2)(a). See note 3 supra.

6 As to educational trusts see PARA 1430 et seq post.

7 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 30(2)(b). See note 3 supra.

8 For the meaning of 'Church of England school' see PARA 42 note 15 ante.

9 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

10 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 30(2)(c). See note 3 supra. In Pt 5 (regs 27-32), 'appropriate diocesan authority' has the meaning given by the School Standards and Framework Act 1998 s 142(1), (4) (see PARA 42 note 15 ante): School Governance (Constitution) (England) Regulations 2003, SI 2003/348, regs 3(1), 27. As to the application of reg 27, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 3.

11 Ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post).

12 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 30(2)(d). See note 3 supra. For the purposes of Pt 5 (regs 27-32), 'appropriate religious body', in relation to a school designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post) as having a religious character that is not a Church of England school or a Roman Catholic Church school, means the body that the Secretary of State considers appropriate in relation to the religion or religious denomination to which the school belongs: School Governance (Constitution) (England) Regulations 2003, SI 2003/348, regs 3(1), 27. See note 10 supra. As to the Secretary of State see PARA 52 ante.

13 Ibid reg 30(3). See note 3 supra.

14 Ibid reg 30(3)(a). See note 3 supra.

15 Ibid reg 30(3)(b). See note 3 supra.

16 Ibid reg 30(3). See note 3 supra.

17 Ibid reg 30(4). See note 3 supra.

18 Ibid reg 30(4). See note 3 supra. As to the categorisation of schools see PARA 102 et seq ante.

19 Ie if ibid reg 30(3)(a) (see the text and notes 14 supra) does not apply.

20 Ie if ibid reg 30(3)(b) (see the text and note 15 supra) does not apply.

21 Ibid reg 30(5)(a). See note 3 supra.

22 Ibid reg 30(5)(b). See note 3 supra.

23 Ibid reg 30(5). See note 3 supra.

24 Ibid reg 28. As to the application of reg 28, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 7.

## UPDATE

### 243 Procedure for making of instruments of government

TEXT AND NOTES--SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924). SI 2003/348 regs 27, 28, 30 now SI 2007/957 regs 28, 29, 31, which apply, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).

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#### **244. Review of instruments of government.**

The governing body<sup>1</sup> or the local education authority<sup>2</sup> may review the instrument of government<sup>3</sup> for a maintained school at any time after it is made<sup>4</sup>. Where on any review the governing body or the authority decides that the instrument should be varied, the governing body or, as the case may be, the authority must notify the other of its proposed variation together with its reasons for proposing such a variation<sup>5</sup>. Where the governing body has received such a notification, it must inform the authority as to whether or not it is content with the proposed variation and, if not content, its reasons<sup>6</sup>. Where the school has foundation governors<sup>7</sup>, the governing body must not give the authority any notification of a proposed variation<sup>8</sup>, or inform the authority<sup>9</sup> that it is content with the authority's proposed variation, unless that variation has been approved by: (1) the foundation governors; (2) any trustees of any trust relating to the school<sup>10</sup>; (3) in the case of a Church of England school<sup>11</sup> or Roman Catholic Church school<sup>12</sup>, the appropriate diocesan authority<sup>13</sup>; and (4) in the case of any other school designated as having a religious character<sup>14</sup>, the appropriate religious body<sup>15</sup>. If whichever of the governing body and the local education authority is the recipient of a notification of a proposed variation<sup>16</sup> agrees with the proposed variation<sup>17</sup>, or if there is agreement between the authority, the governing body and (if the school has foundation governors) the persons listed in heads (1) to (4) above that some other variation should be made instead<sup>18</sup>, then the instrument must be varied accordingly by the authority<sup>19</sup>. If, in the case of a school which has foundation governors, there is at any time disagreement as to the proposed variation among the persons listed in heads (1) to (4) above, any of those bodies or persons may refer the proposed variation to the Secretary of State<sup>20</sup>. On such a reference, the Secretary of State must then give such direction as he thinks fit having regard, in particular, to the category of school to which the school belongs<sup>21</sup>.

If, in the case of a school which does not have foundation governors, the governing body or the local education authority (as the case may be) does not agree with the proposed variation<sup>22</sup> and there is no agreement that some other variation should be made instead<sup>23</sup>, the authority must: (a) inform the governing body of the reasons why it is not content with the governing body's proposed variation, or as the case may be, why it wishes to proceed with its own variation<sup>24</sup>; and (b) give the governing body a reasonable opportunity to reach agreement with the authority with regard to the variation<sup>25</sup>. The instrument must be varied by the local education authority either in the manner agreed between the authority and the governing body or, in the absence of such agreement, in such manner as the authority thinks fit having regard, in particular, to the category of school to which the school belongs<sup>26</sup>.

Where an instrument of government is so varied, the instrument must set out the date on which the variation takes effect<sup>27</sup>.

Nothing in the provisions described above is to be taken as requiring the local education authority to vary the instrument of government if it does not consider it appropriate to do so<sup>28</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante; and for the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the local education authority is a reference to the local education authority that maintains the school: *ibid* reg 3(2)(c). As to local education authorities see *PARA 20 ante*.

3 As to the requirement for an instrument of government see *PARA 241 ante*.

4 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 31(1).

As to the application of reg 31, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 6.

5 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 31(2). See note 4 *supra*.

6 *Ibid* reg 31(3). See note 4 *supra*.

7 For the meaning of 'foundation governor' see *PARA 205 note 7 ante*. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). As to the constitution of the governing bodies of maintained schools see *PARA 203 et seq ante*.

8 *Ie* under *ibid* reg 31(2) (see the text and note 5 *supra*).

9 *Ie* under *ibid* reg 31(3) (see the text and note 6 *supra*).

10 As to educational trusts see *PARA 1430 et seq post*.

11 For the meaning of 'Church of England school' see *PARA 42 note 15 ante*.

12 For the meaning of 'Roman Catholic Church school' see *PARA 42 note 15 ante*.

13 For the meaning of 'appropriate diocesan authority' see *PARA 243 note 10 ante*.

14 *Ie* designated under the School Standards and Framework Act 1998 s 69(3) (see *PARA 951 post*).

15 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, regs 30(2), 31(4). See note 4 *supra*. For the meaning of 'appropriate religious body' see *PARA 243 note 12 ante*.

16 *Ie* under *ibid* reg 31(2) (see the text and note 5 *supra*).

17 *Ibid* reg 31(5)(a). The requirement under reg 30(3) (see *PARA 243 ante*) for the local education authority to consider compliance with all applicable statutory provisions applies in relation to a proposed variation of an instrument of government as it applies in relation to a draft of such an instrument: reg 31(9). See note 4 *supra*.

18 *Ibid* reg 31(5)(b). See note 4 *supra*.

19 *Ibid* reg 31(5). See note 4 *supra*.

20 *Ibid* reg 31(6). See note 4 *supra*. As to the Secretary of State see *PARA 52 ante*.

21 *Ibid* reg 31(6). See note 4 *supra*. As to the categorisation of schools see *PARA 102 et seq ante*.

22 *Ie* if *ibid* reg 31(5)(a) (see the text and notes 16-17 *supra*) does not apply.

23 *Ie* if *ibid* reg 31(5)(b) (see the text and note 18 *supra*) does not apply.

24 *Ibid* reg 31(7)(a). See note 4 *supra*.

25 *Ibid* reg 31(7)(b). See note 4 *supra*.

26 *Ibid* reg 31(7). See note 4 *supra*.

27 *Ibid* reg 31(10). See note 4 *supra*.

28 *Ibid* reg 31(8). See note 4 *supra*.

## UPDATE

## **244 Review of instruments of government**

TEXT AND NOTES--SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924). SI 2003/348 regs 30, 31 now SI 2007/957 regs 31, 32, which apply, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).

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#### **245. Copies of instruments of government and other information.**

The local education authority<sup>1</sup> must ensure that the persons set out in heads (1) to (5) below are provided, free of charge, with a copy of the school's instrument of government<sup>2</sup>, and, where any variation is made to the school's instrument of government<sup>3</sup>, a consolidated version of the instrument of government incorporating all variations made by order of the local education authority, other than any variations which have ceased to have effect<sup>4</sup>. The persons who are to be so provided with such information are:

- 489 (1) every member of the governing body of the school<sup>5</sup>;
- 490 (2) the head teacher<sup>6</sup>, whether or not the head teacher is a member of the governing body<sup>7</sup>;
- 491 (3) the trustees of any trust relating to the school<sup>8</sup>;
- 492 (4) in the case of a Church of England school<sup>9</sup> or Roman Catholic Church school<sup>10</sup>, the appropriate diocesan authority<sup>11</sup>; and
- 493 (5) in the case of any other school designated as having a religious character<sup>12</sup>, the appropriate religious body<sup>13</sup>.

1 Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante.

2 Ibid reg 32(1)(a). As to the requirement for an instrument of government see PARA 241 ante. As to the application of reg 32, with modifications, in relation to the governing body of a federation and its members see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 28, Sch 7 para 7.

3 As to the proposal and approval of variations made to the school's instrument of government see PARA 244 ante.

4 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 32(1)(b). See note 2 supra.

5 Ibid reg 32(2)(a). See note 2 supra. Any reference in the School Governance (Constitution) (England) Regulations 2003, SI 2003/348 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante. As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

6 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

7 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 32(2)(b). See note 2 supra.

8 Ibid reg 32(2)(c). See note 2 supra. As to educational trusts see PARA 1430 et seq post.

9 For the meaning of 'Church of England school' see PARA 42 note 15 ante.

10 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

11 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 32(2)(d). See note 2 supra. For the meaning of 'appropriate diocesan authority' see PARA 243 note 10 ante.

12 Ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post).

13 School Governance (Constitution) (England) Regulations 2003, SI 2003/348, reg 32(2)(e). See note 2 *supra*.

## **UPDATE**

### **245 Copies of instruments of government and other information**

TEXT AND NOTES--SI 2003/348 replaced: School Governance (Constitution) (England) Regulations 2007, SI 2007/957 (amended by SI 2009/1924). SI 2003/348 reg 32 now SI 2007/957 reg 33, which applies, with modifications, in relation to the governing body of a federation and its members: School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 30, Sch 7 (Sch 7 amended by SI 2007/3464).



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## (F) REPORTS

### **246. School profiles for maintained schools.**

The governing body of a maintained school<sup>1</sup> must prepare and publish a document (a 'school profile') containing:

- 494 (1) such information as the Secretary of State<sup>2</sup> may provide to the governing body for inclusion in the profile<sup>3</sup>;
- 495 (2) information provided by the governing body about such matters relating to the school as the Secretary of State may specify for the purpose<sup>4</sup>; and
- 496 (3) such other information about the school as may be prescribed<sup>5</sup>, which may include information to be provided by persons other than the Secretary of State<sup>6</sup>.

Regulations may:

- 497 (a) specify the time by which the school profile must be published<sup>7</sup>;
- 498 (b) require the school profile to contain statements by the governing body as to prescribed matters<sup>8</sup>;
- 499 (c) prescribe the form of the school profile and the manner in which it is to be published<sup>9</sup>;
- 500 (d) require the governing body to give copies of the school profile to such persons as may be prescribed<sup>10</sup>; and
- 501 (e) require the governing body to revise the school profile in accordance with the regulations at prescribed times and to publish the school profile as revised<sup>11</sup>.

In exercising any function so conferred, a governing body must have regard to any guidance given from time to time by the Secretary of State<sup>12</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to the Secretary of State see PARA 52 ante.

3 Education Act 2002 s 30A(1)(a) (s 30A added by the Education Act 2005 s 104). The provisions of the Education Act 2002 s 30A (as added) do not apply to maintained nursery schools in England: see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 10, Schedule Pt 2 para 2(b). For the meaning of 'maintained nursery school' see PARA 94 note 4 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 Ibid s 30A(1)(b) (as added: see note 3 supra).

5 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no such regulations had been made.

6 Ibid s 30A(1)(c) (as added: see note 3 supra).

- 7 Ibid s 30A(2)(a) (as added: see note 3 supra).
- 8 Ibid s 30A(2)(b) (as added: see note 3 supra).
- 9 Ibid s 30A(2)(c) (as added: see note 3 supra).
- 10 Ibid s 30A(2)(d) (as added: see note 3 supra).
- 11 Ibid s 30A(2)(e) (as added: see note 3 supra).
- 12 Ibid s 30A(3) (as added: see note 3 supra).

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## (G) INFORMATION

### **247. Provision of information to the Secretary of State.**

The governing body<sup>1</sup> or temporary governing body<sup>2</sup> of a community, foundation or voluntary school or a community or foundation special school<sup>3</sup> must make such reports and returns, and give such information, to the Secretary of State<sup>4</sup> as he may require for the purpose of the exercise of his functions in relation to education<sup>5</sup>.

1 As to the governing bodies of schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

2 As to temporary governing bodies see PARA 212 ante.

3 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

4 As to the Secretary of State see PARA 52 ante.

5 Education Act 1996 s 538 (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 154). As to the Secretary of State's functions in relation to education see PARA 52 et seq ante.

## **UPDATE**

### **247 Provision of information to the Secretary of State**

TEXT AND NOTES--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 7.

As to the exercise of the Secretary of State's powers under the Education Act 1996 s 538, in relation to securing the provision of special needs information, see PARA 1021A.

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**248. Distribution of information about schools providing secondary education.**

Where the governing body<sup>1</sup> of any school<sup>2</sup> providing primary education<sup>3</sup> receives a request which:

- 502 (1) is made by the governing body of any school providing secondary education<sup>4</sup>; and
- 503 (2) relates to the distribution of information about the school providing secondary education to parents<sup>5</sup> of pupils<sup>6</sup> at the school providing primary education without charge to those parents<sup>7</sup>,

the governing body of that school must secure that the request is treated no less favourably (whether as to services provided or as to the terms on which they are provided) than any such request made by the governing body of any other school providing secondary education<sup>8</sup>.

<sup>1</sup> As to the governing bodies of schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

<sup>2</sup> For the purposes of the Education Act 1996 s 540 (as amended), 'school' means: (1) any community, foundation or voluntary school; or (2) any community or foundation special school, which is not established in a hospital: s 540(2) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 156). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

<sup>3</sup> For the meaning of 'primary education' see PARA 16 ante.

<sup>4</sup> Education Act 1996 s 540(1)(a). For the meaning of 'secondary education' see PARA 17 ante.

<sup>5</sup> As to the meaning of 'parent' see PARA 510 note 1 post.

<sup>6</sup> For the meaning of 'pupil' see PARA 16 note 4 ante.

<sup>7</sup> Education Act 1996 s 540(1)(b).

<sup>8</sup> Ibid s 540(1).

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## **249. Distribution of information about further education institutions.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> require:

- 504 (1) the governing body<sup>3</sup> of any school<sup>4</sup> providing secondary education<sup>5</sup>; and
- 505 (2) the proprietor<sup>6</sup> of any city technology college<sup>7</sup>, city college for the technology of the arts<sup>8</sup> or academy<sup>9</sup>,

to provide such persons as may be prescribed<sup>10</sup> with certain information<sup>11</sup> relating to institutions within the further education sector<sup>12</sup> and which is made available to governing bodies and proprietors for distribution<sup>13</sup>. Information so provided must be provided in such form and manner as may be prescribed<sup>14</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under s 541 (as amended) in relation to England.

3 As to the governing bodies of schools in England see PARA 203 ante. As to the governance of schools in Wales see PARA 251 et seq post.

4 For the purposes of the Education Act 1996 s 541 (as amended), 'school' means: (1) any community, foundation or voluntary school; or (2) any community or foundation special school, which is not established in a hospital: s 541(4) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 157). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

5 Education Act 1996 s 541(1)(a). For the meaning of 'secondary education' see PARA 17 ante.

6 For the meaning of 'proprietor' see PARA 60 note 7 ante.

7 As to the meaning of 'city technology college' see PARA 496 note 31 post.

8 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 post.

9 Education Act 1996 s 541(1)(b) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 61; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 6(1), (6)). As to the meaning of 'academy' see PARA 496 note 29 post.

10 'Prescribed' means prescribed by regulations (see note 2 supra): Education Act 1996 s 579(1).

11 Ibid s 541(1) (as amended: see note 9 supra). The information to be provided is such categories of information falling within s 541(2) (see the text and notes 12-14 infra) as may be prescribed: s 541(1) (as so amended).

12 Ibid s 541(2)(a). The information mentioned in the text is that which is published under the Further and Higher Education Act 1992 s 50 (see PARA 633 post): Education Act 1996 s 541(2)(a). As to further education see PARA 579 et seq post.

13 Ibid s 541(2)(b).

14 Ibid s 541(3).



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## (H) EX OFFICIO TRUSTEES

### **250. Governors of foundation or voluntary school as ex officio trustees.**

Where any provision of a trust deed<sup>1</sup> or other instrument made before 1 July 1981 would otherwise have the effect that the persons who are for the time being governors of a foundation or voluntary school<sup>2</sup> were by virtue of their office trustees of any property held for the purposes of, or in connection with, the school<sup>3</sup>, that provision instead has effect as if the only governors of the school were: (1) the foundation governors<sup>4</sup>; (2) those appointed by the local education authority<sup>5</sup>; and (3) any co-opted governor nominated by a minor authority<sup>6</sup>.

1 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 As to foundation and voluntary schools see PARA 102 et seq ante.

3 As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

4 School Standards and Framework Act 1998 s 83(1)(a). For the meaning of 'foundation governor' see PARA 104 note 6 ante.

5 Ibid s 83(1)(b). As to local education authorities see PARA 20 ante.

6 Ibid s 83(1)(c). Section 83(1) is without prejudice to any power to amend any such provision as is mentioned in s 83(1): s 83(2).

For the purposes of the School Standards and Framework Act 1998, a maintained school serves an area for which there are one or more minor authorities if the area served by the school is:

70 (1) a parish or, in Wales, a community (s 141(1)(a));

71 (2) an area in England which is not within a parish and is not situated in: (a) a county for which there is no council; or (b) a county in which there are no district councils (s 141(1)(b)); or

72 (3) an area comprising two or more areas each of which falls within head (1) or head (2) supra (s 141(1)(c)).

References in s 141 to the area served by a school are references to the area appearing to the local education authority to be served by the school: s 141(7). As to local government areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. As to local education authorities see PARA 20 ante.

Where the area served by the school is a parish, the parish council (if there is one) or the parish meeting (if there is no parish council) is the minor authority in relation to the school: s 141(2). Where the area served by the school is a community, the community council is the minor authority in relation to the school: s 141(3).

Where the area served by the school is an area falling within head (2) supra, any district council for the whole or part of the area is a minor authority in relation to the school: s 141(4).

Where the area served by the school is an area falling within head (3) supra, each of the relevant authorities is a minor authority in relation to the school: s 141(5). For these purposes, 'the relevant authorities' means the bodies which, if the two or more constituent areas referred to in head (3) supra were taken separately, would be minor authorities in relation to the school: s 141(6).

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## ***B. GOVERNANCE OF SCHOOLS IN WALES***

### **(A) CONSTITUTION OF GOVERNING BODIES**

#### **251. Governing bodies.**

Each maintained school in Wales<sup>1</sup> must have a governing body<sup>2</sup>, which is a body corporate<sup>3</sup>. Regulations<sup>4</sup> must provide for a governing body to consist of:

- 506 (1) persons elected or appointed as parent governors<sup>5</sup>;
- 507 (2) persons elected or appointed as staff governors<sup>6</sup>;
- 508 (3) persons appointed as LEA (local education authority) governors<sup>7</sup>;
- 509 (4) except in the case of a voluntary aided school<sup>8</sup>, persons appointed as community governors<sup>9</sup>;
- 510 (5) in the case of a foundation school, a foundation special school or a voluntary school<sup>10</sup>, persons appointed as foundation governors<sup>11</sup> or partnership governors<sup>12</sup>; and
- 511 (6) such other persons as may be prescribed<sup>13</sup>.

Regulations<sup>14</sup> may also make provision as to:

- 512 (a) the number of governors, or of governors falling within any category<sup>15</sup>;
- 513 (b) the person or persons by whom, and the manner in which, governors are to be elected or appointed<sup>16</sup>;
- 514 (c) eligibility for election or appointment as governors of any category, or for voting in an election of such governors<sup>17</sup>;
- 515 (d) the term of office of governors<sup>18</sup>;
- 516 (e) resignation or removal from office of governors<sup>19</sup>;
- 517 (f) the payment of allowances to governors<sup>20</sup>;
- 518 (g) meetings and proceedings of governing bodies<sup>21</sup>;
- 519 (h) the election by the governors of a chairman and vice-chairman of the governing body<sup>22</sup>;
- 520 (i) the establishment by a governing body of committees<sup>23</sup>;
- 521 (j) the appointment of persons other than governors to serve on committees of governing bodies<sup>24</sup>;
- 522 (k) the delegation of functions<sup>25</sup> by governing bodies<sup>26</sup>; and
- 523 (l) other matters relating to the constitution or procedure of governing bodies<sup>27</sup>.

In discharging any function conferred by such regulations, a local education authority or the governing body of a maintained school must have regard to any guidance given from time to time by the National Assembly for Wales<sup>28</sup>.

The governing body<sup>29</sup> is to be known as 'The governing body of . . .' with the addition of the name of the school as for the time being set out in the school's instrument of government<sup>30</sup>.



If the school is discontinued, the governing body is dissolved<sup>31</sup> on the discontinuance date<sup>32</sup>, or on such later date as the Assembly may specify by order made before the discontinuance date<sup>33</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the governance of schools in England see PARA 203 et seq ante.

In relation to Wales, despite the coming into force of the definition of 'maintained school' in the Education Act 2002 s 39 (see PARA 98 note 3 ante), the requirements imposed by s 19(1) in so far as they relate to maintained nursery schools need not be met until 31 March 2006 and transitional provisions apply: see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 7.

2 le a governing body constituted in accordance with regulations (see heads (1)-(6), (a)-(l) in the text). The governing body of a maintained school is a public authority for the purposes of the Human Rights Act 1998: *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382 at [36]-[38], [2004] QB 1231 at [36]-[38], [2004] 4 All ER 628 at [36]-[38] per Sedley LJ. As to the significance of a body being designated a public authority for these purposes see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 6; CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Education Act 2002 s 19(1). Section 19(1) has effect subject to s 24 (federations of schools: see PARA 264 post): s 19(8).

Section 19(8) is to come into force as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

4 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 19(2) in relation to Wales see the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (amended by SI 2005/3200); and the School Councils (Wales) Regulations 2005, SI 2005/3200.

Regulations under the Education Act 2002 s 19 may include provision with respect to the governing bodies of federations (s 19(8)); but may not apply to any temporary governing body (s 34(8)). As to federations see PARA 264 post; and as to temporary governing bodies see PARA 263 post. See note 3 supra.

5 Ibid s 19(2)(a).

6 Ibid s 19(2)(b).

7 Ibid s 19(2)(c). Functions exercisable by or on behalf of a local education authority under regulations made under s 19, so far as relating to the appointment of persons as LEA (local education authority) governors, are relevant functions for the purposes of the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 ante): s 127(6)(m) (added by the Education Act 2002 s 215(1), Sch 21 para 110(1), (3)(c)). As to local education authorities see PARA 20 ante.

8 As to voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

9 Ibid s 19(2)(d).

10 As to foundation schools and foundation special schools see PARA 102 et seq ante. As to special schools see also PARA 1027 et seq post.

11 As to foundation governors see PARA 255 et seq post.

12 Education Act 2002 s 19(2)(e). As to partnership governors see PARA 269 et seq post.

13 Ibid s 19(2)(f). 'Prescribed' means prescribed by regulations: s 212(1). See note 4 supra.

Accordingly, the head teacher of a school must ensure that the school council (see PARA 277 note 9 post) has the opportunity to nominate up to two pupils from years 11 to 13 (inclusive) from its membership to be associate pupil governors on the school's governing body (School Councils (Wales) Regulations 2005, SI 2005/3200, reg 7(1)); and the governing body must accept any pupil so nominated, and appoint him as an associate pupil governor on the governing body, provided the pupil is not disqualified from membership in accordance with the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 24, Sch 5 (see PARA 271 post) (School Councils (Wales) Regulations 2005, SI 2005/3200, reg 7(2)). Regulation 7 does not apply to community special schools or to foundation special schools: reg 5. As to community and foundation special schools see PARA 102 et seq ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante. For the

purposes of the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended), 'associate pupil governor' means a registered pupil nominated by the school council to be a member of the governing body and appointed as such by the governing body in accordance with the School Councils (Wales) Regulations 2005, SI 2005/3200, reg 7: Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 12A(1) (reg 12A added by SI 2005/3200). The maximum number of associate pupil governors on any governing body is two: Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 12A(2) (as so added). Any associate pupil governor is in addition to the numbers of governors set out in regs 13-20 (see PARAS 252-259 post); reg 20A (added by SI 2005/3200).

14 As to the regulations made under the Education Act 2002 s 19(3) in relation to Wales see the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (amended by SI 2005/3200); the School Councils (Wales) Regulations 2005, SI 2005/3200; and the Governor Allowance (Wales) Regulations 2005, SI 2005/2915. See also notes 4 supra, 15 infra.

15 Education Act 2002 s 19(3)(a). Regulations made by virtue of the Education Act 2002 s 19(3)(a) must also secure that the majority of the governors of a voluntary aided school are persons appointed as foundation governors: s 19(4). See PARA 258 post.

16 Ibid s 19(3)(b).

17 Ibid s 19(3)(c).

18 Ibid s 19(3)(d).

19 Ibid s 19(3)(e).

20 Ibid s 19(3)(f). Nothing in the School Standards and Framework Act 1998 s 50(3) (effect of financial delegation: see PARA 321 post) is to be read as authorising the payment of allowances to governors otherwise than in accordance with regulations under the Education Act 2002 s 19: School Standards and Framework Act 1998 s 50(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 101).

21 Education Act 2002 s 19(3)(g). As to the regulations so made see PARA 238 ante.

22 Ibid s 19(3)(h). As to the regulations so made see PARA 238 ante.

23 Ibid s 19(3)(i). As to the regulations so made see PARA 238 ante.

24 Ibid s 19(3)(j). As to the regulations so made see PARA 238 ante.

25 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

26 Ibid s 19(3)(k). Section 19(3)(k) has effect subject to the provisions of any scheme under the School Standards and Framework Act 1998 s 48 (as amended) (local education authorities' financial schemes: see PARA 318 post) which relates to the school: Education Act 2002 s 19(5). As to the regulations so made see PARA 238 ante.

27 Ibid s 19(3)(l).

28 Ibid s 19(7). As to the publication of the guidance mentioned in the text see PARA 54 ante; applied by virtue of s 212(2), (3). As to the National Assembly for Wales see PARA 53 ante.

29 Ie the governing body of a maintained school incorporated under ibid s 19(1) (see the text and notes 1-3 supra): s 19(6), Sch 1 para 1.

30 Ibid Sch 1 para 2(1).

31 Ie by virtue of ibid Sch 1 para 5.

32 For these purposes, 'the discontinuance date' means: (1) the date on which proposals for discontinuing the school are implemented under the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 Pt III paras 11-15 (as amended; prospectively further amended) (see PARAS 141-144 ante), or under the Learning and Skills Act 2000 Sch 7 (as amended; prospectively amended) (see PARA 1283 et seq post) or s 113A(6), Sch 7A (both as added) (see PARA 1290 post); (2) the date on which the school is discontinued under the School Standards and Framework Act 1998 s 30 (as amended) (see PARA 135 ante); or (3) the date specified in a direction given under s 19(1) (as substituted; prospectively further substituted in relation to Wales) (school requiring special measures: see PARA 1273 post) or s 32(1) (see PARA 149 ante), as the case may be: Education Act 2002 Sch 1 paras 1, 5(2).

33 Ibid Sch 1 para 5(1). See note 32 supra. The power to make an order under Sch 1 para 5 is not exercisable by statutory instrument: see s 210(2); and PARA 77 note 7 ante.

## **UPDATE**

### **251 Governing bodies**

NOTE 2--*Lord Grey School*, cited, reversed sub nom *Ali v Head Teacher and Governors of Lord Grey School* [2006] UKHL 14, [2006] 2 All ER 457.

NOTE 3--Education Act 2002 s 19(8) in force 12 April 2010: SI 2010/707.

NOTE 7--1998 Act s 127(6) repealed: Education and Inspections Act 2006 s 58(6), Sch 18 Pt 2.

NOTE 14--SI 2005/2914 further amended: SI 2006/873, SI 2007/944, SI 2009/2544.

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## **252. Constitution of governing bodies of community schools.**

The governing body<sup>1</sup> of a community school<sup>2</sup> must consist of the following:

- 524 (1) the head teacher<sup>3</sup>, unless he resigns the position<sup>4</sup>;
- 525 (2) the requisite number of governors of each of the following categories<sup>5</sup>:
  - 11
  - 16. (a) parent governors<sup>6</sup>;
  - 17. (b) LEA (local education authority) governors<sup>7</sup>;
  - 18. (c) teacher governors<sup>8</sup>;
  - 19. (d) staff governors<sup>9</sup>;
  - 20. (e) community governors<sup>10</sup>; and
  - 12
  - 526 (3) any additional governors required<sup>11</sup>.

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to community schools see PARA 102 et seq ante.

3 As to the meaning of 'head teacher' under the Education Act 1996 see PARA 93 note 13 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 13(1)(a). As to resignation of a position see reg 26(1); and PARA 272 post.

5 Ibid reg 13(1)(b).

6 Ibid reg 13(1)(b), Table. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For these purposes, 'parent governor' (or 'rhiant-lywodraethwr') means: (1) a person who is elected in accordance with reg 4, Sch 1 paras 4-9 (see PARA 267 post) as a governor by parents of registered pupils at the school and is himself such a parent at the time when he or is elected (reg 4(1)(a)); or (2) a person who is appointed as a parent governor in accordance with Sch 1 paras 10-12 (see PARA 267 post) (reg 4(1)(b)). As to the meaning of 'parent' generally see PARA 510 note 1 post. For the meaning of 'registered pupil' see PARA 512 post; for the meaning of 'child' see PARA 16 note 2 ante; and for the meaning of 'young person' see PARA 38 note 4 ante. A person is disqualified from appointment as a parent governor in accordance with Sch 1 paras 10-12 if he is: (a) an elected member of the local education authority; (b) employed by the local education authority in connection with its functions as a local education authority; or (c) paid to work at the school for more than 500 hours in any 12-month period commencing on 1 August and finishing on 31 July, unless he or is a parent of a registered pupil at the school: reg 4(2). A person is not disqualified from continuing to hold office as a parent governor when he ceases to be a parent of a registered pupil at the school or to fulfil any of the requirements set out in Sch 1 para 11 and Sch 1 para 12 (see PARA 267 post), as the case may be, unless he is otherwise disqualified under the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended): reg 4(3). For these purposes, any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante.

The number of parent governors for a secondary school is normally six although there is an option, if the school has less than 600 registered pupils, for the number to be five: see reg 13(1)(b), (2)(a), Table. The number of parent governors for a primary school is normally four or five although there is an option, if the school has less

than 100 registered pupils, for the number to be three: see reg 13(1)(b), (2)(b), Table. As regards the alternative numbers specified, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 13(3). For the meanings of 'secondary school' and 'primary school' see PARA 81 ante.

7 Ibid reg 13(1)(b), Table. For these purposes, 'LEA (local education authority) governor' (or 'llywodraethwr AALI') means a person who is appointed as a governor by the local education authority: reg 7(1). A person is disqualified from appointment or continuing to hold office as an LEA (local education authority) governor of a school if he is eligible to be a teacher or staff governor of the school: reg 7(2). For the meaning of 'teacher governor' see note 8 infra; and for the meaning of 'staff governor' see note 9 infra.

The number of LEA (local education authority) governors for a secondary school is normally five although there is an option, if the school has less than 600 registered pupils, for the number to be four: see reg 13(1)(b), (2)(a), Table. The number of LEA (local education authority) governors for a primary school is normally three or four although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 13(1)(b), (2)(b), Table. As regards the alternative numbers specified, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 13(3).

Where a vacancy in the office of a LEA (local education authority) governor arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(1), (5)(b). The clerk to the governing body must, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(2). However, reg 21(1), (2) does not apply where the person entitled to appoint a person to the office in question has already notified the clerk to the governing body in writing of the person appointed or nominated: reg 21(3). Where any person other than a governing body makes an appointment or nominates a person to be appointed to the governing body, he must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person so appointed or nominated: reg 21(4). As to the clerk to the governing body see PARA 276 post.

8 Ibid reg 13(1)(b), Table. For these purposes, 'teacher governor' (or 'athro neu athrawes lywodraethwr') means a person: (1) who is elected in accordance with reg 5, Sch 2 (see PARA 268 post) as a governor by school teachers at the school; and (2) who is himself such a school teacher at a time when he is elected: reg 5(1). For this purpose, 'school teacher' (or 'athro neu athrawes ysgol') is to be interpreted in accordance with the Education Act 2002 s 122 (see PARA 864 post): Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 3(1). As to the employment of teachers, and staffing generally, see PARA 354 et seq post. Upon ceasing to work at the school, a teacher governor is disqualified from continuing to hold office as such a governor: reg 5(2).

The number of teacher governors for a secondary school is two, whatever the number of registered pupils at the school: see reg 13(1)(b), (2)(a), Table. The number of teacher governors for a primary school is normally one or two although there is an option, if the school has less than 100 registered pupils, for the number to be one: see reg 13(1)(b), (2)(b), Table. As regards the alternative numbers specified, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 13(3).

9 Ibid reg 13(1)(b), Table. For these purposes, 'staff governor' (or 'staff lywodraethwr') means a person: (1) who is elected in accordance with Sch 2 (see PARA 268 post) as a governor by persons employed to work at the school otherwise than as school teachers; and (2) who is himself so employed at a time when he is elected: reg 6(1). For this purpose, 'employed' means employed under a contract of employment or a contract for services: reg 6(1). As to contracts of employment and contracts for services generally see EMPLOYMENT vol 39 (2009) PARA 2. Where the instrument of government of a maintained nursery school makes provision in accordance with reg 14(3) (see PARA 253 post), 'staff governor' (or 'staff lywodraethwr') means a person: (a) who is elected in accordance with Sch 2 (see PARA 268 post) as a governor by persons employed to work at the school; and (b) who is himself so employed at a time when he is elected: reg 6(2). For this purpose, 'employed' means employed under a contract of employment or a contract for services: reg 6(2). Upon ceasing to work at the school, a staff governor of a school is disqualified from continuing to hold office as such a governor: reg 6(3).

The number of staff governors for a secondary school is one, whatever the number of registered pupils at the school: see reg 13(1)(b), (2)(a), Table. The number of staff governors for a primary school is normally one although there is an option, if the school has less than 100 registered pupils, for the number to be one or zero: see reg 13(1)(b), (2)(b), Table.

10 Ibid reg 13(1)(b), Table. For these purposes, 'community governor' (or 'llywodraethwr cymunedol') means a person who is appointed as a governor by the governing body and who is: (1) a person who lives or works in the community served by the school (reg 8(1)(a)); or (2) a person who, in the opinion of the governing body, is committed to the good government and success of the school (reg 8(1)(b)). A person is disqualified from appointment or continuing to hold office as a community governor of a school if he is: (a) a registered pupil at the school; (b) eligible to be a teacher or staff governor of the school: reg 8(2). A person is also disqualified if he

is an elected member of the local education authority: reg 8(3). However, the provisions of reg 8(2), (3) do not apply in the case of an additional community governor: reg 8(4). 'Additional community governor' (or 'llywodraethwr cymunedol ychwanegol') means a governor appointed in accordance with reg 20 (see PARA 259 post): reg 8(1).

The number of community governors for a secondary school is normally five although there is an option, if the school has less than 600 registered pupils, for the number to be four: see reg 13(1)(b), (2)(a), Table. The number of community governors for a primary school is normally three or four although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 13(1)(b), (2)(b), Table. As regards the alternative numbers specified, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 13(3).

Where a vacancy in the office of a community governor (including an additional community governor) arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(1), (5)(c). See further reg 21(2)-(4); and note 7 supra.

11     le required by virtue of *ibid* reg 20: see PARA 259 post.

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### **253. Constitution of governing bodies of maintained nursery schools.**

The governing body<sup>1</sup> of a maintained nursery school<sup>2</sup> must consist of the following:

- 527 (1) the head teacher<sup>3</sup>, unless he resigns the position<sup>4</sup>;
- 528 (2) the requisite number of governors of each of the following categories<sup>5</sup>:  
13
  - 21. (a) parent governors<sup>6</sup>;
  - 22. (b) LEA (local education authority) governors<sup>7</sup>;
  - 23. (c) teacher governors<sup>8</sup>;
  - 24. (d) staff governors<sup>9</sup>;
  - 25. (e) community governors<sup>10</sup>; and
- 14  
529 (3) any additional governors required<sup>11</sup>.

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to maintained nursery schools see PARA 94 ante.

3 As to the meaning of 'head teacher' under the Education Act 1996 see PARA 93 note 13 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 14(1)(a). As to resignation of a position see reg 26(1); and PARA 272 post.

5 Ibid reg 14(1)(b).

6 Ibid reg 14(1)(b), Table. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 252 note 6 ante. The number of parent governors for a maintained nursery school is four or five, although there is an option, if the school has less than 100 registered pupils, for the number to be three: see reg 14(1)(b), (2), Table. As regards the alternative numbers specified, the governing body of a maintained nursery school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 14(4). For the meaning of 'registered pupil' generally see PARA 512 post.

7 Ibid reg 14(1)(b), Table. For the meaning of 'LEA (local education authority) governor' see PARA 252 note 7 ante. As to local education authorities see PARA 20 ante. The number of LEA (local education authority) governors for a maintained nursery school is normally three or four, although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 14(1)(b), (2), Table. As regards the alternative numbers specified, the governing body of a maintained nursery school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 14(4).

8 Ibid reg 14(1)(b), Table. For the meaning of 'teacher governor' see PARA 252 note 8 ante. The number of teacher governors for a maintained nursery school is normally one or two, although there is an option, if the school has less than 100 registered pupils, for the number to be one: see reg 14(1)(b), (2), Table. As regards the alternative numbers specified, the governing body of a maintained nursery school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 14(4).

9 Ibid reg 14(1)(b), Table. For the meaning of 'staff governor' see PARA 252 note 9 ante. The number of staff governors for a maintained nursery school is normally one, although there is an option, if the school has less than 100 registered pupils, for the number to be one or zero: see reg 14(1)(b), (2), Table. The instrument of government of a maintained nursery school may provide for a single category of staff governor instead of the two categories of teacher governor and staff governor in such numbers, being no less than one, as may be specified in the instrument of government: reg 14(3). As to instruments of government see PARA 291 et seq post.

10 Ibid reg 14(1)(b), Table. For the meaning of 'community governor' see PARA 252 note 10 ante. The number of community governors for a maintained nursery school is normally three or four, although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 14(1)(b), (2), Table. As regards the alternative numbers specified, the governing body of a maintained nursery school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 14(4).

11 Ie required by virtue of ibid reg 20: see PARA 259 post.



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## 254. Constitution of governing bodies of community special schools.

The governing body<sup>1</sup> of a community special school<sup>2</sup> must consist of the following:

- 530 (1) the head teacher<sup>3</sup>, unless he resigns the position<sup>4</sup>;
- 531 (2) the requisite number of governors of each of the following categories<sup>5</sup>:
  - 15
  - 26. (a) parent governors<sup>6</sup>;
  - 27. (b) LEA (local education authority) governors<sup>7</sup>;
  - 28. (c) teacher governors<sup>8</sup>;
  - 29. (d) staff governors<sup>9</sup>;
  - 30. (e) community governors<sup>10</sup>.
- 16

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

3 As to the meaning of 'head teacher' under the Education Act 1996 see PARA 93 note 13 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 15(1)(a). As to resignation of a position see reg 26(1); and PARA 272 post.

5 Ibid reg 15(1)(b).

6 Ibid reg 15(1)(b), Table. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 252 note 6 ante. The number of parent governors for a community special school is four or five, although there is an option for the number to be three: see reg 15(1)(b), Table. The option of having a smaller governing body is available whatever the number of registered pupils at the school: reg 15(2). As regards the alternative numbers specified, the governing body of a community special school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 15(3). For the meaning of 'registered pupil' generally see PARA 512 post.

7 Ibid reg 15(1)(b), Table. For the meaning of 'LEA (local education authority) governor' see PARA 252 note 7 ante. As to local education authorities see PARA 20 ante. The number of LEA (local education authority) governors for a community special school is normally three or four, although there is an option for the number to be two: see reg 15(1)(b), Table. The option of having a smaller governing body is available whatever the number of registered pupils at the school: reg 15(2). As regards the alternative numbers specified, the governing body of a community special school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 15(3).

8 Ibid reg 15(1)(b), Table. For the meaning of 'teacher governor' see PARA 252 note 8 ante. The number of teacher governors for a community special school is normally one or two, although there is an option for the number to be one: see reg 15(1)(b), Table. The option of having a smaller governing body is available whatever the number of registered pupils at the school: reg 15(2). As regards the alternative numbers specified, the governing body of a community special school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 15(3).

9 Ibid reg 15(1)(b), Table. For the meaning of 'staff governor' see PARA 252 note 9 ante. The number of staff governors for a community special school is normally one, although there is an option for the number to be one or zero: see reg 15(1)(b), Table. The option of having a smaller governing body is available whatever the number of registered pupils at the school: reg 15(2).

10 Ibid reg 15(1)(b), Table. For the meaning of 'community governor' see PARA 252 note 10 ante. The number of community governors for a community special school is normally three or four, although there is an option for the number to be two: see reg 15(1)(b), Table. The option of having a smaller governing body is available whatever the number of registered pupils at the school: reg 15(2). As regards the alternative numbers specified, the governing body of a community special school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 15(3).

Where a community special school is established in a hospital, the local education authority must designate as the appropriate body: (1) one local health board or more than one board to act jointly; or (2) the National Health Service trust with which the school is most closely associated, and the appropriate body must appoint a representative governor to take the place of one of the number of community governors specified in whichever of the options for numbers applies to the school: reg 15(4). As to health boards and National Health Service trusts see generally HEALTH SERVICES. Where the school is not established in a hospital, then: (a) the local education authority may designate one voluntary organisation or more than one such organisation to act jointly, as the appropriate voluntary organisation concerned with matters in respect of which the school is specially organised; or (b) where an appropriate voluntary organisation is so designated, it must appoint the representative governor to take the place of one of the number of community governors specified in whichever of the options for numbers applies to the school: reg 15(5). For these purposes, 'representative governor' (or 'llywodraethwr cynrychiadol') means a person who is appointed as such in accordance with reg 15(4) or (5): reg 12.

Where a vacancy in the office of a representative governor arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(1), (5)(d). The clerk to the governing body must, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(2). However, the provisions of reg 21(1), (2) do not apply where the person entitled to appoint a person to the office in question has already notified the clerk to the governing body in writing of the person appointed or nominated: reg 21(3). Where any person other than a governing body makes an appointment or nominates a person to be appointed to the governing body, he must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person so appointed or nominated: reg 21(4). As to the clerk to the governing body see PARA 276 post.

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## **255. Constitution of governing bodies of foundation schools.**

The governing body<sup>1</sup> of a foundation school<sup>2</sup> must consist of the following:

- 532 (1) the head teacher<sup>3</sup>, unless he resigns the position<sup>4</sup>;
- 533 (2) the requisite number of governors of each of the following categories<sup>5</sup>:
  - 17 31. (a) parent governors<sup>6</sup>;
  - 32. (b) LEA (local education authority) governors<sup>7</sup>;
  - 33. (c) teacher governors<sup>8</sup>;
  - 34. (d) staff governors<sup>9</sup>;
  - 35. (e) foundation governors<sup>10</sup> or, where the school does not have a foundation<sup>11</sup>, partnership governors<sup>12</sup>;
  - 36. (f) community governors<sup>13</sup>; and
  - 18 534 (3) any additional governors required<sup>14</sup>.

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to foundation schools see PARA 102 et seq ante.

3 As to the meaning of 'head teacher' under the Education Act 1996 see PARA 93 note 13 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 16(1)(a). As to resignation of a position see reg 26(1); and PARA 272 post.

5 Ibid reg 16(1)(b).

6 Ibid reg 16(1)(b), Table. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 252 note 6 ante. The number of parent governors for a secondary school is normally seven although there is an option, if the school has less than 600 registered pupils, for the number to be six: see reg 16(1)(b), (3)(a), Table. The number of parent governors for a primary school is normally five or six although there is an option, if the school has less than 100 registered pupils, for the number to be four: see reg 16(1)(b), (3)(b), Table. As regards alternatives, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 16(4). For the meanings of 'secondary school' and 'primary school' see PARA 81 ante; and for the meaning of 'registered pupil' see PARA 512 post.

7 Ibid reg 16(1)(b), Table. For the meaning of 'LEA (local education authority) governor' see PARA 252 note 7 ante. The number of LEA (local education authority) governors for a secondary school and for a primary school is two, whatever the number of registered pupils at the school: see reg 16(1)(b), Table.

8 Ibid reg 16(1)(b), Table. For the meaning of 'teacher governor' see PARA 252 note 8 ante. The number of teacher governors for a secondary school is two, whatever the number of registered pupils at the school: see reg 16(1)(b), (3)(a), Table. The number of teacher governors for a primary school is one, whatever the number of registered pupils at the school: see reg 16(1)(b), (3)(b), Table.

9 Ibid reg 16(1)(b), Table. For the meaning of 'staff governor' see PARA 252 note 9 ante. The number of staff governors for a secondary school is one, whatever the number of registered pupils at the school: see reg 16(1)(b), (3)(a), Table. The number of staff governors for a primary school is normally one although there is an option, if the school has less than 100 registered pupils, for the number to be one or zero: see reg 16(1)(b), (3)(b), Table.

10 For these purposes, 'foundation governor' (or 'llywodraethwr sefydliedig') means a person who is appointed as a governor otherwise than by the local education authority and who: (1) where the school has a particular religious character, is appointed for the purpose of securing that that character is preserved and developed (ibid reg 9(1)(a)); (2) where there is a trust relating to the school, is appointed for the purpose of securing that the school is conducted in accordance with that trust (reg 9(1)(b)); or (3) where the school does not have a religious character and there is no trust relating to it, is appointed as a foundation governor of the school (reg 9(1)(c)). For these purposes, any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). See also note 3 supra. As to local education authorities see PARA 20 ante. As to foundation schools having a particular religious character see PARA 953 post. As to educational trusts see PARA 1430 et seq post.

Where a vacancy in the office of a foundation governor arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(1), (5)(a). The clerk to the governing body must, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(2). However, reg 21(1), (2) does not apply where the person entitled to appoint a person to the office in question has already notified the clerk to the governing body in writing of the person appointed or nominated: reg 21(3). Where any person other than a governing body makes an appointment or nominates a person to be appointed to the governing body, he must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person so appointed or nominated: reg 21(4). As to the clerk to the governing body see PARA 276 post.

11 For the meaning of 'foundation' see PARA 104 note 6 ante.

12 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 16(1)(b), (2), Table. For these purposes, 'partnership governor' (or 'llywodraethwr partneriaeth') means a person who is nominated as a partnership governor and appointed as such in accordance with reg 10, Sch 3 (see PARA 269 post): reg 10(1). A person is disqualified from nomination or appointment as a partnership governor of a school if he is: (1) a parent of a registered pupil at the school; (2) a registered pupil at the school; (3) eligible to be a teacher or staff governor of the school; (4) an elected member of the local education authority; or (5) employed by the local education authority in connection with its functions as a local education authority: reg 10(2). As to the meaning of 'parent' see PARA 204 note 5 ante.

The number of foundation governors or partnership governors for a secondary school is normally five although there is an option, if the school has less than 600 registered pupils, for the number to be four: see reg 16(1)(b), (3)(a), Table. The number of foundation governors or partnership governors for a primary school is normally three or four although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 16(1)(b), (3)(b), Table. As regards alternatives, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 16(4).

13 Ibid reg 16(1)(b), (2), Table. For the meaning of 'community governor' see PARA 252 note 10 ante. The number of community governors for a secondary school is normally three although there is an option, if the school has less than 600 registered pupils, for the number to be two: see reg 16(1)(b), (3)(a), Table. The number of community governors for a primary school is one, whatever the number of registered pupils at the school: see reg 16(1)(b), Table.

14 Is required by virtue of ibid reg 20: see PARA 259 post.

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## **256. Constitution of governing bodies of foundation special schools.**

The governing body<sup>1</sup> of a foundation special school<sup>2</sup> must consist of the following:

- 535 (1) the head teacher<sup>3</sup>, unless he resigns the position<sup>4</sup>;
- 536 (2) the requisite number of governors of each of the following categories<sup>5</sup>:
- 19
- 37. (a) parent governors<sup>6</sup>;
- 38. (b) LEA (local education authority) governors<sup>7</sup>;
- 39. (c) teacher governors<sup>8</sup>;
- 40. (d) staff governors<sup>9</sup>;
- 41. (e) foundation governors<sup>10</sup> or, where the school does not have a foundation<sup>11</sup>, partnership governors<sup>12</sup>;
- 42. (f) community governors<sup>13</sup>.
- 20

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post. As to the constitution of governing bodies of foundation special schools see PARA 205 ante.

3 As to the meaning of 'head teacher' under the Education Act 1996 see PARA 93 note 13 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 17(1)(a). As to resignation of a position see reg 26(1); and PARA 272 post.

5 Ibid reg 17(1)(b).

6 Ibid reg 17(1)(b), Table. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 252 note 6 ante. The number of parent governors for a foundation special school is five or six, although there is an option for the number to be four: see reg 17(1)(b), Table. The option of having a smaller governing body is available whatever the number of registered pupils at the school reg 17(3). As regards alternatives, the governing body of a foundation special school must be constituted in such a way as to reflect either both of the first alternatives for all categories of governor or both of the second alternatives for all categories of governor: reg 17(4). For the meaning of 'registered pupil' see PARA 512 post.

7 Ibid reg 17(1)(b), Table. For the meaning of 'LEA (local education authority) governor' see PARA 252 note 7 ante. The number of LEA (local education authority) governors for a foundation special school is two, whatever the number of registered pupils at the school: see reg 17(1)(b), Table.

8 Ibid reg 17(1)(b), Table. For the meaning of 'teacher governor' see PARA 252 note 8 ante. The number of teacher governors for a foundation special school is one, whatever the number of registered pupils at the school: see reg 17(1)(b), Table.

9 Ibid reg 17(1)(b), Table. For the meaning of 'staff governor' see PARA 252 note 9 ante. The number of staff governors for a foundation special school is one, although there is an option, if the school has less than 100 registered pupils, for the number to be one or zero: see reg 17(1)(b), (3), Table.

10 For the meaning of 'foundation governor' see PARA 255 note 10 ante.

11 For the meaning of 'foundation' see PARA 104 note 6 ante.

12 Ibid reg 17(1)(b), (2), Table. For the meaning of 'partnership governor' see PARA 255 note 12 ante.

The number of foundation governors or partnership governors for a foundation special school is normally three or four, although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 17(1)(b), (3), Table. As regards alternatives, the governing body of a foundation special school must be constituted in such a way as to reflect either both of the first alternatives for all categories of governor or both of the second alternatives for all categories of governor: reg 17(4).

13 Ibid reg 17(1)(b), (2), Table. For the meaning of 'community governor' see PARA 252 note 10 ante. The number of community governors for a foundation special school is one, whatever the number of registered pupils at the school: see reg 17(1)(b), Table.

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## **257. Constitution of governing bodies of voluntary controlled schools.**

The governing body<sup>1</sup> of a voluntary controlled school<sup>2</sup> must consist of the following:

- 537 (1) the head teacher<sup>3</sup>, unless he resigns the position<sup>4</sup>;
- 538 (2) the requisite number of governors of each of the following categories<sup>5</sup>:
  - 21
  - 43. (a) parent governors<sup>6</sup>;
  - 44. (b) LEA (local education authority) governors<sup>7</sup>;
  - 45. (c) teacher governors<sup>8</sup>;
  - 46. (d) staff governors<sup>9</sup>;
  - 47. (e) foundation governors<sup>10</sup>;
  - 48. (f) community governors<sup>11</sup>; and
  - 22
  - 539 (3) any additional governors required<sup>12</sup>.

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to voluntary controlled schools see PARA 102 et seq ante.

3 As to the meaning of 'head teacher' under the Education Act 1996 see PARA 93 note 13 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 18(1)(a). As to resignation of a position see reg 26(1); and PARA 272 post.

5 Ibid reg 18(1)(b).

6 Ibid reg 18(1)(b), Table. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 252 note 6 ante. The number of parent governors for a secondary school is normally six although there is an option, if the school has less than 600 registered pupils, for the number to be five: see reg 18(1)(b), (2)(a), Table. The number of parent governors for a primary school is normally four or five although there is an option, if the school has less than 100 registered pupils, for the number to be three: see reg 18(1)(b), (2)(b), Table. As regards alternatives, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 18(3). For the meanings of 'secondary school' and 'primary school' see PARA 81 ante; and for the meaning of 'registered pupil' see PARA 512 post.

7 Ibid reg 18(1)(b), Table. For the meaning of 'LEA (local education authority) governor' see PARA 252 note 7 ante. The number of LEA (local education authority) governors for a secondary school is normally four although there is an option, if the school has less than 600 registered pupils, for the number to be three: see reg 18(1)(b), (2)(a), Table. The number of LEA (local education authority) governors for a primary school is normally three although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 18(1)(b), (2)(b), Table.

8 Ibid reg 18(1)(b), Table. For the meaning of 'teacher governor' see PARA 252 note 8 ante. The number of teacher governors for a secondary school is two, whatever the number of registered pupils at the school: see

reg 18(1)(b), (2)(a), Table. The number of teacher governors for a primary school is one, whatever the number of registered pupils at the school: see reg 18(1)(b), (2)(b), Table.

9 Ibid reg 18(1)(b), Table. For the meaning of 'staff governor' see PARA 252 note 9 ante. The number of staff governors for a secondary school is one, whatever the number of registered pupils at the school: see reg 18(1)(b), (2)(a), Table. The number of staff governors for a primary school is normally one although there is an option, if the school has less than 100 registered pupils, for the number to be one or zero: see reg 18(1)(b), (2)(b), Table.

10 Ibid reg 18(1)(b), Table. For the meaning of 'foundation governor' see PARA 255 note 10 ante. The number of foundation governors for a secondary school is normally five although there is an option, if the school has less than 600 registered pupils, for the number to be four: see reg 18(1)(b), (2)(a), Table. The number of foundation governors for a primary school is normally three or four although there is an option, if the school has less than 100 registered pupils, for the number to be two: see reg 18(1)(b), (2)(b), Table. As regards alternatives, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 18(3).

11 Ibid reg 18(1)(b), Table. For the meaning of 'community governor' see PARA 252 note 10 ante. The number of community governors for a secondary school is two, whatever the number of registered pupils at the school: see reg 18(1)(b), (2)(a), Table. The number of community governors for a primary school is one, whatever the number of registered pupils at the school: see reg 18(1)(b), (2)(b), Table.

12 Ie required by virtue of ibid reg 20: see PARA 259 post.



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## **258. Constitution of governing bodies of voluntary aided schools.**

The governing body<sup>1</sup> of a voluntary aided school<sup>2</sup> must consist of the following:

- 540 (1) the head teacher<sup>3</sup>, unless he resigns the position<sup>4</sup>;
- 541 (2) the requisite number of governors of each of the following categories<sup>5</sup>:
  - 23
  - 49. (a) parent governors<sup>6</sup>;
  - 50. (b) LEA (local education authority) governors<sup>7</sup>;
  - 51. (c) teacher governors<sup>8</sup>;
  - 52. (d) staff governors<sup>9</sup>;
  - 24
  - 542 (3) the requisite number of foundation governors<sup>10</sup>; and
  - 543 (4) any additional governors required<sup>11</sup>.

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to voluntary aided schools see PARA 102 et seq ante.

3 As to the meaning of 'head teacher' under the Education Act 1996 see PARA 93 note 13 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 19(1)(a). As to resignation of a position see reg 26(1); and PARA 272 post.

5 Ibid reg 19(1)(b).

6 Ibid reg 19(1)(b), Table. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 252 note 6 ante. The number of parent governors for a secondary school is normally three although there is an option, if the school has less than 600 registered pupils, for the number to be two: see reg 19(1)(b), (2)(a), Table. The number of parent governors for a primary school is normally one or two although there is an option, if the school has less than 100 registered pupils, for the number to be one: see reg 19(1)(b), (2)(b), Table. As regards alternatives, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 19(3). For the meanings of 'secondary school' and 'primary school' see PARA 81 ante; and for the meaning of 'registered pupil' see PARA 512 post.

7 Ibid reg 19(1)(b), Table. For the meaning of 'LEA (local education authority) governor' see PARA 252 note 7 ante. The number of LEA (local education authority) governors for a secondary school is normally two although there is an option, if the school has less than 600 registered pupils, for the number to be one: see reg 19(1)(b), (2)(a), Table. The number of LEA (local education authority) governors for a primary school is normally one or two although there is an option, if the school has less than 100 registered pupils, for the number to be one: see reg 19(1)(b), (2)(b), Table. As regards alternatives, the governing body of a primary school must be constituted in such a way as to reflect either the first alternative for all categories of governor or the second alternative for all categories of governor: reg 19(3).

8 Ibid reg 19(1)(b), Table. For the meaning of 'teacher governor' see PARA 252 note 8 ante. The number of teacher governors for a secondary school is two, whatever the number of registered pupils at the school: see

reg 19(1)(b), (2)(a), Table. The number of teacher governors for a primary school is one, whatever the number of registered pupils at the school: see reg 19(1)(b), (2)(b), Table.

9 Ibid reg 19(1)(b), Table. For the meaning of 'staff governor' see PARA 252 note 9 ante. The number of staff governors for a secondary school is one, whatever the number of registered pupils at the school: see reg 19(1)(b), (2)(a), Table. The number of staff governors for a primary school is normally one although there is an option, if the school has less than 100 registered pupils, for the number to be one or zero: see reg 19(1)(b), (2)(b), Table.

10 Ibid reg 19(1)(c). For the meaning of 'foundation governor' see PARA 255 note 10 ante. The number of foundation governors is such number as will lead to their outnumbering the other governors mentioned in heads (1) and (2) in the text by three, in the case of a secondary school that does not have the option of a smaller governing body, or by two, in the case of any other school: reg 19(1)(c). The foundation governors so required must include at least three governors who at the time of their appointment are parents of registered pupils at the school, in the case of a secondary school that does not have the option of a smaller governing body, or at least two such governors, in the case of any other school: reg 19(4). As to the meaning of 'parent' generally see PARA 510 note 1 post.

11 Ie required by virtue of ibid reg 20: see PARA 259 post.

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## **259. Additional governors for maintained primary schools.**

The instrument of government<sup>1</sup> for any community, voluntary or foundation school<sup>2</sup> which is a primary school<sup>3</sup>, and any maintained nursery school<sup>4</sup>, which serves an area for which there are one or more community councils<sup>5</sup>, must provide for the governing body<sup>6</sup> to include one additional community governor<sup>7</sup> nominated by the community council<sup>8</sup>. Where any such school serves an area for which there are two or more community councils, the governing body may seek nominations from one or more of those councils<sup>9</sup>.

1 As to instruments of government see PARA 241 et seq ante.

2 As to community, voluntary and foundation schools see PARA 102 et seq ante.

3 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 20(1)(a), (2). For the meaning of 'primary school' see PARA 81 ante.

4 Ibid reg 20(1)(b), (2). As to maintained nursery schools see PARA 94 ante.

5 Ibid reg 20(1). As to community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.

6 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

7 In addition to the governors required by virtue of ibid reg 13 (community schools: see PARA 204 ante), reg 14 (maintained nursery schools: see PARA 253 ante), reg 16 (foundation schools: see PARA 205 ante), reg 18 (voluntary controlled schools: see PARA 206 ante), or reg 19 (voluntary aided school: see PARA 207 ante), as the case may be: reg 20(2). For the meanings of 'community governor' and 'additional community governor' see PARA 252 note 10 ante.

8 Ibid reg 20(2).

9 Ibid reg 20(3).

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## **260. Substitutes for ex officio foundation governors.**

A 'substitute governor' (or 'dirprwy lywodraethwr') is a foundation governor<sup>1</sup> appointed to act in the place of an ex officio foundation governor<sup>2</sup> who is unwilling or unable to act as a governor<sup>3</sup> or to act in the place of an ex officio foundation governor who has been removed from office<sup>3</sup>, or to act in the place of an ex officio foundation governor if there is a vacancy in the office by virtue of which such a governorship exists<sup>4</sup>.

1 For the meaning of 'foundation governor' in relation to Wales see PARA 255 note 10 ante. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 For these purposes, 'ex officio foundation governor' (or 'llywodraethwr sefydliedig ex officio') means a foundation governor who is the holder of an office by virtue of which he is entitled to be a foundation governor: *ibid* reg 9(1). An ex officio foundation governor will, upon ceasing to hold the office from which his governorship derives, be disqualified from continuing to hold office as such a governor: reg 9(2). As to governors of foundation or voluntary schools acting as ex officio trustees see PARA 301 post.

3 An ex officio foundation governor may be removed from office as mentioned in the text under *ibid* reg 27(2) (see PARA 223 note 4 ante).

4 *Ibid* reg 8(1).

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## **261. Adjustment in number of governors.**

Where a maintained school<sup>1</sup> has more governors of a particular category<sup>2</sup> than are provided for by the instrument of government for the school<sup>3</sup>, such number of governors of that category as is required to eliminate the excess must cease to hold office, unless a sufficient number resign<sup>4</sup>. The governors who are to cease to hold office are to be determined on the basis of seniority, the governors whose current period of office as a governor of any category at the school is the shortest being the first to cease to hold office<sup>5</sup>.

For these purposes, additional community governors<sup>6</sup> are treated as if they constituted a separate category of governor<sup>7</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante.

2 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales and the categories of governor see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 As to instruments of government see PARAS 291-295 post.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 23(1). As to resignations see reg 26; and PARA 272 post.

5 Ibid reg 23(2). Where it is necessary for these purposes to select one or more governors from a group of equal seniority, it must be done by drawing lots: reg 23(3). As to tenure of office see PARA 222 ante.

6 I.e. additional governors for maintained primary schools required by virtue of ibid reg 20: see PARA 259 ante. For the meaning of 'additional community governor' see PARA 252 note 10 ante.

7 Ibid reg 23(4).

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**262. Powers where there is no properly constituted governing body.**

Where it appears to the National Assembly for Wales<sup>1</sup> that, by reason of the default of any person, there is no properly constituted governing body<sup>2</sup> of any community, foundation or voluntary school or any community or foundation special school<sup>3</sup>, the Assembly may make such appointments and give such directions as it thinks desirable for the purpose of securing that there is a properly constituted governing body of that school<sup>4</sup>. The Assembly may also give directions rendering valid any acts or proceedings which in its opinion are invalid or otherwise defective by reason of the default<sup>5</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

4 Education Act 1996 s 498(1)(a), (2) (s 498(2) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 131).

5 Education Act 1996 s 498(1)(b).

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### **263. Arrangements for government of new schools.**

Where proposals for the establishment of a maintained school<sup>1</sup> fall to be implemented under any enactment<sup>2</sup>, the local education authority<sup>3</sup> must make arrangements providing for the constitution of a temporary governing body for the school<sup>4</sup>. Once constituted<sup>5</sup>, the temporary governing body continues in existence until such time as the governing body is constituted for the school under an instrument of government<sup>6</sup>. The local education authority must secure that the governing body is so constituted before such date as may be determined in accordance with regulations<sup>7</sup>.

The temporary governing body of a school must be treated for the purposes of the Education Acts<sup>8</sup> as if it were the governing body during the period beginning with the school opening date<sup>9</sup> and ending with the time when the governing body is constituted for the school under an instrument of government<sup>10</sup>.

Regulations<sup>11</sup> may make provision with respect to:

- 544 (1) the making and termination of arrangements for the constitution of temporary governing bodies<sup>12</sup>;
- 545 (2) the constitution, meetings and proceedings of temporary governing bodies, the payment of allowances to temporary governors<sup>13</sup>, and the appointment of clerks to such bodies<sup>14</sup>;
- 546 (3) the exercise by a temporary governing body before the school opening date of the power to provide community facilities<sup>15</sup>;
- 547 (4) the transition from a temporary governing body to a governing body constituted under an instrument of government<sup>16</sup>; and
- 548 (5) such other matters relating to temporary governing bodies as the National Assembly for Wales considers appropriate<sup>17</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 As to the implementation of proposals for the establishment of a maintained school see PARA 173 ante.

3 As to local education authorities see PARA 20 ante.

4 Education Act 2002 s 34(1). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

In relation to Wales, despite the coming into force of the Education Act 2002 s 34 and the repeal of the School Standards and Framework Act 1998 s 44, the provisions of s 44 (repealed) and the Education (New Schools) (Wales) Regulations 1999, SI 1999/2243 (mostly revoked by SI 2005/2912), continue to apply (with modifications) in relation to a temporary governing body constituted before 31 October 2005: see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 6.

5 In accordance with arrangements made under the Education Act 2002 s 34(1): see the text and notes 1-4 supra.

6 Ibid s 34(2). The requirement for there to be an instrument of government for a school, imposed by s 20 (see PARA 241 ante), takes effect in relation to a school falling within s 34(1) (see the text and notes 1-4 supra)

as from the date determined under s 34(3) (see the text and note 7 *infra*): s 34(4). As to instruments of government see PARA 241 *et seq ante*.

7 Ibid s 34(3). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 *ante*. At the date at which this volume states the law, no regulations had been made under s 34(3).

8 For the meaning of 'the Education Acts' see PARA 1 note 14 *ante*; definition applied by virtue of the Education Act 2002 s 212(2), (3).

9 For the purposes of *ibid* s 34, 'school opening date', in relation to a new maintained school, means the date when the school first admits pupils: s 34(9). For the meaning of 'pupil' see PARA 16 note 4 *ante*; definition applied by virtue of s 212(2), (3).

10 Ibid s 34(7). For the purposes of s 30(3) (see PARA 296 *post*) and the Education Act 1996 ss 495-498 (general default powers: see PARAS 56 *et seq*, 262 *ante*), the temporary governing body of a school is also so treated at any time falling before the school opening date: Education Act 2002 s 34(7). Despite s 34(7), nothing in any of the following provisions, namely: (1) s 20(1) (see PARA 241 *ante*); (2) (subject to any regulations made under s 34(5)) s 19(6), Sch 1 (see PARA 203 *ante*); or (3) (subject to any regulations made under s 34(5)) regulations made under s 19 (see PARA 203 *ante*), s 20 (see PARA 241 *ante*) or s 23 (see PARA 226 *ante*), applies to any temporary governing body: s 34(8). See note 4 *supra*.

11 Regulations made under *ibid* s 34(5) may, in connection with any matters falling within s 34(5): (1) modify any provision made under any of s 19 (see PARA 203 *ante*), s 20 (see PARA 241 *ante*) or s 23 (see PARA 226 *ante*) or by Sch 1 (see PARA 203 *ante*); (2) apply any such provision with or without modifications; (3) make provision corresponding or similar to any such provision: s 34(6). As to the meanings of 'modify' and 'modifications' see PARA 43 note 7 *ante*; definition applied by virtue of s 212(2), (3). As to the regulations made under s 34(5), (6) in relation to Wales see the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912; and the Governor Allowance (Wales) Regulations 2005, SI 2005/2915.

For regulations relating to arrangements for the incorporation of temporary governing bodies see the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, Pt 2 (regs 5-7). For regulations relating to the categories of temporary governor see Pt 3 (regs 8-20). For regulations relating to the composition of temporary governing bodies see Pt 4 (reg 21), which applies the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, regs 13-20 (see PARAS 252-259 *ante*), with modifications. For regulations relating to qualifications and tenure of office of temporary governors see the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, Pt 5 (regs 22-27). For regulations relating to the transition from a temporary governing body to a permanent governing body see Pt 8 (regs 43-38), which applies the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Pts 7-10 (regs 39-63) (see PARAS 272, 276, 288 *post*), with modifications. As to the appointment, functions and removal of officers, meetings and proceedings of temporary governing bodies, committees of temporary governing bodies and conflicts of interest in relation to new schools in Wales see the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912, Pt 7 (regs 27-42).

12 Education Act 2002 s 34(5)(a). The arrangements mentioned in the text include such arrangements made in anticipation of proposals falling to be implemented as mentioned in s 34(1) (see the text and notes 1-4 *supra*): s 34(5)(a).

13 In the case of temporary governors of a new school, nothing in the School Standards and Framework Act 1998 s 50(3) (effect of financial delegation: see PARA 321 *post*) is to be read as authorising the payment of allowances to governors otherwise than in accordance with regulations under the Education Act 2002 s 34(5): School Standards and Framework Act 1998 s 50(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 101). For the meaning of 'new school' see PARA 202 *ante*.

14 Education Act 2002 s 34(5)(b).

15 Ibid s 34(5)(c). The power to provide community facilities is conferred by s 27: see PARA 232 *ante*.

16 Ibid s 34(5)(d).

17 Ibid s 34(5)(e). As to the National Assembly for Wales see PARA 53 *ante*.

## UPDATE

### 263 Arrangements for government of new schools

NOTE 11--See the Staffing of Maintained Schools (Wales) Regulations 2006, SI 2006/873 (amended by SI 2007/944, SI 2009/2544, SI 2009/2708, SI 2009/3161). SI 2006/873



applied, with modifications, in relation to pupil referral units: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 14.

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## **264. Federations of schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

In prescribed<sup>2</sup> cases, the governing bodies<sup>3</sup>:

- 549 (1) of two or more maintained schools<sup>4</sup>;
- 550 (2) of an existing federation<sup>5</sup> and of one or more maintained schools<sup>6</sup>; or
- 551 (3) of two or more existing federations<sup>7</sup>,

may, after complying with prescribed conditions and in accordance with prescribed procedure, provide for their respective schools to be federated<sup>8</sup>. Where any schools are so federated<sup>9</sup>, they must have a single governing body constituted under a single instrument of government<sup>10</sup>, and, in prescribed cases, they must be treated as a single school for the purposes of such enactments<sup>11</sup> as may be prescribed<sup>12</sup>. Regulations<sup>13</sup> may make provision:

- 552 (a) as to the dissolution of governing bodies on the formation of a federation<sup>14</sup>;
- 553 (b) enabling the governing body of a federation to continue in existence as a body corporate<sup>15</sup> when one or more schools join or leave the federation<sup>16</sup>;
- 554 (c) as to the circumstances in which and manner in which a federation may be dissolved, or one or more schools may leave a federation<sup>17</sup>;
- 555 (d) enabling the governing body of a federation that is dissolved to be replaced either by governing bodies for each of the constituent schools or by governing bodies which include the governing body of a new federation<sup>18</sup>;
- 556 (e) as to the transition from one governing body to another<sup>19</sup>;
- 557 (f) as to the transfer of property, rights and liabilities between governing bodies, or between local education authorities<sup>20</sup> and governing bodies<sup>21</sup>; and
- 558 (g) as to such other matters relating to federations, federated schools or the formation or dissolution of federations as the National Assembly for Wales, considers appropriate<sup>22</sup>.

If such regulations<sup>23</sup> allow the formation of a federation comprising schools within different categories<sup>24</sup>, the regulations may make provision modifying any enactment which relates to schools within a particular category, or to the governing bodies of schools within a particular category, in the application of the enactment to schools forming part of such a federation or to the governing bodies of such federations<sup>25</sup>. Regulations may also make provision modifying certain provisions of the School Standards and Framework Act 1998<sup>26</sup> in the application of those provisions to federated schools or their governing bodies<sup>27</sup>.

In any enactment: (i) any reference to the governing body or governors<sup>28</sup> of a school is to be construed, in relation to a federated school, as a reference to the governing body or governors of the federation<sup>29</sup>; and (ii) any reference to the instrument of government of a school is to be construed, in relation to a federated school, as a reference to the instrument of government of the federation<sup>30</sup>.

<sup>1</sup> The Education Act 2002 ss 24-25 are brought into force as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales. As to

federations of schools in England see PARA 213 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made in relation to Wales for these purposes.

3 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

4 Education Act 2002 s 24(1)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

5 For the meaning of 'federation' see PARA 213 note 4 ante.

6 Education Act 2002 s 24(1)(b). See note 1 supra.

7 Ibid s 24(1)(c). See note 1 supra.

8 Ibid s 24(1). See note 1 supra. The text refers to schools being federated for the purposes of Pt 3 Ch 1 (ss 19-40). For the meaning of 'federated school' see PARA 213 note 4 ante.

9 Ie by virtue of ibid s 24.

10 Ibid s 24(3)(a). See note 1 supra. As to instruments of government see PARA 291 et seq post.

11 Ie other than any enactment contained in the School Standards and Framework Act 1998 Pt 2 Ch 2 (ss 28-35) (as amended) (establishment, alteration or discontinuance of schools: see PARA 131 et seq ante) or in Pt 3 (ss 84-109) (as amended) (school admissions: see PARA 393 et seq post): Education Act 2002 s 24(3)(b). See note 1 supra.

12 Ibid s 24(3)(b). See note 1 supra.

13 See note 2 supra.

14 Education Act 2002 s 24(4)(a). See note 1 supra.

15 As to bodies corporate generally see CORPORATIONS.

16 Education Act 2002 s 24(4)(b). See note 1 supra.

17 Ibid s 24(4)(c). See note 1 supra.

18 Ibid s 24(4)(d). See note 1 supra.

19 Ibid s 24(4)(e). See note 1 supra.

20 As to local education authorities see PARA 20 ante.

21 Education Act 2002 s 24(4)(f). Regulations made by virtue of head (f) in the text in relation to the transfer of property, rights and liabilities may: (1) provide for prescribed matters to be determined by the National Assembly for Wales; (2) apply with modifications any provision of the Education Reform Act 1988 ss 198, 228, Sch 10 (as amended) (supplementary provisions with respect to transfers: see PARA 1389 et seq post); or (3) make provision equivalent to that made by any provision of the Education Reform Act 1988 Sch 10: Education Act 2002 s 24(5). See note 1 supra. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3).

22 Ibid s 24(4)(g). See note 1 supra.

23 Ie regulations made by virtue of ibid s 24.

24 For this purpose, references to categories of maintained schools are references to the categories set out in the School Standards and Framework Act 1998 s 20(1) (see PARA 102 ante): Education Act 2002 s 25(4).

25 Ibid s 25(3). See note 1 supra.

26     le any provision contained in: (1) the School Standards and Framework Act 1998 Pt 1 Ch 4 (ss 14-19A) (as amended) (intervention in schools causing concern: see PARA 1264 et seq post) (Education Act 2002 s 25(1)(a)); or (2) the School Standards and Framework Act 1998 s 51, Sch 15 (as amended) (financial delegation: see PARA 320 et seq post) (Education Act 2002 s 25(1)(b)). See note 1 supra.

27     Ibid s 25(1). The modifications that may be made by virtue of s 25(1) include, in particular, modifications: (1) enabling powers conferred by the provisions referred to in s 25(1) (see note 26 supra) to be exercised in relation to all the schools in a federation even though the circumstances by reference to which the powers are exercisable exist only in relation to one or more of those schools; and (2) requiring the apportionment of any costs or expenses incurred by the governing body of a federation: s 25(2). At the date at which this volume states the law, no regulations had been made under s 25 in relation to Wales. See note 1 supra.

28     As to the constitution of governing bodies of a school in Wales see PARA 251 et seq ante. As to the governance of schools in England see PARA 203 et seq ante.

29     Education Act 2002 s 24(6)(a). See note 1 supra.

30     Ibid s 24(6)(b). See note 1 supra.

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## **265. Collaboration between schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>. Regulations<sup>2</sup> may:

- 559 (1) enable the governing bodies<sup>3</sup> of two or more maintained schools<sup>4</sup> to arrange for any of their functions<sup>5</sup> to be discharged jointly or by a joint committee<sup>6</sup>;
- 560 (2) provide for the appointment by two or more governing bodies of a joint committee for the purposes of discharging any functions in pursuance of any such arrangements<sup>7</sup>; and
- 561 (3) provide that any enactment relating to those functions or the governing bodies by whom they are to be discharged is to have effect subject to all necessary modifications<sup>8</sup> in its application in relation to those functions and the governing bodies by whom they are to be discharged<sup>9</sup>.

1 The Education Act 2002 s 26 is brought into force as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales. As to collaboration between schools in England see PARA 214 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made in relation to Wales for these purposes.

3 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

4 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

5 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

6 Ibid s 26(a). See note 1 supra.

7 Ibid s 26(b). See note 1 supra.

8 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

9 Ibid s 26(c). See note 1 supra.

## **UPDATE**

### **265-266 Collaboration between schools, Governing bodies consisting of interim executive members**

These provisions now in force in relation to Wales: SI 2007/3611.

## **265 Collaboration between schools**

NOTE 2--See the Collaboration Between Maintained Schools (Wales) Regulations 2008, SI 2008/168.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(iv) Governance of Schools/B. GOVERNANCE OF SCHOOLS IN WALES/(A) Constitution of Governing Bodies/266. Governing bodies consisting of interim executive members.

## **266. Governing bodies consisting of interim executive members.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where a notice has been given in respect of any maintained school<sup>2</sup> either by the local education authority<sup>3</sup> or by the National Assembly for Wales<sup>4</sup> that, as from the date specified in the notice, the governing body<sup>5</sup> is to consist of interim executive members<sup>6</sup>, the following provisions<sup>7</sup> have effect<sup>8</sup>. The governing body of the school must consist of members appointed by the appropriate authority<sup>9</sup>. The governing body as so constituted<sup>10</sup> is referred to as 'the interim executive board'<sup>11</sup>, and the members of the governing body as so constituted are referred to as 'interim executive members'<sup>12</sup>. On the date specified in the notice given either by the local education authority<sup>13</sup> or by the Assembly<sup>14</sup>, the existing governors<sup>15</sup> must vacate office<sup>16</sup>.

During the interim period<sup>17</sup>, the interim executive board must conduct the school so as to secure, so far as is practicable to do so, the provision of a sound basis for future improvement in the conduct of the school<sup>18</sup>. During the same period, the local education authority may not exercise any power to appoint additional governors<sup>19</sup>, nor may the Assembly<sup>20</sup>. At any time during the interim period, the interim executive board may, if it thinks fit, make a report to the local education authority and the Assembly recommending that the school be discontinued<sup>21</sup>, and stating the reasons for that recommendation<sup>22</sup>. Where during the interim period, the Assembly gives a direction to close the school<sup>23</sup> or gives a direction requiring the discontinuance of a community or foundation special school<sup>24</sup>, or where the local education authority determines to discontinue the school<sup>25</sup>, the interim period continues until the discontinuance date<sup>26</sup>, even where it would otherwise end before that date<sup>27</sup>. However, where such a direction is not given by the Assembly and where the local education authority does not make such a determination to discontinue the school and where the notice stating that the governing body is to consist of interim executive members<sup>28</sup> did not specify the duration of the interim period, the appropriate authority may give notice to the specified persons specifying a date on which the governing body is to become a normally constituted governing body<sup>29</sup>. The persons specified for this purpose are: (1) every interim executive member<sup>30</sup>; (2) where the local education authority is the appropriate authority, the Assembly<sup>31</sup>; (3) where the Assembly is the appropriate authority, the local education authority<sup>32</sup>; (4) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, the appropriate diocesan authority<sup>33</sup>; and (5) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed<sup>34</sup>.

The interim executive members must vacate office: (a) on the discontinuance date<sup>35</sup>; (b) at the end of the specified period<sup>36</sup>; and (c) in any other case, on the date specified<sup>37</sup> as the date on which the governing body is to become a normally constituted governing body<sup>38</sup>. However, this does not prevent the termination of the appointment of an interim executive member at any earlier time<sup>39</sup> or in accordance with the terms of his appointment<sup>40</sup>. Where interim executive members are to vacate office on the date referred to in head (b) or head (c) above, the local education authority must make arrangements providing for the constitution of the governing body on and after that date<sup>41</sup>. Regulations<sup>42</sup> may make provision with respect to the transition from an interim executive board to a normally constituted governing body<sup>43</sup>.

1 The School Standards and Framework Act 1998 Sch 19A (added by the Education Act 2002 s 59(1)) and the School Standards and Framework Act 1998 Sch 1A (added by the Education Act 2002 s 59(2), Sch 6) come into force as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales. As to governing bodies in England consisting of interim executive members see PARA 215 ante.

2 For the meaning of 'maintained school' see PARA 94 ante.

3 Ie under the School Standards and Framework Act 1998 s 16A (prospectively added and amended in relation to Wales): see PARA 1270 post. As to local education authorities see PARA 20 ante.

4 Ie under ibid s 18A (prospectively added and amended in relation to Wales): see PARA 1272 post. As to the National Assembly for Wales see PARA 52 ante.

5 As to the governing body of a maintained school in Wales see PARA 251 et seq ante. As to the governance of schools in England see PARA 203 et seq ante.

6 For the meaning of 'interim executive members' see the text and note 12 infra.

7 Ie the School Standards and Framework Act 1998 Sch 19A, Sch 1A (both prospectively added in relation to Wales): see the text and notes 8-43 infra.

8 Ibid s 19A (as added: see note 1 supra).

9 Ibid Sch 1A para 2(1) (as added: see note 1 supra). For the purposes of Sch 1A (prospectively added in relation to Wales), 'the appropriate authority' means: (1) where Sch 1A (prospectively added in relation to Wales) applies by virtue of a notice under s 16A(1) (prospectively added in relation to Wales) (see PARA 1270 post), the local education authority which gave the notice; and (2) where Sch 1A (prospectively added in relation to Wales) applies by virtue of a notice under s 18A(1) (prospectively added and amended in relation to Wales) (see PARA 1272 post), the National Assembly for Wales: Sch 1A para 1(1) (as so added). The text refers to a governing body constituted in accordance with Sch 1A (prospectively added in relation to Wales) instead of being constituted in accordance with regulations made by virtue of the Education Act 2002 s 19 (see PARA 203 ante): School Standards and Framework Act 1998 Sch 1A para 2(1) (as so added).

10 Ie constituted in accordance with ibid Sch 1A (prospectively added in relation to Wales).

11 Regulations made by virtue of the Education Act 2002 s 19(2) or (3) (see PARA 203 ante) do not apply in relation to the interim executive board: School Standards and Framework Act 1998 Sch 1A para 13(1) (as added: see note 1 supra). The instrument of government of the school does not, so far as it relates to the constitution of the governing body, have effect in relation to the interim executive board: Sch 1A para 13(2) (as so added).

The interim executive board may determine its own procedure (Sch 1A para 11(1) (as so added)); and may make such arrangements as it thinks fit for the discharge of its functions by any other person (Sch 1A para 11(2) (as so added)).

12 Ibid Sch 1A para 2(2) (as added: see note 1 supra).

The number of interim executive members must not be less than two: Sch 1A para 4(1) (as so added). The initial appointment of interim executive members must be made so as to take effect on the date specified in the notice under s 16A(1) (prospectively added in relation to Wales) (see PARA 1270 post) or s 18A(1) (prospectively added and amended in relation to Wales) (see PARA 1272 post): Sch 1A para 4(2) (as so added). The appropriate authority may appoint further interim executive members at any time during the interim period: Sch 1A para 4(3) (as so added). For the meaning of 'the interim period' see note 17 infra.

Every appointment of an interim executive member must be made by an instrument in writing setting out the terms of his appointment: Sch 1A para 5(1) (as so added). An interim executive member holds office in accordance with the terms of his appointment and subject to Sch 1A para 18 (prospectively added in relation to Wales) (see the text and notes 35-40 infra) (Sch 1A para 5(2)(a) (as so added)), and may at any time be removed from office by the appropriate authority for incapacity or misbehaviour (Sch 1A para 5(2)(b) (as so added)). The terms of appointment of an interim executive member may provide for his appointment to be terminable by the appropriate authority by notice: Sch 1A para 5(3) (as so added).

The appropriate authority must give a copy of the notice under s 16A(1) (prospectively added in relation to Wales) or s 18A(1) (prospectively added and amended in relation to Wales) and of every instrument of appointment of an interim executive member: (1) to every interim executive member; (2) to every existing governor of the school; (3) where the local education authority is the appropriate authority, to the National Assembly for Wales; (4) where the National Assembly for Wales is the appropriate authority, to the local



education authority; (5) in the case of a foundation or voluntary school which is a Church of England school, a Church in Wales school or a Roman Catholic Church school, to the appropriate diocesan authority; and (6) in the case of any other foundation or voluntary school, to the person or persons by whom the foundation governors are appointed: Sch 1A para 6(1) (as so added). A failure to comply with Sch 1A para 6(1) (prospectively added in relation to Wales) does not invalidate the notice or appointment: Sch 1A para 6(2) (as so added). For the meanings of 'Church of England school', 'Church in Wales school', 'Roman Catholic Church school' and 'appropriate diocesan authority' see PARA 42 note 15 ante. As to foundation and voluntary schools see PARA 102 et seq ante.

The appropriate authority may nominate one of the interim executive members to be chairman of the interim executive board (Sch 1A para 8 (as so added)); and may pay to any interim executive member such remuneration and allowances as the appropriate authority may determine (Sch 1A para 9 (as so added)).

13 See note 3 supra.

14 See note 4 supra.

15 'Existing governors', in relation to a school in respect of which a notice under the School Standards and Framework Act 1998 s 16A(1) (prospectively added in relation to Wales) (see PARA 1270 post) or s 18A(1) (prospectively added and amended in relation to Wales) (see PARA 1272 post) has been given, means the governors who hold office immediately before the governing body becomes constituted in accordance with Sch 1A (prospectively added in relation to Wales): Sch 1A para 1(1) (as added: see note 1 supra).

16 Ibid Sch 1A para 3(1) (as added: see note 1 supra). Schedule 1A para 3(1) (prospectively added in relation to Wales) does not prevent the appointment of an existing governor as an interim executive member: Sch 1A para 3(2) (as so added).

If immediately before the date specified in a notice under s 16A(1) (prospectively added in relation to Wales) (see PARA 1270 post) or s 18A(1) (prospectively added and amended in relation to Wales) (see PARA 1272 post) the school does not have a delegated budget, the suspension of the governing body's right to a delegated budget is revoked with effect from that date: Sch 1A para 12(1) (as so added). Schedule 1A para 12(1) (prospectively added in relation to Wales) is to be construed in accordance with s 49(7) (see PARA 320 post): Sch 1A para 12(4) (as so added). If a notice under s 51, Sch 15 para 1 (suspension of delegated budget for mismanagement: see PARA 322 post) has been given to the governing body before the date specified in a notice under s 16A(1) (prospectively added in relation to Wales) or s 18A(1) (prospectively added and amended in relation to Wales) but has not yet taken effect, the notice ceases to have effect on that date: Sch 1A para 12(2) (as so added). During the interim period, the local education authority may not exercise the power conferred by s 17 (as amended) (power to suspend right to delegated budget: see PARA 1269 post): Sch 1A para 12(3) (as so added).

17 For these purposes, 'the interim period', in relation to a school in respect of which a notice under ibid s 16A(1) (prospectively added in relation to Wales) (see PARA 1270 post) or s 18A(1) (prospectively added and amended in relation to Wales) (see PARA 1272 post) has been given, means the period during which the governing body is constituted in accordance with Sch 1A (prospectively added in relation to Wales): Sch 1A para 1(1) (as added: see note 1 supra). During the interim period, any reference in any provision contained in, or made under, the Education Acts to a governor or foundation governor of a school has effect, in relation to the school, as a reference to an interim executive member (School Standards and Framework Act 1998 Sch 1A para 3(3) (as so added)); and s 83 (modification of provisions making governors of foundation or voluntary school ex officio trustees: see PARA 301 post) has effect in relation to the school with the substitution for s 83(1)(a)-(c) of a reference to the interim executive members (Sch 1A para 3(4) (as so added)). The appropriate authority may in the notice under s 16A(1) (prospectively added in relation to Wales) or s 18A(1) (prospectively added and amended in relation to Wales) specify the duration of the interim period: Sch 1A para 7 (as so added). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

18 Ibid Sch 1A para 10(1) (as added: see note 1 supra). Schedule 1A para 10(1) (prospectively added in relation to Wales) is without prejudice to the other duties of the interim executive board as governing body: Sch 1A para 10(2) (as so added).

19 Ibid Sch 1A para 14(a) (as added: see note 1 supra). The power to appoint additional governors referred to in the text is the power under s 16 (as amended; prospectively amended in relation to Wales) (see PARA 1268 post).

20 Ibid Sch 1A para 14(b) (as added: see note 1 supra). The power to appoint additional governors referred to in the text is the power under s 18 (as amended; prospectively amended in relation to Wales) (see PARA 1271 post).

21 In ibid Sch 1A (prospectively added in relation to Wales), any reference to the discontinuance of a maintained school is a reference to the local education authority ceasing to maintain it: Sch 1A para 1(2) (as added: see note 1 supra).

22 Ibid Sch 1A para 15(1) (as added: see note 1 supra). However, the interim executive board may not: (1) publish under s 29(2) (proposals for discontinuance of community, foundation, voluntary or maintained nursery school: see PARA 134 ante) proposals to discontinue the school; or (2) serve notice under s 30(2) (notice by governing body to discontinue foundation or voluntary school: see PARA 135 ante): Sch 1A para 15(2) (as so added).

23 Ie under ibid s 19(1) (as substituted; prospectively further substituted in relation to Wales) (see PARA 1273 post).

24 Ibid Sch 1A para 16(1)(a) (as added: see note 1 supra). The text refers to a direction given under s 32(1) (see PARA 149 ante).

25 Ibid Sch 1A para 16(1)(b) (as added: see note 1 supra).

26 For the purposes of ibid Sch 1A para 16 (prospectively added in relation to Wales), 'the discontinuance date' means: (1) the date on which proposals for discontinuing the school are implemented under ss 28(8), 29(7), 31(8), Sch 6 Pt 3 paras 11-15 (as amended) (see PARAS 141-144 ante); (2) the date on which the school is discontinued under s 30 (as amended) (notice by governing body to discontinue foundation or voluntary school: see PARA 135 ante); or (3) the date specified in the direction under s 19(1) (as substituted; prospectively further substituted in relation to Wales) (see PARA 1273 post) or s 32(1) (see PARA 149 ante), as the case may be: Sch 1A para 16(2) (as added: see note 1 supra).

27 Ibid Sch 1A para 16(1) (as added: see note 1 supra).

28 Ie the notice under ibid s 16A(1) (prospectively added in relation to Wales) (see PARA 1270 post) or under s 18A(1) (prospectively added and amended in relation to Wales) (see PARA 1272 post).

29 Ibid Sch 1A para 17(1) (as added: see note 1 supra). For these purposes, 'a normally constituted governing body' means a governing body constituted in accordance with regulations made by virtue of the Education Act 2002 s 19 (see PARA 203 ante): School Standards and Framework Act 1998 Sch 1A para 1(1) (as so added).

30 Ibid Sch 1A para 17(2)(a) (as added: see note 1 supra).

31 Ibid Sch 1A para 17(2)(b) (as added: see note 1 supra).

32 Ibid Sch 1A para 17(2)(c) (as added: see note 1 supra).

33 Ibid Sch 1A para 17(2)(d) (as added: see note 1 supra).

34 Ibid Sch 1A para 17(2)(e) (as added: see note 1 supra).

35 Ibid Sch 1A para 18(1)(a) (as added: see note 1 supra). The date referred to in the text is the discontinuance date within the meaning of Sch 1A para 16 (prospectively added in relation to Wales) (see the text and notes 23-27 supra), in a case where Sch 1A para 16 (prospectively added in relation to Wales) applies: Sch 1A para 18(1)(a) (as so added).

36 Ibid Sch 1A para 18(1)(b) (as added: see note 1 supra). The period referred to in the text is the period specified in a case where Sch 1A para 16 (prospectively added in relation to Wales) (see the text and notes 23-27 supra) does not apply and the notice under s 16A(1) (prospectively added in relation to Wales) (see PARA 1270 post) or under s 18A(1) (prospectively added and amended in relation to Wales) (see PARA 1272 post) specified the duration of the interim period: Sch 1A para 18(1)(b) (as so added).

37 Ie the date specified under ibid Sch 1A para 17(1) (prospectively added in relation to Wales) (see the text and notes 28-29 supra).

38 Ibid Sch 1A para 18(1)(c) (as added: see note 1 supra).

39 Ie under ibid Sch 1A para 5(2)(b) (prospectively added in relation to Wales) (see note 12 supra).

40 Ibid Sch 1A para 18(2) (as added: see note 1 supra).

41 Ibid Sch 1A para 19(1) (as added: see note 1 supra).

42 For these purposes, 'regulations' means regulations made by the National Assembly for Wales: *ibid* s 142(1). Such regulations may in connection with that transition: (1) modify any provision made under any of the Education Act 2002 s 19 (governing bodies: see PARA 203 ante), s 20 (instruments of government: see PARA 241 ante) and s 23 (clerk to the governing body: see PARA 226 ante) or by s 19(6), Sch 1 (incorporation and powers of governing body: see PARA 228 ante); (2) apply any such provision with or without modifications; and (3) make provision corresponding to or similar to any such provision: School Standards and Framework Act 1998 Sch 1A para 19(2) (as added: see note 1 supra).

43 *Ibid* Sch 1A para 19(2) (as added: see note 1 supra). The provision that may be made by virtue of Sch 1A para 19(2) (prospectively added in relation to Wales) includes, in particular, provision enabling governors to be elected or appointed, and to exercise functions, before the end of the interim period: Sch 1A para 19(3) (as so added). At the date at which this volume states the law, no regulations had been made under Sch 1A paras 19(2), (3) (prospectively added in relation to Wales) in relation to Wales.

## **UPDATE**

### **265-266 Collaboration between schools, Governing bodies consisting of interim executive members**

These provisions now in force in relation to Wales: SI 2007/3611.

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## (B) THE GOVERNORS AND CLERK

### **267. Election and appointment of parent governors.**

The appropriate authority<sup>1</sup> must make all the necessary arrangements for the election of parent governors<sup>2</sup>. Any election which is contested must be held by secret ballot<sup>3</sup>, and the necessary arrangements so made must provide for every person who is entitled to vote to have an opportunity to do so by post<sup>4</sup>, although the arrangements may provide also for every person who is entitled to vote to have an opportunity to do so by electronic means<sup>5</sup>. Where a vacancy for a parent governor arises, the appropriate authority must take such steps as are reasonably practicable to secure that every person who is known to it to be a parent<sup>6</sup> of a registered pupil<sup>7</sup> at the school is informed of the vacancy and that it is required to be filled by election<sup>8</sup>, is informed that he is entitled to stand as a candidate and vote in the election<sup>9</sup>, and is given the opportunity to do so<sup>10</sup>.

The number of parent governors required must be made up by parent governors appointed by the governing body, if one or more vacancies for parent governors arises and either:

- 562 (1) the number of parents standing for election is less than the number of vacancies<sup>11</sup>;
- 563 (2) at least 50 per cent of the registered pupils at the school are boarders<sup>12</sup> and it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors<sup>13</sup>; or
- 564 (3) in the case of a school which is a community special or foundation special school established in a hospital, it would, in the opinion of the appropriate authority, be impractical for there to be an election of parent governors<sup>14</sup>.

The governing body must appoint as a parent governor a parent of a registered pupil at the school<sup>15</sup>, or a parent of a child of compulsory school age or, in the case of a maintained nursery school, of or under compulsory school age<sup>16</sup>. However, where the school is a community special school or a foundation special school, the governing body must appoint a parent of a registered pupil at the school<sup>17</sup>, a parent of a child of compulsory school age with special educational needs<sup>18</sup>, a parent of a child of any age with special educational needs<sup>19</sup>, or a parent of a child of compulsory school age<sup>20</sup>.

1 For this purpose, 'appropriate authority' (or 'awdurdod priodol') means: (1) in relation to a community school, a community special school, a maintained nursery school or a voluntary controlled school, the local education authority; (2) in relation to a voluntary aided school, foundation school or foundation special school, the governing body: Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 4, Sch 1 para 1. Where a local education authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under Sch 1: Sch 1 para 2. The local education authority is the appropriate authority in relation to a school within head (2) supra if the governing body and the local education authority so agree: Sch 1 para 3. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to: (a) the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2) (a)); and (b) any reference to the local education authority is a reference to the local education authority that maintains the school (reg 3(2)(c)). As to local education authorities see PARA 20 ante. As to community schools, foundation schools, voluntary schools and community and foundation special schools see PARA 102 et seq ante.

As to special schools see PARA 1027 et seq post. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante. For the meaning of 'school' see PARA 81 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 Ibid Sch 1 para 4. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). For the meaning of 'parent governor' see PARA 252 note 6 ante. The power conferred by Sch 1 para 4 does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected but does include the power to make provision as to qualifying dates: Sch 1 para 6. The appropriate authority is to determine, for the purposes of an election of parent governors, any question whether a person is a parent of a registered pupil at the school: Sch 1 para 5.

3 Ibid Sch 1 para 7.

4 Ibid Sch 1 para 8(1). For this purpose, 'post' includes delivery by hand: Sch 1 para 8(2).

5 Ibid Sch 1 para 8(3).

6 As to the meaning of 'parent' see PARA 204 note 5 ante.

7 For the meaning of 'registered pupil' see PARA 512 post.

8 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 1 para 9(a).

9 Ibid Sch 1 para 9(b).

10 Ibid Sch 1 para 9(c).

11 Ibid Sch 1 para 10(a).

12 As to the meaning of 'boarder' see PARA 26 note 16 ante.

13 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 1 para 10(b).

14 Ibid Sch 1 para 10(c).

15 Ibid Sch 1 para 11(1)(a).

16 Ibid Sch 1 para 11(1)(b). As to the meaning of 'compulsory school age' see PARA 15 ante. The governing body may only appoint a person referred to in Sch 1 para 11(b) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 11(a) (see the text and note 15 supra): Sch 1 para 11(b).

17 Ibid Sch 1 para 12(1)(a).

18 Ibid Sch 1 para 12(1)(b). For the meaning of 'special educational needs' see PARA 984 post. The governing body may only appoint a person referred to in Sch 1 para 12(b) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 12(1)(a) (see the text and note 17 supra): Sch 1 para 12(2).

19 Ibid Sch 1 para 12(1)(c). The governing body may only appoint a person referred to in Sch 1 para 12(c) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 12(b)(1) (see the text and note 18 supra): Sch 1 para 12(2).

20 Ibid Sch 1 para 12(1)(d). The governing body may only appoint a person referred to in Sch 1 para 12(d) if it is not reasonably practicable to appoint a person referred to in Sch 1 para 12(1)(c) (see the text and note 19 supra): Sch 1 para 12(2).

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## **268. Election and appointment of teacher governors and staff governors.**

The appropriate authority<sup>1</sup> must make all the necessary arrangements for the election of teacher governors<sup>2</sup> and staff governors<sup>3</sup>. Any election which is contested must be held by secret ballot<sup>4</sup>.

1 For these purposes, 'appropriate authority' (or 'awdurdod priodol') has the same meaning as in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 4, Sch 1 (see PARA 216 note 1 ante); reg 5, Sch 2 para 1. Where an authority is the appropriate authority in relation to a school, that authority may delegate to the head teacher of the school any of its functions under Sch 2: Sch 2 para 2. For the meaning of 'school' see PARA 81 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante.

2 For the meaning of 'teacher governor' see PARA 252 note 8 ante.

3 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 2 para 3. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'staff governor' see PARA 252 note 9 ante. As to the governing bodies of maintained schools in Wales and the categories of governor see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

The power conferred by Sch 2 para 3 does not include power to impose any requirements as to the minimum number of votes required to be cast for a candidate to be elected, but does include the power to make provision as to qualifying dates: Sch 2 para 5. The appropriate authority is to determine for the purposes of an election of teacher or staff governors whether a person is a school teacher or otherwise employed to work at the school: Sch 2 para 4.

4 Ibid Sch 2 para 6.

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## **269. Appointment of partnership governors.**

Where a partnership governor<sup>1</sup> is required, the governing body must seek nominations from parents<sup>3</sup> of registered pupils<sup>4</sup> at the school, and from such other persons in the community served by the school as it considers appropriate<sup>5</sup>. No person may nominate for appointment, or appoint, a person as a partnership governor unless that person would be eligible for appointment by the governing body as a community governor<sup>6</sup>; and no governor may nominate a person for appointment as a partnership governor<sup>7</sup>.

The governing body must appoint such number of partnership governors as is required by the instrument of government<sup>8</sup> from among eligible nominees<sup>9</sup>. If the number of eligible nominees is less than the number of vacancies, the number of partnership governors required may be made up by persons selected by the governing body<sup>10</sup>.

The governing body must make all necessary arrangements for and determine all other matters relating to the nomination and appointment of partnership governors<sup>11</sup>.

1 For the meaning of 'partnership governor' see PARA 255 note 12 ante. See further PARAS 255-256 ante. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales and the categories of governor see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 As to the meaning of 'parent' see PARA 204 note 5 ante.

4 For the meaning of 'registered pupil' see PARA 512 post.

5 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 10, Sch 3 para 1. Where a vacancy in the office of a partnership governor arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(1), (5)(f). The clerk to the governing body must, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(2). However, reg 21(1), (2) does not apply where the person entitled to appoint a person to the office in question has already notified the clerk to the governing body in writing of the person appointed or nominated: reg 21(3). Where any person other than a governing body makes an appointment or nominates a person to be appointed to the governing body, he must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person so appointed or nominated: reg 21(4). As to the clerk to the governing body see PARA 276 post.

6 Ibid Sch 3 para 2. For the meaning of 'community governor' see PARA 252 note 10 ante.

7 Ibid Sch 3 para 4. This provision is subject to Sch 3 para 5(2) (see the text and note 10 infra). As to the need for notification of appointments see PARA 252 note 7 ante.

8 As to instruments of government see PARA 241 et seq ante.

9 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 3 para 5(1). In the case of a foundation special school without a foundation, the governing body must appoint at least one person with experience of education for children with special educational needs as a partnership governor, unless no eligible nominee has such experience: Sch 3 para 3(1). In seeking nominations for partnership governors for

foundation special schools, the governing body must take steps to secure that persons making nominations are aware of the requirement in Sch 3 para 3(1): Sch 3 para 3(2).

10 Ibid Sch 3 para 5(2). Where the governing body makes an appointment under Sch 3 para 5(2), having rejected any person nominated under Sch 3 para 1 (see the text and notes 1-5 *supra*), it must give written reasons for its decision to the local education authority and to the person rejected: Sch 3 para 6. In the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended), any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see *PARA 20 ante*.

11 Ibid Sch 3 para 7.



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## 270. Election and appointment of sponsor governors.

Where a school<sup>1</sup> has one or more sponsors<sup>2</sup>, the governing body may determine that the instrument of government<sup>3</sup> will provide for the governing body to appoint sponsor governors<sup>4</sup>, not exceeding two<sup>5</sup>. The governing body must seek nominations for such appointments from the sponsor or (as the case may be) from one or more of the sponsors<sup>6</sup>.

1 For the meaning of 'school' see PARA 81 ante.

2 For these purposes, 'sponsor' (or 'noddwr') in relation to a school means: (1) a person who gives or has given substantial financial assistance (which for these purposes includes benefits in kind) to the school other than pursuant to statutory obligation; or (2) any other person (not being otherwise represented on the governing body) who provides or has provided substantial services to the school: Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 11, Sch 4 para 1. Any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 As to instruments of government see PARA 241 et seq ante.

4 For these purposes, 'sponsor governor' (or 'noddwr-lywodraethwr') means a person who is nominated as a sponsor governor and is appointed as such by the governing body in accordance with the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 11, Sch 4: reg 11.

5 Ibid Sch 4 para 2. The text refers to sponsor governors nominated in accordance with Sch 4 para 3 (see the text and note 6 infra).

6 Ibid Sch 4 para 3. Where a vacancy in the office of a sponsor governor arises, the clerk to the governing body must as soon as is reasonably practicable give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(1), (5)(e). The clerk to the governing body must, at least two months before the date of the expiry of the term of office of an appointed member, give notice in writing of that fact to the person entitled to appoint or nominate a person to that office: reg 21(2). However, reg 21(1), (2) does not apply where the person entitled to appoint a person to the office in question has already notified the clerk to the governing body in writing of the person appointed or nominated: reg 21(3). Where any person other than a governing body makes an appointment or nominates a person to be appointed to the governing body, he must give written notice of the appointment or the nomination to the clerk to the governing body specifying the name and usual place of residence of the person so appointed or nominated: reg 21(4). As to the clerk to the governing body see PARA 276 post.

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## 271. Qualifications and disqualifications.

No person is qualified to be a governor<sup>1</sup> unless he is aged 18 or over<sup>2</sup> at the date of his election or appointment<sup>3</sup>. Save as otherwise provided<sup>4</sup>, the fact that a person is qualified to be elected or appointed as a governor of a particular category<sup>5</sup> at a school does not disqualify him from election or appointment or from continuing as a governor of any other category at that school<sup>6</sup>. However, no person may at any time hold the office of more than one governor of the same school<sup>7</sup>, or at any time hold office as governor in more than two schools<sup>8</sup>.

Any governor who is not a governor by virtue of his office and who, without the consent of the governing body, has failed to attend meetings for a continuous period of six months beginning with the date of the first such meeting he failed to attend, is, on the expiry of that period, disqualified from continuing to hold office as a governor of that school<sup>9</sup>.

A person is also disqualified from holding, or from continuing to hold, office as a governor of a school:

- 565 (1) at any time when he is liable to be detained under the Mental Health Act 1983<sup>10</sup>;
- 566 (2) if he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged and the bankruptcy order has not been annulled or rescinded<sup>11</sup>, or if he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it<sup>12</sup>;
- 567 (3) at any time when he is subject to a disqualification order or disqualification undertaking in relation to company directorship<sup>13</sup>, or is subject to an order made<sup>14</sup> for failure to pay under a county court administration order<sup>15</sup>;
- 568 (4) if he has been removed from the office of trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or to which he contributed or which he facilitated by his conduct<sup>16</sup>;
- 569 (5) at any time when his employment is subject to certain restrictions or prohibitions<sup>17</sup> associated with the protection of children<sup>18</sup>;
- 570 (6) where, subject to certain conditions, he has been convicted, whether in the United Kingdom<sup>19</sup> or elsewhere, of any offence and has had passed on him a sentence of imprisonment<sup>20</sup>, or has been convicted under the provisions relating to nuisance and disturbance on educational premises<sup>21</sup> of an offence and has been sentenced to a fine<sup>22</sup>; or
- 571 (7) at any time when he refuses a request by the clerk to the governing body to make an application<sup>23</sup> for a criminal records certificate<sup>24</sup>.

Where, by virtue of any of heads (2) to (6) above, a person is disqualified from holding, or from continuing to hold, office as a governor of a school, and he is, or is proposed to become, a governor, he must give notice of that fact to the clerk to the governing body<sup>25</sup>.

- 1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales and the categories of governor see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.
- 2 A person attains a particular age expressed in years at the commencement of the relevant anniversary of the date of his birth: see the Family Law Reform Act 1969 s 9; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 2.
- 3 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 24, Sch 5 para 1. As to the election and appointment of governors see PARA 216 et seq ante. Schedule 5 para 1 does not apply in the case of associated pupil governors: Sch 5 para 1 (amended by SI 2005/3200). For the meaning of 'associated pupil governor' see PARA 251 note 12 ante.
- 4 le by the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended).
- 5 As to the different categories of governor see PARAS 204-205 ante.
- 6 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 3.
- 7 Ibid Sch 5 para 2.
- 8 Ibid Sch 5 para 11(1). Schedule 5 para 11(1) does not apply in the case of associated pupil governors: Sch 5 para 11(1) (amended by SI 2005/3200). For these purposes, no account is to be taken of ex-officio governorships, governorships to which the New Maintained Schools (Wales) Regulations 2005, SI 2005/2912 apply (see PARA 202 ante) or any appointment under the School Standards and Framework Act 1998 s 16 (as amended; prospectively further amended in relation to Wales) (see PARA 1268 post), s 16A (prospectively added in relation to Wales) (see PARA 1270 post), s 18 (as amended; prospectively further amended in relation to Wales) (see PARA 1271 post), s 18A (prospectively added and amended in relation to Wales) (see PARA 1272 post): Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 11(2).
- 9 Ibid Sch 5 para 5(1), (2). A governor who has been disqualified as a governor of a school under Sch 5 para 5(2) is not qualified for election, nomination or appointment as a governor of any category at that school during the 12 months immediately following his disqualification under Sch 5 para 5(2): Sch 5 para 5(4). Where a governor has sent an apology to the clerk to the governing body before a meeting which he does not propose to attend, the minutes of the meeting must record the governing body's consent or otherwise to the absence and a copy of the minutes must be sent to the governor concerned at his normal place of residence: Sch 5 para 5(3). As to the clerk to the governing body see PARA 276 post.
- 10 Ibid Sch 5 para 4. This includes any re-enactment or statutory modification of the Mental Health Act 1983 in force from time to time: Sch 5 para 4. As to detention under the Mental Health Act 1983 see MENTAL HEALTH.
- 11 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 6(a). As to the making of bankruptcy orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 195 et seq; and as to discharge from bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 629 et seq.
- 12 Ibid Sch 5 para 6(b). As to compositions and arrangements with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 859 et seq.
- 13 le a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 (see COMPANIES vol 15 (2009) PARA 1578 et seq).
- 14 le an order made under the Insolvency Act 1986 s 429(2)(b) (as amended) (see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 910).
- 15 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 7.
- 16 Ibid Sch 5 para 8. As to the removal from office of a charity trustee or trustee for a charity see CHARITIES vol 8 (2010) PARAS 294, 566. As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.
- 17 The restrictions and prohibitions mentioned in the text apply when a person is: (1) included in the list of teachers and workers with children or young persons whose employment is prohibited or restricted under the Protection of Children Act 1999 s 1 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 648 et seq); (2) subject to a direction of the National Assembly for Wales under the Education Act 2002 s 142

(see PARA 782 post); (3) disqualified from working with children under the Criminal Justice and Court Services Act 2000 ss 28, 29 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 663-664); or (4) by virtue of an order made under the Education Act 1996 s 470 (repealed) or s 471 (repealed), disqualified from being the proprietor of any independent school or from being a teacher or other employee in any school: Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 9(a)-(d). For the meaning of 'child' see PARA 16 note 2 ante; for the meaning of 'young person' see PARA 38 note 4 ante; for the meaning of 'proprietor' see PARA 60 note 7 ante; and for the meaning of 'independent school' see PARA 465 post. As to the National Assembly for Wales see PARA 53 ante.

18 Ibid Sch 5 para 9.

19 For the meaning of 'United Kingdom' see PARA 63 note 3 ante.

20 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 10(1)-(5). This provision applies to a person if he has been convicted of an offence as mentioned in the text:

73 (1) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office, or since his appointment or election as governor or, as the case may be, since he became a governor by virtue of his office, and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine (Sch 5 para 10(1), (2));

74 (2) within the period of 20 years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office, and has had passed on him a sentence of imprisonment for a period of not less than two and a half years (Sch 5 para 10(1), (3));

75 (3) and he has had passed on him a sentence of imprisonment for a period of not less than five years (Sch 5 para 10(1), (4)).

For the purposes of heads (1)-(3) supra, any conviction by or before a court outside the United Kingdom of an offence which, if the facts giving rise to the offence had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom must be disregarded: Sch 5 para 10(5).

21 Ie under the Education Act 1996 s 547 (as amended) (see PARA 1416 post) or under the Further and Higher Education Act 1992 s 85A (as added) (see PARA 1417 post).

22 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 10(6). This provision applies to a person if he has been convicted of an offence relating to nuisance and disturbance on educational premises and been sentenced to a fine: (1) within the period of five years ending with the date immediately preceding the date on which his appointment or election as governor would otherwise have taken effect or, as the case may be, on which he would otherwise have become a governor by virtue of his office; or (2) since his appointment or election as governor or, as the case may be, since he became a governor by virtue of his office: Sch 5 para 10(6).

23 Ie under the Police Act 1997 s 113 (as amended; prospectively further amended; prospectively repealed).

24 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, Sch 5 para 12.

25 Ibid Sch 5 para 13.

## **UPDATE**

### **271 Qualifications and disqualifications**

NOTES 17, 18, 24--SI 2005/2914 Sch 5 paras 9, 12 amended: SI 2009/2544.

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## **272. Tenure of office.**

A governor<sup>1</sup> holds office for a fixed period of four years from the date of his election or appointment<sup>2</sup>. However, these provisions do not prevent a governor from:

- 572 (1) being elected or appointed for a further term<sup>3</sup>;
- 573 (2) resigning his office<sup>4</sup>;
- 574 (3) being removed from office<sup>5</sup>; or
- 575 (4) being disqualified<sup>6</sup> from holding or continuing to hold office<sup>7</sup>.

A governor may at any time resign his office by giving written notice to the clerk to the governing body<sup>8</sup>.

The governing body may by resolution suspend a governor for all or any meetings of the governing body, or of a committee, for a fixed period of up to six months on one or more of the following grounds<sup>9</sup>:

- 576 (a) that the governor, being a person paid to work at the school, is the subject of disciplinary proceedings in relation to his employment<sup>10</sup>;
- 577 (b) that the governor is the subject of proceedings in any court or tribunal, the outcome of which may be that he is disqualified from continuing to hold office as a governor<sup>11</sup>;
- 578 (c) that the governor has acted in a way that is inconsistent with the ethos or with the religious character of the school and has brought or is likely to bring the school or the governing body or his office into disrepute<sup>12</sup>; or
- 579 (d) that the governor is in breach of his duty of confidentiality to the school or to any member of staff or to any pupil at the school<sup>13</sup>.

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales and the categories of governor see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 Ibid reg 25(1). However, this provision does not apply: (1) to any governor who is the head teacher of the school, or to any ex officio foundation governor, who may hold office for as long as he holds the position from which his governorship derives (reg 25(2)); or (2) to any foundation governor whose term of office is to be determined by the person who appointed him, up to a maximum of four years (reg 25(3)); or (3) to any additional governor, additional foundation governor or interim executive member appointed under the School Standards and Framework Act 1998 s 16 (as amended; prospectively further amended in relation to Wales) (see PARA 1268 post), s 16A (prospectively added in relation to Wales) (see PARA 1270 post), s 18 (as amended; prospectively further amended in relation to Wales) (see PARA 1271 post) or s 18A (prospectively added and amended in relation to Wales) (see PARA 1272 post) whose term of office is determined by the person who appointed him, up to a maximum of four years (Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 25(4)); (4) to any parent governor of a maintained nursery school who is to hold office for a fixed period of two years from the date of his election or appointment (reg 25(5)); or (5) to any associate pupil governor who is to hold office for a period of one year from the date of his appointment (and note that an associate pupil governor may be re-appointed at the expiration of his term of office) (reg 25(5A) (added by SI 2005/3200)). For the meaning of 'associate pupil governor' see PARA 251 note 12 ante; for the meaning of 'staff

governor' see PARA 252 note 9 ante; and for the meaning of 'ex officio foundation governor' see PARA 260 note 2 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante. As to the election and appointment of governors see PARA 216 et seq ante.

A substitute governor may hold office until the earlier of the following: (a) the expiry of four years from the date when his appointment takes effect; (b) the date when the original governor, not having been removed from office under the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 27(2) (see PARA 223 ante), gives written notice to the clerk to the governing body to the effect that he is able and willing to act as a foundation governor; or (c) the date when a person other than the original governor takes office in the post by virtue of which the ex officio foundation governorship exists: reg 25(6). For this purpose, 'the original governor' (or 'y llywodraethwr gwreiddiol') means the ex officio foundation governor in whose place the substitute governor is appointed to act: reg 25(8). For the meaning of 'substitute governor' see PARA 260 ante; for the meaning of 'foundation governor' see PARA 255 note 10 ante; and for the meaning of 'ex officio foundation governor' see PARA 260 note 2 ante. As to the clerk to the governing body see PARA 276 post.

3 Ibid reg 25(7)(a). This provision does not apply if the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) provide otherwise.

4 Ibid reg 25(7)(b). See note 2 supra. As to resignation from office see reg 26(1); and the text and note 8 infra.

5 Ibid reg 25(7)(c). See note 2 supra. As to removal from office see regs 27-29; and PARA 223 ante.

6 Ibid by virtue of any provision of the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended): see PARA 221 ante.

7 Ibid reg 25(7)(d). See note 2 supra.

8 Ibid reg 26(1). The head teacher may withdraw his resignation at any time by giving written notice to the clerk to the governing body: reg 26(2). An ex officio foundation governor may resign as governor either permanently or temporarily, but his resignation does not prejudice the ex officio governorship of his successor in the office from which the ex officio governorship derives: reg 26(3). As to the meaning of 'head teacher' see PARA 93 note 13 ante.

9 Ibid reg 49(1).

10 Ibid reg 49(1)(a).

11 Ibid reg 49(1)(b).

12 Ibid reg 49(1)(c).

13 Ibid reg 49(1)(d). As to the procedure to be followed and further provision in relation to suspension see reg 49(2)-(6).

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### **273. Removal of governors.**

Any LEA (local education authority) governor<sup>1</sup> or foundation governor<sup>2</sup> or representative governor<sup>3</sup> may be removed from office by the person who appointed him, who must give written notice thereof to the clerk to the governing body<sup>4</sup> and to the governor so removed<sup>5</sup>.

Any additional community governor<sup>6</sup> or sponsor governor<sup>7</sup> may be removed by the person who nominated him, who must give written notice thereof to the clerk to the governing body and to the governor so removed<sup>8</sup>.

Any community governor<sup>9</sup> may be removed from office by the governing body in accordance with the procedure set out below<sup>10</sup>. Any parent governor<sup>11</sup> appointed by the governing body<sup>12</sup>, any partnership governor<sup>13</sup> and any associate pupil governor<sup>14</sup> may be removed by the governing body in accordance with the procedure set out below<sup>15</sup>.

A resolution to remove a governor from office<sup>16</sup> which is passed at a meeting of the governing body does not have effect unless<sup>17</sup>:

- 580 (1) before the governing body resolves to remove the governor from office, the governor or governors proposing his removal at that meeting state their reasons for doing so and the governor whom it is proposed to remove is given an opportunity to make a statement in response<sup>18</sup>;
- 581 (2) the matter of the governor's removal from office is specified as an item of business on the agenda for the meeting<sup>19</sup>.

After a resolution to remove a governor from office has been passed the governing body must inform the person removed from office of the reasons for the removal in writing<sup>20</sup>.

1 For the meaning of 'LEA (local education authority) governor' see PARA 252 note 7 ante. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies (reg 3(2)(b)); and any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies (reg 3(2)(a)). For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales and the categories of governor see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 For the meaning of 'foundation governor' in relation to Wales see PARA 255 note 10 ante.

3 For the meaning of 'representative governor' see PARA 254 note 10 ante.

4 As to the clerk to the governing body see PARA 276 post.

5 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 27(1). An ex officio foundation governor may be removed from office by the person named in the instrument of government as the person entitled to remove him, and that person must give written notice thereof to the clerk to the governing body and to the governor so removed: reg 27(2). For the meaning of 'ex officio foundation governor' see PARA 260 note 2 ante. As to instruments of government see PARA 241 et seq ante.

6 For the meaning of 'additional community governor' see PARA 252 note 10 ante.

7 For the meaning of 'sponsor governor' see PARA 270 note 4 ante.

8 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 27(3).

9 Ie except an additional community governor: see the text and note 6 supra.

10 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 28. The text refers to the procedure set out in reg 30: see the text and notes 16-20 infra.

11 For the meaning of 'parent governor' see PARA 252 note 6 ante.

12 Ie under the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 4, Sch 1 paras 10-12: see PARA 216 ante.

13 For the meaning of 'partnership governor' see PARA 255 note 12 ante.

14 For the meaning of 'associate pupil governor' see PARA 251 note 12 ante.

15 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 29 (substituted by SI 2005/3200). The text refers to the procedure set out in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 30: see the text and notes 16-20 infra.

16 Ie in relation to the removal of a governor from office in accordance with *ibid* reg 28 (see the text and notes 9-10 supra) or reg 29 (as substituted) (see the text and notes 11-15 supra): reg 30(1).

17 *Ibid* reg 30(2).

18 *Ibid* reg 30(2)(a).

19 *Ibid* reg 30(2)(b).

20 *Ibid* reg 30(3).



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## 274. Governors' allowances.

The governing body of a maintained school<sup>1</sup> which has a delegated budget<sup>2</sup> may make to a member of that governing body or to a member of any committee of that governing body<sup>3</sup> payments by way of allowance<sup>4</sup> in respect of expenditure necessarily incurred by a member of the governing body for the purpose of enabling him to perform his duty as a governor or as a member of a committee of the governing body<sup>5</sup> being either travel or subsistence expenses<sup>6</sup> or payments at a rate determined by the governing body and made on provision of a receipt<sup>7</sup> for the relevant amount<sup>8</sup>.

A local education authority<sup>9</sup> may<sup>10</sup> pay prescribed<sup>11</sup> allowances to:

- 582 (1) a governor of a maintained school which does not have a delegated budget<sup>12</sup>;
- 583 (2) a person appointed to represent the local education authority on the governing body of any institution providing higher education<sup>13</sup> or further education<sup>14</sup> (or both)<sup>15</sup>;
- 584 (3) a person appointed to represent the local education authority on the governing body of any independent school<sup>16</sup> or special school<sup>17</sup> which is not maintained by that authority<sup>18</sup>.

The payments prescribed by way of allowance are in respect of expenditure necessarily incurred by a person listed in heads (1) to (3) above for the purpose of enabling him to perform any duty as a governor or as a person appointed to represent the local education authority being either travel or subsistence payments<sup>19</sup> or payments at a rate determined by the authority and made on provision of a receipt for the relevant amount<sup>20</sup>.

Where a maintained school does not have a delegated budget, the local education authority may pay to members of committees of the governing body who are not governors such payments by way of allowance<sup>21</sup> in respect of expenditure necessarily incurred by that person for the purposes of enabling him to perform any duty as a member of a committee being either travel or subsistence payments<sup>22</sup> or payments at a rate determined by the authority and made on provision of a receipt for the relevant amount<sup>23</sup>.

1 For these purposes, 'governing body' (or 'corff llywodraethu') in relation to a maintained school includes a temporary governing body constituted under the Education Act 2002 s 34 (see PARA 263 ante); Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 2. For the meaning of 'school' see PARA 81 ante; and for the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to delegated budgets see PARA 320 et seq post.

3 As to the regulations made allowing for committees of the governing body to be established see PARA 288 post.

4 Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 4(1). The text refers to payments made by way of allowance in accordance with the provisions of a scheme made by the governing body for the purpose of the Governor Allowances (Wales) Regulations 2005, SI 2005/2915; and such a scheme may not make different provision in relation to members of the governing body and members of committees of the governing body or in relation to different categories of governor or committee member: reg 4(2). For these purposes, 'governor' (or 'llywodraethwr') in relation to a maintained school includes a member of a temporary

governing body: reg 2. As to the different categories of governor see PARAS 204-205 ante; and as to temporary governing bodies see PARA 263 ante.

5 Ibid reg 4(1), (3).

6 Ie payments for travel or subsistence expenses which may not exceed such rates as may be specified from time to time by the National Assembly for Wales in regulations made under the Local Government Act 2000 s 100 (power to make provision about allowances: see LOCAL GOVERNMENT vol 69 (2009) PARA 168): Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 7. As to the National Assembly for Wales see PARA 53 ante.

7 For these purposes, a reference to 'receipt' (or 'derbynneb') includes a reference to other evidence establishing the amount of the expenditure: Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 2.

8 Ibid reg 4(1), (4).

9 As to local education authorities see PARA 20 ante.

10 Ie in accordance with the provisions of a scheme made by the authority for the purposes of the Education Act 1996 s 519 (as amended) (travelling and subsistence allowances for governors of schools and further or higher education institutions: see PARA 46 ante).

11 Ie prescribed in the Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 5(2) (see the text and notes 19-20 infra).

12 Ibid reg 5(1)(a).

13 For the meaning of 'higher education' see PARA 19 ante.

14 For the meaning of 'further education' see PARA 18 ante.

15 Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 5(1)(b).

16 As to independent schools see PARA 465 et seq post.

17 As to special schools see PARA 1027 et seq post.

18 Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 5(1)(c). For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

19 Ie under ibid reg 7 (see note 6 supra).

20 Ibid reg 5(2).

21 Ie in accordance with the provisions of a scheme made by the authority for the purpose: see note 10 supra. Such a scheme may not make different provision in relation to different categories of committee member: ibid reg 6(3).

22 Ie made under ibid reg 7 (see note 6 supra).

23 Ibid reg 6(1), (2).

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## **275. Training and support of governors.**

The local education authority<sup>1</sup> must:

- 585 (1) to the extent that it is not otherwise required to secure the provision of such information, secure that every governor<sup>2</sup> is provided, free of charge, with such information as it considers appropriate in connection with the discharge of his functions<sup>3</sup> as governor<sup>4</sup>; and
- 586 (2) secure that there is made available to every governor, free of charge, such training as it considers necessary for the effective discharge of those functions<sup>5</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the appointment of governors see PARA 251 et seq ante.

3 As to the general powers and duties of governing bodies see PARA 227 et seq ante.

4 Education Act 2002 s 22(a).

5 Ibid s 22(b).

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## **276. Appointment etc of clerk.**

Regulations<sup>1</sup> may make provision:

- 587 (1) requiring the appointment of a clerk to the governing body of a maintained school<sup>2</sup> and authorising or requiring the appointment of clerks to committees of the governing body<sup>3</sup>;
- 588 (2) prescribing<sup>4</sup> the body by whom any such appointment is to be made and any restrictions or other requirements relating to any such appointment<sup>5</sup>;
- 589 (3) as to the dismissal of any such clerk and the procedure to be followed in connection with his dismissal<sup>6</sup>;
- 590 (4) authorising the governing body or a committee of the governing body, where the clerk fails to attend a meeting of theirs, to appoint one of their number to act as clerk for the purposes of the meeting<sup>7</sup>.

1 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 23 in relation to Wales see the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, regs 42-43.

2 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 Ibid s 23(a). See note 1 supra.

4 'Prescribed' means prescribed by regulations (see note 1 supra): ibid s 212(1).

5 Ibid s 23(b). See note 1 supra.

6 Ibid s 23(c). See note 1 supra.

7 Ibid s 23(d). See note 1 supra.

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## (C) GENERAL POWERS AND DUTIES OF GOVERNING BODIES

### **277. General responsibility of governing body for conduct of school.**

The conduct of a maintained school<sup>1</sup> is under the direction of the school's governing body<sup>2</sup>. The governing body must conduct the school with a view to promoting high standards of educational achievement at the school<sup>3</sup>.

Regulations<sup>4</sup> may: (1) set out terms of reference for governing bodies of maintained schools<sup>5</sup>; (2) define the respective roles and responsibilities of the local education authority<sup>6</sup>, the governing body and the head teacher<sup>7</sup> of such schools, whether generally or with respect to particular matters, in relation to the conduct such schools<sup>8</sup>; and (3) confer functions on governing bodies and head teachers of such schools<sup>9</sup>.

The governing body of a maintained school must, in discharging its functions, comply with the instrument of government<sup>10</sup> and any trust deed<sup>11</sup> relating to the school<sup>12</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3).

2 Ibid s 21(1). This is subject to any other statutory provision: s 21(1). In Pt 3 Ch 1 (ss 19-40), 'statutory provision' means a provision contained in an Act or in subordinate legislation within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1232): Education Act 2002 s 39(1). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 Ibid s 21(2).

4 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 21(3) in relation to Wales see the Education (Review of Staffing Structure) (Wales) Regulations 2005, SI 2005/1910; and the School Councils (Wales) Regulations 2005, SI 2005/3200 (see note 9 infra). The School Government (Terms of Reference) (Wales) Regulations 2000, SI 2000/3027 (amended by SI 2002/1396; SI 2005/2913) also have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 21(3).

5 Ibid s 21(3)(a).

6 As to local education authorities see PARA 20 ante.

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

8 Ibid s 21(3)(b).

9 Ibid s 21(3)(c). Accordingly, the governing body of a school must establish a school council, the purpose of which is to enable pupils to discuss matters relating to their school, their education and any other matters of concern or interest and to make representations on these to the governing body and the head teacher: School Councils (Wales) Regulations 2005, SI 2005/3200, reg 3(1). The head teacher of a school must: (1) ensure that meetings of the school council are convened on six occasions during the school year and, in so far as practicable, at regular intervals, the first of such meetings to take place by 1 November 2006; and (2) ensure that all school council meetings are supervised by at least one member of the school staff: reg 3(2). Both the governing body and the head teacher of a school must consider any matter communicated to them by the

school council and provide a response to the school council: reg 3(3). The governing body and head teacher of a school may agree to perform their functions under the School Councils (Wales) Regulations 2005, SI 2005/3200, jointly with the governing body and head teacher of other schools: reg 3(4). As to membership of school councils see reg 4; and as to elections to school councils see reg 6. Certain provisions relating to school councils do not apply to community special schools or foundation special schools: reg 5. As to community and foundation special schools see PARA 102 et seq ante.

10 Education Act 2002 s 21(4)(a). As to instruments of government see PARA 241 et seq ante.

11 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of *ibid* s 212(2), (3).

12 *Ibid* s 21(4)(b). This is subject to any other statutory provision: see s 21(4)(b). See note 2 *supra*.

## UPDATE

### 277 General responsibility of governing body for conduct of school

TEXT AND NOTES--The governing body of a maintained school must, in discharging its functions relating to the conduct of the school (1) promote the well-being of pupils at the school (Education Act 2002 s 21(5)(a) (s 21(5)-(9) added by the Education and Inspections Act 2006 s 38(1)); and (2) have regard to any relevant children and young people's plan (s 21(6)). 'Well-being' means the well-being of pupils so far as relating to the matters mentioned in the Children Act 2004 s 25(2); Education Act 2002 s 21(8)(b). 'Relevant children and young people's plan' means (a) any plan published by the local education authority under the Children Act 2004 s 26; or (b) in a case where the local education authority is not required by regulations under s 26 to prepare and publish a plan, any plan which is published by the authority and sets out its strategy for discharging its functions in relation to children and relevant young persons within the meaning of s 26: Education Act 2002 s 21(9)(b)).

NOTE 4--SI 2005/1910 amended: SI 2009/994. SI 2000/3027 further amended: SI 2009/2159.

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## 278. Powers of governing body.

The governing body of a maintained school<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the conduct of the school<sup>2</sup> or the provision<sup>3</sup> of community facilities or services<sup>4</sup>. The governing body may also provide advice or assistance to the governing body of any other maintained school, whether or not maintained by the same local education authority<sup>5</sup>, or to any local education authority<sup>6</sup>.

The powers so conferred include, in particular, the power to:

- 591 (1) borrow such sums as the governing body thinks fit and, in connection with such borrowing, grant any mortgage, charge or other security over any land or other property of the governing body<sup>7</sup>;
- 592 (2) acquire and dispose of land and other property<sup>8</sup>;
- 593 (3) enter into contracts<sup>9</sup>;
- 594 (4) invest any sums not immediately required for the purposes of carrying on any activities it has power to carry on<sup>10</sup>;
- 595 (5) accept gifts of money, land or other property and apply it, or hold and administer it on trust, for any of those purposes<sup>11</sup>; and
- 596 (6) do anything incidental to the conduct of the school, the provision of advice or assistance, or the provision of community facilities or services<sup>12</sup>.

Regulations<sup>13</sup> may make further provision as to the general powers of the governing body<sup>14</sup>, and as to other matters relating to it as a body corporate<sup>15</sup>.

The governing body of a maintained school<sup>16</sup> may require registered pupils<sup>17</sup> to attend at any place outside the school premises<sup>18</sup> for the purposes of receiving any instruction or training included in the secular curriculum for the school<sup>19</sup>.

1 le the governing body of a maintained school incorporated under the Education Act 2002 s 19(1) (see PARA 251 ante): s 19(6), Sch 1 para 1. For the meaning of 'maintained school' see PARA 98 note 3 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to the general responsibility of the governing body for the conduct of a school see PARA 227 ante.

3 le under the Education Act 2002 s 27 (see PARA 232 ante).

4 Ibid Sch 1 para 3(1). The provisions of Sch 1 para 3(1)-(3) (see the text and notes 5-12 infra) have effect subject to: (1) any provisions of the school's instrument of government (Sch 1 para 3(8)(a)); and (2) any provisions of a scheme under the School Standards and Framework Act 1998 s 48 (as amended) (see PARA 318 post) which relates to the school (Education Act 2002 Sch 1 para 3(8)(b)). As to instruments of government see PARA 241 et seq ante.

5 Ibid Sch 1 para 3(2)(a). As to local education authorities see PARA 20 ante.

6 Ibid Sch 1 para 3(2)(b).

7 Ibid Sch 1 para 3(3)(a). The power to borrow money and grant security mentioned in Sch 1 para 3(2)(a) may only be exercised with the written consent of the National Assembly for Wales or, if an order under Sch 1

para 3(5) so provides, of the local education authority: Sch 1 para 3(4). Any such consent may be given for particular borrowing or for borrowing of a particular class: Sch 1 para 3(4). The Assembly may by order make provision for its function of giving consent under Sch 1 para 3(4) to be instead exercisable in the case of all maintained schools, or in the case of any class of such schools specified in the order, by the local education authorities by whom those schools are maintained: Sch 1 para 3(5). In exercising that function those authorities must comply with any directions contained in an order made by the Assembly: Sch 1 para 3(6). The power to make an order under Sch 1 para 3(6) is not exercisable by statutory instrument: see s 210(2); and PARA 77 note 7 ante. At the date at which this volume states the law, no order had been made under Sch 1 para 3. As to the National Assembly for Wales see PARA 53 ante.

8 Ibid Sch 1 para 3(3)(b). As to the acquisition and disposal of land see PARA 1356 et seq post.

9 Ibid Sch 1 para 3(3)(c). Where the school is a foundation, voluntary aided or foundation special school, the power to enter into contracts mentioned in Sch 1 para 3(3)(c) includes power to enter into contracts for the employment of teachers and other staff; but no such contracts may be entered into by the governing body of a community, voluntary controlled or community special school or of a maintained nursery school: Sch 1 para 3(7). For the meaning of 'maintained nursery school' see PARA 98 note 3 ante. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to the employment of teachers, and staffing generally, see PARA 354 et seq post.

10 Ibid Sch 1 para 3(3)(d).

11 Ibid Sch 1 para 3(3)(e). As to land or other property held on trust, or by trustees, for the purposes of a school see PARA 104 note 6 ante.

12 Ibid Sch 1 para 3(3)(f).

13 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made in relation to Wales for these purposes.

14 Ibid Sch 1 para 4(a).

15 Ibid Sch 1 para 4(b). As to bodies corporate generally see CORPORATIONS.

16 For this purpose, 'maintained school' does not include a maintained nursery school: ibid s 29(4).

17 For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of ibid s 212(2), (3).

18 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

19 Ibid s 29(3) (amended by the Education Act 2005 s 115).



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### **279. Power of governing body to provide higher education.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The governing body of a maintained school<sup>2</sup> has the power to arrange the provision to pupils<sup>3</sup> at the school, whether by teachers at the school or other persons, of: (1) courses in preparation for professional examinations at a higher level<sup>4</sup>; or (2) courses providing education at a higher level (whether or not in preparation for an examination)<sup>5</sup>. A governing body may exercise this power in relation to a particular pupil only if it is satisfied that the provision to that pupil of the course in question will not to any significant extent interfere with the other education with which he is being provided at the school<sup>6</sup>.

The National Assembly for Wales<sup>7</sup> may give, or make arrangements for the giving of, financial assistance to any person in connection with the provision of courses mentioned in heads (1) and (2) above by the governing body of a maintained school in Wales<sup>8</sup>.

The power so conferred<sup>9</sup> has effect notwithstanding the fact that nothing in the Education Act 1996 confers any functions with respect to higher education<sup>10</sup>.

1 The Education Act 2002 s 28A (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

4 The courses falling within the Education Reform Act 1988 s 120(1), Sch 6 para 1(g) (see PARAS 19 ante, 726 post).

5 Education Act 2002 s 28A(1) (s 28A added by the Education Act 2005 s 105). See note 1 supra. The courses providing education at a higher level mentioned in the text are courses falling within the Education Reform Act 1988 Sch 6 para 1(h) (see PARAS 19 ante, 726 post).

6 Education Act 2002 s 28A(2) (as added: see note 5 supra). See also note 1 supra.

7 As to the National Assembly for Wales see PARA 53 ante.

8 Education Act 2002 s 28A(3) (as added: see note 5 supra). Section 15 (forms of assistance under s 14) and s 16 (terms on which assistance under s 14 is given) (see PARA 65 ante) apply to financial assistance given under s 28A(3) (as added) as they apply to financial assistance given under s 14: s 28A(4) (as so added). See also note 1 supra.

9 The under ibid s 28A (as added).

10 Ibid s 28A(5) (as added: see note 5 supra). See also note 1 supra. For the meaning of 'higher education' see PARA 19 ante. As to the Education Act 1996 and higher education see s 1(4); and PARA 14 ante.

### **UPDATE**

**279 Power of governing body to provide higher education**

NOTE 1--Day now appointed in relation to Wales: SI 2006/1338.

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**280. Power of governing body to provide further education.**

The governing body of any maintained school<sup>1</sup> is responsible for determining whether or not to provide part-time education suitable to the requirements of persons of any age over compulsory school age<sup>2</sup>.

<sup>1</sup> For the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante. As to the governance of schools in England see PARA 203 et seq ante.

The governing body of a community or foundation special school may not determine to provide, or to cease to provide, education under the School Standards and Framework Act 1998 s 80 without the consent of the local education authority: see s 80(1); and PARA 607 post. As to local education authorities see PARA 20 ante.

<sup>2</sup> See the School Standards and Framework Act 1998 s 80(1); and PARA 607 post.

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**281. Power of governing body to form or invest in companies to provide services etc.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The governing body of a maintained school<sup>2</sup> may form, or participate in forming, companies<sup>3</sup> to:

- 597 (1) provide services or facilities<sup>4</sup> for any schools<sup>5</sup>;
- 598 (2) exercise relevant local education authority functions<sup>6</sup>; or
- 599 (3) make, or facilitate the making of, arrangements under which facilities or services are provided for any schools by other persons<sup>7</sup>.

The governing body of a maintained school may, with a view to securing or facilitating:

- 600 (a) the provision by a company of services or facilities for any schools<sup>8</sup>;
- 601 (b) the exercise by a company of relevant local education authority functions<sup>9</sup>; or
- 602 (c) the making by any person of arrangements of the kind referred to in head (3) above<sup>10</sup>,

invest<sup>11</sup> in the company which is to provide the services or facilities or exercise the functions or by which the arrangements are to be made or facilitated<sup>12</sup>. The governing body of a maintained school may form, or participate in forming, companies to purchase services or facilities for that school and other participating schools<sup>13</sup>. The governing body of a maintained school may, with a view to securing or facilitating the purchase by a company of services or facilities for that school and other participating schools, become a member of the company<sup>14</sup>.

The above provisions are without prejudice to any powers of the governing body of a maintained school which are exercisable otherwise<sup>15</sup>.

The governing body of a maintained school may not exercise any of the above powers<sup>16</sup> except with the consent of the local education authority<sup>17</sup>, and at a time when the school has a delegated budget<sup>18</sup>. A governing body may not exercise any of those powers in relation to a company unless the company satisfies any applicable requirements of regulations under heads (i) and (ii) below<sup>19</sup>, and may not<sup>20</sup> remain a member of a company at any time when the company fails to satisfy any such requirements<sup>21</sup>.

Regulations:

- 603 (i) must provide that, except in such cases as may be prescribed<sup>22</sup>, the company is to be prohibited by its constitution from admitting to its membership any person who is not of a prescribed description<sup>23</sup>;
- 604 (ii) may impose requirements with respect to the constitution of the company, and any other matter connected with the company's affairs<sup>24</sup>;
- 605 (iii) must provide that where one or more governing bodies have invested in a company<sup>25</sup>, a local education authority must be designated as the supervising authority for the company<sup>26</sup>;

- 606 (iv) must specify the persons by whom and the manner in which the power of designation is, or is in specified circumstances, exercisable<sup>27</sup>;
- 607 (v) must make provision about the duties of a local education authority who is for the time being designated as the supervising authority for a company<sup>28</sup>.

Regulations may also: (A) require that, where a local education authority is for the time being designated as the supervising authority for a company, the company must provide prescribed information relating to its financial affairs to it at such times and in such manner as may be prescribed<sup>29</sup>; (B) provide that in prescribed circumstances a local education authority who is for the time being so designated may direct any participating governing body<sup>30</sup> to cease to be a member of the company or to take any other prescribed action in relation to the company<sup>31</sup>; and (C) prescribe the procedure for making such a direction<sup>32</sup>.

1 The Education Act 2002 ss 11-12 are brought into force as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the commencement of ss 11-12 in relation to England see PARA 231 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For these purposes, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: *ibid* s 11(9). See note 1 *supra*. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante; definition applied by virtue of s 212(2), (3). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 For these purposes, 'company' means a company registered under the Companies Act 1985 as a company limited by shares or a company limited by guarantee (see COMPANIES vol 14 (2009) PARA 102); Education Act 2002 s 11(9). See note 1 *supra*.

4 For these purposes, 'facilities' includes the provision of (or of the use of) premises, goods, materials, vehicles, plant or apparatus: *ibid* s 11(9). See note 1 *supra*. As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 212(2), (3).

5 *Ibid* s 11(1)(a). See note 1 *supra*.

6 *Ibid* s 11(1)(b). For these purposes, 'relevant local education authority functions', in relation to a company, means any such functions of any local education authority as are or may become exercisable by the company in accordance with an authorisation given or direction made by virtue of any enactment: s 11(9). See note 1 *supra*. As to local education authorities see PARA 20 ante.

7 *Ibid* s 11(1)(c). See note 1 *supra*.

8 *Ibid* s 11(2)(a). See note 1 *supra*.

9 *Ibid* s 11(2)(b). See note 1 *supra*.

10 *Ibid* s 11(2)(c). See note 1 *supra*.

11 References to investing in a company include references to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise: *ibid* s 11(10). See note 1 *supra*.

12 *Ibid* s 11(2). See note 1 *supra*.

13 *Ibid* s 11(3). 'Participating school', in relation to a company, means a school whose governing body is, or is to be, a member of the company: s 11(9). See note 1 *supra*.

14 *Ibid* s 11(4). The governing body of a maintained school may provide staff to any company in relation to which it has exercised a power conferred by any of s 11(1)-(4): s 11(5). The provisions of s 11(1)-(4) have effect subject to s 12 (see the text and notes 16-32 *infra*): s 11(6). In exercising the power conferred by s 11(5), the governing body of a maintained school must have regard to any guidance given from time to time by the National Assembly for Wales: s 11(7). See note 1 *supra*. As to the National Assembly for Wales see PARA 53 ante.

15 *Ibid* s 11(8). See note 1 *supra*.

16    Ie powers conferred by any of *ibid* s 11(1)-(4) (see the text and notes 1-14 *supra*).

17    *Ibid* s 12(1)(a). Regulations may restrict the circumstances in which a local education authority may refuse to give any consent applied for under s 12(1): s 12(8). See note 1 *supra*. 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see *PARA* 79 note 2 *ante*. At the date at which this volume states the law, no regulations had been made in relation to Wales for these purposes.

18    *Ibid* s 12(1)(b). See note 1 *supra*. The text refers to a delegated budget within the meaning of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) (see *PARA* 320 *post*).

19    Education Act 2002 s 12(2)(a). See note 1 *supra*.

20    Ie by virtue of *ibid* s 11 (see the text and notes 1-15 *supra*).

21    *Ibid* s 12(2)(b). See note 1 *supra*.

22    'Prescribed' means prescribed by regulations: *ibid* s 212(1).

23    *Ibid* s 12(3)(a). See note 1 *supra*. At the date at which this volume states the law, no such regulations had been made in relation to Wales.

24    Education Act 2002 s 12(3)(b). Without prejudice to the generality of head (ii) in the text, regulations under that head may require that the company be prohibited by its constitution from borrowing money, except with the consent of a prescribed person: s 12(4). See note 1 *supra*. At the date at which this volume states the law, no such regulations had been made in relation to Wales.

25    Ie by virtue of the Education Act 2002 s 11 (see the text and notes 1-15 *supra*).

26    *Ibid* s 12(5)(a). See note 1 *supra*. At the date at which this volume states the law, no such regulations had been made in relation to Wales.

27    Education Act 2002 s 12(5)(b). See note 1 *supra*.

28    *Ibid* s 12(5)(c). See note 1 *supra*.

29    *Ibid* s 12(6)(a). See note 1 *supra*.

30    For this purpose, 'participating governing body', in relation to a company, means any governing body of a maintained school who is a member of the company: *ibid* s 12(7). See note 1 *supra*.

31    *Ibid* s 12(6)(b). See note 1 *supra*.

32    *Ibid* s 12(6)(c). See note 1 *supra*.

## **UPDATE**

### **281 Power of governing body to form or invest in companies to provide services etc**

NOTE 3--Education Act 2002 s 11(9) amended: SI 2009/1941.

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## **282. Power of governing body to provide community facilities etc.**

The governing body of a maintained school<sup>1</sup> has the power to provide any facilities or services whose provision furthers any charitable purpose for the benefit of pupils<sup>2</sup> at the school or their families, or people who live or work in the locality in which the school is situated<sup>3</sup>. This power<sup>4</sup> includes, in particular, power for a governing body to: (1) incur expenditure<sup>5</sup>; (2) enter into arrangements or agreements with any person<sup>6</sup>; (3) co-operate with, or facilitate or co-ordinate the activities of, any person<sup>7</sup>; and (4) provide staff, goods, services and accommodation to any person<sup>8</sup>. A governing body may charge for any services or facilities so provided<sup>9</sup>.

However, the power to provide community facilities<sup>10</sup> does not enable a governing body to do anything which it is unable to do by virtue of any prohibition, restriction or limitation on its powers which is contained in the school's instrument of government<sup>11</sup>, or any local education authorities' financial scheme<sup>12</sup> which relates to the school<sup>13</sup>. Regulations<sup>14</sup> may make provision preventing governing bodies from doing<sup>15</sup> anything which is specified, or is of a description specified, in the regulations<sup>16</sup>. A governing body must exercise the power to provide community facilities<sup>17</sup> only if, and to the extent that, it is satisfied that anything which it proposes to do will not to a significant extent interfere with the performance of any duty imposed on it either in relation to its general responsibility to conduct the school with a view to promoting high standards of educational achievement<sup>18</sup>, or by any other provision of the Education Acts<sup>19</sup>.

Before exercising the power to provide community facilities, a governing body:

- 608 (a) must consult the local education authority, the staff of the school, and the parents<sup>20</sup> of registered pupils<sup>21</sup> of the school<sup>22</sup>;
- 609 (b) where the proposed exercise of the power would affect registered pupils of the school and the governing body considers it appropriate in view of their age and understanding to consult all or some of them, must consult the registered pupils or such of them as the governing body considers it appropriate to consult<sup>23</sup>; and
- 610 (c) must consult such other persons as the governing body considers appropriate<sup>24</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

The reference to a 'maintained school' in s 27(1) has effect, in relation to Wales, until the commencement of the definition in s 39(1) (see PARA 98 note 3 ante), as if it were a reference to a maintained school as defined by the School Standards and Framework Act 1998 s 20(7) (see PARA 94 ante): Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2003, SI 2003/1717, reg 3(2).

2 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 Ibid s 27(1). See further note 22 infra.

4 I.e. the power under ibid s 27(1).

5 Ibid s 27(2)(a). Expenditure incurred by the governing body of a maintained school in the exercise of the power conferred by s 27 is, as against third parties, to be treated as part of the expenses of maintaining the school under the School Standards and Framework Act 1998 s 22 (as amended) (see PARA 302 et seq post), but if met by the local education authority may be recovered by it from the governing body: s 51A(1) (s 51A added by the Education Act 2002 s 40, Sch 3 para 4). Except as provided by regulations under the School Standards and Framework Act 1998 s 50(3)(b) (see PARA 321 post), no expenditure incurred by the governing body of a maintained school in the exercise of the power referred to in s 51A(1) (as added) is to be met from the school's budget share for any financial year: s 51A(2) (as so added). Section 51A(2) (as added) applies at a time when the school does not have a delegated budget by virtue of any suspension under s 17 (as amended) (see PARA 1269 post) or s 51, Sch 15 (as amended) (see PARA 322 et seq post), as well as a time when it does have a delegated budget: s 51A(3) (as so added). As to delegated budgets see PARA 320 et seq post. As to the requirement for maintained schools to have budget shares see PARA 312 post. As to local education authorities see PARA 20 ante.

As from a day to be appointed, the School Standards and Framework Act 1998 s 51A(2) (as added) is amended so that the reference to 'financial year' is to be read as a reference to 'funding period': s 51A(2) (prospectively amended by the Education Act 2005 s 117, Sch 18 para 9). At the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the funding period see PARA 312 note 4 post.

6 Education Act 2002 s 27(2)(b).

7 Ibid s 27(2)(c).

8 Ibid s 27(2)(d). Regulations under ss 35(4), 36(4) (in force in relation to England only) (see PARAS 333, 343 post) may make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of the provision of facilities and services under s 27, or any other activities which are not school activities but are carried on the school premises under the management or control of the governing body: see ss 35(5)(c), 36(5)(c) (in force in relation to England only); and PARAS 333, 343 post.

9 Ibid s 27(3). Section 27(3) is subject to the provisions of the Education Act 1996 Pt VI Ch III (ss 449-462) (as amended) (charges in connection with education at maintained schools: see PARA 443 et seq post): Education Act 2002 s 27(3).

10 Ie ibid s 27(1) (see the text and notes 1-3 supra).

11 As to instruments of government see PARA 291 et seq post.

12 Ie any scheme under the School Standards and Framework Act 1998 s 48 (as amended) (see PARA 318 post).

13 Education Act 2002 s 28(1).

14 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made in relation to Wales under s 28.

15 Ie by virtue of ibid s 27(1) (see the text and notes 1-3 supra).

16 Ibid s 28(2).

17 Ie conferred by ibid s 27(1) (see the text and notes 1-3 supra).

18 Ie imposed by ibid s 21(2) (see PARA 277 ante).

19 Ibid s 28(3). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of s 212(2), (3).

20 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 212(2), (3).

21 For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of ibid s 212(2), (3).

22 Ibid s 28(4)(a). In exercising the power under s 27(1) (see the text and notes 1-3 supra) or consulting under s 28(4), a governing body must have regard: (1) to any guidance given from time to time by the National Assembly for Wales; and (2) to any advice given to it from time to time by the local education authority: s 28(5).

23 Ibid s 28(4)(b). See also note 22 supra.

24 Ibid s 28(4)(c). See also note 22 supra.



## **UPDATE**

### **282 Power of governing body to provide community facilities etc**

TEXT AND NOTES 10-24--In exercising the power under the Education Act 2002 s 27(1), the governing body of a maintained school must have regard to any relevant children and young people's plan: s 28(4A) (s 28(4A), (4B) added by the Education and Inspections Act 2006 s 38(2)). For the meaning of 'relevant children and young people's plan' see PARA 277 (definition applied by the Education Act 2002 s 28(4B)).

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**283. Duty of governing body in relation to complaints procedures.**

The governing body of a maintained school<sup>1</sup> must:

- 611 (1) establish procedures for dealing with all complaints relating to the school or to the provision of facilities or services<sup>2</sup>, other than complaints falling to be dealt with in accordance with any procedures required to be established in relation to the school by virtue of any other<sup>3</sup> statutory provision<sup>4</sup>; and
- 612 (2) publicise the procedures so established<sup>5</sup>.

In establishing or publicising such procedures<sup>6</sup>, the governing body must have regard to any guidance given from time to time by the National Assembly for Wales<sup>7</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie under ibid s 27 (see PARA 282 ante).

3 Ie other than ibid s 29.

4 Ibid s 29(1)(a). For the meaning of 'statutory provision' see PARA 227 note 2 ante.

5 Ibid s 29(1)(b).

6 Ie under ibid s 29(1).

7 Ibid s 29(2). As to the National Assembly for Wales see PARA 53 ante.

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**284. Duty of governing body in relation to health and safety.**

The governing body<sup>1</sup> and head teacher<sup>2</sup> of a community or voluntary controlled school<sup>3</sup>, a community special school<sup>4</sup>, or a maintained nursery school<sup>5</sup>, must comply with any direction given to it by the local education authority<sup>6</sup> concerning the health and safety of persons on the school's premises<sup>7</sup> or taking part in any school activities elsewhere<sup>8</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 As to community and voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3).

4 As to community special schools see PARAS 102 et seq ante, 1027 et seq post.

5 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

6 As to local education authorities see PARA 20 ante.

7 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to health and safety on school premises see also PARA 1418 post.

8 Ibid s 29(5).

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### **285. Duty of governing body in relation to the welfare of children.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The governing body of a maintained school<sup>2</sup> must make arrangements for ensuring that its functions<sup>3</sup> relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children<sup>4</sup> who are pupils<sup>5</sup> at the school<sup>6</sup>. Such a body must, in considering what arrangements are required to be made by it, have regard to any guidance given from time to time by the National Assembly for Wales<sup>7</sup>.

1 The Education Act 2002 s 175 is brought into force as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'Wales' see PARA 52 note 13 ante.

2 For this purpose, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: *ibid* s 175(5). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 ante. As to special schools see also PARA 1027 et seq post. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 212(2), (3).

4 For this purpose, 'child' means a person under the age of 18: *ibid* s 175(5). See note 1 supra.

5 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of *ibid* s 212(2), (3).

6 *Ibid* s 175(2). See note 1 supra.

7 *Ibid* s 175(4). See note 1 supra. As to the publication of guidance as mentioned in the text see PARA 54 ante; applied by virtue of s 212(2), (3). As to the National Assembly for Wales see PARA 53 ante.

### **UPDATE**

### **285 Duty of governing body in relation to the welfare of children**

NOTE 1--Day now appointed in relation to Wales: SI 2006/172.

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## **286. Consultation with pupils.**

It is the duty of:

- 613 (1) a local education authority<sup>1</sup>, in the exercise of any of its schools functions<sup>2</sup>; and
- 614 (2) the governing body of a maintained school<sup>3</sup>, in the exercise of any function relating to the conduct of the school<sup>4</sup>,

to have regard to any guidance given from time to time by the National Assembly for Wales<sup>5</sup>, in relation to Wales<sup>6</sup>, about consultation with pupils<sup>7</sup> in connection with the taking of decisions affecting them<sup>8</sup>. Any such guidance must provide for a pupil's views to be considered in the light of his age and understanding<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 2002 s 176(1)(a). For this purpose, 'schools functions', in relation to a local education authority, means functions relating to: (1) maintained schools; (2) pupil referral units; or (3) the provision of education for children of compulsory school age otherwise than at school: s 176(3). 'Maintained school' means a community, foundation or voluntary school or a community or foundation special school: s 176(3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 ante. As to special schools see also PARA 1027 et seq post. As to pupil referral units see PARA 457 et seq post. For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 212(2), (3). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 212(2), (3).

3 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

4 Education Act 2002 s 176(1)(b).

5 As to the publication of guidance as mentioned in the text see PARA 54 ante; applied by virtue of ibid s 212(2), (3). As to the National Assembly for Wales see PARA 53 ante.

6 For the meaning of 'Wales' see PARA 52 note 13 ante.

7 For this purpose, 'pupil' does not include a child who is being provided with nursery education (whether at a school or elsewhere): Education Act 2002 s 176(3). As to nursery education see PARA 85 et seq ante.

8 Ibid s 176(1).

9 Ibid s 176(2).

## **UPDATE**

### **286 Consultation with pupils**

TEXT AND NOTES 2, 4, 8--Education Act 2002 s 176(1) amended and repealed in part: Education and Skills Act 2008 s 158, Sch 2 (not yet in force).

NOTES 2, 7--'Maintained school' also means a maintained nursery school; definition of 'pupil' omitted: 2002 Act s 176(3), Sch 18 Pt 6 (amended by the Education and Inspections Act 2006 s 167 (in force in England: SI 2007/1801)).

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## **287. Control of school premises by governing body.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> may make provision relating to the control by the governing body of a maintained school<sup>3</sup> of the occupation and use of school premises<sup>4</sup>.

<sup>1</sup> The Education Act 2002 s 31 is to be brought into force by order made under s 216(4) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. Until such a day is appointed, in relation to the control of school premises, see the School Standards and Framework Act 1998 s 40, Sch 13 (prospectively repealed); and PARAS 1420-1427 post.

<sup>2</sup> 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 31.

<sup>3</sup> For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 212(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

<sup>4</sup> *Ibid* s 31. As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 212(2), (3).

### **UPDATE**

## **287 Control of school premises by governing body**

TEXT AND NOTES 2-4--The Control of School Premises (Wales) Regulations 2008, SI 2008/136, have been made under the Education Act 2002 s 31.

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## (D) MEETINGS AND PROCEEDINGS

### 288. Meetings and proceedings.

Regulations<sup>1</sup> make provision as to the meetings and proceedings of governing bodies<sup>2</sup>, in particular in relation to:

- 615 (1) the election of the chair and vice-chair<sup>3</sup>;
- 616 (2) the delegation of functions to the chair or vice-chair in cases of urgency<sup>4</sup>;
- 617 (3) the right of persons to attend meetings of the governing body<sup>5</sup>;
- 618 (4) convening meetings of the governing body<sup>6</sup>;
- 619 (5) proceedings of the governing body<sup>7</sup>;
- 620 (6) minutes and papers of the governing body<sup>8</sup>;
- 621 (7) restrictions on persons taking part in proceedings<sup>9</sup>;
- 622 (8) the delegation of functions<sup>10</sup> by the governing body and restrictions on such delegation<sup>11</sup>;
- 623 (9) reporting to the governing body following the exercise of delegated functions<sup>12</sup>;
- 624 (10) the establishment of committees by the governing bodies and the appointment of persons other than governors to serve on them<sup>13</sup>.

1 The regulations made under the Education Act 2002 s 19(3)(g)-(k) (see PARA 251 ante). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations that have been made under s 19(3)(g)-(k) in relation to Wales see the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended); and heads (1) to (10) in the text.

2 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

3 See the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 39. As to the removal of the chair or vice-chair from office see reg 41.

4 See *ibid* reg 40. See also *R v Birmingham City Council, ex p McKenna* (1991) 156 LG Rev 486, (1991) Times, 16 May (decided under previous legislation).

5 See the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, regs 44-44A (reg 44 amended, and reg 44A added, by SI 2005/3200).

As regards the withdrawal of a governor from a meeting over the matter of a pecuniary interest see *Noble v Inner London Education Authority* (1983) 82 LGR 291, CA; *Bostock v Kay* (1989) 87 LGR 583, 153 JP 549, CA; *R v Governors of Small Heath School, ex p Birmingham City Council* [1990] COD 23, (1990) Independent, 3 August, CA; *R v Governors of Bacon's School, ex p Inner London Education Authority* [1990] COD 414, DC (all cases decided under previous legislation).

6 See the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 45.

7 See *ibid* reg 46 (amended by SI 2005/3200).

8 See the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, regs 47-48.

9 See *ibid* Pt 10 (reg 63), Sch 7. Schedule 7 includes provision in relation to conflicts of interest.



10 See *ibid* reg 50.

11 See *ibid* reg 51.

12 See *ibid* reg 52.

13 See *ibid* Pt 9 (regs 53-62) (regs 54-58, 60 amended by SI 2005/3200). See also *R v Secretary of State for Education, ex p Prior* [1994] ELR 231, [1994] ICR 877 (decided under previous legislation).

## **UPDATE**

### **288 Meetings and proceedings**

NOTE 10--SI 2005/2914 reg 50 amended: SI 2006/873, SI 2007/944.

NOTE 11--SI 2005/2914 reg 51 amended: SI 2006/873, SI 2007/944.

NOTE 13--SI 2005/2914 regs 55, 59 amended: SI 2006/873.

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## **289. Documentary evidence.**

In any legal proceedings, a document purporting to be an extract from the minutes of the proceedings of the governing body of a maintained school<sup>1</sup>, and to be signed by the chairman of the governing body or by its clerk<sup>2</sup>, is to be received in evidence and treated, without further proof, as the document which it purports to be and as having been signed by the person by whom it purports to have been signed, unless the contrary is proved<sup>3</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to the clerk to the governing body see PARA 226 ante.

3 Education Act 1996 s 566(1)(b) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 173). In any legal proceedings, any such extract as is mentioned in the Education Act 1996 s 566(1)(b) (as amended) is evidence of the matters stated in it: s 566(2). As to rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

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**290. Seal of governing body.**

The application of the seal of the governing body<sup>1</sup> must be authenticated by the signature of:

- 625 (1) the chairman of the governing body<sup>2</sup>; or
- 626 (2) some other member authorised either generally or specially by the governing body to act for that purpose<sup>3</sup>,

together with the signature of any other member<sup>4</sup>.

Every document purporting to be an instrument made or issued by or on behalf of the governing body and to be duly executed under the seal of the governing body<sup>5</sup>, or to be signed or executed by a person authorised by the governing body to act in that behalf<sup>6</sup>, is to be received in evidence and to be treated, without further proof, as being so made or issued unless the contrary is shown<sup>7</sup>.

1     Ie the governing body of a maintained school in Wales incorporated under the Education Act 2002 s 19(1) (see PARA 251 ante): s 19(6), Sch 1 para 1. For the meaning of 'maintained school' see PARA 98 note 3 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2     Ibid Sch 1 para 2(2)(a).

3     Ibid Sch 1 para 2(2)(b).

4     Ibid Sch 1 para 2(2).

5     Ibid Sch 1 para 2(3)(a).

6     Ibid Sch 1 para 2(3)(b).

7     Ibid Sch 1 para 2(3). As to the rules of civil evidence see generally CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

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## (E) INSTRUMENTS OF GOVERNMENT

### 291. Instruments of government.

For every maintained school<sup>1</sup> there must be an instrument ('the instrument of government')<sup>2</sup> which determines the constitution of the governing body<sup>3</sup> and other matters relating to the school<sup>4</sup>.

Regulations<sup>5</sup> must make provision with respect to the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments<sup>6</sup>.

The governing body of a maintained school must not conduct the school under a name other than the one for the time being set out in the school's instrument of government<sup>7</sup>.

1 For the meaning of 'maintained school' see PARA 98 note 3 ante. In relation to Wales, despite the coming into force of the definition of maintained school in the Education Act 2002 s 39 (see PARA 98 note 3 ante), the requirements imposed by s 20(1) in so far as they relate to maintained nursery schools need not be met until 31 March 2006 and transitional provisions apply: see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 7. For the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the form and content of instruments of government see PARA 242 ante; and as to the procedure for making instruments of government see PARA 243 ante.

3 As to the constitution of governing bodies in Wales see PARA 251 et seq ante. As to the governance of schools in England see PARA 203 et seq ante.

4 Education Act 2002 s 20(1). Section 20(1) has effect subject to s 24 (federations of schools: see PARA 213 ante); s 20(4). Section 20(4) is brought into force as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

A local education authority must make an instrument of government in accordance with the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended): (1) for each nursery school which is maintained by it no later than 31 March 2006; and (2) for all other schools maintained by it, no later than 31 August 2008: reg 37. For these purposes, any reference to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante. Regulation 37 does not apply to instruments of government of schools which change category see the Change of Category of Maintained Schools (Wales) (Amendment) Regulations 2005, SI 2005/2916, reg 10, Sch 3.

In relation to Wales, despite the coming into force of the Education Act 2002 s 20(1) and the repeal of the School Standards and Framework Act 1998 s 37(1) and Sch 12, all instruments of government of maintained schools remain in force until replaced by a new instrument of government made in accordance with the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended): see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 5.

5 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. Regulations under s 20(2) may require any person responsible for the making, review or variation of an instrument of government to have regard to any guidance given from time to time by the National Assembly for Wales: s 20(3). As to the National Assembly for Wales see PARA 53 ante. Regulations under s 20(2) may also include provision with respect to instruments of government for federations: s 20(4). See note 4 supra. For the meaning of 'federation' see PARA 213 note 4 ante. As to the regulations made under s 20(2), (3) in relation to Wales see the Government of

Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (amended by SI 2005/3200); and the School Councils (Wales) Regulations 2005, SI 2005/3200.

6 Education Act 2002 s 20(2).

7 Ibid s 20(5).

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## **292. Contents and form of instrument of government.**

The instrument of government<sup>1</sup> for a maintained school<sup>2</sup> must set out:

- 627 (1) the name of the school<sup>3</sup>;
- 628 (2) the category of school<sup>4</sup> to which the school belongs<sup>5</sup>;
- 629 (3) the name of the governing body of the school<sup>6</sup>;
- 630 (4) the manner in which the governing body is to be constituted<sup>7</sup>, specifying the number of governors in each category of governor<sup>8</sup>, the categories of person from whom or from amongst whose members nominations for the appointment of any additional community governor<sup>9</sup> or sponsor governor<sup>10</sup> are authorised<sup>11</sup>, and the total membership of the governing body<sup>12</sup>;
- 631 (5) where the term of office for a category of governor is to be less than four years, the length of that term of office<sup>13</sup>;
- 632 (6) where the school has foundation governors<sup>14</sup>:
- 25 53. (a) the name of any person who is entitled to appoint such governors and, if there is more than one such person, the basis on which such appointments are to be made<sup>15</sup>;
- 54. (b) details of any foundation governorship to be held ex officio<sup>16</sup> by the holder of a named office<sup>17</sup>; and
- 55. (c) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor<sup>18</sup>;
- 26 633 (7) where the school is a community special school<sup>19</sup>, the name of any appropriate body or appropriate voluntary organisation entitled to nominate a person for appointment<sup>20</sup> as a representative governor<sup>21</sup>;
- 634 (8) where there is a trust relating to the school<sup>22</sup>, that fact<sup>23</sup>;
- 635 (9) where the school is a foundation or a voluntary school<sup>24</sup> designated as having a religious character<sup>25</sup>, a description of the religious ethos of the school<sup>26</sup>; and
- 636 (10) the date when the instrument of government takes effect<sup>27</sup>.

The instrument must comply with any trust deed<sup>28</sup> relating to the school<sup>29</sup>.

1 As to the requirement for an instrument of government see PARA 241 ante.

2 For the meaning of 'maintained school' see PARA 98 note 3 ante.

3 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(1)(a).

4 As to categories of school see PARA 102 ante.

5 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(1)(b). As modifications made to reg 33 in relation to the instruments of government of schools which change category see the Change of Category of Maintained Schools (Wales) (Amendment) Regulations 2005, SI 2005/2916, reg 10, Sch 3.

6 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(1)(c). For these purposes, any reference to the governing body or to the governing body of a school is a reference to the

governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

7 le in accordance with ibid Pt 3 (regs 13-23) (see PARA 203 et seq ante). The manner in which the governing body is to be constituted, as set out in accordance with reg 33(1)(d), must accord with the provisions of the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) as they apply to a school of the category to which the school belongs: reg 33(2). Where, for the purposes of Pt 3, it is material to determine the number of registered pupils at the school, that number is to be determined as at the date when the instrument is made: reg 33(3). For the meaning of 'registered pupil' generally see PARA 512 post.

8 Ibid reg 33(1)(d)(i). For these purposes, any reference to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). As to the constitution of the governing bodies of maintained schools see PARA 203 et seq ante. Regulation 33(1)(d) does not apply to associate pupil governors: reg 33(5) (added by SI 2005/3200). For the meaning of 'associate pupil governor' see PARA 251 note 12 ante.

9 For the meaning of 'additional community governor' see PARA 252 note 10 ante.

10 For the meaning of 'sponsor governor' see PARA 270 note 4 ante.

11 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(1)(d)(ii). See note 8 supra. The text refers to the categories of person authorised by the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended). If the instrument of government of a school provides for one or more governors to be appointed by persons acting jointly, and those persons fail to make an agreed appointment, the appointment is to be made by, or in accordance with a direction given by, the National Assembly for Wales: reg 22. As to the National Assembly for Wales see PARA 53 ante.

12 Ibid reg 33(1)(d)(iii). See note 8 supra.

13 Ibid reg 33(1)(e). Regulation 33(1)(e) does not apply to associate pupil governors: reg 33(5) (as added: see note 8 supra).

14 Ibid reg 33(1)(f). For the meaning of 'foundation governor' see PARA 255 note 10 ante.

15 Ibid reg 33(1)(f)(i). As to the appointment of foundation governors see PARA 205 ante.

16 For the meaning of 'ex officio foundation governor' see PARA 260 note 2 ante.

17 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(1)(f)(ii).

18 Ibid reg 33(1)(f)(iii). As to the removal of ex officio foundation governors see PARA 209 ante.

19 As to community special schools see PARA 102 ante.

20 le under the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 15(4) or 15(5) (see PARA 218 ante).

21 Ibid reg 33(1)(g). See note 3 supra. For the meaning of 'representative governor' see PARA 254 note 10 ante.

22 As to educational trusts see PARA 1430 et seq post.

23 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(1)(h).

24 As to foundation and voluntary schools see PARA 104 et seq ante.

25 le designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post). As to foundation and voluntary schools having a religious character see PARAS 953-954 post.

26 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(1)(i).

27 Ibid reg 33(1)(j). The date must not be earlier than 1 January 2006: reg 33(1)(j). As to transitional arrangements in force until a new instrument of government is made for a school in accordance with reg 33 (as amended) see reg 2(2); and as to provision made for the purpose of continuing the term of office of governors on transition to an instrument of government made in accordance with the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, see reg 38, Sch 6.

28 As to the meaning of 'trust deed' generally see PARA 104 note 6 ante.

29 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 33(4). This is subject to any statutory provision: reg 33(4).



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### **293. Procedure for making of instruments of government.**

The governing body<sup>1</sup> of a maintained school must prepare a draft of the instrument of government<sup>2</sup> and submit it to the local education authority<sup>3</sup>. Where the school has foundation governors<sup>4</sup>, the governing body must not submit the draft to the local education authority unless it has been approved by: (1) the foundation governors<sup>5</sup>; (2) any trustees of any trust<sup>6</sup> relating to the school<sup>7</sup>; (3) in the case of a Church in Wales school<sup>8</sup> or Roman Catholic Church school<sup>9</sup>, the appropriate diocesan authority<sup>10</sup>; and (4) in the case of any other school designated as having a religious character<sup>11</sup>, the appropriate religious body<sup>12</sup>.

On receiving the draft, the local education authority must consider whether it complies with all applicable statutory provisions<sup>13</sup>, and if the authority is content that the draft so complies<sup>14</sup>, or if there is agreement between the authority, the governing body and (if the school has foundation governors) the persons mentioned in heads (1) to (4) above, that the draft should be revised to any extent, and the revised draft complies with all the applicable statutory provisions<sup>15</sup>, then the instrument must be made by the authority in the form of the draft or, as the case may be, in the form of the revised draft<sup>16</sup>. If, in the case of a school which has foundation governors, there is at any time disagreement as to the contents of the draft among the persons mentioned in heads (1) to (4) above, any of those persons may refer the draft to the National Assembly for Wales<sup>17</sup>. The Assembly must then give such direction as it thinks fit having regard, in particular, to the category of school to which the school belongs<sup>18</sup>.

If, in the case of a school which does not have foundation governors, the local education authority is not content with the draft<sup>19</sup> and there is no agreement as to the revision of the draft<sup>20</sup>, the local education authority must: (a) inform the governing body of the reasons why it is not content with the draft instrument of government<sup>21</sup>; and (b) give the governing body a reasonable opportunity to reach agreement with the authority on revising the draft<sup>22</sup>. The instrument of government must be made by the local education authority either in the form of a revised draft agreed between the authority and the governing body or, in the absence of such agreement, in such form as the authority thinks fit having regard, in particular, to the category of school to which the school belongs<sup>23</sup>.

In respect of the making of instruments of government, the matters to be dealt with in such instruments, the form of such instruments, and the review and variation of such instruments, governing bodies and local education authorities must have regard to any guidance given from time to time by the Assembly<sup>24</sup>.

1 For these purposes, any reference to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 3(2)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante; and for the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to the requirement for an instrument of government see PARA 241 ante.

3 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 34(1). In the case of a maintained nursery school, the local education authority must prepare and make the first instrument of government: reg 34(6). For these purposes, any reference to the local education authority is a reference to the

local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante. As to maintained nursery schools see PARA 94 et seq ante.

As to modifications made to reg 34 in relation to the instruments of government of schools which change category see the Change of Category of Maintained Schools (Wales) (Amendment) Regulations 2005, SI 2005/2916, reg 10, Sch 3.

4 For the meaning of 'foundation governor' see PARA 255 note 10 ante. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). As to the constitution of the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 Ibid reg 34(2)(a).

6 As to educational trusts see PARA 1430 et seq post.

7 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 34(2)(b).

8 For the meaning of 'Church in Wales school' see PARA 42 note 15 ante.

9 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

10 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 34(2)(c). For the purposes of Pt 5 (regs 31-37), 'appropriate diocesan authority' (or 'awdurdod esgobaethol priodol') has the meaning given by the School Standards and Framework Act 1998 s 142(1), (4) (see PARA 42 note 15 ante): Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 31.

11 Ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post).

12 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 34(2)(d). For the purposes of Pt 5 (regs 31-37), 'appropriate religious body' (or 'corff crefyddol priodol'), in relation to a school designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post) as having a religious character that is not a Church in Wales school or a Roman Catholic Church school, means the body that the National Assembly for Wales considers appropriate in relation to the religion or religious denomination to which the school belongs: Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 31. As to the National Assembly for Wales see PARA 53 ante.

13 Ibid reg 34(3).

14 Ibid reg 34(3)(a).

15 Ibid reg 34(3)(b).

16 Ibid reg 34(3).

17 Ibid reg 34(4).

18 Ibid reg 34(4). As to the categorisation of schools see PARA 102 et seq ante.

19 Ie if ibid reg 34(3)(a) (see the text and notes 14 supra) does not apply.

20 Ie if ibid reg 34(3)(b) (see the text and note 15 supra) does not apply.

21 Ibid reg 34(5)(a).

22 Ibid reg 34(5)(b).

23 Ibid reg 34(5).

24 Ibid reg 32.

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## **294. Review of instruments of government.**

The governing body<sup>1</sup> or the local education authority<sup>2</sup> may review the instrument of government<sup>3</sup> for a maintained school at any time after it is made<sup>4</sup>. Where on any review the governing body or the local education authority decides that the instrument should be varied, the governing body or, as the case may be, the local education authority must notify the other of its proposed variation together with its reasons for proposing such a variation<sup>5</sup>. Where the governing body has received such a notification, it must inform the local education authority as to whether or not it is content with the proposed variation and, if not content, its reasons<sup>6</sup>. Where the school has foundation governors<sup>7</sup>, the governing body must not give the local education authority any notification of a proposed variation<sup>8</sup>, or inform the authority<sup>9</sup> that it is content with the authority's proposed variation, unless that variation has been approved by: (1) the foundation governors; (2) any trustees of any trust relating to the school<sup>10</sup>; (3) in the case of a Church in Wales school<sup>11</sup> or Roman Catholic Church school<sup>12</sup>, the appropriate diocesan authority<sup>13</sup>; and (4) in the case of any other school designated as having a religious character<sup>14</sup>, the appropriate religious body<sup>15</sup>. If whichever of the governing body and the local education authority is the recipient of a notification of a proposed variation<sup>16</sup> agrees with the proposed variation<sup>17</sup>, or if there is agreement between the local education authority, the governing body and (if the school has foundation governors) the persons listed in heads (1) to (4) above that some other variation should be made instead<sup>18</sup>, then the instrument must be varied accordingly by the authority<sup>19</sup>. If, in the case of a school which has foundation governors, there is at any time disagreement as to the proposed variation among the persons listed in heads (1) to (4) above, any of those bodies or persons may refer the proposed variation to the National Assembly for Wales<sup>20</sup>. On such a reference, the Assembly must then give such direction as it thinks fit having regard, in particular, to the category of school to which the school belongs<sup>21</sup>.

If, in the case of a school which does not have foundation governors, the governing body or the local education authority (as the case may be) does not agree with the proposed variation<sup>22</sup> and there is no agreement that some other variation should be made instead<sup>23</sup>, the local education authority must: (a) inform the governing body of the reasons why it is not content with the governing body's proposed variation, or, as the case may be, why it wishes to proceed with its own variation<sup>24</sup>; and (b) give the governing body a reasonable opportunity to reach agreement with the authority with regard to the variation<sup>25</sup>. The instrument of government must be varied by the local education authority either in the manner agreed between the authority and the governing body or, in the absence of such agreement, in such manner as the authority thinks fit having regard, in particular, to the category of school to which the school belongs<sup>26</sup>.

Where an instrument of government is so varied, the instrument must set out the date on which the variation takes effect<sup>27</sup>.

Nothing in the provisions described above is to be taken as requiring the local education authority to vary the instrument of government if it does not consider it appropriate to do so<sup>28</sup>.

<sup>1</sup> Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante; and for the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

- 2 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the local education authority is a reference to the local education authority that maintains the school: *ibid* reg 3(2)(c). As to local education authorities see *PARA 20 ante*.
- 3 As to the requirement for an instrument of government see *PARA 241 ante*.
- 4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 35(1). As to modifications made to reg 35 in relation to the instruments of government of schools which change category see the Change of Category of Maintained Schools (Wales) (Amendment) Regulations 2005, SI 2005/2916, reg 10, Sch 3.
- 5 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 35(2).
- 6 *Ibid* reg 35(3).
- 7 For the meaning of 'foundation governor' see *PARA 255 note 10 ante*. Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to a governor is a reference to a member of a governing body of any school to which the provision applies: reg 3(2)(b). As to the constitution of the governing bodies of maintained schools in Wales see *PARA 251 et seq ante*.
- 8 *Ie* under *ibid* reg 35(2) (see the text and note 5 *supra*).
- 9 *Ie* under *ibid* reg 35(3) (see the text and note 6 *supra*).
- 10 As to educational trusts see *PARA 1430 et seq post*.
- 11 For the meaning of 'Church in Wales school' see *PARA 42 note 15 ante*.
- 12 For the meaning of 'Roman Catholic Church school' see *PARA 42 note 15 ante*.
- 13 For the meaning of 'appropriate diocesan authority' see *PARA 293 note 10 ante*.
- 14 *Ie* designated under the School Standards and Framework Act 1998 s 69(3) (see *PARA 951 post*).
- 15 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, regs 34(2), 35(4). For the meaning of 'appropriate religious body' see *PARA 243 note 12 ante*.
- 16 *Ie* under *ibid* reg 35(2) (see the text and note 5 *supra*).
- 17 *Ibid* reg 35(5)(a).
- 18 *Ibid* reg 35(5)(b).
- 19 *Ibid* reg 35(5).
- 20 *Ibid* reg 35(6). As to the National Assembly for Wales see *PARA 53 ante*.
- 21 *Ibid* reg 35(6). As to the categorisation of schools see *PARA 102 et seq ante*.
- 22 *Ie* if *ibid* reg 35(5)(a) (see the text and notes 16-17 *supra*) does not apply.
- 23 *Ie* if *ibid* reg 35(5)(b) (see the text and note 18 *supra*) does not apply.
- 24 *Ibid* reg 35(7)(a).
- 25 *Ibid* reg 35(7)(b).
- 26 *Ibid* reg 35(7).
- 27 *Ibid* reg 35(9)(a). In relation to any variation relating to the manner in which the governing body is to be constituted, if it is material to determine the number of registered pupils at the school, that number is to be determined as at the date when the variation is made: regs 33(3), 35(9)(b).
- 28 *Ibid* reg 35(8).

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## **295. Copies of instruments of government and other information.**

The local education authority<sup>1</sup> must ensure that the persons set out in heads (1) to (5) below are provided, free of charge, with a copy of the school's instrument of government<sup>2</sup>, and, where any variation is made to the school's instrument of government<sup>3</sup>, a consolidated version of the instrument of government incorporating all variations made by order of the local education authority, other than any variations which have ceased to have effect<sup>4</sup>. The persons who are to be so provided with such information are:

- 637 (1) every member of the governing body of the school<sup>5</sup>;
- 638 (2) the head teacher<sup>6</sup>, whether or not the head teacher is a member of the governing body<sup>7</sup>;
- 639 (3) the trustees of any trust relating to the school<sup>8</sup>;
- 640 (4) in the case of a Church in Wales school<sup>9</sup> or Roman Catholic Church school<sup>10</sup>, the appropriate diocesan authority<sup>11</sup>; and
- 641 (5) in the case of any other school designated as having a religious character<sup>12</sup>, the appropriate religious body<sup>13</sup>.

1 Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the local education authority is a reference to the local education authority that maintains the school: reg 3(2)(c). As to local education authorities see PARA 20 ante.

2 Ibid reg 36(1)(a). As to the requirement for an instrument of government see PARA 241 ante.

3 As to the proposal and approval of variations made to the school's instrument of government see PARA 244 ante.

4 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 36(1)(b).

5 Ibid reg 36(2)(a). Any reference in the Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914 (as amended) to the governing body or to the governing body of a school is a reference to the governing body of any maintained school to which the provision applies: reg 3(2)(a). For the meaning of 'maintained school' see PARA 98 note 3 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

6 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

7 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 36(2)(b).

8 Ibid reg 36(2)(c). As to educational trusts see PARA 1430 et seq post.

9 For the meaning of 'Church in Wales school' see PARA 42 note 15 ante.

10 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

11 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 36(2)(d). For the meaning of 'appropriate diocesan authority' see PARA 293 note 10 ante.

12 Ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 post).

13 Government of Maintained Schools (Wales) Regulations 2005, SI 2005/2914, reg 36(2)(e).



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## (F) REPORTS

### **296. Governors' reports and other information relating to maintained schools.**

Once in every school year<sup>1</sup> the governing body of a maintained school<sup>2</sup> in Wales<sup>3</sup> must prepare a report (a 'governors' report') dealing with such matters, and otherwise complying with such requirements, as may be specified in regulations<sup>4</sup>. Such regulations may:

- 642 (1) impose requirements on the governing body of a maintained school<sup>5</sup> with respect to the giving of copies of a governors' report to such persons as may be prescribed<sup>6</sup>, and making such copies available for inspection at the school<sup>7</sup>;
- 643 (2) make provision for: (a) enabling the governing body to determine the language or languages in which a governors' report is to be produced and the form or forms in which it is to be produced<sup>8</sup>; (b) requiring it to comply with any direction given by the local education authority<sup>9</sup> with respect to any additional language to be used or with respect to any additional form in which the report is to be produced<sup>10</sup>;
- 644 (3) enable the governors' report to be combined with any other document whose preparation by the governing body is required by or under any enactment<sup>11</sup>.

The governing body of a maintained school must provide the local education authority with such reports in connection with the discharge of its functions<sup>12</sup> as the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of its functions<sup>13</sup>.

The head teacher<sup>14</sup> of a maintained school must provide the governing body or, as the case may be, the local education authority with such reports in connection with the discharge of his functions as the governing body or the authority may require (either on a regular basis or from time to time) for the purposes of the exercise of any of its functions<sup>15</sup>. Where such a requirement is imposed on the head teacher by the local education authority, the authority must notify the governing body of that requirement<sup>16</sup>, and the head teacher must give the governing body a copy of any report made by him in complying with it<sup>17</sup>.

<sup>1</sup> For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

<sup>2</sup> For the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

<sup>3</sup> For the meaning of 'Wales' see PARA 52 note 13 ante.

<sup>4</sup> Education Act 2002 s 30(1) (amended by the Education Act 2005 s 103(1)(a)). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 30 in relation to Wales. However, the School Governors' Annual Reports (Wales) Regulations 2001, SI 2001/1110 (amended by SI 2002/1401; SI 2004/1735) have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 30(1), (2) (as amended). As to special needs information which must be included in the governors' report see PARA 1021 post.

- 5 Ibid s 30(2)(a) (amended by the Education Act 2005 s 103(1)(a)).
- 6 Education Act 2002 s 30(2)(a)(i). 'Prescribed' means prescribed by regulations: s 212(1). See further note 4 *supra*.
- 7 Ibid s 30(2)(a)(ii).
- 8 Ibid s 30(2)(b)(i).
- 9 As to local education authorities see PARA 20 *ante*.
- 10 Education Act 2002 s 30(2)(b)(ii).
- 11 Ibid s 30(2)(c).
- 12 As to the meaning of 'functions' see PARA 14 note 5 *ante*; definition applied by virtue of *ibid* s 212(2), (3).
- 13 Ibid s 30(3) (amended by the Education Act 2005 s 103(1)(b)). Functions exercisable by or on behalf of a local education authority under the Education Act 2002 s 30(3), (4) (as amended) are relevant functions for the purposes of the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 *ante*): s 127(6) (n) (added by the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2004, SI 2004/1743, reg 4).
- 14 As to the meaning of 'head teacher' see PARA 93 note 13 *ante*; definition applied by virtue of the Education Act 2002 s 212(2), (3).
- 15 Ibid s 30(4) (amended by the Education Act 2005 s 103(1)(b)). See note 13 *supra*.
- 16 Education Act 2002 s 30(5)(a).
- 17 Ibid s 30(5)(b).

## **UPDATE**

### **296 Governors' reports and other information relating to maintained schools**

NOTE 13--1998 Act s 127(6) repealed: Education and Inspections Act 2006 s 58(6), Sch 18 Pt 2.

NOTE 15--2002 Act s 30(4) applies in relation to pupil referral units in Wales as it applies in relation to maintained schools: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 8.



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## **297. Annual parents' meetings.**

Once in every school year<sup>1</sup> the governing body of a maintained school<sup>2</sup> in Wales<sup>3</sup> must hold a meeting (an 'annual parents' meeting') which is open to<sup>4</sup>:

- 645 (1) all parents<sup>5</sup> of registered pupils<sup>6</sup> at the school<sup>7</sup>;
- 646 (2) the head teacher<sup>8</sup>; and
- 647 (3) such other persons as the governing body may invite<sup>9</sup>.

The purpose of the meeting is to provide an opportunity for discussion of the manner in which the school has been, and is to be, conducted, and of any other matters relating to the school raised by parents of registered pupils<sup>10</sup>.

Regulations<sup>11</sup> may make provision as to circumstances in which a governing body is to be exempt from the obligation<sup>12</sup> to hold an annual parents' meeting<sup>13</sup>.

<sup>1</sup> For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

<sup>2</sup> For the meaning of 'maintained school' see PARA 98 note 3 ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

<sup>3</sup> For the meaning of 'Wales' see PARA 52 note 13 ante.

<sup>4</sup> Education Act 2002 s 33(1) (amended by the Education Act 2005 s 103(2)(a)).

<sup>5</sup> As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of the Education Act 2002 s 212(2), (3).

<sup>6</sup> For the meaning of 'registered pupil' see PARA 512 post; definition applied by virtue of ibid s 212(2), (3).

<sup>7</sup> Ibid s 33(1)(a).

<sup>8</sup> Ibid s 33(1)(b). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 212(2), (3).

<sup>9</sup> Ibid s 33(1)(c).

<sup>10</sup> Ibid s 33(2).

<sup>11</sup> 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 33(3) see the Annual Parents' Meeting (Exemptions) (Wales) Regulations 2005, SI 2005/2911; and note 13 infra.

<sup>12</sup> Ie the obligation imposed by the Education Act 2002 s 33(1) (see the text and notes 1-9 supra): s 33(3).

<sup>13</sup> Ibid s 33(3). The Annual Parents' Meeting (Exemptions) (Wales) Regulations 2005, SI 2005/2911, provide for exemptions for the governing bodies of hospital special schools and boarding schools (see reg 4) and for the governing bodies of schools that either hold a post-inspection meeting (see reg 5) or hold other meetings that fulfil specified criteria (see reg 6). Governing bodies are also exempt from the obligation to hold an annual parents' meeting if the parents of fewer than 5% of registered pupils respond within a specified period to the notice of such a meeting given to them with the governors' report: see reg 7. These exemptions are disapplied if no annual parents' meeting is held in the preceding year or if the governing body receives a written request from the parents of 5% or more of the registered pupils for there to be such a meeting: see reg 8.

**UPDATE**

**297 Annual parents' meetings**

NOTE 13--SI 2005/2911 amended: SI 2006/1714.

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## (G) INFORMATION

### **298. Provision of information to the National Assembly for Wales.**

The governing body<sup>1</sup> or temporary governing body<sup>2</sup> of a community, foundation or voluntary school or a community or foundation special school<sup>3</sup> must make such reports and returns, and give such information, to the National Assembly for Wales<sup>4</sup> as it may require for the purpose of the exercise of its functions in relation to education<sup>5</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 As to temporary governing bodies in relation to Wales see PARA 263 ante.

3 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

4 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 Education Act 1996 s 538 (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 154). As to the functions mentioned in the text see PARA 52 et seq ante.

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**299. Distribution of information about schools providing secondary education.**

Where the governing body<sup>1</sup> of any school<sup>2</sup> providing primary education<sup>3</sup> receives a request which:

- 648 (1) is made by the governing body of any school providing secondary education<sup>4</sup>; and
- 649 (2) relates to the distribution of information about the school providing secondary education to parents<sup>5</sup> of pupils<sup>6</sup> at the school providing primary education without charge to those parents<sup>7</sup>,

the governing body of that school must secure that the request is treated no less favourably (whether as to services provided or as to the terms on which they are provided) than any such request made by the governing body of any other school providing secondary education<sup>8</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

2 For the purposes of the Education Act 1996 s 540 (as amended), 'school' means: (1) any community, foundation or voluntary school; or (2) any community or foundation special school, which is not established in a hospital: s 540(2) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 156). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

3 For the meaning of 'primary education' see PARA 16 ante.

4 Education Act 1996 s 540(1)(a). For the meaning of 'secondary education' see PARA 17 ante.

5 As to the meaning of 'parent' see PARA 510 note 1 post.

6 For the meaning of 'pupil' see PARA 16 note 4 ante.

7 Education Act 1996 s 540(1)(b).

8 Ibid s 540(1).

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### **300. Distribution of information about further education institutions.**

The National Assembly for Wales<sup>1</sup> may by regulations<sup>2</sup> require the governing body<sup>3</sup> of any school<sup>4</sup> providing secondary education<sup>5</sup> to provide such persons as may be prescribed<sup>6</sup> with certain information<sup>7</sup> relating to institutions within the further education sector<sup>8</sup> and which is made available to governing bodies and proprietors for distribution<sup>9</sup>. Information so provided must be provided in such form and manner as may be prescribed<sup>10</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For these purposes, 'regulations' means regulations made by the National Assembly for Wales: Education Act 1996 s 579(1). As to the making of regulations generally under the Education Act 1996 see PARA 40 ante. At the date at which this volume states the law, no regulations had been made under s 541 (as amended) but, by virtue of s 582(3), Sch 39 paras 1, 2, the Education (Distribution by Schools of Information about Further Education Institutions) (Wales) Regulations 1994, SI 1994/1321, have effect in relation to Wales as if so made.

3 As to the governing bodies of maintained schools in Wales see PARA 251 ante. As to the governance of schools in England see PARA 203 et seq ante.

4 For the purposes of the Education Act 1996 s 541 (as amended), 'school' means: (1) any community, foundation or voluntary school; or (2) any community or foundation special school, which is not established in a hospital: s 541(4) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 157). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

5 Education Act 1996 s 541(1)(a). For the meaning of 'secondary education' see PARA 17 ante.

6 'Prescribed' means prescribed by regulations (see note 2 supra): *ibid* s 579(1).

7 *Ibid* s 541(1) (as amended: see note 4 supra). The information to be provided is such categories of information falling within s 541(2) (see the text and notes 8-9 infra) as may be prescribed: s 541(1) (as so amended).

8 *Ibid* s 541(2)(a). The information mentioned in the text is that which is published under the Further and Higher Education Act 1992 s 50 (see PARA 633 post): Education Act 1996 s 541(2)(a). As to further education see PARA 579 et seq post.

9 *Ibid* s 541(2)(b).

10 *Ibid* s 541(3).

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## (H) EX OFFICIO TRUSTEES

### **301. Governors of foundation or voluntary school as ex officio trustees.**

Where any provision of a trust deed<sup>1</sup> or other instrument made before 1 July 1981 would otherwise have the effect that the persons who are for the time being governors of a foundation or voluntary school<sup>2</sup> were by virtue of their office trustees of any property held for the purposes of, or in connection with, the school<sup>3</sup>, that provision instead has effect as if the only governors of the school were: (1) the foundation governors<sup>4</sup>; (2) those appointed by the local education authority<sup>5</sup>; and (3) any co-opted governor nominated by a minor authority<sup>6</sup>.

1 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 As to foundation and voluntary schools see PARA 102 et seq ante.

3 As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

4 School Standards and Framework Act 1998 s 83(1)(a). For the meaning of 'foundation governor' see PARA 104 note 6 ante.

5 Ibid s 83(1)(b). As to local education authorities see PARA 20 ante.

6 Ibid s 83(1)(c). Section 83(1) is without prejudice to any power to amend any such provision as is mentioned in s 83(1): s 83(2). As to minor authorities see PARA 250 note 6 ante.

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## **(v) Maintenance and other Funding of Maintained Schools**

### **A. IN GENERAL**

#### **302. Local education authorities' duty to maintain schools.**

A local education authority<sup>1</sup> is under a duty to maintain:

- 650 (1) any maintained schools<sup>2</sup> which it is required by virtue of the School Standards and Framework Act 1998<sup>3</sup> to maintain<sup>4</sup>;
- 651 (2) any maintained schools established by it<sup>5</sup>;
- 652 (3) any maintained schools established in its area otherwise than by it or any other local education authority<sup>6</sup>; and
- 653 (4) any maintained nursery school<sup>7</sup> established by it<sup>8</sup>.

The above provision has effect subject to the transfer under Part II of the School Standards and Framework Act 1998<sup>9</sup> of a maintained school from the area of one local education authority to that of another, and subject to the provisions of Part II of that Act relating to the discontinuance of schools<sup>10</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'maintained school' see PARA 94 ante.

3 Ie by virtue of the School Standards and Framework Act 1998 s 20(4) or (5): see PARA 102 ante.

4 Ibid s 22(1)(a). As to provision made for foundation, voluntary controlled and foundation special schools see PARAS 303 et seq, 1352 et seq post.

5 Ibid s 22(1)(b) (amended by the Education Act 2002 s 215, Sch 21 para 96(1), (2)(a), Sch 22 Pt 3).

6 School Standards and Framework Act 1998 s 22(1)(c) (amended by the Education Act 2002 Sch 21 para 96(1), (2)(b), Sch 22 Pt 3).

7 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

8 School Standards and Framework Act 1998 s 22(1)(d).

9 Ie ibid Pt II (ss 20-83) (as amended): see PARA 102 et seq ante.

10 Ibid s 22(2). As to the discontinuance of schools see PARA 131 et seq ante.

### **UPDATE**

#### **302 Local education authorities' duty to maintain schools**

TEXT AND NOTES 9, 10--The 1998 Act s 22(1) has effect subject to any statutory provision authorising the discontinuance of a maintained school or maintained nursery school: s 22(2) (substituted by the Education and Inspections Act 2006 Sch 3 para 15).





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## ***B. COMMUNITY, COMMUNITY SPECIAL AND MAINTAINED NURSERY SCHOOLS***

### **303. Local education authorities' duty to defray expenses and provide premises.**

In the case of a community school, a community special school<sup>1</sup> or a maintained nursery school<sup>2</sup>, the duty of the local education authority<sup>3</sup> to maintain<sup>4</sup> the school includes the duty of defraying all the expenses of maintaining it, and of making premises<sup>5</sup> available to be used for the purposes of the school<sup>6</sup>.

1 As to community and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

2 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

3 As to local education authorities see PARA 20 ante.

4 'Maintain', in relation to schools falling within the School Standards and Framework Act 1998 s 22(3), is to be read in accordance with s 22(3): s 22(8)(b).

5 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 142(8).

6 Ibid s 22(3). As to provision made for foundation, voluntary controlled and foundation special schools see PARAS 303 et seq, 1352 et seq post.

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### ***C. FOUNDATION, VOLUNTARY AND FOUNDATION SPECIAL SCHOOLS***

#### **(A) IN GENERAL**

##### **304. Default powers of central government.**

Where it appears to the Secretary of State<sup>1</sup> that a local education authority<sup>2</sup> has defaulted in the discharge of its duties relating to the maintenance of a foundation, voluntary or foundation special school<sup>3</sup>, he may<sup>4</sup>: (1) direct that any act done by or on behalf of the school's governing body<sup>5</sup> for the purpose of securing the proper maintenance of the school is taken to have been done by or on behalf of the authority<sup>6</sup>; and (2) reimburse to the governing body any sums which in his opinion it has properly expended for that purpose<sup>7</sup>. The amount of any sum so reimbursed is recoverable by the Secretary of State as a debt due to him from the authority; and without prejudice to any other method of recovery the whole or any part of any such sum may be deducted from any sums payable to the authority by the Secretary of State in pursuance of any regulations<sup>8</sup> relating to the payment of grants<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post. As to a local authority's duties in relation to the maintenance of those schools see PARAS 307-308 post.

4 School Standards and Framework Act 1998 s 22(7), Sch 3 para 10(1).

5 As to the governing bodies of maintained schools see PARA 203 et seq ante.

6 School Standards and Framework Act 1998 Sch 3 para 10(1)(a).

7 Ibid Sch 3 para 10(1)(b).

8 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. See note 9 infra.

9 Ibid Sch 3 para 10(2). As to the regulations that have been made in relation to the payment of grants see the Education (Grants in Respect of Voluntary Aided Schools) Regulations 1999, SI 1999/2020 (as amended); and PARA 309 post.

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### **305. Endowments.**

Where any sums accruing in respect of the income of an endowment are required by virtue of the provisions of a trust deed<sup>1</sup> to be applied towards the maintenance of a foundation, voluntary or foundation special school<sup>2</sup>, those sums are not payable to the local education authority<sup>3</sup> but must be applied by the governing body of the school<sup>4</sup>: (1) in the case of a voluntary aided school, towards the discharge of its obligations<sup>5</sup>; or (2) in the case of any school, in such manner, if any, as may be determined by a scheme for the administration of the endowment made after 1 April 1945<sup>6</sup>.

1 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 As to foundation, voluntary and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

3 As to local education authorities see PARA 20 ante.

4 School Standards and Framework Act 1998 s 22(7), Sch 3 para 11. As to the governing bodies of maintained schools see PARA 203 et seq ante.

5 Ibid Sch 3 para 11(a). The text refers to the obligations of the governing body under Sch 3 para 3 (as substituted in relation to England): see PARA 308 post.

6 Ibid Sch 3 para 11(b).

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### **306. Disapplication of restriction on local authority disposals.**

The prohibition contained in the Local Government Act 1972<sup>1</sup> on local authorities from making disposals of land<sup>2</sup> below market value without the consent of the Secretary of State<sup>3</sup> does not apply in the case of a disposal to the governing body of a foundation, voluntary or foundation special school<sup>4</sup> or to persons proposing to establish such a school<sup>5</sup>.

1    Ie the Local Government Act 1972 s 123(2) (prohibition on disposal of land below market value without consent of the Secretary of State): see LOCAL GOVERNMENT vol 69 (2009) PARA 515.

2    Ie under ibid s 123 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 515. As to the meaning of 'disposing of land' see PARA 1352 note 15 post.

3    As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4    As to foundation, voluntary and foundation special schools see PARA 102 et seq ante.

5    School Standards and Framework Act 1998 s 22(7), Sch 3 para 12. As to proposals to establish foundation and voluntary schools and foundation special schools see PARA 132 et seq ante.

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## (B) FOUNDATION, VOLUNTARY CONTROLLED AND FOUNDATION SPECIAL SCHOOLS

### **307. Obligations of local education authorities and governing bodies.**

In the case of a foundation, voluntary controlled or foundation special school<sup>1</sup>, the local education authority's<sup>2</sup> duty to maintain<sup>3</sup> the school includes the duty of defraying all the expenses of maintaining it<sup>4</sup>, and the duty under any enactment of providing new premises for the school<sup>5</sup>.

The governing body<sup>6</sup> of a foundation, voluntary controlled or foundation special school is<sup>7</sup> not responsible for any of the expenses of maintaining the school<sup>8</sup>. However, this does not apply to the repayment of the principal of, or interest on, a loan made to the governing body<sup>9</sup>.

1 As to foundation, voluntary and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

2 As to local education authorities see PARA 20 ante.

3 'Maintain', in relation to schools falling within the School Standards and Framework Act 1998 s 22(4) (as amended), is to be read in accordance with s 22(4) (as amended): s 22(8)(b).

4 For the purposes of the School Standards and Framework Act 1998, the expenses of maintaining a foundation, voluntary or foundation special school include the payment of rates: s 22(6). As to rates see PARAS 1428-1429 post; and RATING AND COUNCIL TAX. 'Maintain', in relation to schools falling within s 22(6), is to be read in accordance with s 22(6): s 22(8)(b).

5 Ibid s 22(4) (amended by the Education Act 2002 s 215, Sch 21 para 96(1), (3)). As to the duty to provide premises for foundation, voluntary controlled and foundation special schools see PARA 1352 et seq post.

6 As to the governing bodies of maintained schools see PARA 203 et seq ante.

7 Ie in accordance with the School Standards and Framework Act 1998 s 22(4) (as amended): see the text and notes 1-5 supra.

8 Ibid Sch 3 para 1(1).

9 Ibid Sch 3 para 1(2).

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## (C) VOLUNTARY AIDED SCHOOLS

### **308. Obligations of local education authorities and governing bodies.**

In the case of a voluntary aided school in England<sup>1</sup>, the duty of the local education authority<sup>2</sup> to maintain<sup>3</sup> the school includes the duty of defraying all the expenses of maintaining it, except any expenditure that is<sup>4</sup> to be met, by the governing body<sup>5</sup>, and the duty under any enactment of providing new premises<sup>6</sup> for the school<sup>7</sup>. In the case of a voluntary aided school, the governing body of the school is responsible for meeting all capital expenditure in relation to school premises<sup>8</sup>. However, this duty does not extend to: (1) capital expenditure<sup>9</sup> in relation to playing fields<sup>10</sup> or any building or other structure erected thereon in connection with the use of playing fields, but does extend to capital expenditure in relation to boundary walls and fences<sup>11</sup>; (2) capital expenditure necessary in consequence of the use of the school premises, in pursuance of a direction or requirement of the local education authority, for purposes other than those of the school<sup>12</sup>; or (3) capital expenditure on the provision of any new site which the local education authority is<sup>13</sup> to provide<sup>14</sup>.

In the case of a voluntary aided school in Wales<sup>15</sup>, the local education authority's duty to maintain the school includes the duty of defraying all the expenses of maintaining it, except any expenses that are<sup>16</sup> payable by the governing body<sup>17</sup>, and the duty under any enactment of providing new premises for the school<sup>18</sup>. In the case of a voluntary aided school, the expenses of discharging any liability<sup>19</sup> incurred by or on behalf of the governing body of the school, any former governors of the school, or any trustees of the school in connection with the provision of premises or specified equipment<sup>20</sup> for the purposes of the school are payable by the governing body of the school<sup>21</sup>. In addition, any expenses incurred in making to the school buildings<sup>22</sup> of a voluntary aided school such alterations<sup>23</sup> as may be required by the local education authority for the purpose of securing that the school premises conform to the prescribed<sup>24</sup> standards<sup>25</sup>, or in effecting repairs to the school buildings are payable by the governing body of the school<sup>26</sup>. However, the governing body of a voluntary aided school is not responsible for repairs to the interior of the school buildings<sup>27</sup>, or to those buildings necessary in consequence of the use of the school premises in pursuance of a direction or requirement of the local education authority for purposes other than those of the school<sup>28</sup>.

In England or Wales, a local education authority may give to the governing body of a voluntary aided school such assistance as the authority thinks fit in relation to the carrying out by the governing body of these obligations<sup>29</sup>. Where such assistance consists of the provision of any premises for use for the purposes of a school, the local education authority must transfer its interest in the premises to the trustees of the school, to be held by them on trust for the purposes of the school<sup>30</sup>, or if the school has no trustees, to the school's foundation body<sup>31</sup>, to be held by that body for the relevant purposes<sup>32</sup>.

1 As to voluntary schools see PARA 102 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante.

2 As to local education authorities see PARA 20 ante.

3 'Maintain', in relation to schools falling within the School Standards and Framework Act 1998 s 22(5) (as amended), is to be read in accordance with s 22(5) (as amended): s 22(8)(b).

4 le by virtue of *ibid* s 22(7), Sch 3 para 3 (as substituted in relation to England): see the text and notes 8-14 *infra*.

5 *Ibid* s 22(5)(a) (amended by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 3). As to the governing bodies of maintained schools in England see *PARA* 203 *et seq ante*; and as to maintained schools generally see *PARA* 94 *et seq ante*.

6 As to the meaning of 'premises' see *PARA* 1352 note 3 *post*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7 *Ibid* s 22(5)(b) (amended by the Education Act 2002 s 215, Sch 21 para 96(1), (4)). As to the duty to provide premises for foundation, voluntary controlled and foundation special schools see *PARA* 1352 *et seq post*. As to the disposal of a voluntary aided school's land by a local education authority in England see *PARA* 1363 *post*.

8 School Standards and Framework Act 1998 Sch 3 para 3(1) (Sch 3 para 3 substituted, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 5).

9 For these purposes, 'capital expenditure' has the meaning given by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 13, as it has effect from time to time: School Standards and Framework Act 1998 Sch 3 para 3(3) (as substituted: see note 8 *supra*). Accordingly, for the purposes of Sch 3 and Sch 22 (as amended) (see *PARA* 1363 *et seq post*), 'capital expenditure' means expenditure on:

76 (1) the acquisition, reclamation, enhancement or laying out of any land;

77 (2) the acquisition, construction, preparation, enhancement, replacement or demolition of any building or part of a building (including any fixtures and fittings affixed to a building), wall, fence or other structure, or any playground or other hard-standing;

78 (3) the acquisition, installation or replacement of any movable or immovable, plant, machinery, apparatus or furniture,

used or intended to be used for the purposes of the school: Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 13(1). For these purposes, 'enhancement', in relation to any asset, means the carrying out of works which are intended: (a) to lengthen substantially the useful life of the asset; or (b) to increase substantially the open market value of the asset; or (c) to increase substantially the extent to which the asset can or will be used for the purposes of or in connection with the school concerned, but expenditure on the enhancement of an asset is not to be regarded as capital expenditure unless it should be so regarded in accordance with proper practices: art 13(2). 'Proper practices' are those accounting practices: (i) which the governing body or the maintaining local education authority is required to follow by virtue of any enactment; or (ii) which, whether by reference to any generally recognised published code or otherwise, are regarded as proper accounting practices to be followed in the keeping of the accounts of local authorities, either generally or of the description concerned; but in the event of any conflict in any respect between the practices falling within head (i) *supra* and those falling within head (ii) *supra*, only those falling within head (i) *supra* are to be regarded as proper practices: art 13(3). Despite the other provisions of art 13, any expenditure of an amount less than £2,000 does not constitute 'capital expenditure' for these purposes: art 13(4). Article 13(1)-(4) constitutes subordinate provisions for the purposes of the Regulatory Reform Act 2001 s 4 and a subordinate provisions order (within the meaning of s 4(4)) made in respect of those provisions is subject to annulment in pursuance of a resolution of either House of Parliament: Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 13(5).

10 For the meaning of 'playing fields' see *PARA* 1410 note 22 *post*.

11 School Standards and Framework Act 1998 Sch 3 para 3(2)(a) (as substituted: see note 8 *supra*).

12 *Ibid* Sch 3 para 3(2)(b) (as substituted: see note 8 *supra*).

13 le by virtue of *ibid* Sch 3 para 4 (as amended): see *PARA* 1353 *post*.

14 *Ibid* Sch 3 para 3(2)(c) (as substituted: see note 8 *supra*).

15 For the meaning of 'Wales' see *PARA* 52 note 13 *ante*.

16 le by virtue of the School Standards and Framework Act 1998 s 22(7), Sch 3 para 3: see the text and notes 19-28 *infra*.

17 Ibid s 22(5)(a). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

18 Ibid s 22(5)(b) (amended by the Education Act 2002 s 215, Sch 21 para 96(1), (4)).

19 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

20 For these purposes, 'specified equipment' means equipment of any description specified by the National Assembly for Wales for the purposes of ibid Sch 3 para 3: Sch 3 para 3(1). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

21 Ibid Sch 3 para 3(1). Nothing in Sch 3 para 3 imposes on the governing body of a voluntary aided school which was, either before or after 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), a school of a different description any obligation in respect of a liability incurred at any time before the school became a voluntary aided school, if, at that time, no obligation in respect of that liability was imposed on it, as the governing body of a school of that description, under the School Standards and Framework Act 1998 or the Education Act 1996, as the case may be: School Standards and Framework Act 1998 Sch 3 para 3(4).

22 For the meaning of 'school building' see PARA 1353 note 18 post; definition applied by virtue of ibid s 142(8).

23 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of ibid s 142(8).

24 Ie prescribed under the Education Act 1996 s 542 (as amended): see PARA 1409 post.

25 School Standards and Framework Act 1998 Sch 3 para 3(2)(a).

26 Ibid Sch 3 para 3(2)(b).

27 Ibid Sch 3 para 3(3)(a).

28 Ibid Sch 3 para 3(3)(b).

29 Ibid Sch 3 para 8.

30 Ibid Sch 3 para 9(1)(a). As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante. As to land or other property held on trust, or by trustees, for the purposes of a school see PARA 104 note 6 ante.

31 For the meaning of 'foundation body' see PARA 104 note 6 ante.

32 School Standards and Framework Act 1998 Sch 3 para 9(1)(b). For these purposes, 'the relevant purposes' means, in relation to a transfer to a school's foundation body, the purposes of the schools comprising the group for which that body acts: Sch 3 para 9(4). For the meaning of 'the group' see PARA 104 note 6 ante.

Where any doubt or dispute arises as to the persons to whom the authority is required to make the transfer, it is to be made to such persons as the Secretary of State thinks proper: Sch 3 para 9(2). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer: Sch 3 para 9(3).

## UPDATE

### 308 Obligations of local education authorities and governing bodies

NOTE 9--For the purposes of the 1998 Act Sch 3, references to capital expenditure, in the case of a voluntary aided school, are references to expenditure which falls to be capitalised in accordance with proper accounting practices: see Sch 3 paras 9A, 9B (Sch 3 para 3(3) revoked, PARAS 9A, 9B added by Education and Inspections Act 2006 s 35). Any expenditure by an appropriate body or any promoters in respect of a new voluntary aided school of an amount less than £2,000 does not constitute capital



expenditure: Capital Expenditure in respect of Voluntary Aided Schools (England) Regulations 2007, SI 2007/1322.

Regulatory Reform Act 2001 s 4 repealed: Legislative and Regulatory Reform Act 2006 Schedule.

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### **309. Grants in respect of expenditure on premises or equipment.**

The Secretary of State<sup>1</sup> may make grants to the governing body<sup>2</sup> of a voluntary aided school<sup>3</sup> in England<sup>4</sup> in respect of capital expenditure<sup>5</sup> incurred or to be incurred by it<sup>6</sup>, or to a relevant body<sup>7</sup>, in the case of such a school, in respect of capital expenditure incurred or to be incurred by that body on behalf of the governing body<sup>8</sup>. The amount of any such grant in respect of any such expenditure must not exceed 90 per cent of the expenditure or, if the Secretary of State considers that the circumstances are exceptional, must not exceed 100 per cent of the expenditure<sup>9</sup>, and in the case of any prescribed class or description of such expenditure<sup>10</sup>, must be such as may be determined in accordance with regulations<sup>11</sup>. The times at which, and the manner in which, payments are made in respect of such grants are such as may be determined from time to time by the Secretary of State<sup>12</sup>.

Without prejudice to any other duty of his, the Secretary of State must, in performing functions<sup>13</sup> relating to the exercise of his power<sup>14</sup> to make grants in respect of expenditure on school premises<sup>15</sup>, give priority to paying grants in respect of expenditure which is necessary to make such alterations<sup>16</sup> as may be required by the local education authority<sup>17</sup> for the purpose of securing that the school premises conform to the required standards for educational premises<sup>18</sup> or as may be required for the purpose of securing that the school premises conform to standards specified by or under any other enactment relating to health and safety<sup>19</sup>. The amount of any such grant paid in the exercise of the power in respect of such expenditure on school premises must be at least 90 per cent of the expenditure<sup>20</sup>.

Any body to whom any payment is made in respect of such a grant must comply with such requirements determined by the Secretary of State as he may from time to time impose<sup>21</sup>. Such requirements may be imposed on, or at any time after, the making of any payment by reference to which they are imposed<sup>22</sup>, and may at any time be waived, removed or varied by the Secretary of State<sup>23</sup>; but such requirements may be imposed after the making of any such payment only if the Secretary of State is satisfied that in all the circumstances it is reasonable for them to be so imposed<sup>24</sup>. Such requirements may, in particular, if any conditions specified in the requirements are satisfied:

- 654 (1) require the application for purposes connected with the provision of education in appropriate schools<sup>25</sup> of: (a) any premises or equipment in respect of which the grant has been paid<sup>26</sup>; or (b) an amount equal to so much of the value of any such premises or equipment as is determined in accordance with the requirements to be properly attributable to the payment of the grant<sup>27</sup>; and
- 655 (2) in the event that that requirement is not complied with, require the payment to the Secretary of State of the whole or any part of the relevant amount<sup>28</sup>.

When deciding whether to make any grant to a body in circumstances where he considers that it would be appropriate to impose requirements<sup>29</sup>, the Secretary of State may have regard to whether, if such requirements were imposed, that body would have an enforceable right against some other person to be given by that person such financial assistance as would be necessary to enable it to pay to the Secretary of State the relevant amount<sup>30</sup>.

No grant may be paid under this provision in respect of any expenses incurred in the provision of any premises which it is the duty of the local education authority to provide<sup>31</sup>.

The National Assembly for Wales<sup>32</sup> may make grants to the governing body<sup>33</sup> of a voluntary aided school in Wales<sup>34</sup> in respect of qualifying expenditure<sup>35</sup> incurred by it<sup>36</sup>, or to a relevant body, in the case of such a school, in respect of qualifying expenditure incurred by that body on behalf of the governing body<sup>37</sup>. The amount of any such grant in respect of any such expenditure must not exceed 85 per cent of the expenditure<sup>38</sup>, and in the case of any prescribed<sup>39</sup> class or description of such expenditure, must be such as may be determined in accordance with regulations<sup>40</sup>. The times at which, and the manner in which, payments are made in respect of such grants are such as may be determined from time to time by the Assembly<sup>41</sup>. Without prejudice to any other of its duties, the Assembly must, in performing functions relating to the exercise of the power to make grants in respect of expenditure on the alterations to school buildings<sup>42</sup> or the repair of school buildings, give priority to paying grants in respect of expenditure which is necessary for the performance by governing bodies of their duties; and the amount of any grant paid in the exercise of that power in respect of such expenditure on the repair of school buildings must be 85 per cent of the expenditure<sup>43</sup>.

Any body to whom any payment is made in respect of such a grant must comply with such requirements determined by the Assembly as it may from time to time impose<sup>44</sup>. Such requirements may be imposed on, or at any time after, the making of any payment by reference to which they are imposed<sup>45</sup>, and may at any time be waived, removed or varied by the Assembly<sup>46</sup>; but such requirements may be imposed after the making of any such payment only if the Assembly is satisfied that in all the circumstances it is reasonable for them to be so imposed<sup>47</sup>. Such requirements may, in particular, if any conditions specified in the requirements are satisfied:

- 656 (i) require the application for purposes connected with the provision of education in appropriate schools of: (A) any premises or equipment in respect of which the grant has been paid<sup>48</sup>; or (B) an amount equal to so much of the value of any such premises or equipment as is determined in accordance with the requirements to be properly attributable to the payment of the grant<sup>49</sup>; and
- 657 (ii) in the event that that requirement is not complied with, require the payment to the Assembly of the whole or any part of the relevant amount<sup>50</sup>.

When deciding whether to make any grant to a body in circumstances where it considers that it would be appropriate to impose requirements<sup>51</sup>, the Assembly may have regard to whether, if such requirements were imposed, that body would have an enforceable right against some other person to be given by that person such financial assistance as would be necessary to enable it to pay to the Assembly the relevant amount<sup>52</sup>.

No grant may be paid under this provision in respect of any expenses incurred in the provision of any premises which it is the duty of the local education authority to provide<sup>53</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

3 As to voluntary schools see PARA 102 et seq ante.

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 For the meaning of 'capital expenditure' see PARA 308 note 9 ante.

6 School Standards and Framework Act 1998 s 22(7), Sch 3 para 5(1)(a) (amended by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 7(a)).

7 For these purposes, 'relevant body', in relation to a voluntary aided school, means the appropriate diocesan authority or the school's trustees: School Standards and Framework Act 1998 Sch 3 para 5(12). For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 ante.

8 Ibid Sch 3 para 5(1)(b) (amended by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 7(a)).

9 School Standards and Framework Act 1998 Sch 3 para 5(3)(a) (substituted, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 7(c)).

10 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the prescribed classes and descriptions of expenditure see the Education (Grants in Respect of Voluntary Aided Schools) Regulations 1999, SI 1999/ 2020, reg 3 (amended, in relation to England, by SI 2002/1720; SI 2003/507). The Education (Grants in Respect of Voluntary Aided Schools) Regulations 1999, SI 1999/ 2020 (as amended) also provide for the proceeds resulting from the disposal of associated school property (for the meaning of which see reg 4) to be taken into account in determining the amount of any such grant: see regs 5-6.

11 School Standards and Framework Act 1998 Sch 3 para 5(3). See note 10 supra.

12 Ibid Sch 3 para 5(4).

13 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).

14 Ie under ibid Sch 3 para 5 (as amended).

15 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 142(8).

16 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of ibid s 142(8).

17 As to local education authorities see PARA 20 ante.

18 Ie the standards prescribed under the Education Act 1996 s 542 (as amended) (see PARA 1409 post).

19 School Standards and Framework Act 1998 Sch 3 para 5(5) (substituted, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 7(d)).

20 School Standards and Framework Act 1998 Sch 3 para 5(5) (as substituted: see note 19 supra).

21 Ibid Sch 3 para 5(6).

22 Ibid Sch 3 para 5(7)(a).

23 Ibid Sch 3 para 5(7)(b).

24 Ibid Sch 3 para 5(7).

25 For these purposes, 'appropriate schools' means: (1) in relation to a voluntary aided school having a religious character, schools which are either foundation or voluntary schools and whose specified religion or religious denomination under ibid s 69(4) (see PARA 951 post) is the same as that school's; and (2) in relation to any other voluntary aided school, maintained schools: Sch 3 para 5(12). As to schools having a religious character see s 69(3); and PARA 951 note 9 post. As to the meaning of 'specified religion or religious denomination' see PARA 42 note 15 ante. For the meaning of 'maintained school' see PARA 94 ante. As to foundation schools see PARA 102 et seq ante.

26 Ibid Sch 3 para 5(8)(a)(i).

27 Ibid Sch 3 para 5(8)(a)(ii).

28 Ibid Sch 3 para 5(8)(b). The amount is the amount of the payments made in respect of the grant under Sch 3 para 5 (as amended), or the amount mentioned in head (1)(b) in the text, whichever the Secretary of State determines to be just: Sch 3 para 5(9).

29 Ie falling within ibid Sch 3 para 5(8): see the text to notes 25-28 supra.

30 Ibid Sch 3 para 5(10).

31 Ibid Sch 3 para 5(11).

32 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

33 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

34 For the meaning of 'Wales' see PARA 52 note 13 ante.

35 For these purposes, 'qualifying expenditure' means expenditure in respect of the provision, alteration or repair of premises or equipment for the school: School Standards and Framework Act 1998 s 22(7), Sch 3 para 5(2) (repealed in relation to England by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 7(b)). 'Repair' does not include repair falling within the School Standards and Framework Act 1998 Sch 3 para 3(3) (see PARA 308 ante): Sch 3 para 5(12) (definition repealed in relation to England by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 7(e)).

36 School Standards and Framework Act 1998 Sch 3 para 5(1)(a).

37 Ibid Sch 3 para 5(1)(b).

38 Ibid Sch 3 para 5(3)(a).

39 As to the prescribed classes and descriptions of expenditure see the Education (Grants in Respect of Voluntary Aided Schools) Regulations 1999, SI 1999/ 2020, reg 3 (amended, in relation to Wales, by SI 2004/1576). The Education (Grants in Respect of Voluntary Aided Schools) Regulations 1999, SI 1999/ 2020 (as amended) also provide for the proceeds resulting from the disposal of associated school property (for the meaning of which see reg 4) to be taken into account in determining the amount of any such grant: see regs 5-6. See note 10 supra.

40 School Standards and Framework Act 1998 Sch 3 para 5(3)(b). See note 39 supra.

41 Ibid Sch 3 para 5(4).

42 Ie such as are referred to in ibid Sch 3 para 3(2)(a) (see PARA 308 ante). For the meaning of 'school building' see PARA 1353 note 18 post; definition applied by virtue of s 142(8).

43 Ibid Sch 3 para 5(5).

44 Ibid Sch 3 para 5(6).

45 Ibid Sch 3 para 5(7)(a).

46 Ibid Sch 3 para 5(7)(b).

47 Ibid Sch 3 para 5(7).

48 Ibid Sch 3 para 5(8)(a)(i).

49 Ibid Sch 3 para 5(8)(a)(ii).

50 Ibid Sch 3 para 5(8)(b). The amount is the amount of the payments made in respect of the grant under Sch 3 para 5, or the amount mentioned in head (1)(b) in the text, whichever the National Assembly for Wales determines to be just: Sch 3 para 5(9).

51 Ie falling within ibid Sch 3 para 5(8): see the text to notes 48-50 supra.

52 Ibid Sch 3 para 5(10).

53 Ibid Sch 3 para 5(11).

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### **310. Grants in respect of preliminary expenditure.**

The Secretary of State may pay grants<sup>1</sup>:

- 658 (1) to the governing body<sup>2</sup> of a voluntary aided school<sup>3</sup> in respect of preliminary expenditure incurred or to be incurred by it for the purposes of any scheme for the transfer of the school to a new site or the enlargement<sup>4</sup> or alteration<sup>5</sup> of the school premises<sup>6</sup>; or
- 659 (2) to a relevant body<sup>7</sup> in the case of such a school, in respect of any preliminary expenditure incurred or to be incurred by it, on behalf of the governing body, for the purposes of any such scheme<sup>8</sup>.

Where any persons propose or are considering whether to propose the establishment<sup>9</sup> of a voluntary aided school, the Secretary of State may pay grants to them in respect of any preliminary expenditure incurred or to be incurred by them for the purposes of a scheme for the provision of a site for the school or of any buildings which would be used for the purposes of the school<sup>10</sup>. Such grants<sup>11</sup> must not exceed 90 per cent of the expenditure or, if the Secretary of State considers that the circumstances are exceptional, must not exceed 100 per cent of the expenditure, in respect of which it is paid<sup>12</sup>.

Such grants may be paid in respect of schemes for the transfer of the school to a new site or for the enlargement or alteration of the school premises or for the provision of a site for the school or of any buildings whether or not:

- 660 (a) the details of such a scheme had been formulated at the time when the expenditure was incurred<sup>13</sup>;
- 661 (b) where such details were not formulated at that time, they are subsequently formulated<sup>14</sup>;
- 662 (c) the governing body or persons in question had determined to proceed with such a scheme at that time<sup>15</sup>; or
- 663 (d) where they had not determined to proceed with such a scheme at that time, they subsequently determine to proceed with such a scheme<sup>16</sup>.

Expenditure in respect of which such grants are payable includes, in particular, costs incurred in connection with the preparation of plans and specifications for any proposed construction, enlargement or alteration of buildings which are or would be used for the purposes of the school<sup>17</sup>, and estimating the sums which would be expended if any such works were carried out<sup>18</sup>, but does not include any sums expended in carrying out any such works<sup>19</sup>. Where a grant is paid<sup>20</sup> in the case of any voluntary aided school, or a grant is paid<sup>21</sup> in the case of any school which is established as a voluntary aided school, the grant must, for the purposes of the provision requiring the consent of the Secretary of State if expenditure has been incurred on school premises (otherwise than in connection with repairs) before a notice to discontinue a foundation or voluntary school can be given<sup>22</sup>, be treated as expenditure incurred by the Secretary of State, otherwise than in connection with repairs, in respect of the school premises<sup>23</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the obligations of local education authorities and governing bodies towards voluntary aided schools in England see PARA 308 ante; and as to grants to voluntary aided schools in respect of expenditure on premises or equipment in England see PARA 309 ante. As to the obligations of local education authorities and governing bodies towards voluntary aided schools in Wales see PARA 308 ante; and as to grants to voluntary aided schools in respect of expenditure on premises or equipment in Wales see PARA 309 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 As to voluntary schools see PARA 102 et seq ante.

4 As to the meaning of 'enlargement' see PARA 132 note 8 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of ibid s 142(8).

6 Ibid s 22(7), Sch 3 para 6(1)(a) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 8(a)). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). In relation to Wales, these provisions do not apply to expenditure to be incurred.

7 For these purposes, 'relevant body', in relation to a voluntary aided school, means the appropriate diocesan authority or the school's trustees: ibid Sch 3 para 6(7). For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 ante.

8 Ibid Sch 3 para 6(1)(b) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 8(a)).

9 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

10 Ibid Sch 3 para 6(2) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 8(b), (c)). In relation to Wales, these provisions refer to buildings which would be school buildings rather than buildings which would be used for the purposes of the school. For the meaning of 'school building' see PARA 1353 note 18 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

11 Ie grants under ibid Sch 3 para 6(1) (see the text and notes 1-8 supra) or Sch 3 para 6(2) (see the text and notes 9-10 supra).

12 Ibid Sch 3 para 6(5) (substituted, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 8(e)). In relation to Wales, such grants must not exceed 85% of the expenditure in respect of which they are paid: School Standards and Framework Act 1998 Sch 3 para 6(5). See note 9 supra.

13 Ibid Sch 3 para 6(3)(a).

14 Ibid Sch 3 para 6(3)(b).

15 Ibid Sch 3 para 6(3)(c).

16 Ibid Sch 3 para 6(3)(d).

17 Ibid Sch 3 para 6(4)(a) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 8(d)). In relation to Wales, these provisions refer to buildings which are or would be school buildings rather than buildings which are or would be used for the purposes of the school.

18 School Standards and Framework Act 1998 Sch 3 para 6(4)(b).

19 Ibid Sch 3 para 6(4).

20 Ie under ibid Sch 3 para 6(1) (as amended in relation to England) (see the text and notes 1-8 supra).

- 21    le under *ibid* Sch 3 para 6(2) (as amended in relation to England) (see the text to notes 9-10 *supra*).
- 22    le for the purposes of *ibid* s 30(2): see *PARA 135 ante*.
- 23    *Ibid* Sch 3 para 6(6).



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### **311. Loans in respect of initial expenses.**

Where, on the application of the governing body<sup>1</sup> of a voluntary aided school<sup>2</sup> and after consulting persons representing the governing body, the Secretary of State<sup>3</sup> is satisfied that the governing body's share of any initial expenditure<sup>4</sup> required in connection with the school premises<sup>5</sup> will involve capital expenditure<sup>6</sup>, and having regard to all the circumstances of the case, considers that that capital expenditure ought properly to be met by borrowing<sup>7</sup>, he may make a loan to the governing body for the purpose of helping it meet that expenditure<sup>8</sup>. The amount, rate of interest and other terms and conditions applicable to the loan are such as may be specified in an agreement made between the Secretary of State and the governing body with the consent of the Treasury<sup>9</sup>. These principles<sup>10</sup> apply for the purpose of enabling loans to be made to a relevant body<sup>11</sup> in respect of expenditure incurred by that body on behalf of the governing body as they apply to expenditure incurred by the governing body<sup>12</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante. See note 12 infra.

2 As to voluntary schools see PARA 102 et seq ante.

3 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 The governing body's share of any initial expenditure must be taken to be so much of the expenditure as remains to be borne by the governing body after taking into account the amount of any grant under the School Standards and Framework Act 1998 Sch 3 para 5 (as amended in relation to England) (see PARA 309 ante) that may be paid or payable in respect of them: Sch 3 para 7(4) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 10(e)). For these purposes, 'initial expenditure' is expenditure to be incurred in providing: (1) a site or buildings for a voluntary aided school in connection with the implementation of any proposals for a prescribed alteration to the school published under the School Standards and Framework Act 1998 s 28 (as amended) (see PARA 132 ante), or the transfer of the school to a new site; or (2) a site or buildings for a new voluntary aided school, being expenditure in respect of which grants may be paid under Sch 3 para 5 (as amended in relation to England) (see PARA 309 ante): Sch 3 para 7(3) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 10(c), (d)). As to the meaning of 'alteration' see PARA 132 note 6 ante; definition applied by virtue of s 142(8).

The provisions of the School Standards and Framework Act 1998 Sch 3 para 7(3), (4) have not been amended in relation to Wales, and must be read as referring to 'initial expenses' rather than 'initial expenditure'. In relation to Wales, the governing body's share of any initial expenses must be taken to be so much of the expenses as remains to be borne by the governing body after taking into account the amount of any grant under s 22(7), Sch 3 para 5 (see PARA 309 ante) that may be paid or payable in respect of them: Sch 3 para 7(4). For these purposes, 'initial expenses' are expenses to be incurred in providing: (a) a site or school buildings for a voluntary aided school in connection with the implementation of any proposals for a prescribed alteration to the school published under s 28 (as amended) (see PARA 132 ante), or the transfer of the school to a new site; or (b) a site or school buildings for a new voluntary aided school, being expenses in respect of which grants may be paid under Sch 3 para 5 (see PARA 309 ante): Sch 3 para 7(3). For the meaning of 'school building' see PARA 1353 note 18 post; definition applied by virtue of s 142(8).

For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of *ibid* s 142(8).

6 *Ibid* Sch 3 para 7(1)(a) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 10(a)). The School Standards and

Framework Act 1998 Sch 3 para 7(1) has not been amended in relation to Wales, and must be read as referring to initial expenses rather than initial expenditure (see note 4 *supra*).

7 Ibid Sch 3 para 7(1)(b) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 10(b)). The School Standards and Framework Act 1998 Sch 3 para 7(1) has not been amended in relation to Wales, and must be read as referring simply to expenditure rather than capital expenditure.

8 Ibid Sch 3 para 7(1). The statutory requirement for the consent of the Secretary of State or the local education authority (see s 36(2), Sch 10 para 3(3); and PARA 278 *ante*) does not apply to any borrowing by a governing body under Sch 3 para 7 (as amended): Sch 3 para 7(6).

As to the obligations of local education authorities and governing bodies towards voluntary aided schools in England see PARA 308 *ante*; and as to grants to voluntary aided schools in respect of expenditure on premises or equipment in England see PARA 309 *ante*. As to the obligations of local education authorities and governing bodies towards voluntary aided schools in Wales see PARA 308 *ante*; and as to grants to voluntary aided schools in respect of expenditure on premises or equipment in Wales see PARA 309 *ante*.

9 Ibid Sch 3 para 7(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

10 Ie the provisions of *ibid* Sch 3 para 7(1)-(4) (as amended in relation to England): see the text and notes 1-9 *supra*.

11 Ie within the meaning of *ibid* Sch 3 para 5 (as amended in relation to England) (see PARA 309 note 7 *ante*).

12 Ibid Sch 3 para 7(5) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 10(f)). The School Standards and Framework Act 1998 Sch 3 para 7(5) has not been amended in relation to Wales, and must be read as referring to expenses rather than expenditure.

In the provisions of Sch 3 para 7(1)-(4) (as amended in relation to England), as they apply in relation to a new voluntary aided school, references to the governing body are to be read as references to the promoters: Sch 3 para 7(5). As to the meaning of 'promoters' see s 28(2); and PARA 132 *ante*.

## UPDATE

### 311 Loans in respect of initial expenses

NOTE 12--In the 1998 Act Sch 3 paras 2A-9B 'promoters', in relation to a school in England, means persons who are for the purposes of the Education and Inspections Act 2006 Sch 2 the proposers in relation to proposals for the establishment of the school: 1998 Act Sch 3 para 2A (added by the 2006 Act Sch 3 para 31).

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## **(vi) Financing of Maintained Schools**

### **312. Maintained schools to have budget shares.**

For the purposes of the financing of maintained schools<sup>1</sup> by local education authorities<sup>2</sup>, every such school must have, for each funding period<sup>3</sup>, a budget share<sup>4</sup> which is allocated to it by the authority which maintains it<sup>5</sup>. For the purposes of Part II of the School Standards and Framework Act 1998<sup>6</sup>:

- 664 (1) a maintained school's 'budget share' for a funding period is such amount as the local education authority may determine, in accordance with regulations<sup>7</sup>, to allocate to the school out of the authority's individual schools budget for that year<sup>8</sup>;
- 665 (2) a local education authority's 'individual schools budget' for a funding period is the amount remaining after deducting from the authority's schools budget for that period such planned expenditure by the authority in respect of that period as it may determine should be so deducted in accordance with regulations<sup>9</sup>;
- 666 (3) a local education authority's 'schools budget' for a funding period is the amount<sup>10</sup> appropriated by the authority for meeting all expenditure by the authority in that period of a class or description prescribed for the purpose, which may include expenditure incurred otherwise than in respect of schools<sup>11</sup>; and
- 667 (4) a local education authority's 'local education authority budget' for a relevant period<sup>12</sup> is the amount appropriated by the authority for meeting all expenditure by the authority in that period of a class or description prescribed for the purpose<sup>13</sup>.

1 In the School Standards and Framework Act 1998 Pt II Ch IV (ss 45-53A) (as amended), 'maintained school' means: (1) a community, foundation or voluntary school; (2) a community or foundation special school; or (3) a maintained nursery school: s 45(1A) (added by the Education Act 2002 s 215(1), Sch 21 para 99(1), (2)). In relation to Wales, the application of the School Standards and Framework Act 1998 Pt II Ch IV (as amended) to maintained nursery schools, made by the amendment of s 45 by the Education Act 2002 Sch 21 para 99(1), (2), has effect in the period ending immediately before 1 April 2006 only for the purpose of financing maintained nursery schools in any financial year beginning on and after that date: see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 8. As to community schools, foundation schools, voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante. For the meaning of 'maintained school' generally see PARA 94 ante; and for the meaning of 'school' see PARA 81 ante.

2 In the School Standards and Framework Act 1998 Pt II Ch IV (as amended):

- 79 (1) references to schools maintained by a local education authority do not include pupil referral units (as to which see PARA 457 post) (s 45(3)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 99(1), (3)(a)));
- 80 (2) references, in a context referring to a local education authority, to a maintained school or to a school maintained by such an authority must be read as including a new school: (a) which on implementation of proposals under any enactment will be a community, foundation or voluntary school or a community or foundation special school maintained by the authority; and (b) which has a temporary governing body (School Standards and Framework Act 1998 s 45(3)(b) (amended by the Education Act 2002 Sch 21 para 99(1), (3)(b))); and
- 81 (3) references to the governing body of a maintained school or of a school maintained by a local education authority must accordingly be read as including the temporary governing body of

a new school falling within the School Standards and Framework Act 1998 s 45(3)(b) (as amended) (see head (2) *supra*) (s 45(3)(c)).

As to local education authorities see PARA 20 *ante*. As to the governing bodies of maintained schools see PARA 203 *et seq ante*. 'New school' (without more) means a school or proposed school for which there is a temporary governing body constituted under the Education Act 2002 s 34 (see PARAS 212, 263 *ante*), or for which there is no such body but for which such a body is required to be so constituted by virtue of s 34(1) (see PARAS 212, 263 *ante*), or may be so constituted in accordance with such anticipatory arrangements as are mentioned in s 34(5) (a) (see PARAS 212, 263 *ante*); School Standards and Framework Act 1998 s 72(3) (amended by the Education Act 2002 Sch 21 para 106); definition applied for the purposes of the School Standards and Framework Act 1998 Pt II Ch IV (as amended) by virtue of s 45(4). As to new schools generally see PARAS 202, 212, 263 *ante*.

3 For the purposes of *ibid* Pt II Ch IV (as amended), 'funding period' means a financial year or such other period as may be prescribed: s 45(1B) (added by the Education Act 2005 Sch 16 para 2(1), (3)). For the meaning of 'financial year' see PARA 68 note 9 *ante*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). 'Prescribed' means prescribed by regulations: s 142(1); and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 *ante*. At the date at which this volume states the law, no such regulations had been made.

Section 45(1B) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

4 The School Standards and Framework Act 1998 s 45A (as added; amended in relation to England; and prospectively amended in relation to Wales) (see the text and notes 9-13 *infra*), s 45AA (as added) (power to require LEAs in England to determine schools budget: see PARA 315 *post*), s 45AB (as added) (duty of LEAs in Wales to determine schools budget: see PARA 316 *post*), s 45AC (as added) (power to require LEAs in Wales to determine schools budget: see PARA 316 *post*), s 45B (as added and amended; substituted in relation to England; prospectively substituted in relation to Wales) (power of central government to set minimum schools budget for LEA: see PARAS 314, 316 *post*), s 45C (as added; substituted in relation to England; prospectively substituted in relation to Wales) (see PARAS 314, 316 *post*), s 45D (added in relation to England; prospectively added in relation to Wales) (power of National Assembly for Wales to repeal Wales-only school funding provisions: see PARA 316 *post*) and s 47 (as amended in relation to England; prospectively amended in relation to Wales) (see the text and notes 6-8 *infra*; and PARA 313 *post*) have effect for determining the amount of a school's budget share for a funding period: s 45(2) (amended by the Education Act 2002 s 41(2); the Education Act 2005 s 101, Sch 16 para 2(1), (4); and the Education Act 2002 (Modification of Provisions) (England) Regulations 2002, SI 2003/2316, reg 2).

The amendments made to the School Standards and Framework Act 1998 s 45(2) by the Education Act 2005 Sch 16 para 2(1), (4) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the references to 's 45A', 's 45AA', 's 45AB', 's 45AC', 's 45B', 's 45C', 's 45D' and 's 47' are to be read simply as references to 's 45A' and 's 47', and the words 'funding period' are to be read as 'financial year'.

5 School Standards and Framework Act 1998 s 45(1) (amended by the Education Act 2005 Sch 16 para 2(1), (2)). The amendment made to the School Standards and Framework Act 1998 s 45(1) by the Education Act 2005 Sch 16 para 2(1), (2) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'.

6 *Ie* the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) (see PARA 102 *et seq ante*).

7 As to the regulations made under *ibid* s 47(1) (as amended) see the Schools Forums (England) Regulations 2002, SI 2002/2114 (amended by SI 2004/447; SI 2005/3299) (cited in PARA 317 *post*); the Financing of Maintained Schools (England) (No 2) Regulations 2003, SI 2003/3247 (amended by SI 2004/659) (cited in PARA 313 *post*); the Schools Budget Shares (Wales) Regulations 2004, SI 2004/2506 (amended by SI 2005/2913) (cited in PARA 313 *post*); and the Financing of Maintained Schools (England) Regulations 2004, SI 2004/3130 (cited in PARA 313 *post*). In relation to England, a school's budget share for the financial year beginning on 1 April 2004 may only be redetermined in the financial year beginning on 1 April 2005 in accordance with the provisions of the Financing of Maintained Schools (England) (No 2) Regulations 2003, SI 2003/3247 (as amended) if such redetermination makes provision for: (1) pupils permanently excluded or admitted following a permanent exclusion; or (2) the correction of errors, whether in calculation or data, under any of the provisions of those regulations: Financing of Maintained Schools (England) Regulations 2004, SI 2004/3130, reg 2(2).

The statutory instrument containing the first regulations to be made under the School Standards and Framework Act 1998 s 47 (as amended) in relation to England after 1 November 2005 (ie after the coming into force of the Education Act 2005 Sch 16 para 6: see note 8 *infra*) is not subject to annulment in pursuance of a resolution of either House of Parliament but a draft instrument containing any such regulations must be laid before and approved by a resolution of each House of Parliament: see the School Standards and Framework Act 1998 s 138(5)(d) (added by the Education Act 2005 s 101, Sch 16 para 8). At the date at which this volume states the law, no such regulations had been made.

8 School Standards and Framework Act 1998 s 47(1) (amended by the Education Act 2005 Sch 16 para 6(1), (2)(a), (b)). The amendment made to the School Standards and Framework Act 1998 s 47(1) by the Education Act 2005 Sch 16 para 6(1), (2)(a), (b) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'.

9 School Standards and Framework Act 1998 s 45A(3) (s 45A(1)-(5) added by the Education Act 2002 s 41(1); and the School Standards and Framework Act 1998 s 45A(3) amended by the Education Act 2005 Sch 16 para 3(1), (6)(a), (b)). The amendments made to the School Standards and Framework Act 1998 s 45A(3) (as added) by the Education Act 2005 Sch 16 para 3(1), (6)(a), (b) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year' and 'that period' year' as 'that year'.

Regulations under the School Standards and Framework Act 1998 s 45A(3) (as added and amended) may: (1) prescribe classes or descriptions of expenditure which are authorised or required to be deducted from an authority's schools budget (see head (3) in the text) (s 45A(4)(a) (as so added)); (2) provide, in relation to any prescribed class or description of expenditure specified in the regulations, that such expenditure may only be deducted subject to either or both of the following, namely: (a) such limit or limits (however framed) as may be specified by or determined in accordance with the regulations; and (b) such other conditions as may be so specified or determined (s 45A(4)(b) (as so added)). As to the classes or descriptions of planned expenditure which a local education authority may deduct from its schools budget in order to arrive at its individual schools budget for the financial year see the LEA Budget, Schools Budget and Individual Schools Budget (Wales) Regulations 2003, SI 2003/3118, reg 6, Sch 2 (Sch 2 amended by SI 2005/2913); and the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004, SI 2004/3131, reg 6, Schs 2-3 (Sch 2 amended, in relation to certain authorities, by SI 2005/526). Regulations under the School Standards and Framework Act 1998 s 45A(3) (as added; amended in relation to England; and prospectively amended in relation to Wales) may also make provision: (i) enabling any expenditure falling outside any classes or descriptions of expenditure prescribed by virtue of s 45A(4)(a) (as added) (see head (1) *supra*) to be deducted from the authority's schools budget if the deduction of such expenditure is authorised, on the application of the authority, by the authority's schools forum or the Secretary of State; and (ii) enabling any limit or condition that would otherwise apply by virtue of s 45A(4)(b)(i) (as added) (see head (2)(a) *supra*) or s 45A(4)(b)(ii) (as added) (see head (2)(b) *supra*) to be varied or excluded, on the application of the authority, by the authority's schools forum or the Secretary of State: see s 45A(4A) (s 45A as so added; and s 45A(4A) added by the Education Act 2005 Sch 16 para 3(1), (7)). The School Standards and Framework Act 1998 s 45A(4A) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the schools forums advising on matters relating to the local education authority's schools budget see PARA 317 *post*. As to the Secretary of State see PARA 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

As to the application of the School Standards and Framework Act 1998 s 45A (as added and amended) in relation to federated schools and their governing bodies (as to which see PARA 213 *ante*) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 33.

10 The amount referred to in the School Standards and Framework Act 1998 s 45A(2) (as added and amended) includes the amount of any grant which is appropriated, for meeting the expenditure mentioned in s 45A(2) (as added and amended), in accordance with a condition which: (1) is imposed under the Education Act 2002 s 16 (terms on which assistance under s 14 is given: see PARA 65 *ante*) or any other enactment; and (2) requires that the grant be applied as part of the authority's schools budget for the funding period: School Standards and Framework Act 1998 s 45A(2A) (s 45A as added (see note 9 *supra*); and s 45A(2A) added by the Education Act 2005 Sch 16 para 3(1), (5)). The School Standards and Framework Act 1998 s 45A(2A) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1

and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

11 School Standards and Framework Act 1998 s 45A(2) (s 45A as added (see note 9 supra); and s 45A(2) amended by the Education Act 2005 Sch 16 para 3(1), (4)(a), (b)). As to the classes or descriptions of local education authority expenditure prescribed for the purposes of the School Standards and Framework Act 1998 s 45A(2) (as added and amended) and the determination of a local education authority's schools budget see the LEA Budget, Schools Budget and Individual Schools Budget (Wales) Regulations 2003, SI 2003/3118, reg 4; and the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004, SI 2004/3131, regs 3, 5.

The amendments made to the School Standards and Framework Act 1998 s 45A(2) (as added) by the Education Act 2005 Sch 16 para 3(1), (4)(a), (b) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year' and 'that period' as 'that year'.

12 For these purposes, 'relevant period' means a financial year or such other period as may be prescribed: School Standards and Framework Act 1998 s 45A(1A) (s 45A as added (see note 9 supra); and s 45A(1A) added by the Education Act 2005 Sch 16 para 3(1), (3)). The School Standards and Framework Act 1998 s 45A(1A) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

13 School Standards and Framework Act 1998 s 45A(1) (as added (see note 9 supra); and amended by the Education Act 2005 Sch 16 para 3(1), (2)(a), (b)). As to the classes or descriptions of local education authority expenditure prescribed for the purposes of the School Standards and Framework Act 1998 s 45A(1) (as added and amended) and the determination of a local education authority's LEA budget see the LEA Budget, Schools Budget and Individual Schools Budget (England) Regulations 2004, SI 2004/3131, regs 4-5, Sch 1; and the LEA Budget, Schools Budget and Individual Schools Budget (Wales) Regulations 2003, SI 2003/3118, reg 5, Sch 1 (Sch 1 amended by SI 2004/696; SI 2005/2913).

The amendments made to the School Standards and Framework Act 1998 s 45A(1) (as added) by the Education Act 2005 Sch 16 para 3(1), (2)(a), (b) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'relevant period' are to be read as 'financial year' and 'that period' as 'that year'.

## UPDATE

### 312 Maintained schools to have budget shares

NOTE 7--SI 2002/2114 further amended: SI 2006/5, SI 2008/47. SI 2003/3247 now replaced by School Finance (England) Regulations 2008, SI 2008/228 (amended by SI 2010/210). SI 2004/2506 further amended: SI 2005/3238.

NOTES 9, 11, 13--SI 2004/3131 (as amended) now replaced by SI 2008/228, NOTE 7.

NOTE 9--SI 2004/2042 reg 33 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 35. See School Standards and Framework Act 1998 s 45A(4B) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 202(2)).

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### **313. Determination of school's budget share.**

Regulations<sup>1</sup> for the determination of a school's budget share<sup>2</sup> may, in particular, make provision:

- 668 (1) as to the time when schools' budget shares are to be initially determined by local education authorities<sup>3</sup>;
- 669 (2) specifying factors or criteria which such authorities are to take into account, or requirements as to other matters with which such authorities are to comply, in determining such shares, whether generally or in such cases as are specified in the regulations<sup>4</sup>;
- 670 (3) requiring adjustments to be made to such shares by such authorities in respect of pupils<sup>5</sup> permanently excluded<sup>6</sup> from schools maintained<sup>7</sup> by them, or pupils admitted to schools maintained by them who have been permanently excluded from other maintained schools<sup>8</sup>;
- 671 (4) as to the treatment of new schools<sup>9</sup>, including provision authorising the determination of nil amounts as the budget shares of such schools<sup>10</sup>;
- 672 (5) authorising or requiring such authorities to take account of matters arising during the course of a funding period<sup>11</sup> by redetermining budget shares for that funding period, or by making adjustments to such shares for the following funding period, in accordance with the regulations, and requiring them in that connection to disregard such matters as may be specified in the regulations<sup>12</sup>;
- 673 (6) requiring consultation to be carried out by such authorities in relation to the factors or criteria which are to be taken into account in determining such shares and as to the time and manner of such consultation<sup>13</sup>;
- 674 (7) authorising local education authorities in prescribed<sup>14</sup> cases to determine (or redetermine) budget shares, to such extent as may be prescribed, in accordance with arrangements approved by the authority's schools forum<sup>15</sup> or the Secretary of State in accordance with the regulations (in place of the arrangements provided for by the regulations)<sup>16</sup>;
- 675 (8) authorising or requiring local education authorities to take account of matters arising after the initial determination of budget shares for a funding period but before the beginning of the funding period, by redetermining budget shares for that period in accordance with the regulations, and requiring them in that connection to disregard such matters as may be specified in the regulations<sup>17</sup>; and
- 676 (9) requiring notice of any initial determination or revised determination to be given in accordance with the regulations to the governing bodies of schools maintained by the authority in question<sup>18</sup>.

1 The regulations under the School Standards and Framework Act 1998 s 47 (as amended in relation to England; prospectively amended in relation to Wales) (see PARA 312 ante). 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under s 47 (as amended in relation to England; prospectively amended in relation to Wales) see the Schools Forums (England) Regulations 2002, SI 2002/2114 (amended by SI 2004/447; SI 2005/3299) (cited in PARA 317 post); the Financing of Maintained Schools (England) (No 2) Regulations 2003, SI 2003/3247 (amended by SI 2004/659); the Schools Budget Shares (Wales) Regulations 2004, SI 2004/2506 (amended by SI 2005/2913); and the Financing of Maintained Schools (England) Regulations 2004, SI 2004/3130. See further note 2 infra.

2 As to the determination of a school's budget share see the Financing of Maintained Schools (England) (No 2) Regulations 2003, SI 2003/3247, Pt 2 (regs 3-26), Schs 1, 2 (reg 26, Sch 2 amended by SI 2004/659) (see also PARA 312 note 7 ante); the Schools Budget Shares (Wales) Regulations 2004, SI 2004/2506 (amended by SI 2005/2913); and the Financing of Maintained Schools (England) Regulations 2004, SI 2004/3130, Pt 2 (regs 3-26), Schs 1, 2. For the meaning of 'budget share' see PARA 312 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid s 47(2)(a). As to local education authorities see PARA 20 ante. The time by which regulations made in pursuance of s 47(2)(a) (see head (1) in the text) require an initial determination of schools' budget shares for a funding period to be made may be up to 48 months before the beginning of the funding period: s 47(2A) (added by the Education Act 2005 s 101, Sch 16 para 6(1), (4)). For the meaning of 'funding period' see PARA 312 note 3 ante. The School Standards and Framework Act 1998 s 47A(2A) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

4 School Standards and Framework Act 1998 s 47(2)(b).

5 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

6 For these purposes, 'exclude', in relation to the exclusion of a child from a school, means exclude on disciplinary grounds; and 'exclusion' must be construed accordingly: ibid s 142(1) (definition added by the Education Act 2002 s 215(1), Sch 21 para 112). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the exclusion of pupils see PARA 562 et seq post.

7 For the meaning of 'maintained school' for these purposes see PARA 312 note 1 ante; and as to the meaning of 'schools maintained by a local education authority' see PARA 312 note 2 ante. For the meaning of 'maintained school' generally see PARA 94 ante.

8 School Standards and Framework Act 1998 s 47(2)(c). Regulations made in pursuance of s 47(2)(c) (see head (3) in the text) may provide for the adjustments to be made on such basis as may be prescribed, which may involve the deduction from one school's budget share of an amount which is greater or less than that allocated to another school's budget share in respect of the excluded pupil: s 47(3).

9 For the meaning of 'new school' see PARA 312 note 2 ante.

10 School Standards and Framework Act 1998 s 47(2)(d).

11 For the meaning of 'funding period' see PARA 312 note 3 ante.

12 School Standards and Framework Act 1998 s 47(2)(e) (amended by the Education Act 2005 Sch 16 para 6(1), (3)(b)). The amendments made to the School Standards and Framework Act 1998 s 47(2)(e) by the Education Act 2005 Sch 16 para 6(1), (3)(b) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'. For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

13 Ibid s 47(2)(f).

14 'Prescribed' means prescribed by regulations (see note 1 supra): ibid s 142(1).

15 As to schools forums see PARA 317 post.

16 School Standards and Framework Act 1998 s 47(2)(g) (substituted by the Education Act 2005 Sch 16 para 6(1), (3)(d)). The School Standards and Framework Act 1998 s 47(2)(g) is substituted as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, head (7) in the text should be read as allowing regulations to make provision enabling the National Assembly for Wales, where it appears to it to be expedient to do so, to authorise such authorities to determine (or redetermine) budget shares, to such extent as it may specify, in accordance with arrangements approved by it (in place of those provided for by the



regulations): see the School Standards and Framework Act 1998 s 47(2)(g) (as originally enacted). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

17 Ibid s 47(2)(dd) (added by the Education Act 2005 Sch 16 para 6(1), (3)(a)). The School Standards and Framework Act 1998 s 47(2)(dd) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

18 School Standards and Framework Act 1998 s 47(2)(ff) (added by the Education Act 2005 Sch 16 para 6(1), (3)(c)). The School Standards and Framework Act 1998 s 47(2)(ff) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante.

## **UPDATE**

### **313 Determination of school's budget share**

NOTES 1, 2--SI 2003/3247 now replaced by School Finance (England) Regulations 2008, SI 2008/228 (see PARA 312 NOTE 7). SI 2004/2506 further amended: SI 2005/3238.

NOTE 1--SI 2002/2114 further amended: SI 2006/5, SI 2008/47.

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### **314. Determination of local education authority's schools budget in Wales.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

Before the schools budget deadline<sup>2</sup> in any financial year<sup>3</sup>, a local education authority<sup>4</sup> must determine the proposed amount of its schools budget<sup>5</sup> for the following financial year and give notice of its determination to the National Assembly for Wales<sup>6</sup> and to the governing body of every school maintained by the authority<sup>7</sup>. If it appears to the Assembly that, in all the circumstances, the amount proposed in such a notice<sup>8</sup> as a local education authority's schools budget for a financial year is inadequate, the Assembly may, within the period of 14 days beginning with the schools budget deadline in the financial year preceding that financial year, give the authority a notice<sup>9</sup>, which either:

- 677 (1) determines the minimum amount of the authority's schools budget for the year under consideration<sup>10</sup>; or
- 678 (2) specifies the amount which the Assembly would have determined as the minimum amount of the authority's schools budget for the year under consideration if it had acted under head (1) above and states the Assembly's intention to determine the minimum amount of the authority's schools budget for the following financial year<sup>11</sup>.

If, at the schools budget deadline in any financial year, a local education authority has failed to give the Assembly a notice<sup>12</sup> in relation to its schools budget for the following financial year, the Assembly may, at any time after that deadline, give the authority a notice under head (1) or head (2) above<sup>13</sup>.

The local education authority may, within the period of 14 days beginning with the date of a notice given under head (1) above, give the Assembly notice of its objection to its determination, giving reasons for the objection<sup>14</sup>. Where the local education authority has given notice of its objection in this way, the notice given under head (1) above ceases to have effect, but the Assembly may by order prescribe<sup>15</sup> the minimum amount of the authority's schools budget for the year under consideration<sup>16</sup>. However, where a notice under head (1) above has been given to a local education authority and no notice of objection has been given during the period specified<sup>17</sup>, or where an order has been made by the Assembly<sup>18</sup>, the local education authority must determine a schools budget for the year under consideration which is not less than the amount specified in relation to the authority in the notice or order<sup>19</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b), the provisions of the School Standards and Framework Act 1998 s 45A(5), (6) (as added and amended) are repealed by the Education Act 2005 ss 101, 123, Sch 16 para 3(1), (8), Sch 19 Pt 4, and the School Standards and Framework Act 1998 ss 45B-45C (as added) are substituted by the Education Act 2005 Sch 16 para 5. In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the determination of a local education authority's school's budget in Wales after such a day has been appointed see PARA 316 post. As to the determination of a local education authority's school's budget in England see PARA 315 post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For these purposes, 'the schools budget deadline' is the end of January in the case of an authority in Wales: see the School Standards and Framework Act 1998 s 45A(6) (added by the Education Act 2002 s 41(1) (amended by the Local Government Act 2003 s 127(1), Sch 7 para 66(1), (4))). See note 1 supra.

3 For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 As to local education authorities see PARA 20 ante.

5 For the meaning of a local education authority's 'schools budget' see PARA 312 ante.

6 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 School Standards and Framework Act 1998 s 45A(5) (added by the Education Act 2002 s 41(1) (amended by the Local Government Act 2003 Sch 7 para 66(3))). See note 1 supra. As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante. As to schools forums advising on matters relating to the local education authority's schools budget see PARA 317 post.

8 I.e. a notice under the School Standards and Framework Act 1998 s 45A(5) (as added and amended; prospectively repealed in relation to Wales) (see the text and notes 2-7 supra).

9 Ibid s 45B(1) (s 45B added by the Education Act 2002 s 42; and the School Standards and Framework Act 1998 s 45B(1) amended by the Local Government Act 2003 s 127(1), Sch 7 para 66(1), (5)). See note 1 supra.

10 School Standards and Framework Act 1998 s 45B(4) (as added: see note 9 supra). 'The year under consideration' means the financial year to which the notice under s 45A(5) (as added and amended; prospectively repealed in relation to Wales) (see the text and notes 2-7 supra) relates or, in a case falling within s 45B(2) (as added and amended; prospectively substituted in relation to Wales) (see the text and notes 12-13 infra), the financial year in relation to which such a notice ought to have been given: s 45B(3) (as so added). A notice under s 45B(4) (as added; prospectively substituted in relation to Wales) or s 45B(5) (as added; prospectively substituted in relation to Wales) (see head (2) in the text) must include a statement of the Assembly's reasons for giving the notice (s 45B(6) (as so added)); and the Assembly may act under different subsections in relation to different authorities (s 45B(7) (as so added)). See note 1 supra.

11 Ibid s 45B(5) (as added: see note 9 supra). See notes 1, 10 supra.

12 I.e. under ibid s 45A(5) (as added and amended; prospectively repealed in relation to Wales) (see the text and notes 2-7 supra).

13 Ibid s 45B(2) (as added (see note 9 supra); and amended by the Local Government Act 2003 Sch 7 para 66(1), (6)(a), (b))). See note 1 supra.

14 School Standards and Framework Act 1998 s 45C(1) (s 45C added by the Education Act 2002 s 42). See note 1 supra.

15 'Prescribe' means prescribe by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

16 Ibid s 45C(2) (as added: see note 14 supra). The amount prescribed under s 45C(2) (as added; prospectively substituted in relation to Wales) must not be greater than the amount specified in the notice under s 45B(4) (as added; prospectively substituted in relation to Wales) (see head (1) in the text): s 45C(3) (as so added). An order under s 45C(2) (as added; prospectively substituted in relation to Wales) may relate to two or more authorities: s 45C(4) (as so added). See note 1 supra. As to the making of orders under the School Standards and Framework Act 1998 see PARA 82 note 15 ante.

17 I.e. the period specified in ibid s 45C(1) (as added; prospectively substituted in relation to Wales) (see the text and note 14 supra).

18 I.e. under ibid s 45C(2) (as added; prospectively substituted in relation to Wales) (see the text and notes 15-16 supra).

19 Ibid s 45C(6) (as added: see note 14 supra). See note 1 supra.

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### **315. Determination of local education authority's schools budget in England.**

Regulations<sup>1</sup> may require a local education authority<sup>2</sup> in England<sup>3</sup>, not later than the prescribed date<sup>4</sup>, to make an initial determination of its schools budget<sup>5</sup> for a funding period<sup>6</sup>. Such regulations may: (1) authorise or require local education authorities in England to take account of matters arising after the initial determination of their schools budgets for any funding period but before the beginning of the funding period, by redetermining their schools budgets for the period in accordance with the regulations<sup>7</sup>; and (2) require notice of any initial determination or revised determination to be given in accordance with the regulations to the governing bodies of schools maintained by the local education authority<sup>8</sup>.

1 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante.

The statutory instrument containing the first regulations to be made under s 45AA (as added) is not subject to annulment in pursuance of a resolution of either House of Parliament but a draft instrument containing any such regulations must be laid before and approved by a resolution of each House of Parliament: see s 138(5)(c) (added by the Education Act 2005 s 101, Sch 16 para 8). At the date at which this volume states the law, no such regulations had been made.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 The date prescribed for the purposes of the School Standards and Framework Act 1998 s 45AA(1) (as added) may be a date falling up to 48 months before the beginning of the funding period: s 45AA(2) (s 45AA added by the Education Act 2005 Sch 16 para 4). For the meaning of 'funding period' see PARA 312 note 3 ante. 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1). At the date at which this volume states the law, no such regulations had been made.

5 For the meaning of a local education authority's 'schools budget' see PARA 312 ante.

6 School Standards and Framework Act 1998 s 45AA(1) (as added: see note 4 supra).

7 Ibid s 45AA(3)(a) (as added: see note 4 supra).

8 Ibid s 45AA(3)(b) (as added: see note 4 supra). As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante.

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**316. New provisions relating to the determination of local education authority's school's budget in Wales.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Before the schools budget deadline<sup>2</sup> in any funding period<sup>3</sup>, a local education authority in Wales must: (1) determine the proposed amount of its schools budget<sup>4</sup> for the following funding period<sup>5</sup>; and (2) give notice of its determination to the National Assembly for Wales and to the governing body of every school maintained by the authority<sup>6</sup>.

Regulations may require a local education authority in Wales, not later than the prescribed date<sup>7</sup>, to make an initial determination of its schools budget for a funding period<sup>8</sup>. Such regulations may: (a) authorise or require local education authorities in Wales to take account of matters arising after the initial determination of their schools budgets for the funding period but before the beginning of the funding period, by redetermining their schools budgets for the period in accordance with the regulations<sup>9</sup>; and (b) require notice of any initial determination or revised determination to be given in accordance with the regulations to the Assembly and to the governing bodies of schools maintained by the local education authority<sup>10</sup>.

If it appears to the Assembly that, in all the circumstances, the proposed amount of a local education authority's schools budget for a funding period<sup>11</sup> is inadequate, the Assembly may, within the period of 14 days beginning with the schools budget deadline<sup>12</sup> in the funding period preceding that funding period, give the authority a notice<sup>13</sup>, which either:

- 679 (i) determines the minimum amount of the authority's schools budget for the period under consideration<sup>14</sup>; or
- 680 (ii) specifies the amount which the Assembly would have determined as the minimum amount of the authority's schools budget for the period under consideration if it had acted under head (i) above and states the Assembly's intention to determine the minimum amount of the authority's schools budget for the following funding period<sup>15</sup>.

If, at the schools budget deadline in any funding period, a local education authority in Wales has failed to give the Assembly a notice<sup>16</sup>, the Assembly may, at any time after that deadline, give the authority a notice under head (i) or head (ii) above<sup>17</sup>.

The local education authority may, within the period of 14 days beginning with the date of a notice given under head (i) above, give the Assembly notice of its objection to the Assembly's determination, giving reasons for its objection<sup>18</sup>. Where the local education authority has given notice of its objection in this way, the notice given under head (i) above ceases to have effect, but the Assembly may by order prescribe the minimum amount of the authority's schools budget for the period under consideration<sup>19</sup>. However, where a notice under head (i) above has been given to a local education authority and no notice of objection has been given during the period specified<sup>20</sup>, or where an order has been made by the Assembly<sup>21</sup>, the local education authority must determine a schools budget for the period under consideration which is not less than the amount specified in relation to the authority in the notice or order<sup>22</sup>.

1 The School Standards and Framework Act 1998 ss 45AB-45AC, 45D are added, and ss 45B-45C (as added) are substituted, by the Education Act 2005 s 101, Sch 16 paras 4-5 as from a day to be appointed under ss 125(4), 126(1), (4)(b). At the date at which this volume states the law, no such day had been appointed in relation to Wales, although the day appointed for England in relation to the School Standards and Framework Act 1998 s 45D (as added) is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8). For the meaning of 'Wales' see PARA 52 note 13 ante; and for the meaning of 'England' see PARA 52 note 11 ante.

The National Assembly for Wales may by order: (1) repeal any of the following provisions, namely the School Standards and Framework Act 1998 s 45AB (prospectively added) (see the text and notes 2-6 *infra*), s 45AC(4) (prospectively added) (see note 8 *infra*), s 45B (as added; prospectively substituted) (see the text and notes 11-17 *infra*), and s 45C (as added; prospectively substituted) (see the text and notes 18-22 *infra*); and (2) make any amendments of the other provisions of Pt II Ch IV (ss 45-53A) (as amended) which appear to the Assembly to be necessary or expedient in consequence of any repeal made by virtue of head (1) *supra*: s 45D. As to the National Assembly for Wales see PARA 53 ante. As to the making of orders under the School Standards and Framework Act 1998 see PARA 82 note 15 ante.

2 For the purposes of *ibid* s 45AB (prospectively added), 'the schools budget deadline', in relation to a local education authority in Wales, means the end of January or such other time as may be prescribed: s 45AB(2). See note 1 *supra*. As to local education authorities see PARA 20 ante. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

3 For the meaning of 'funding period' see PARA 312 note 3 ante.

4 For the meaning of a local education authority's 'schools budget' see PARA 312 ante.

5 School Standards and Framework Act 1998 s 45AB(1)(a). See note 1 *supra*.

6 *Ibid* s 45AB(1)(b). See note 1 *supra*. As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante.

7 The date prescribed for the purposes of *ibid* s 45AC(1) (prospectively added) may be a date falling up to 48 months before the beginning of the funding period: s 45AC(2). See note 1 *supra*.

8 *Ibid* s 45AC(1). Regulations under s 45AC(1) (prospectively added) are not to have effect in relation to an authority's schools budget for any funding period if s 45AB (prospectively added) (see the text and notes 2-6 *supra*) is in force in relation to that funding period: s 45AC(4). See note 1 *supra*. At the date at which this volume states the law, no regulations had been made for these purposes.

9 *Ibid* s 45AC(3)(a). See note 1 *supra*.

10 *Ibid* s 45AC(3)(b). See note 1 *supra*.

11 In *ibid* s 45B(1) (as added; prospectively substituted), the reference to the proposed amount of a local education authority's schools budget for a funding period is: (1) if s 45AB (prospectively added) (see the text and notes 2-6 *supra*) is in force in relation to that funding period, a reference to the amount specified in a notice under s 45AB(1)(b) (prospectively added) (see head (2) in the text) (s 45B(2)(a) (s 45B added by the Education Act 2002 s 42)); or (2) if regulations under the School Standards and Framework Act 1998 s 45AC(1) (prospectively added) (see the text and notes 7-8 *supra*) are in force in relation to that funding period, a reference to such amount, determined by the authority in accordance with those regulations and specified in a notice required by those regulations to be given to the Assembly, as may be prescribed (s 45B(2)(b) (as so added)). See note 1 *supra*.

12 In *ibid* s 45B (as added; prospectively substituted), 'the schools budget deadline': (1) in a case falling within s 45B(2)(a) (as added; prospectively substituted) (see note 11 head (1) *supra*), has the same meaning as in s 45AB (prospectively added) (see note 2 *supra*); and (2) in a case falling within s 45B(2)(b) (as added; prospectively substituted) (see note 11 head (2) *supra*), means the time in the funding period preceding the funding period to which the schools budget relates by which regulations under s 45AC(1) (prospectively added) (see the text and notes 7-8 *supra*) require notice of a revised determination of the schools budget to be given to the Assembly: s 45B(4) (as added: see note 11 *supra*). See note 1 *supra*.

13 *Ibid* s 45B(1) (as added: see note 11 *supra*). See note 1 *supra*.

14 *Ibid* s 45B(6) (as added: see note 11 *supra*). In s 45B (as added; prospectively substituted) and s 45C (as added; prospectively substituted) (see the text and notes 18-22 *infra*), 'the period under consideration' means the funding period to which the notice mentioned in s 45B(2)(a) (as added; prospectively substituted) (see note

11 head (1) supra) or s 45B(2)(b) (as added; prospectively substituted) (see note 11 head (2) supra) relates or, in a case falling within s 45B(3) (as added; prospectively substituted) (see the text and notes 16-17 infra), the funding period in relation to which such a notice ought to have been given: s 45B(5) (as so added). See note 1 supra. A notice under s 45B(6) (as added; prospectively substituted) (see head (i) in the text) or s 45B(7) (as added; prospectively substituted) (see head (ii) in the text) must include a statement of the reasons for giving the notice (s 45B(8) (as so added)); and the Assembly may act under different subsections in relation to different authorities (s 45B(9) (as so added)). See note 1 supra.

15 Ibid s 45B(7) (as added: see note 11 supra). See note 1 supra.

16 Ie either a notice under ibid s 45AB(1)(b) (prospectively added) (see head (2) in the text) or a notice required as mentioned in s 45B(2)(b) (as added; prospectively substituted) (see note 11 head (2) supra).

17 Ibid s 45B(3) (as added: see note 11 supra). See note 1 supra.

18 Ibid s 45C(1) (s 45C added by the Education Act 2002 s 42). See note 1 supra.

19 School Standards and Framework Act 1998 s 45C(2) (as added: see note 18 supra). See note 1 supra. The amount prescribed under s 45C(2) (as added; prospectively substituted) must not be greater than the amount specified in the notice under s 45B(6) (as added; prospectively substituted) (see head (i) in the text): s 45C(3) (as so added). An order under s 45C(2) (as added; prospectively substituted) may relate to two or more authorities: s 45C(4) (as so added). See note 1 supra.

20 Ibid s 45C(5)(a) (as added: see note 18 supra). See note 1 supra. The period mentioned in the text is the period specified in s 45C(1) (as added; prospectively substituted) (see the text and note 18 supra).

21 Ibid s 45C(5)(b) (as added: see note 18 supra). See note 1 supra. The order mentioned in the text is an order made under s 45C(2) (as added; prospectively substituted) (see the text and note 19 supra).

22 Ibid s 45C(5) (as added: see note 18 supra). See note 1 supra.

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### **317. Schools forums to advise on matters relating to the local education authority's schools budget.**

Every local education authority<sup>1</sup> must in accordance with regulations<sup>2</sup> establish for its area<sup>3</sup> before such date as may be prescribed<sup>4</sup> a body, to be known as a schools forum, representing the governing bodies and head teachers<sup>5</sup> of schools maintained by the authority<sup>6</sup> and, if the authority so determines, also representing such bodies as the authority may from time to time in accordance with regulations determine<sup>7</sup>.

The purpose of a schools forum is:

- 681 (1) to advise the relevant authority<sup>8</sup> on such matters relating to the authority's schools budget<sup>9</sup> as may be prescribed by regulations<sup>10</sup>; and
- 682 (2) to exercise any function that may be imposed on the schools forum by virtue of the provisions relating to the determination of specified budgets of a local education authority<sup>11</sup> or by virtue of the provisions authorising local education authorities in prescribed cases to determine (or redetermine) budget shares<sup>12</sup>.

Regulations<sup>13</sup> may include provision requiring a relevant authority to have regard to advice given by its schools forum, or requiring a relevant authority to consult its schools forum in relation to prescribed matters or before taking prescribed decisions<sup>14</sup>.

Regulations may make provision as to the constitution, meetings and proceedings of a schools forum<sup>15</sup>. Regulations may also make provision with respect to expenses of a schools forum<sup>16</sup>. Except as provided by regulations, the expenses of a schools forum must be defrayed by the relevant authority<sup>17</sup>.

1 As to local education authorities see PARA 20 ante.

2 'Regulations' means regulations made by under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under s 47A (as added; amended in relation to England; prospectively amended in relation to Wales) see the School Forums (England) Regulations 2002, SI 2002/2114 (amended by SI 2004/447; SI 2005/3299); and the Schools Forums (Wales) Regulations 2003, SI 2003/2909 (amended by SI 2005/2913).

3 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 'Prescribed' means prescribed by regulations (see note 2 supra): *ibid* s 142(1).

5 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 142(8).

6 As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante.

7 School Standards and Framework Act 1998 s 47A(1) (s 47A added by the Education Act 2002 s 43). The School Standards and Framework Act 1998 s 47A(1) (as added) does not apply in relation to the Common Council of the City of London or the Council of the Isles of Scilly: s 47A(2) (as so added). As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55; and as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36. As to the regulations made in relation to the



establishment of a schools forum see the School Forums (England) Regulations 2002, SI 2002/2114, reg 2; and the Schools Forums (Wales) Regulations 2003, SI 2003/2909, reg 2.

8 For the purposes of the School Standards and Framework Act 1998 s 47A (as added; amended in relation to England; prospectively amended in relation to Wales), 'relevant authority', in relation to a schools forum, means the local education authority by whom the forum is established: s 47A(9) (as added: see note 7 supra).

9 For the meaning of a local education authority's 'schools budget' see PARA 312 ante.

10 School Standards and Framework Act 1998 s 47A(3)(a) (as added: see note 7 supra). The matters referred to in the text may be prescribed either by regulations under the School Standards and Framework Act 1998 s 45A(3) (as added; amended in relation to England; prospectively amended in relation to Wales) (see PARA 312 ante) or by regulations under s 47A(3) (as added; substituted in relation to England; prospectively substituted in relation to Wales): s 47A(3)(a) (as so added). As to the regulations made in relation to the relevant authority consulting a schools forum annually in respect of the relevant authority's functions relating to the schools budget see the School Forums (England) Regulations 2002, SI 2002/2114, regs 9-10; and the Schools Forums (Wales) Regulations 2003, SI 2003/2909, regs 7, 10.

The School Standards and Framework Act 1998 s 47A(3) (as added) is substituted by the Education Act 2005 s 101, Sch 16 para 7 as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, head (2) in the text should be omitted.

11 le by virtue of the School Standards and Framework Act 1998 s 45A(4A) (added in relation to England; prospectively added in relation to Wales) (see PARA 312 note 9 ante).

12 Ibid s 47A(3)(b) (as added: see note 7 supra). See note 10 supra. The provisions referred to in the text are those contained in s 47(2)(g) (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 313 note 14 ante).

13 le regulations under ibid s 45A(3) (as added; amended in relation to England; prospectively amended in relation to Wales) (see PARA 312 ante) or under s 47A(3) (as added; substituted in relation to England; prospectively substituted in relation to Wales) (see the text and notes 8-10 supra).

14 Ibid s 47A(4) (as added: see note 7 supra). As to regulations made in relation to consultation between the relevant authority and a schools forum on the school funding formula and on contracts see the School Forums (England) Regulations 2002, SI 2002/2114, regs 7-8, 10; and the Schools Forums (Wales) Regulations 2003, SI 2003/2909, regs 8-10.

15 School Standards and Framework Act 1998 s 47A(5) (as added: see note 7 supra). Regulations made by virtue of s 47A(5) (as added) may include provision enabling the Secretary of State in prescribed circumstances to remove from membership of a schools forum any non-schools member: s 47A(6) (as so added). For the purposes of s 47A (as added; amended in relation to England; prospectively amended in relation to Wales), 'non-schools member', in relation to a schools forum, means a member other than a schools member; and 'schools member', in relation to a schools forum, means a member elected to represent governing bodies or head teachers of schools maintained by the relevant authority: s 47A(9) (as so added). As to the regulations made in relation to the constitution, meetings and proceedings of a schools forum see the School Forums (England) Regulations 2002, SI 2002/2114, regs 3-6 (regs 4, 6 amended by SI 2004/447; School Forums (England) Regulations 2002, SI 2002/2114, regs 3-6 amended, and reg 4A added, by SI 2005/3299); and the Schools Forums (Wales) Regulations 2003, SI 2003/2909, regs 3-6 (reg 4 amended by SI 2005/2913). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

16 School Standards and Framework Act 1998 s 47A(7) (as added: see note 7 supra). As to the regulations made in relation to the expenses of a schools forum see the School Forums (England) Regulations 2002, SI 2002/2114, Pt 4 (regs 11-12); and the Schools Forums (Wales) Regulations 2003, SI 2003/2909, Pt 4 (regs 11-12).

17 School Standards and Framework Act 1998 s 47A(8) (as added: see note 7 supra).

## UPDATE

### **317 Schools forums to advise on matters relating to the local education authority's schools budget**

TEXT AND NOTES--School Standards and Framework Act 1998 s 47A further amended: Education and Skills Act 2008 s 165, Sch 2 (in force in relation to England: SI 2008/3077), Apprenticeships, Skills, Children and Learning Act 2009 s 194(1), (8).

NOTE 2--SI 2003/2909 further amended: SI 2005/3238, SI 2006/5.

NOTE 10--In exercising its functions, a schools forum is to have regard to any children and young people's plan prepared by the local children's trust board (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 188A, 190): see School Standards and Framework Act 1998 s 47A(3A), (10) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 194(8)).

TEXT AND NOTES 11, 12--Now head (2) to exercise any other function that may be imposed on the schools forum by or under the 1998 Act Ch IV (ss 45-53A): s 47A(3)(b) (amended by Education and Inspections Act 2006 Sch 5 para 2(2)).

NOTE 14--SI 2002/2114 reg 7 revoked: SI 2008/47. SI 2002/2114 reg 8 amended: SI 2006/5. SI 2003/2909 reg 9 amended: SI 2006/5.

NOTE 15--SI 2002/2114 regs 3, 4, 4A, 6 amended, reg 5 substituted: SI 2008/47. SI 2003/2909 reg 6 amended: SI 2005/3238. 1998 Act s 47A(6) repealed: Education and Inspections Act 2006 Sch 5 para 2(3), Sch 18 Pt 6.

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### **318. Local education authorities' financial schemes.**

Each local education authority<sup>1</sup> must prepare a scheme dealing with such matters connected with the financing of the schools maintained by the authority<sup>2</sup> or the exercise by the governing bodies<sup>3</sup> of such schools of the power to provide community facilities<sup>4</sup>, as are required to be dealt with in the scheme<sup>5</sup> by or by virtue of regulations made by the Secretary of State<sup>6</sup>, or any provision of Part II of the School Standards and Framework Act 1998<sup>7</sup>. Such regulations may, in particular, require a scheme to deal with:

- 683 (1) the carrying forward from one funding period to another of surpluses and deficits arising in relation to schools' budget shares<sup>8</sup>;
- 684 (2) amounts which may be charged against schools' budget shares<sup>9</sup>;
- 685 (3) amounts received by schools which may be retained by their governing bodies and the purposes for which such amounts may be used<sup>10</sup>;
- 686 (4) the imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the management of their delegated budgets, including conditions prescribing financial controls and procedures<sup>11</sup>;
- 687 (5) the imposition, by or under the scheme, of conditions which must be complied with by schools in relation to the exercise by the governing bodies of maintained schools of the power to provide community facilities etc<sup>12</sup>, including conditions prescribing financial controls and procedures<sup>13</sup>;
- 688 (6) terms on which services and facilities are provided by the authority for schools maintained by it<sup>14</sup>.

Where there is any inconsistency between a scheme prepared by a local education authority<sup>15</sup> and any other rules or regulations made by the authority which relate to the funding or financial management of schools which it maintains, the terms of the scheme must prevail<sup>16</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'maintained school' for these purposes see PARA 312 note 1 ante; and as to the meaning of 'schools maintained by a local education authority' see PARA 312 note 2 ante. For the meaning of 'maintained school' generally see PARA 94 ante.

3 As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante.

4 I.e. the power conferred by the Education Act 2002 s 27 (see PARA 227 ante). Expenditure incurred by the governing body of a maintained school in the exercise of the power conferred by s 27 must, as against third parties, be treated as part of the expenses of maintaining the school under the School Standards and Framework Act 1998 s 22 (as amended) (see PARA 302 et seq ante) but if met by the local education authority may be recovered by it from the governing body: s 51A(1) (s 51A added by the Education Act 2002 s 40, Sch 3 para 4). Except as provided by regulations under s 50(3)(b) (see PARA 321 post), no expenditure incurred by the governing body of a maintained school in the exercise of the power referred to in the School Standards and Framework Act 1998 s 51A(1) (as added) will be met from the school's budget share for any funding period: s 51A(2) (as so added; and amended by the Education Act 2005 s 117, Sch 18 para 9). For the meaning of 'funding period' see PARA 312 note 3 ante. The amendment made to the School Standards and Framework Act 1998 s 51A(2) (as added) by the Education Act 2005 Sch 18 para 9 has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034,

art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'. For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). Section 51A(2) (as added) applies at a time when the school does not have a delegated budget by virtue of any suspension under s 17 (as amended) (see PARA 1269 post) or s 51, Sch 15 (as amended) (see PARAS 322-325 post), as well as a time when it does have a delegated budget: s 51A(3) (as so added). For the meaning of 'budget share' see PARA 312 ante. For the meaning of 'school having a delegated budget' see PARA 320 post. As to the application of s 51A (as added) in relation to federated schools and their governing bodies (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 33.

5 In the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) (see PARA 102 et seq ante) any reference to 'the scheme', in relation to a maintained school, is a reference to the scheme prepared (or by virtue of s 48(4), Sch 14 para 1(6) (see PARA 319 post) treated as prepared) by the local education authority under s 48 (as amended), as from time to time revised under Sch 14 para 2 (see PARA 319 post): s 48(5).

6 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the required content of such schemes applicable to the financial year beginning on 1 April 2005 in relation to England see the Financing of Maintained Schools (England) Regulations 2004, SI 2004/3130, reg 29, Sch 3; and as to the required content of such schemes applicable to the financial year beginning after 31 March 2005 in relation to Wales see the Education (LEA Financial Schemes) (Wales) Regulations 2004, SI 2004/2507, reg 4, Schedule. The statutory instrument containing the first regulations to be made under the School Standards and Framework Act 1998 s 48(1) (as originally enacted) was not subject to annulment in pursuance of a resolution of either House of Parliament but a draft instrument containing the regulations had to be laid before and approved by a resolution of each House of Parliament: see s 138(5)(b)(ii).

7 Ibid s 48(1) (amended by the Education Act 2002 Sch 3 para 2(1), (2)). The School Standards and Framework Act 1998 s 48(1) (as amended) applies in relation to the preparation by the authority of any revision of a scheme under Sch 14 para 2 (see PARA 319 post) as it applies in relation to the preparation by the authority of a scheme: Sch 14 para 2(2).

Any function of a local education authority in England which is conferred by or under s 48 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

8 School Standards and Framework Act 1998 s 48(2)(a) (amended by the Education Act 2005 Sch 18 para 7). The amendment made to the School Standards and Framework Act 1998 s 48(2)(a) by the Education Act 2005 Sch 18 para 7 has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'.

9 School Standards and Framework Act 1998 s 48(2)(b). See also note 7 supra.

10 Ibid s 48(2)(c). See also note 7 supra.

11 Ibid s 48(2)(d). See also note 7 supra.

12 Ie the power mentioned in ibid s 48(1) (as amended) (see the text and note 4 supra).

13 Ibid s 48(2)(dd) (added by the Education Act 2002 Sch 3 para 2(1), (3)). See also note 7 supra.

14 School Standards and Framework Act 1998 s 48(2)(e). See also note 7 supra.

15 Ie under ibid s 48(1) (as amended) (see the text to notes 1-7 supra).

16 Ibid s 48(3). See also note 7 supra.

## UPDATE

### 318 Local education authorities' financial schemes

TEXT AND NOTE 2--For 'prepare' read 'maintain': School Standards and Framework Act 1998 s 48(1) (amended by Education and Inspections Act 2006 Sch 5 para 3(2)).

NOTE 4--SI 2004/2042 reg 33 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 35.

NOTE 5--Any reference in the School Standards and Framework Act 1998 Pt II (ss 20-83) to 'the scheme', in relation to a maintained school, is a reference to the scheme for the time being maintained under s 17: s 48(5) (amended by Education and Inspections Act 2006 Sch 5 para 3(5)).

NOTE 6--SI 2004/3130 replaced by School Finance (England) Regulations 2008, SI 2008/228 (see PARA 312 NOTE 7).

NOTE 7--School Standards and Framework Act 1998 Sch 14 para 2 substituted: see PARA 319.

TEXT AND NOTE 15--For 'prepared' read 'maintained': School Standards and Framework Act 1998 s 48(3) (amended by Education and Inspections Act 2006 Sch 5 para 3(3)).

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### **319. Approval, imposition or revision of financial schemes.**

A financial scheme prepared by a local education authority<sup>1</sup> must be submitted to the Secretary of State<sup>2</sup> on or before such date as he may by order direct, whether generally, or in relation to that authority or to any class or description of local education authorities to which that authority belongs<sup>3</sup>. In preparing such a scheme a local education authority must take into account any guidance given by the Secretary of State whether generally, or, in relation to that authority or to any class or description of local education authorities to which that authority belongs, as to the provisions he regards as appropriate for inclusion in the scheme<sup>4</sup>. Before preparing such a scheme the local education authority must consult, in relation to any time on or after 1 September 1999<sup>5</sup>, the governing body<sup>6</sup> and the head teacher<sup>7</sup> of every school maintained by the authority<sup>8</sup>.

Such a scheme does not come into force until it has been approved by the Secretary of State or until such date as he may, in giving his approval, specify, and he may approve such a scheme either without modifications<sup>9</sup> or with such modifications as he thinks fit after consulting the authority concerned, and subject to such conditions as he may specify in giving his approval<sup>10</sup>. If in the case of any local education authority either the authority fails to submit a scheme as so required<sup>11</sup>, or it appears to the Secretary of State that a scheme submitted by the authority as so required does not accord with any guidance given by him for these purposes and cannot be made to do so merely by modifying it, he may, after consulting the authority and such other persons as he thinks fit, impose a scheme making such provision<sup>12</sup> as he considers appropriate<sup>13</sup>. A scheme must be published in such manner as may be prescribed<sup>14</sup> on its coming into force, and on such subsequent occasions as may be prescribed<sup>15</sup>.

A local education authority may<sup>16</sup> revise the whole or any part of the scheme prepared<sup>17</sup> by it<sup>18</sup>. As regards any proposed variation of the scheme, the authority must first consult every governing body and head teacher whom it is obliged to consult<sup>19</sup>, and must then submit a copy of its proposals to the Secretary of State for his approval<sup>20</sup>. The Secretary of State may by a direction revise the whole or any part of any scheme as from such date as may be specified in the direction<sup>21</sup>. Before giving such a direction the Secretary of State must consult the local education authority and such other persons as he thinks fit<sup>22</sup>.

1     Ie under the School Standards and Framework Act 1998 s 48(1) (as amended) (see PARA 318 ante). As to local education authorities see PARA 20 ante.

2     As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3     School Standards and Framework Act 1998 s 48(4), Sch 14 para 1(1). Such orders are not to be made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante.

4     Ibid Sch 14 para 1(2). For the meaning of 'the scheme' see PARA 318 note 3 ante. Schedule 14 para 1(2) applies in relation to the preparation by the authority of any revision of a scheme under Sch 14 para 2 (see the text and notes 16-22 infra) as it applies in relation to the preparation by the authority of a scheme: Sch 14 para 2(2).

5     Ie the appointed day: see PARA 102 note 3 ante.

6     As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante.

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ibid Sch 14 para 1(3)(b). For the meaning of 'maintained school' for these purposes see PARA 312 note 1 ante. As to 'schools maintained by a local education authority' see PARA 312 note 2 ante. For the meaning of 'maintained school' generally see PARA 94 ante.

Any function of a local education authority in England which is conferred by or under Sch 14 para 1(3) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

9 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

10 Ibid Sch 14 para 1(4).

11 Ie as required by ibid Sch 14 para 1(1): see the text and notes 1-3 supra.

12 Ie of a description required to be made by a scheme under ibid s 48 (as amended): see PARA 318 ante.

13 Ibid Sch 14 para 1(5). A scheme imposed by the Secretary of State by virtue of Sch 14 para 1(5) must be treated as if made under s 48 (as amended) (see PARA 318 ante) by the local education authority concerned, and comes into force on such date as may be specified in the scheme: Sch 14 para 1(6).

14 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the prescribed manner of the publication of schemes under Sch 14 para 1(7) see the Financing of Maintained Schools (England) Regulations 2004, SI 2004/3130, reg 30; and the Education (LEA Financial Schemes) (Wales) Regulations 2004, SI 2004/2507, reg 5.

15 School Standards and Framework Act 1998 Sch 14 para 1(7). As to the additional occasions when schemes require publication see the Financing of Maintained Schools (England) Regulations 2004, SI 2004/3130, reg 31; and the Education (LEA Financial Schemes) (Wales) Regulations 2004, SI 2004/2507, reg 6.

16 Ie in accordance with the School Standards and Framework Act 1998 Sch 14 para 2: see the text and notes 17-22 infra.

17 Ie under ibid s 48(1) (as amended): see PARA 318 ante.

18 Ibid Sch 14 para 2(1).

19 Ie under ibid Sch 14 para 1(3): see the text to notes 5-8 supra.

20 Ibid Sch 14 para 2(3). Where the proposals are so submitted, Sch 14 para 1(4) (see the text to notes 9-10 supra) applies to the scheme as revised as it applies to a scheme prepared under s 48 (as amended) (see PARA 318 ante): Sch 14 para 2(4).

21 Ibid Sch 14 para 2(5).

22 Ibid Sch 14 para 2(6).

## UPDATE

### 319 [Revision of local education authority schemes]

TEXT AND NOTES 1-13--School Standards and Framework Act 1998 Sch 14 para 1(1)-(6) repealed: Education and Inspections Act 2006 Sch 5 para 5(4)(a), Sch 18 Pt 6.

TEXT AND NOTES 14, 15--Now refers to a scheme maintained by a local education authority under the School Standards and Framework Act 1998 s 48(1) (see PARA 318) and for 'prescribed on its coming into force' read 'prescribed on its coming into force as revised by Sch 14': Sch 14 para 1(7) (substituted by Education and Inspections Act 2006 Sch 5 para 5(4)(b)).

NOTES 14, 15--SI 2004/3130 now replaced by School Finance (England) Regulations 2008, SI 2008/228 (see PARA 312 NOTE 7).

TEXT AND NOTES 16-22--School Standards and Framework Act 1998 Sch 14 para 2 replaced by Sch 14 paras 2A, 2B (substituted by Education and Inspections Act 2006 Sch 5 para 5(5)).

TEXT AND NOTES 16-18--For 'prepared' read 'maintained': School Standards and Framework Act 1998 Sch 14 para 2A(1) (see TEXT AND NOTES 16-22). In revising the scheme, the local education authority must take into account any guidance given by the Secretary of State, whether generally or in relation to that authority or any class or description of local education authorities to which that authority belongs, as to the provisions the Secretary of State regards as appropriate for inclusion in the scheme: Sch 14 para 2A(2).

TEXT AND NOTES 19, 20--For 'whom it is obliged to consult' read 'of every school maintained by the authority', and for 'Secretary of State for his approval' read 'authority's schools forum for its approval': School Standards and Framework Act 1998 Sch 14 para 2A(3) (see TEXT AND NOTES 16-22). Schedule 14 para 2(4) not replicated.

TEXT AND NOTES 21, 22--Regulations may make provision preventing schemes as revised from coming into force unless they are approved in accordance with the regulations by the local education authority's schools forum or by the Secretary of State: School Standards and Framework Act 1998 Sch 14 para 2B(1) (see TEXT AND NOTES 16-22). The regulations may in particular (1) prescribe circumstances in which proposals which have been submitted to a local education authority's schools forum may be submitted to the Secretary of State; (2) enable the schools forum or the Secretary of State to approve proposals with modifications; and (3) enable the schools forum or the Secretary of State, in giving their or his approval, to specify the date on which the scheme as revised is to come into force: Sch 14 para 2B(2). Schedule 14 para 2(5), (6) not replicated. The power of the Secretary of State under these provisions is exercisable in relation to Wales by the National Assembly for Wales: see Education and Inspections Act 2006 s 180.



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### **320. Maintained schools to have delegated budgets.**

Every maintained school<sup>1</sup> must have a 'delegated budget'<sup>2</sup>, which means that the governing body of the school<sup>3</sup> is entitled to manage the school's budget share<sup>4</sup>. Where a school has a delegated budget the governing body is accordingly said to 'have a right to a delegated budget'<sup>5</sup>. A new school<sup>6</sup> must have a delegated budget as from the school opening date<sup>7</sup>, unless a different date applies<sup>8</sup>.

A school must have a delegated budget:

- 689 (1) as from a date earlier than the school opening date if the local education authority so determines<sup>9</sup>;
- 690 (2) as from a later date if the authority so determines with the written approval of the Secretary of State<sup>10</sup>; or
- 691 (3) as from such date as the Secretary of State may determine, if the authority has determined that the school should have a delegated budget as from a later date but that date is not approved by him<sup>11</sup>.

Subject to:

- 692 (a) the right<sup>12</sup> of a governing body to spend the school's budget share where the school has a delegated budget<sup>13</sup>;
- 693 (b) the power<sup>14</sup> of governing body to spend amounts out of the budget share where the delegation of the budget is suspended<sup>15</sup>;
- 694 (c) education standards grants<sup>16</sup>; and
- 695 (d) any provisions of the local education authority scheme<sup>17</sup>,

a local education authority may not delegate to the governing body of any maintained school the power to spend any part of the authority's local education authority budget or schools budget<sup>18</sup>.

Any amount made available by a local education authority to the governing body of a maintained school<sup>19</sup> remains the property of the authority until spent by the governing body or the head teacher<sup>20</sup>, and when spent by the governing body or the head teacher, must be taken to be spent by it or him as the authority's agent<sup>21</sup>.

1 For the meaning of 'maintained school' for these purposes see PARA 312 note 1 ante. For the meaning of 'maintained school' generally see PARA 94 ante.

2 School Standards and Framework Act 1998 s 49(1). A maintained school falling within s 49(1) did not have a delegated budget as from the day on which s 49 came into force (ie 1 April 1999) if the governing body's right to a delegated budget had been suspended under the Education Act 1996 s 117 (now repealed) (suspension of financial delegation for mismanagement etc) or the School Inspections Act 1996 s 28 (now repealed) (suspension of right to delegated budget), and that suspension had not been previously revoked with effect from that or any earlier day: School Standards and Framework Act 1998 s 144(7), Sch 32 para 5(1). For the purposes of Sch 32 para 5, references to a school having a delegated budget or to a governing body's right to such a budget are to be construed in accordance with s 49(7) (see the text to notes 3-5 infra): Sch 32 para 5(7)(b). Such a school must, however, have had a delegated budget as from the day with effect from which that suspension is revoked: Sch 32 para 5(2). The Secretary of State may by order determine that a relevant school

does not have a delegated budget as from the day on which s 49 (as originally enacted) came into force where he considers that it would not be expedient for the school to have such a budget as from that day for reasons connected with the financial position, or the financial management, of the school: Sch 32 para 5(3). Such orders are not to be made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante. For these purposes, 'relevant school' means a maintained school which immediately before the day on which s 49 (as originally enacted) came into force was a grant-maintained or grant-maintained special school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 Sch 32 para 5(7)(a). As grant-maintained schools see PARAS 102 note 16, 104 et seq ante. As to grant-maintained special schools see PARAS 102 note 17, 104 et seq ante.

Where the Secretary of State makes an order under Sch 32 para 5(3) in relation to a school:

- 82 (1) for the purposes of Pt II (as amended) the right of the governing body to a delegated budget must be treated as if it had been suspended by the local education authority under s 51, Sch 15 para 1 (as amended) (see PARA 322 post) on the day on which s 49 (as originally enacted) came into force (Sch 32 para 5(4)(a));
- 83 (2) the provisions of Sch 15 paras 2-4 (as amended) (see PARAS 323-325 post) (but not Sch 15 para 3(1)(a) (see PARA 324 post)) apply to any such suspension (Sch 32 para 5(4)(b)); and
- 84 (3) the school must have a delegated budget as from the day with effect from which that suspension is revoked (Sch 32 para 5(4)(c)).

At the date at which this volume states the law, no such order had been made under Sch 32 para 5. As to the making of orders under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. Any reference in any of ss 54-57 (in force in relation to Wales only) (see PARAS 354-380, 385, 392 post) to any suspension of a school's delegated budget under Sch 15 (as amended) (see PARAS 322-325 post) includes a reference to any suspension of a school's delegated budget by virtue of Sch 32 para 5(1), and (in accordance with Sch 32 para 5(4)) any such suspension by virtue of Sch 32 para 5(3): Sch 32 para 5(5). Where the day on which s 49 (as originally enacted) came into force is earlier than the day appointed under s 20(7) (see PARA 102 ante) any reference in Sch 32 para 5 to a maintained school is a reference to a school which is (within the meaning of the Education Act 1996) a school maintained by a local education authority, or a grant-maintained or grant-maintained special school, and to which the School Standards and Framework Act 1998 s 49 (as amended) applies in accordance with regulations under s 144(1) (transitional provisions): Sch 32 para 5(6). See also the transitional arrangements made by the Education (References to Delegated Budgets and Revocation) Regulations 1999, SI 1999/711 (revoked).

As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to local education authorities see PARA 20 ante.

- 3 As to the governing bodies of maintained schools see PARA 312 note 2 ante.
- 4 Schools Standards and Framework Act 1998 s 49(7). For the meaning of 'budget share' see PARA 312 ante.
- 5 Ibid s 49(7).
- 6 For the meaning of 'new school' see PARA 312 note 2 ante.
- 7 For the meaning of 'school opening date' see PARAS 102 note 11, 131 note 2 ante.
- 8 School Standards and Framework Act 1998 s 49(2).
- 9 Ibid s 49(3)(a).
- 10 Ibid s 49(3)(b).
- 11 Ibid s 49(3)(c).
- 12 Ie the right under ibid s 50 (as amended): see PARA 321 post.
- 13 Ibid s 49(4)(a).
- 14 Ie under ibid Sch 15 para 4: see PARA 325 post.
- 15 Ibid s 49(4)(b).
- 16 Ibid s 49(4)(c). The text refers to educational standards grants under the Education Act 1996 s 489(2) (as amended): see PARA 74 ante.

17 School Standards and Framework Act 1998 s 49(4)(d). For the meaning of 'the scheme' see PARA 318 note 3 ante.

18 Ibid s 49(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 100(1), (2)). For the meaning of 'local schools budget' see PARA 312 ante.

19 Ie whether under the School Standards and Framework Act 1998 s 50 (as amended) (see PARA 321 post) or otherwise.

20 Ibid s 49(5)(a). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8).

21 Ibid s 49(5)(b). Section 49(5)(b) does not apply to any such amount where it is spent by way of repayment of the principal of, or interest on, a loan, or (in the case of a voluntary aided school) to meet (in relation to Wales) expenses payable by the governing body under s 22(7), Sch 3 para 3(1) or Sch 3 para 3(2) (see PARA 308 ante) or (in relation to England) expenditure payable by the governing body under Sch 3 para 3(1) (as substituted in relation to England), or Sch 6 para 14(2) (as amended) (see PARA 143 ante), the Learning and Skills Act 2000 s 113A(6), Sch 7A (both as added) (see PARA 1282 et seq post) or the Education Act 2002 s 70, Sch 8 para 8 (prospectively repealed) (see PARA 156 ante): School Standards and Framework Act 1998 s 49(6) (amended by the Education Act 2002 Sch 21 para 100(1), (3); and, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 4). As to voluntary aided schools see PARA 102 et seq ante.

## UPDATE

### 320 Maintained schools to have delegated budgets

TEXT AND NOTES 8-11--School Standards and Framework Act 1998 s 49(2), (3) now s 49(2), (2A) (substituted by Education and Inspections Act 2006 Sch 5 para 4). A new school must now have a delegated budget from a date determined in accordance with regulations: School Standards and Framework Act 1998 s 49(2). Such regulations may enable the date that would otherwise apply by virtue of the regulations to be varied in accordance with the regulations, on the application of the local education authority, by the authority's schools forum or by the Secretary of State, and may make provision about the respective powers of the schools forum and the Secretary of State in relation to any application to vary that date: s 49(2A). The power of the Secretary of State under these provisions is exercisable in relation to Wales by the National Assembly for Wales: see Education and Inspections Act 2006 s 180.

See School Finance (England) Regulations 2008, SI 2008/228; and PARA 312 NOTE 7.

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### **321. Effect of financial delegation.**

Where a maintained school<sup>1</sup> has a delegated budget<sup>2</sup> in respect of the whole or part of a funding period<sup>3</sup> the local education authority<sup>4</sup> must secure that in respect of that period there is available to be spent by the governing body<sup>5</sup>:

- 696 (1) where the school has a delegated budget in respect of the whole of that period, a sum equal to the school's budget share<sup>6</sup> for the period<sup>7</sup>; or
- 697 (2) where the school has a delegated budget in respect of only part of that period, a sum equal to that portion of the school's budget share for the period which has not been spent<sup>8</sup>.

The times at which, and the manner in which, any amounts are made available by the authority to the governing body in respect of any such sum are such as may be provided by or under the financial scheme<sup>9</sup>. Subject to any provision made by or under the scheme, the governing body may spend any such amounts as it thinks fit for any purposes of the school<sup>10</sup> or (subject also to any prescribed conditions) for such purposes as may be prescribed<sup>11</sup>.

1 For the meaning of 'maintained school' for these purposes see PARA 312 note 1 ante. For the meaning of 'maintained school' generally see PARA 94 ante.

2 For the meaning of 'school having a delegated budget' see PARA 320 ante.

3 For the meaning of 'funding period' see PARA 312 note 3 ante.

4 As to local education authorities see PARA 20 ante.

5 School Standards and Framework Act 1998 s 50(1) (amended by the Education Act 2005 s 117, Sch 18 para 8(a), (b)). As to the meaning of 'governing body of a school maintained by a local education authority' see PARA 312 note 2 ante. The amendments made to the School Standards and Framework Act 1998 s 50(1) by the Education Act 2005 Sch 18 para 8(a), (b) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year', and the words 'that period' are to be read as 'that year'. For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

Any function of a local education authority in England which is conferred by or under s 50 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (l). For the meaning of 'England' see PARA 52 note 11 ante.

6 For the meaning of 'budget share' see PARA 312 ante.

7 School Standards and Framework Act 1998 s 50(1)(a) (amended by the Education Act 2005 s 117, Sch 18 para 8(c)). The amendments made to the School Standards and Framework Act 1998 s 50(1)(a) by the Education Act 2005 Sch 18 para 8(c) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'that period' are to be read as 'that year'.

8 School Standards and Framework Act 1998 s 50(1)(b) (amended by the Education Act 2005 s 117, Sch 18 para 8(c)). The amendments made to the School Standards and Framework Act 1998 s 50(1)(b) by the Education Act 2005 Sch 18 para 8(c) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'that period' are to be read as 'that year'.

9 School Standards and Framework Act 1998 s 50(2). See note 5 supra. As to the financial schemes prepared by local education authorities under s 48 (as amended) (see PARA 318 ante) as from time to time revised under Sch 14 para 2 see PARA 319 ante.

10 Ibid s 50(3)(a). See note 5 supra. In s 50(3), 'purposes of the school' does not include purposes wholly referable to the provision of:

- 85 (1) facilities and services under the Education Act 2002 s 27 (power of governing body to provide community facilities etc: see PARA 232 ante);
- 86 (2) part-time education suitable to the requirements of persons of any age over compulsory school age; or
- 87 (3) full-time education suitable to the requirements of persons who have attained the age of 19,

but any such purposes may be prescribed by regulations under the School Standards and Framework Act 1998 s 50(3)(b) (see the text to note 11 infra): s 50(4) (amended by the Education Act 2002 s 40, Sch 3 para 3). As to the meaning of 'compulsory school age' see PARA 15 ante. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 50(4) (as amended).

The governing body may delegate to the head teacher, to such extent as may be permitted by or under the scheme, its powers under s 50(3)(a), (b) (see the text to note 11 infra) in relation to any amount such as is mentioned in s 50(3)(a), (b): s 50(6). The governors of a school will not incur any personal liability in respect of anything done in good faith in the exercise or purported exercise of their powers under s 50(3) or s 50(6): s 50(7). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8). See further note 11 infra. However, nothing in s 50(3) may be read as authorising the payment of allowances to governors otherwise than in accordance with regulations under the Education Act 2002 s 19 (see PARAS 203, 251 ante) or, in the case of temporary governors of a new school, regulations under s 34(5) (see PARAS 212, 263 ante): School Standards and Framework Act 1998 s 50(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 101). For the meaning of 'new school' see PARA 312 note 2 ante. As to new schools generally see PARAS 202, 212, 263 ante.

11 School Standards and Framework Act 1998 s 50(3)(b). See notes 5, 10 supra. As to the purposes prescribed for the expenditure of the budget share of a maintained school in England by its governing body see the School Budget Shares (Prescribed Purposes) (England) Regulations 2002, SI 2002/378, reg 3 (amended by SI 2004/444).

## UPDATE

### 321 Effect of financial delegation

NOTE 11--SI 2002/378 reg 3 further amended: SI 2010/190. In relation to Wales, see School Budget Shares (Prescribed Purposes and Consequential Amendments) (Wales) Regulations 2008, SI 2008/1866.

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### **322. Suspension of financial delegation for mismanagement etc.**

Where it appears to the local education authority<sup>1</sup> that the governing body<sup>2</sup> of a school which has a delegated budget<sup>3</sup>:

- 698 (1) has been guilty of a substantial or persistent failure to comply with any delegation requirement or restriction<sup>4</sup>;
- 699 (2) is not managing in a satisfactory manner the expenditure or appropriation of the sum equal to the school's budget share for the year or a sum equal to that portion of the school's budget share for the year which has not been spent<sup>5</sup>; or
- 700 (3) is not managing in a satisfactory manner any expenditure, or sums received, in the exercise of the power<sup>6</sup> to provide community facilities<sup>7</sup>,

then the authority may suspend the governing body's right to a delegated budget<sup>8</sup> by giving the governing body not less than one month's notice of the suspension, unless by reason of any gross incompetence or mismanagement on the part of the governing body or other emergency it appears to the authority to be necessary to give the governing body a shorter period of notice, or to give the governing body a notice suspending its right to such a budget with immediate effect<sup>9</sup>.

The notice must specify the grounds for the suspension, giving particulars:

- 701 (a) of any alleged failure on the part of the governing body to comply with any delegation requirement or restriction<sup>10</sup>;
- 702 (b) of any alleged mismanagement on its part<sup>11</sup>; and
- 703 (c) if applicable, of the basis upon which a period of notice of less than one month was given<sup>12</sup>.

The notice must also inform the governing body of its right to appeal against the suspension<sup>13</sup> and of the time within which such an appeal may be brought<sup>14</sup>.

A copy of the notice must be given to the head teacher<sup>15</sup> of the school at the same time as the notice is given to the governing body<sup>16</sup>. The authority must send a copy of the notice to the Secretary of State<sup>17</sup>.

Any notice given under these provisions must be in writing<sup>18</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 312 note 2 ante.

3 For the meaning of 'school having a delegated budget' see PARA 320 ante.

4 School Standards and Framework Act 1998 s 51, Sch 15 para 1(1)(a). For these purposes, 'delegation requirement or restriction' means any requirement or restriction applicable, under or by virtue of the financial scheme or s 50(3) (see PARA 321 ante), to the management by the governing body of the school's budget share: Sch 15 para 1(7). As to the financial schemes prepared by local education authorities under s 48 (as amended) (see PARA 318 ante) as from time to time revised under Sch 14 para 2 see PARA 319 ante. For the meaning of 'budget share' see PARA 312 ante.

Any function of a local education authority in England which is conferred by or under Sch 15 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (m). For the meaning of 'England' see PARA 52 note 11 ante.

5 School Standards and Framework Act 1998 Sch 15 para 1(1)(b). See note 4 supra. The text refers to the sum mentioned in s 50(1) (as amended in relation to England; prospectively amended in relation to Wales): see PARA 321 ante.

6 le the power conferred by the Education Act 2002 s 27: see PARA 232 ante.

7 School Standards and Framework Act 1998 Sch 15 para 1(1)(c) (added by the Education Act 2002 s 40, Sch 3 para 5). See note 4 supra.

8 For the meaning of 'right to a delegated budget' see PARA 320 ante.

9 School Standards and Framework Act 1998 Sch 15 para 1(2). See note 4 supra.

10 Ibid Sch 15 para 1(3)(a). See note 4 supra.

11 Ibid Sch 15 para 1(3)(b). See note 4 supra.

12 Ibid Sch 15 para 1(3)(c). The text refers to the period of notice given under Sch 15 para 1(2): see the text to notes 8-9 supra. See note 4 supra.

13 le under ibid Sch 15 para 3: see PARA 324 post.

14 Ibid Sch 15 para 1(4). See note 4 supra.

15 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

16 Ibid Sch 15 para 1(5). See note 4 supra.

17 Ibid Sch 15 para 1(6). See note 4 supra. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

18 Ibid Sch 15 para 1(8). See note 4 supra.

## UPDATE

### 322 Suspension of financial delegation for mismanagement etc

TEXT AND NOTES 13, 14--1998 Act Sch 15 para 1(4) repealed: Education and Inspections Act 2006 Sch 5 para 6(a), Sch 18 Pt 6.

TEXT AND NOTE 17--1998 Act Sch 15 para 1(6) repealed: Education and Inspections Act 2006 Sch 5 para 6(a), Sch 18 Pt 6.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(vi) Financing of Maintained Schools/323. Review of suspension.

### **323. Review of suspension.**

A local education authority<sup>1</sup> which has suspended<sup>2</sup> the right of the governing body of a maintained school<sup>3</sup> to a delegated budget<sup>4</sup>:

- 704 (1) must before the beginning of every funding period<sup>5</sup> review any suspension of financial delegation for mismanagement<sup>6</sup> which is for the time being in force, unless the suspension took effect less than two months before the beginning of that period<sup>7</sup>; and
- 705 (2) may review at any time any such suspension which is for the time being in force, if it considers it appropriate to do so<sup>8</sup>.

For the purposes of any such review, the authority must give the governing body and the head teacher<sup>9</sup> of the school an opportunity to make representations with respect to the suspension<sup>10</sup>. If on the review the authority considers it appropriate to do so, it must revoke the suspension:

- 706 (a) in the case of a review under head (1) above, with effect from the beginning of the funding period next following the review<sup>11</sup>; or
- 707 (b) in the case of a review under head (2) above, with effect from such time before the beginning of the funding period next following the review as it may determine<sup>12</sup>.

The authority must give the governing body and the head teacher notice in writing of its decision on the review<sup>13</sup>. If the review was conducted under head (1) above and the authority's decision is to refuse to revoke the suspension, the notice must inform the governing body of its right to appeal against the refusal<sup>14</sup> and of the time within which such an appeal may be brought<sup>15</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie under the School Standards and Framework Act 1998 s 51, Sch 15 para 1 (as amended): see PARA 322 ante.

3 As to the governing bodies of maintained schools see PARA 312 note 2 ante.

4 For the meaning of 'right to a delegated budget' see PARA 320 ante.

5 For the meaning of 'funding period' see PARA 312 note 3 ante.

6 Ie any suspension under the School Standards and Framework Act 1998 Sch 15 para 1 (as amended): see PARA 322 ante.

7 Ibid Sch 15 para 2(1)(a) (amended by the Education Act 2005 s 117, Sch 18 para 11(1), (2)). The amendments made to the School Standards and Framework Act 1998 Sch 15 para 2(1)(a) by the Education Act 2005 Sch 18 para 11(1), (2) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year', and the words 'that period' are to be read as



'that year'. For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ibid Sch 15 para 2(1)(b).

9 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

10 Ibid Sch 15 para 2(2).

11 Ibid Sch 15 para 2(3)(a) (amended by the Education Act 2005 s 117, Sch 18 para 11(1), (3)). The amendment made to the School Standards and Framework Act 1998 Sch 15 para 2(3)(a) by the Education Act 2005 Sch 18 para 11(1), (3) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'.

12 School Standards and Framework Act 1998 Sch 15 para 2(3)(b) (amended by the Education Act 2005 s 117, Sch 18 para 11(1), (3)). The amendment made to the School Standards and Framework Act 1998 Sch 15 para 2(3)(b) by the Education Act 2005 Sch 18 para 11(1), (3) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'.

13 School Standards and Framework Act 1998 Sch 15 para 2(4).

14 Ie under ibid Sch 15 para 3: see PARA 324 post.

15 Ibid Sch 15 para 2(5).

## **UPDATE**

### **323 Review of suspension**

TEXT AND NOTES 14, 15--1998 Act Sch 15 para 2(5) repealed: Education and Inspections Act 2006 Sch 5 para 6(b), Sch 18 Pt 6.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(vi) Financing of Maintained Schools/324. Appeal against suspension or refusal to revoke it.

### **324. Appeal against suspension or refusal to revoke it.**

A governing body<sup>1</sup> may appeal to the Secretary of State<sup>2</sup> against the imposition of any suspension<sup>3</sup> of its right to a delegated budget<sup>4</sup>, or any refusal of a local education authority<sup>5</sup> to revoke any such suspension on a review<sup>6</sup>. Such an appeal must be brought within the period of two months beginning with the date on which the governing body receives the authority's notice<sup>7</sup>. However, if the authority's notice failed to comply with the statutory requirements relating to such notices<sup>8</sup>, such an appeal may be brought at any time before the end of the period of two months beginning with the date on which the governing body is informed by the authority in writing of its right of appeal<sup>9</sup>.

On an appeal, the Secretary of State may allow or reject the appeal, and he must have regard, in making his determination, to the gravity of the default on the part of the governing body and the likelihood of its continuing or recurring<sup>10</sup>. Where the Secretary of State allows an appeal, the suspension of the governing body's right to a delegated budget is revoked from a date determined by the Secretary of State<sup>11</sup>.

1 As to the governing bodies of maintained schools see PARA 312 note 2 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Ie under the School Standards and Framework Act 1998 s 51, Sch 15 para 1 (as amended): see PARA 322 ante.

4 School Standards and Framework Act 1998 Sch 15 para 3(1)(a). For the meaning of 'right to a delegated budget' see PARA 320 ante.

5 As to local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 Sch 15 para 3(1)(b). The text refers to a review under Sch 15 para 2(1)(a) (as amended in relation to England; prospectively amended in relation to Wales) (see PARA 323 ante).

7 Ibid Sch 15 para 3(2). The text refers to a notice under Sch 15 para 1(2) (see PARA 322 ante) or Sch 15 para 2(4) (see PARA 323 ante), as the case may be.

8 Ie the requirements of ibid Sch 15 para 1(4) (see PARA 322 ante) or Sch 15 para 2(5) (see PARA 323 ante).

9 Ibid Sch 15 para 3(3).

10 Ibid Sch 15 para 3(4).

11 Ibid Sch 15 para 3(5).

## **UPDATE**

### **324 Appeal against suspension or refusal to revoke it**

TEXT AND NOTES--Repealed: Education and Inspections Act 2006 Sch 5 para 6(c), Sch 18 Pt 6.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(vi) Financing of Maintained Schools/325. Effect of suspension of right to delegated budget.

### **325. Effect of suspension of right to delegated budget.**

During any period when a governing body's<sup>1</sup> right to a delegated budget<sup>2</sup> is suspended<sup>3</sup> the local education authority's<sup>4</sup> duty to make available to be spent by the governing body a sum equal to the school's budget share for the year, or to that portion of the school's budget share for the year which has not been spent<sup>5</sup>, does not apply in relation to the school<sup>6</sup>, but the authority may permit the governing body to take such decisions as to the spending of sums to be met from the school's budget share<sup>7</sup> as the authority considers appropriate<sup>8</sup>. Where<sup>9</sup> the governing body has consequently decided that a particular sum should be spent, it must, in spending that sum, comply with such reasonable conditions as the authority thinks fit to impose<sup>10</sup>. The governing body may, to such extent as it may specify, delegate its powers in relation to that sum to the head teacher<sup>11</sup>.

1 As to the governing bodies of maintained schools see PARA 312 note 2 ante.

2 For the meaning of 'right to a delegated budget' see PARA 320 ante.

3 Ie under the School Standards and Framework Act 1998 s 51, Sch 15 para 1 (as amended); see PARA 322 ante.

4 As to local education authorities see PARA 20 ante.

5 Ie the duty under the School Standards and Framework Act 1998 s 50(1) (as amended in relation to England; prospectively amended in relation to Wales); see PARA 321 ante.

6 Ibid Sch 15 para 4(1)(a).

7 For the meaning of 'budget share' see PARA 312 ante.

8 School Standards and Framework Act 1998 Sch 15 para 4(1)(b).

9 Ie in accordance with ibid Sch 15 para 4(1)(b); see the text to notes 7-8 supra.

10 Ibid Sch 15 para 4(2).

11 Ibid Sch 15 para 4(3). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(vi) Financing of Maintained Schools/326. Accounts of maintained schools.

### 326. Accounts of maintained schools.

Regulations<sup>1</sup> may require the governing body of a maintained school<sup>2</sup>:

- 708 (1) to keep prescribed<sup>3</sup> accounts and prescribed records in relation to the accounts<sup>4</sup>;
- 709 (2) to prepare prescribed financial statements or reports<sup>5</sup>;
- 710 (3) to comply with prescribed conditions with respect to audit<sup>6</sup>; and
- 711 (4) to send copies of the accounts, together with such financial statements or reports as may be prescribed, to the local education authority<sup>7</sup>.

Such regulations may:

- 712 (a) impose on the governing body requirements relating to: (i) resources held by the governing body; and (ii) other resources whose application is controlled by the governing body<sup>8</sup>; and
- 713 (b) provide that for the purposes of the regulations any resources which, although not held by the governing body, appear to the local education authority to be available for the purposes of the school or for the purposes of the maintenance of any part of the school premises<sup>9</sup> are to be taken to fall within head (ii) above unless the governing body satisfies the local education authority that the governing body does not control the application of those resources<sup>10</sup>.

The Secretary of State<sup>11</sup> may require a local education authority to give him copies of accounts or other documents received by the authority from a governing body in accordance with such regulations<sup>12</sup>. The regulations may also prescribe the form or manner in which, the period by reference to which, and the time within which, anything required by the regulations must be done<sup>13</sup>. The Secretary of State<sup>14</sup> may:

- 714 (A) publish information provided in accordance with regulations under these provisions in such form and manner as he considers appropriate<sup>15</sup>;
- 715 (B) make arrangements for such information to be published in such form and manner, and by such persons, as he may specify for the purpose<sup>16</sup>; and
- 716 (C) make regulations requiring local education authorities to publish prescribed categories of such information, together with such supplementary information as may be prescribed, in such form and manner as may be prescribed<sup>17</sup>.

1 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 44 see the Consistent Financial Reporting (England) Regulations 2003, SI 2003/373 (amended by SI 2004/393).

2 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the purposes of the Education Act 2002 s 44, 'maintained school' has the same meaning as in Pt 3 Ch 1 (ss 19-40) (as amended) (see PARA 98 note 3 ante): s 44(7).

Section 44 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 for the purposes of s 44(1)-(6) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4), and 1 September 2003 for the

purposes of the Education Act 2002 s 44(7) (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

Any function of a local education authority in England which is conferred by or under the Education Act 2002 s 44 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (t) (added by SI 2003/2704). As to local education authorities see PARA 20 ante.

3 'Prescribed' means prescribed by regulations (see note 1 supra): Education Act 2002 s 212(1).

4 Ibid s 44(1)(a). See note 2 supra. As to the financial statements of local education authorities see PARA 327 post.

5 Ibid s 44(1)(b). See note 2 supra.

6 Ibid s 44(1)(c). See note 2 supra.

7 Ibid s 44(1)(d). See note 2 supra.

8 Ibid s 44(2)(a). For the purposes of s 44(2), any powers exercisable by the head teacher are to be taken to be exercisable by the governing body: s 44(3). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 212(2), (3). See note 2 supra.

9 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

10 Ibid s 44(2)(b). See notes 2, 8 supra.

11 When ibid s 44 comes into force in relation to Wales (see note 2 supra), the reference to 'the Secretary of State' will read, in relation to Wales, 'the National Assembly for Wales' and expressions must be construed accordingly: see s 44(4). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

12 Ibid s 44(4). See note 2 supra.

13 Ibid s 44(5). See note 2 supra.

14 See note 11 supra.

15 School Standards and Framework Act 1998 s 44(6)(a). See note 2 supra.

16 Ibid s 44(6)(b). See note 2 supra.

17 Ibid s 44(6)(c). See note 2 supra.

## **UPDATE**

### **326 Accounts of maintained schools**

NOTE 1--SI 2003/373 further amended: SI 2006/437, SI 2007/599, SI 2008/46.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(vi) Financing of Maintained Schools/327. Financial statements of local education authorities.

### **327. Financial statements of local education authorities.**

Before the beginning of each prescribed period<sup>1</sup> the local education authority<sup>2</sup> must prepare a financial statement containing such information relating to its planned expenditure in that period as may be prescribed<sup>3</sup>. After the end of each prescribed period<sup>4</sup> the local education authority must prepare a statement containing such information with respect to<sup>5</sup>:

- 717 (1) the planned expenditure in that period specified in the financial statement prepared by the authority<sup>6</sup>;
- 718 (2) expenditure actually incurred, or treated by the authority as having been incurred, by it in the period<sup>7</sup>;
- 719 (3) any other resources allocated by the authority in the period to schools maintained by it<sup>8</sup> during any part of the period<sup>9</sup>; and
- 720 (4) accountable resources<sup>10</sup> held, received or expended in the period by any person in relation to a school maintained by the authority<sup>11</sup>,

as may be prescribed<sup>12</sup>.

Both such statements must be prepared in such form, and be published in such manner and at such times, as may be prescribed<sup>13</sup>. The authority must furnish the governing body<sup>14</sup> and head teacher<sup>15</sup> of each school maintained by it with a copy of each financial statement prepared by the authority or, if regulations so provide, with a copy of such part or parts of it as may be prescribed<sup>16</sup>. A governing body provided with such a copy must secure that a copy of it is available for inspection, at all reasonable times and free of charge, at the school<sup>17</sup>.

1 The periods prescribed for the purposes of the School Standards and Framework Act 1998 s 52(1) (as amended in relation to England; prospectively amended in relation to Wales): (1) must consist of one or more funding periods; and (2) may include funding periods in respect of which, by virtue of their inclusion in one or more earlier periods prescribed for the purposes of s 52(1) (as amended in relation to England; prospectively amended in relation to Wales), information relating to planned expenditure has previously been required under s 52(1) (as amended in relation to England; prospectively amended in relation to Wales): s 52(1A) (added by the Education Act 2005 s 117, Sch 18 para 10(1), (3)). For the meaning of 'funding period' see PARA 312 note 3 ante.

The School Standards and Framework Act 1998 s 52(1A) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 As to local education authorities see PARA 20 ante.

3 School Standards and Framework Act 1998 s 52(1) (amended by the Education Act 2005 Sch 18 para 10(1), (2)). The amendments made to the School Standards and Framework Act 1998 s 52(1) by the Education Act 2005 Sch 18 para 10(1), (2) have effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'prescribed period' are to be read as 'financial year', and the words 'that period' are to be read as 'that year'. For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. In the regulations, the statement referred to in s 52(1) is called a 'budget statement' (or, in Wales, 'datganiad cyllideb'): see the Education (Budget Statements) (England) Regulations 2005, SI 2005/345, reg 2(1); and the Education (Budget Statements) (Wales) Regulations 2002, SI 2002/122, reg 2(1). As to the prescribed form of, and information to be contained in, budget statements see the Education (Budget Statements) (England) Regulations 2005, SI 2005/345, reg 3, Schs 1-5; and the Education (Budget Statements) (Wales) Regulations 2002, SI 2002/122, reg 4, Schs 1-3.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 52(1)-(4) (see also the text and notes 4-16 infra) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (n). For the meaning of 'England' see PARA 52 note 11 ante. As to the application of the School Standards and Framework Act 1998 s 52 (as amended) in relation to federated schools and their governing bodies (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 33.

4 The periods prescribed for the purposes of the School Standards and Framework Act 1998 s 52(2) (as amended) must consist of one or more funding periods: s 52(2B) (added by the Education Act 2005 Sch 18 para 10(1), (5)).

The School Standards and Framework Act 1998 s 52(2B) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

5 School Standards and Framework Act 1998 s 52(2) (amended by the Education Act 2005 Sch 18 para 10(1), (4)(a)). The amendment made to the School Standards and Framework Act 1998 s 52(2) by the Education Act 2005 Sch 18 para 10(1), (4)(a) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'prescribed period' are to be read as 'financial year'.

6 School Standards and Framework Act 1998 s 52(2)(a) (amended by the Education Act 2005 Sch 18 para 10(1), (4)(b)). The amendment made to the School Standards and Framework Act 1998 s 52(2)(a) by the Education Act 2005 Sch 18 para 10(1), (4)(b) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'that period' are to be read as 'that year'.

7 School Standards and Framework Act 1998 s 52(2)(b) (amended by the Education Act 2005 Sch 18 para 10(1), (4)(b)). The amendment made to the School Standards and Framework Act 1998 s 52(2)(b) by the Education Act 2005 Sch 18 para 10(1), (4)(b) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'the period' are to be read as 'the year'.

8 As to the meaning of 'schools maintained by a local education authority' see PARA 312 note 1 ante.

9 School Standards and Framework Act 1998 s 52(2)(c) (amended by the Education Act 2005 Sch 18 para 10(1), (4)(b)). The amendment made to the School Standards and Framework Act 1998 s 52(2)(c) by the Education Act 2005 Sch 18 para 10(1), (4)(b) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'the period' are to be read as 'the year'.

10 For these purposes, 'accountable resources', in relation to a maintained school, means any resources which are not provided by the local education authority but in respect of which an obligation is imposed on the governing body of the school by virtue of regulations under the Education Act 2002 s 44 (currently in force in relation to England only) (accounts of maintained schools: see PARA 326 ante): School Standards and Framework Act 1998 s 52(2A) (added by the Education Act 2002 s 45(1), (3)).

The School Standards and Framework Act 1998 s 52(2A) (as added) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 April 2003 (see



the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

11 School Standards and Framework Act 1998 s 52(2)(d) (added by the Education Act 2002 s 45(1), (2); and amended by the Education Act 2005 Sch 18 para 10(1), (4)(b)). The School Standards and Framework Act 1998 s 52(2)(d) (as added) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'Wales' see PARA 52 note 13 ante. The amendment made to the School Standards and Framework Act 1998 s 52(2)(d) (as added) by the Education Act 2005 Sch 18 para 10(1), (4)(b) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'the period' are to be read as 'the year'.

12 School Standards and Framework Act 1998 s 52(2) (as amended: see note 5 supra). See note 3 supra. In the regulations, the statement referred to in s 52(2) (as amended) is called an 'outturn statement' (or, in Wales, 'datganiad alldro'): see the Education (Outturn Statements) (England) Regulations 2005, SI 2005/1386, reg 2(1); and the Education (Outturn Statements) (Wales) Regulations 2003, SI 2003/873, reg 2(1). As to the form of, and information to be contained, in outturn statements see the Education (Outturn Statements) (England) Regulations 2005, SI 2005/1386, reg 4, Schs 1-2; and the Education (Outturn Statements) (Wales) Regulations 2003, SI 2003/873, regs 4-5.

13 School Standards and Framework Act 1998 s 52(3). See note 3 supra.

As to the form, manner and times of publication of outturn statements see the Education (Outturn Statements) (England) Regulations 2005, SI 2005/1386, reg 5; and the Education (Outturn Statements) (Wales) Regulations 2003, SI 2003/873, regs 6-7.

14 As to the governing bodies of maintained schools see PARA 312 note 1 ante.

15 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

16 Ibid s 52(4). See note 3 supra. As to the furnishing of a copy of the budget statement to the governing body and the head teacher of a school see the Education (Budget Statements) (England) Regulations 2005, SI 2005/345, reg 6; and the Education (Budget Statements) (Wales) Regulations 2002, SI 2002/122, reg 8.

17 School Standards and Framework Act 1998 s 52(5). Section 52(5) does not apply to a temporary governing body of a new school at any time before the school opening date: s 52(6). For the meaning of 'new school' see PARA 312 note 2 ante; and for the meaning of 'school opening date' see PARAS 102 note 11, 131 note 2 ante. As to temporary governing bodies see PARAS 212, 263 ante.

## UPDATE

### 327 Financial statements of local education authorities

TEXT AND NOTES--Provisions now apply only to local education authorities in Wales: School Standards and Framework Act 1998 s 52(1), (2) (amended by Apprenticeships, Skills, Children and Learning Act 2009 s 253(2)). For corresponding provision in relation to local authorities in England see Apprenticeships, Skills, Children and Learning Act 2009 ss 251, 252.

NOTE 3--In relation to England and in respect of the financial years 2006-2007, 2007-2008 and 2008-2009, as to the prescribed form of, and information to be contained in, budget statements see the Education (Budget Statements) (England) Regulations 2006, SI 2006/511, reg 4, Schs 1-4, the Education (Budget Statements) (England) Regulations 2007, SI 2007/356, reg 4, and the Education (Budget Statements) (England) Regulations 2008, SI 2008/377, reg 4, Schs 1-3 (reg 4, Schs 2, 3 amended by SI 2009/444). SI 2004/2042 reg 33 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 35.

NOTES 12, 13--SI 2005/1386 replaced: see now the Education (Outturn Statements) (England) Regulations 2009, SI 2009/1586.

NOTE 12--SI 2005/1386 reg 4, Sch 1, 2 now SI 2006/1760 reg 5, Schs 1, 2.

NOTE 13--SI 2005/1386 reg 5 now SI 2006/1760 reg 6.

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### **328. Certification of statements in England by the Audit Commission.**

A local education authority<sup>1</sup> in England<sup>2</sup> must, if directed to do so by the Secretary of State<sup>3</sup>, require the Audit Commission for Local Authorities and the National Health Service in England and Wales<sup>4</sup> to make arrangements<sup>5</sup> for certifying such financial statement or statements prepared by the authority<sup>6</sup>, or such part or parts of any such statement or statements, as may be specified in the directions<sup>7</sup>. The arrangements so made by the Audit Commission must include arrangements for sending to the Secretary of State a copy of the statement or statements so certified, or a copy of the part or parts so certified, as the case may be<sup>8</sup>. Directions so given may relate to any local education authority or to local education authorities generally or to any class or description of such authorities<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante. As to the certification of statements in Wales see PARA 329 post.

3 As to the Secretary of State see PARA 52 ante.

4 As to the Audit Commission for Local Authorities and the National Health Service in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

5 Ie in accordance with the Audit Commission Act 1998 s 28(1)(d): see LOCAL GOVERNMENT vol 69 (2009) PARA 779. For the purposes of s 28(1)(d), any statement under the School Standards and Framework Act 1998 s 52 (as amended) (see PARA 327 ante) must be treated as a return by the authority: s 53(1).

6 Ie under ibid s 52 (as amended): see PARA 327 ante.

7 Ibid s 53(1) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 39, 40).

As to the application of the School Standards and Framework Act 1998 s 53 (as amended) in relation to federated schools and their governing bodies (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 33.

8 School Standards and Framework Act 1998 s 53(2).

9 Ibid s 53(3).

### **UPDATE**

### **328 Certification of statements in England by the Audit Commission**

TEXT AND NOTES--School Standards and Framework Act 1998 s 53 repealed:  
Apprenticeships, Skills, Children and Learning Act 2009 s 253(3), Sch 16 Pt 9.

NOTE 7--SI 2004/2042 reg 33 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 35.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(vi) Financing of Maintained Schools/329. Certification of statements in Wales by the Auditor General for Wales.

### **329. Certification of statements in Wales by the Auditor General for Wales.**

A local education authority<sup>1</sup> in Wales<sup>2</sup> must, if directed to do so by the National Assembly for Wales<sup>3</sup>, require the Auditor General for Wales<sup>4</sup> to make arrangements<sup>5</sup> for certifying such financial statement or statements prepared by the authority<sup>6</sup>, or such part or parts of any such statement or statements, as may be specified in the directions<sup>7</sup>. The arrangements so made by the Auditor General for Wales must include arrangements for sending to the National Assembly for Wales a copy of the statement or statements so certified, or a copy of the part or parts so certified, as the case may be<sup>8</sup>. Directions so given may relate to any local education authority or to local education authorities generally or to any class or description of such authorities<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'Wales' see PARA 52 note 13 ante. As to the certification of statements in England see PARA 328 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 As to the Auditor General for Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 796 et seq.

5 Ie in accordance with the Government of Wales Act 1998 s 96B(1)(d) (as added): see LOCAL GOVERNMENT vol 69 (2009) PARA 796. For the purposes of s 96B(1)(d) (as added), any statement under the School Standards and Framework Act 1998 s 52 (as amended) (see PARA 327 ante) must be treated as a return by the authority: s 53A(1) (s 53A added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 39, 41).

6 Ie the School Standards and Framework Act 1998 s 52 (as amended): see PARA 327 ante.

7 Ibid s 53A(1) (as added: see note 5 supra).

8 Ibid s 53A(2) (as added: see note 5 supra).

9 Ibid s 53A(3) (as added: see note 5 supra).

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## (vii) Recoupment

### 330. Excluded pupils.

Where a pupil<sup>1</sup> is permanently excluded from any school<sup>2</sup> maintained by a local education authority<sup>3</sup> ('the old authority') and, in the funding period<sup>4</sup> in which the exclusion first takes effect, he is subsequently provided with education by another local education authority ('the new authority'), whether at a school maintained by that authority or otherwise than at school<sup>5</sup>, the old authority must pay to the new authority, in connection with the provision of education for that pupil in that funding period, such amount, if any, as is payable in accordance with regulations<sup>6</sup>.

Where a pupil is permanently excluded from any school maintained by a local education authority and, in the funding period in which the exclusion first takes effect, the following events subsequently occur<sup>7</sup>:

- 721 (1) he is first provided by another local education authority ('the intermediate authority') with education in a pupil referral unit<sup>8</sup> or otherwise than at school<sup>9</sup>; and
- 722 (2) at any time afterwards he is provided with education by a local education authority other than the intermediate authority ('the last authority'), whether at a school maintained by that authority or otherwise than at school<sup>10</sup>,

then, in connection with the provision of the education mentioned in head (2) above, the intermediate authority must pay the last authority such amount, if any, as is payable in accordance with regulations<sup>11</sup>.

Any dispute as to whether any local education authority is entitled to be paid any amount<sup>12</sup> by any other such authority must be determined by the Secretary of State<sup>13</sup>.

1 For the meaning of 'pupil' see PARA 16 note 4 ante.

2 For the meaning of 'school' see PARA 81 ante. As to exclusion from school see PARA 562 et seq post. Regulations may prescribe the time when the permanent exclusion of a pupil is to be regarded as taking effect for the purposes of this provision: Education Act 1996 s 494(5) (s 494 substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 128). 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). The function of making regulations under s 494 (as substituted; as amended in relation to England; prospectively amended in relation to Wales), so far as exercisable in relation to Wales, is transferred to the National Assembly for Wales: Education Act 2002 s 208(2). The function mentioned in s 208(2) is to be treated as having been transferred to the National Assembly for Wales by an Order in Council under the Government of Wales Act 1998 s 22 (transfer of ministerial functions: see CONSTITUTIONAL LAW AND HUMAN RIGHTS); and, accordingly, the transfer may be revoked or varied by an Order in Council under s 22: Education Act 2002 s 208(3). See also PARA 53 note 21 ante. As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante.

As to the time when the permanent exclusion of a pupil is to be regarded under regulations as taking effect for the purposes of s 494 (as substituted; as amended in relation to England; prospectively amended in relation to Wales) see the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999, SI 1999/495, reg 4 (amended, in relation to England, by SI 2004/402; and, in relation to Wales, by SI 2003/3227).

3 As to local education authorities see PARA 20 ante.

4 For these purposes, 'funding period' has the meaning given by the School Standards and Framework Act 1998 s 45(1B) (added in relation to England; prospectively added in relation to Wales) (see PARA 312 note 4 ante): see the Education Act 1996 s 494(6) (added by the Education Act 2005 s 117, Sch 18 para 5(1), (3)).

The Education Act 1996 s 494(6) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

5 Education Act 1996 s 494(1) (as substituted (see note 2 supra); and amended by the Education Act 2005 Sch 18 para 5(1), (2)). The amendment made to the Education Act 1996 s 494(1) (as substituted) by the Education Act 2005 Sch 18 para 5(1), (2) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'. For the meaning of 'financial year' see PARA 68 note 9 ante.

6 Education Act 1996 s 494(2) (as substituted (see note 2 supra); and amended by the Education Act 2005 s 117, Sch 18 para 5(1), (2)). The amendment made to the Education Act 1996 s 494(2) (as substituted) by the Education Act 2005 Sch 18 para 5(1), (2) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'.

As to the amount to be paid and the time within which such payment must be made see the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999, SI 1999/495, regs 2-3 (reg 2 amended, in relation to England, by SI 2001/870; SI 2004/402; and, in relation to Wales, by SI 2002/408; SI 2003/3227).

7 Education Act 1996 s 494(3) (as substituted (see note 2 supra); and amended by the Education Act 2005 s 117, Sch 18 para 5(1), (2)). The amendment made to the Education Act 1996 s 494(3) (as substituted) by the Education Act 2005 Sch 18 para 5(1), (2) has effect as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the words 'funding period' are to be read as 'financial year'.

8 As to pupil referral units see PARAS 457-464 post.

9 Education Act 1996 s 494(3)(a) (as substituted: see note 2 supra).

10 Ibid s 494(3)(b) (as substituted: see note 2 supra).

11 Ibid s 494(2), (3) (as substituted: see note 2 supra). As to the amount to be paid and the time within which such payment must be made see the Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999, SI 1999/495, regs 2-3 (reg 2 amended, in relation to England, by SI 2001/870; SI 2004/402; and, in relation to Wales, by SI 2002/408; SI 2003/3227).

12 Ie under the Education Act 1996 s 494 (as substituted; as amended in relation to England; prospectively amended in relation to Wales).

13 Ibid s 494(4) (as substituted: see note 2 supra).

## UPDATE

### 330 Excluded pupils

NOTE 2--Education Act 2002 s 208A (adjustment between local education authorities and the Young People's Learning Agency for England (see PARA 27A)) added: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 55.

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### **331. Adjustment between local education authorities.**

Regulations<sup>1</sup> may provide, in relation to cases where any provision for education<sup>2</sup> is made by a local education authority<sup>3</sup> ('the providing authority') in respect of a person who belongs to the area of another local education authority, for requiring or authorising the other authority (the 'home authority') to pay to the providing authority such amount as the authorities may agree, or failing agreement, such amount as may be determined by or under the regulations<sup>4</sup>. The regulations may provide for the amounts payable by one authority to another:

- 723 (1) to reflect the whole or any part of the average costs incurred by local education authorities in the provision of education, whether in England and Wales as a whole or in any particular area or areas<sup>5</sup>; and
- 724 (2) to be based on figures for average costs determined by such body or bodies representing local education authorities, or on such other figures relating to costs so incurred, as the Secretary of State or, as the case may be, the National Assembly for Wales considers appropriate<sup>6</sup>.

Regulations made for these purposes in relation to Wales by the Assembly may provide for the amounts so payable, in such cases as may be specified in or determined in accordance with the regulations, to be such amounts as may be determined<sup>7</sup>: (a) where the providing authority and the home authority are both in Wales, by the Assembly<sup>8</sup>; or (b) where the providing authority is in Wales and the home authority is in England, by the Assembly with the consent of the Secretary of State<sup>9</sup>. Any dispute between local education authorities in Wales as to whether one of them is entitled to be paid any amount by another under the regulations must be determined by the Assembly<sup>10</sup>. Any dispute between a providing authority in Wales and a home authority in England as to whether the providing authority is entitled to be paid any amount by the home authority under the regulations must be determined by the Assembly with the consent of the Secretary of State<sup>11</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 207.

Notwithstanding the coming into force of the repeal of the Education Act 1996 s 492 (ie on 1 April 2003 in relation to England (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) and on 9 January 2004 in relation to Wales (see the Education Act 2002 (Commencement No 3) (Wales) Order 2003, SI 2003/2961, art 7, Schedule Pt IV)), during the period beginning on 9 January 2004 and ending immediately before the beginning of the day on which regulations made by the National Assembly for Wales under the Education Act 2002 s 207 come into force, the Education (Inter-authority Recoupment) Regulations 1994, SI 1994/3251, are to continue to have effect in relation to Wales as though they were made by the Assembly under the Education Act 2002 s 207 (subject to a transitional amendment regarding the Secretary of State and National Assembly for Wales): see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (No 2) (Wales) Regulations 2003, SI 2003/2959, reg 9.

2 Ie primary education and secondary education: see the Education Act 2002 s 207(2). For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of s 212(2), (3). In s 207, references to provision for

education include provision of any benefits or services for which provision is made by or under the Education Act 2002 or any other enactment relating to education: s 207(7).

3 As to local education authorities see PARA 20 ante.

4 Education Act 2002 s 207(1).

5 Ibid s 207(3)(a).

6 Ibid s 207(3)(b).

7 Ibid s 207(4).

8 Ibid s 207(4)(a).

9 Ibid s 207(4)(b).

10 Ibid s 207(5).

11 Ibid s 207(6).



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### **332. Cross-border provisions.**

Regulations<sup>1</sup> may make provision requiring or authorising payments of amounts determined by or under the regulations to be made by one authority to another where:

- 725 (1) the authority receiving the payment makes, in such cases or circumstances as may be specified in the regulations, provision for education<sup>2</sup> in respect of a person having such connection with the area of the paying authority as may be so specified<sup>3</sup>; and
- 726 (2) one of the authorities is a local education authority<sup>4</sup> and the other is an education authority in Scotland<sup>5</sup>.

Any question concerning the connection of any person with the area of a particular local education authority<sup>6</sup> or education authority must be decided in accordance with the regulations<sup>7</sup>. The regulations may provide for the amounts payable by one authority to another:

- 727 (a) to reflect the whole or any part of the average costs incurred by local education authorities in the provision of education (whether in England and Wales as a whole or in any particular area or areas)<sup>8</sup>; and
- 728 (b) to be based on figures for average costs determined by such body or bodies representing local education authorities, or on such other figures relating to costs so incurred, as the Secretary of State considers appropriate<sup>9</sup>.

The regulations may also provide for the amounts payable by one authority to another, in such cases as may be specified by or under the regulations, to be such amounts as may be determined by the Secretary of State<sup>10</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under s 493 (as amended).

2 For the purposes of *ibid* s 493(1) (see the text and notes 1 *supra*, 3-5 *infra*), 'provision for education' includes provision of any benefits or services for which provision is made by or under the Education Act 1996 or any other enactment relating to education: s 493(4).

3 *Ibid* s 493(1)(a).

4 As to local education authorities see PARA 20 ante.

5 Education Act 1996 s 493(1)(b).

6 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante.

7 Education Act 1996 s 493(3).

8 Education Act 2002 s 207(3)(a); applied by the Education Act 1996 s 493(2) (substituted by the Education Act 2002 s 208(1)).

9 Education Act 2002 s 207(3)(b); applied by the Education Act 1996 s 493(2) (as substituted: see note 8 *supra*).

10 Education Act 1996 s 493(2A) (added by the Education Act 2002 s 208(1)).

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## **(viii) Staffing of Schools**

### **A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND**

#### **(A) COMMUNITY, VOLUNTARY CONTROLLED, COMMUNITY SPECIAL AND MAINTAINED NURSERY SCHOOLS**

##### ***(a) Schools having a Delegated Budget***

#### **333. In general.**

Any teacher<sup>1</sup> or other member of staff<sup>2</sup> who is appointed to work under a contract of employment<sup>3</sup> at a community school<sup>4</sup>, a voluntary controlled school<sup>5</sup>, a community special school<sup>6</sup> or a maintained nursery school<sup>7</sup> is to be employed by the local education authority<sup>8</sup>. The teaching staff of any such school must include a person appointed as head teacher<sup>9</sup>, or a person appointed to carry out the functions of the head teacher of the school pending the appointment of a head teacher or in the absence of the head teacher<sup>10</sup>.

Regulations<sup>11</sup> may make further provision with respect to the staffing of such schools<sup>12</sup> and may, in particular:

- 729 (1) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff<sup>13</sup>;
- 730 (2) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment<sup>14</sup>;
- 731 (3) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of the provision of facilities and services<sup>15</sup> or any other activities which are not school activities but are carried on the school premises<sup>16</sup> under the management or control of the governing body<sup>17</sup>; and
- 732 (4) confer functions on local education authorities, governing bodies and head teachers<sup>18</sup>.

In discharging any function conferred by such regulations, a local education authority or the governing body or head teacher of a maintained school<sup>19</sup> must have regard to any guidance given from time to time by the Secretary of State<sup>20</sup>.

1 As to the appointment of teachers (other than head teachers) see PARA 335 post.

2 As to the appointment of support staff see PARA 336 post.

3 For these purposes, 'contract of employment' has the meaning given by the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2): Education Act 2002 s 212(1).

4 As to community schools see PARA 102 et seq ante.

5 As to voluntary controlled schools see PARA 102 et seq ante.

6 As to community special schools see PARA 102 et seq ante.

7 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

8 Education Act 2002 s 35(1), (2). As to local education authorities see PARA 20 ante.

Section 35 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 for the purposes of s 35(4), (5) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) and 1 September 2003 for the purposes of the Education Act 2002 s 35(1)-(3), (6)-(8) (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

As to the staffing of community, voluntary controlled and community special schools in Wales see the School Standards and Framework Act 1998 s 54, Sch 16 (Sch 16 as amended); and PARAS 354-366 post.

9 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the appointment of head teachers see PARA 334 post.

10 Ibid s 35(3). See note 8 supra.

11 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 35(4) see the School Staffing (England) Regulations 2003, SI 2003/1963 (amended by SI 2003/2725). As to the application of the School Staffing (England) Regulations 2003, SI 2003/1963 (as amended), with modifications, in relation to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9; and PARA 334 et seq post.

In relation to teachers at a voluntary controlled school who are reserved teachers within the meaning of the School Standards and Framework Act 1998 s 58 (as amended) (appointment and dismissal of certain teachers at schools with a religious character: see PARA 388 post), regulations under the Education Act 2002 s 35(4) have effect subject to the provisions of the School Standards and Framework Act 1998 s 58 (as amended): Education Act 2002 s 35(6). See note 8 supra. As to schools not having a delegated budget see s 35(7), Sch 2 Pt 1 paras 1-4; and PARA 342 post.

12 Ibid s 35(4). See note 8 supra.

13 Ibid s 35(5)(a). See note 8 supra. As to the appointment, discipline, suspension and dismissal of teachers and other staff in community, voluntary controlled, community special and maintained nursery schools see the School Staffing (England) Regulations 2003, SI 2003/1963, regs 5-7, Pt 2 (regs 10-18); and PARAS 334-341 post.

14 Education Act 2002 s 35(5)(b). See note 8 supra. As to the manner of appointment of teachers and other staff in community, voluntary controlled, community special and maintained nursery schools see the School Staffing (England) Regulations 2003, SI 2003/1963, reg 11.

15 Ie under the Education Act 2002 s 27 (power of governing body to provide community facilities etc: see PARA 232 ante).

16 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

17 Ibid s 35(5)(c). See note 8 supra.

18 Ibid s 35(5)(d). See note 8 supra. As to the governing bodies of maintained schools see PARA 203 et seq ante.

19 For the meaning of 'maintained school' see PARA 98 note 3 ante.

20 Education Act 2002 s 35(8). See note 8 supra. As to the Secretary of State see PARA 52 ante.

## UPDATE

### 333-353 Staffing of Particular Categories of Schools in England

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **333 In general**

NOTE 8--Day now appointed in relation to Wales: SI 2006/879.

NOTE 11--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

NOTE 14--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, Sch 1 para 26. For the meaning of 'pupil referral unit' see PARA 457.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(A) Community, Voluntary Controlled, Community Special and Maintained Nursery Schools/(a) Schools having a Delegated Budget/334. Appointment of head teacher and deputy head teacher.

### **334. Appointment of head teacher and deputy head teacher.**

The governing body<sup>1</sup> of a community<sup>2</sup>, voluntary controlled<sup>3</sup>, community special<sup>4</sup> or maintained nursery school<sup>5</sup> must notify the authority<sup>6</sup> of any vacancy<sup>7</sup> for the head teacher<sup>8</sup>, and, where it identifies the post of deputy head teacher as one to be filled, that post<sup>9</sup>.

The governing body must advertise any such vacancy or post in such manner as it considers appropriate<sup>10</sup>; and must appoint a selection panel consisting of at least three of its members:

- 733 (1) to select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the authority in writing of the names of the applicants so selected<sup>11</sup>;
- 734 (2) to interview such of those applicants as attend for the purpose<sup>12</sup>; and
- 735 (3) where it considers it appropriate, to recommend to the governing body for approval one of the applicants interviewed by it<sup>13</sup>.

If within a period of seven days beginning with the date when it receives notification under head (1) above, the authority makes written representations to the selection panel that any applicant is not a suitable person for the appointment, the selection panel must consider those representations, and where it decides to recommend for appointment any person about whom representations have been made, notify the governing body and authority in writing of its reasons<sup>14</sup>.

Subject to any person appointed meeting all relevant staff qualification requirements<sup>15</sup>, where the person recommended by the selection panel is approved by the governing body for appointment, the authority must appoint the person, unless the governing body has determined to appoint that person otherwise than under a contract of employment<sup>16</sup>. If the selection panel do not recommend a person to the governing body<sup>17</sup>, or if the governing body declines to approve the person recommended by the selection panel<sup>18</sup>, or the authority declines to appoint the person that the governing body approves<sup>19</sup>, the selection panel may select another person<sup>20</sup>.

Subject to any person appointed meeting all relevant staff qualification requirements<sup>21</sup>, if the governing body has good reason not to advertise and conduct a selection process to fill the vacancy or post in accordance with the above provisions<sup>22</sup>, the authority must appoint the person identified by the governing body to fill the vacancy or post, unless the governing body has determined to appoint that person otherwise than under a contract of employment<sup>23</sup>.

A representative of the authority may attend and offer advice at all proceedings relating to the selection of any teacher<sup>24</sup>. Such advice must be considered by the governing body or any person or persons to whom such functions have been delegated when reaching any such decision<sup>25</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to community schools see PARA 102 et seq ante.

3 As to voluntary controlled schools see PARA 102 et seq ante.

4 As to community special schools see PARA 102 et seq ante.

5 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

6 For these purposes, the 'authority' means the local education authority by which a maintained school is, or a proposed school is to be, maintained: School Staffing (England) Regulations 2003, SI 2003/1963, reg 3(1). As to local education authorities see PARA 20 ante. For the meaning of 'maintained school' see PARAS 94, 98 note 3 ante. For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of reg 3, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 1.

7 For these purposes, references to a vacancy in any post include a prospective vacancy in the post: School Staffing (England) Regulations 2003, SI 2003/1963, reg 3(2). See also note 6 supra.

8 As to the meaning of 'head teacher' see PARA 93 note 13 ante. As to the appointment of other teachers see PARA 335 post.

9 School Staffing (England) Regulations 2003, SI 2003/1963, regs 10, 13(1).

Regulation 13 applies where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to the application of regs 10, 33, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 4, 14; and as to the application of reg 13, with modifications, to the staffing of federations see the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003, SI 2003/1965, reg 26, Sch 8 para 2.

As to the appointment of head teachers and deputy head teachers of community, voluntary controlled and community special schools in Wales see PARA 355 post.

10 School Staffing (England) Regulations 2003, SI 2003/1963, reg 13(2). See note 9 supra.

11 Ibid reg 13(3)(a). See note 9 supra.

12 Ibid reg 13(3)(b). See note 9 supra.

13 Ibid reg 13(3)(c). See note 9 supra. Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff: (1) the selection panel must consist of at least three governors taken from any of the collaborating governing bodies; and (2) the selection panel must make its recommendation to the governing body of the relevant school: regs 28(1), 29(1). If the recommendation is not approved by that governing body the selection process must be repeated by the selection panel of the collaborating governing bodies unless the relevant school's governing body withdraws from the agreement to collaborate: reg 29(2). As to the application of reg 29, with modifications, to the staffing of federations see the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003, SI 2003/1965, reg 26, Sch 8 para 7. For these purposes, 'collaborating governing bodies' means two or more governing bodies which arrange for any of their functions to be discharged jointly; and 'relevant school' means the school or schools to which any member of staff is, or is to be, appointed: School Staffing (England) Regulations 2003, SI 2003/1963, reg 28(2). As to collaboration between schools generally see PARA 214 ante. As to the appointment of governors of a maintained school see PARA 267 et seq ante. As to the application of reg 28, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 12.

14 School Staffing (England) Regulations 2003, SI 2003/1963, reg 13(4). See note 9 supra.

15 Ie subject to ibid reg 11(2): see note 16 infra.

16 Ibid reg 13(5). See note 9 supra. The text refers to the authority having to appoint the person so approved unless reg 11(1)(c) applies. Where a governing body approves a person for appointment under reg 13(5), it is for the governing body to determine whether that person is appointed: (1) under a contract of employment with the authority (reg 11(1)(a)); (2) by the authority otherwise than under a contract of

employment (reg 11(1)(b)); or (3) by the governing body otherwise than under a contract of employment (reg 11(1)(c)). Any person so appointed must meet all relevant staff qualification requirements: reg 11(2). A person is to be treated as meeting any staff qualification requirements if he: (a) fulfils any requirements with respect to qualifications or registration which apply to him as a result of regulations made under the Education Act 2002 ss 132-135 (s 134 amended in relation to Wales) (see PARAS 769-771 post) and regulations made under the Teaching and Higher Education Act 1998 s 19 (as amended) (requirement to serve induction period: see PARA 774 post); (b) meets any conditions with respect to health and physical capacity which apply to him as a result of the Education (Teachers' Qualifications and Health Standards) (England) Regulations 1999, SI 1999/2166, Pt 3 (regs 5-7) (revoked) or regulations made under the Education Act 2002 s 141 (health and fitness: see PARA 773 post); and (c) is not subject to any direction made under the Education Act 2002 s 142 (prohibition from teaching etc: see PARA 782 post) that he may not carry out work to which s 142 applies: School Staffing (England) Regulations 2003, SI 2003/1963, reg 3(3). See also note 6 supra.

Regulation 11 applies (with modifications: see reg 33; and note 9 supra) where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget: reg 34.

17 Ibid reg 13(6)(a). See note 9 supra.

18 Ibid reg 13(6)(b). See note 9 supra.

19 Ibid reg 13(6)(c). See note 9 supra.

20 Ibid reg 13(6). This does not prevent the selection of an existing applicant: reg 13(6). See note 9 supra.

21 Ie subject to ibid reg 11(2): see note 16 supra.

22 Ie in accordance with ibid reg 13(2)-(4): see the text and notes 10-14 supra.

23 Ibid reg 13(7). See note 9 supra. The text refers to the authority having to appoint the person so identified unless reg 11(1)(c) applies. Where a governing body identifies a person for appointment under reg 13(7), it is for the governing body to determine whether that person is appointed: (1) under a contract of employment with the authority (reg 11(1)(a)); (2) by the authority otherwise than under a contract of employment (reg 11(1)(b)); or (3) by the governing body otherwise than under a contract of employment (reg 11(1)(c)). Any person so appointed must meet all relevant staff qualification requirements: reg 11(2). See note 16 supra. As to staff qualification requirements see reg 3(3); and note 16 supra.

24 Ibid reg 12(1). Where the authority has an entitlement to offer advice to any individual governing body, the authority has the same entitlement to offer advice to other collaborating governing bodies: reg 32.

Regulation 12 applies (with modifications: see reg 33; and note 9 supra) where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget: reg 34.

25 Ibid reg 12(2). See note 24 supra.

## UPDATE

### 333-353 Staffing of Particular Categories of Schools in England

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with



children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **334 Appointment of head teacher and deputy head teacher**

NOTES 6, 9, 13--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(A) Community, Voluntary Controlled, Community Special and Maintained Nursery Schools/(a) Schools having a Delegated Budget/335. Appointment of other teachers.

### **335. Appointment of other teachers.**

Where the governing body<sup>1</sup> of a community<sup>2</sup>, voluntary controlled<sup>3</sup>, community special<sup>4</sup> or maintained nursery school<sup>5</sup> identifies any post of teacher<sup>6</sup> to be filled, other than a post of head teacher or deputy head teacher<sup>7</sup>, which is to be filled for a period of more than four months, it must send a specification for the post to the authority<sup>8</sup>.

Subject to any person appointed meeting all relevant staff qualification requirements<sup>9</sup>, where a person is selected by the governing body for appointment, the authority must appoint the person, unless the governing body has determined to appoint that person otherwise than under a contract of employment<sup>10</sup>.

If the authority declines to appoint a person that the governing body selects, the governing body may select another person for appointment<sup>11</sup>.

A representative of the authority may attend and offer advice at all proceedings relating to the selection of any teacher<sup>12</sup>. Such advice must be considered by the governing body or any person or persons to whom such functions have been delegated when reaching any such decision<sup>13</sup>.

Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff, the collaborating governing bodies may delegate the appointment of any teacher (other than the head teacher and deputy head teacher) to<sup>14</sup>:

- 736 (1) the head teacher of one or more of the collaborating schools<sup>15</sup>;
- 737 (2) one or more governors from any of the collaborating schools<sup>16</sup>;
- 738 (3) one or more head teachers with one or more governors from any of the collaborating schools<sup>17</sup>.

Any decision relating to the appointment of a member of staff must be unanimous<sup>18</sup>. Where the collaborating governing bodies have delegated the appointment of a member of staff, other than to the head teacher of the relevant school<sup>19</sup>, the head teacher of the relevant school is entitled to attend and offer advice<sup>20</sup>. Such advice must be considered by the person or persons to whom the delegation has been made<sup>21</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to community schools see PARA 102 et seq ante.

3 As to voluntary controlled schools see PARA 102 et seq ante.

4 As to community special schools see PARA 102 et seq ante.

5 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

6 For these purposes, 'teacher' means a person who is a school teacher for the purposes of the Education Act 2002 s 122 (power to prescribe pay and conditions: see PARA 864 post) and includes a person who would be regarded as a teacher but for the fact the other party to the contract is not an authority or a governing body of

a school falling within the School Staffing (England) Regulations 2003, SI 2003/1963, Pt 3 (regs 19-27) (provisions relating to foundation, voluntary aided and foundation special schools: see PARA 343 et seq post): reg 3(1).

As to the application of reg 3, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 1.

7 As to the appointment to a post of head teacher or deputy head teacher see PARA 334 ante.

8 School Staffing (England) Regulations 2003, SI 2003/1963, regs 10, 14(1), (2). For the meaning of 'the authority' see PARA 334 note 6 ante. The governing body may delegate its function under reg 14 to the head teacher, to one or more governors, or to one or more governors and the head teacher: reg 4(1)(a), (2). Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to whom the delegation has been made: reg 4(3).

Regulations 4 and 14 apply where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and have effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 4, 10, 33, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3-4, 14.

As to the appointment of teachers (other than head teachers and deputy head teachers) of community, voluntary controlled and community special schools in Wales see PARA 356 post.

9 Ie subject to the School Staffing (England) Regulations 2003, SI 2003/1963, reg 11(2): see note 10 infra.

10 Ibid reg 14(3). See note 8 supra. The text refers to the authority having to appoint the person so selected unless reg 11(1)(c) applies. Where a governing body selects a person for appointment under reg 14(3), it is for the governing body to determine whether that person is appointed: (1) under a contract of employment with the authority (reg 11(1)(a)); (2) by the authority otherwise than under a contract of employment (reg 11(1)(b)); or (3) by the governing body otherwise than under a contract of employment (reg 11(1)(c)). Any person so appointed must meet all relevant staff qualification requirements: reg 11(2). As to staff qualification requirements see reg 3(3); and PARA 334 note 16 ante.

Regulation 11 applies (with modifications: see reg 33; and note 8 supra) where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget: reg 34.

11 Ibid reg 14(4). This does not prevent the selection of an existing applicant: reg 14(4). See note 8 supra.

12 Ibid reg 12(1). Where the authority has an entitlement to offer advice to any individual governing body, the authority has the same entitlement to offer advice to other collaborating governing bodies: reg 32. For the meaning of 'collaborating governing bodies' see PARA 334 note 13 ante. As to collaboration between schools generally see PARA 214 ante.

Regulation 12 applies (with modifications: see reg 33; and note 8 supra) where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget: reg 34.

13 Ibid reg 12(2). See note 12 supra.

14 Ibid regs 28(1), 30(1).

As to the application of reg 30, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 13.

15 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(1)(a). See note 14 supra.

16 Ibid reg 30(1)(b). See note 14 supra.

17 Ibid reg 30(1)(c). See note 14 supra.

18 Ibid reg 30(2). See note 14 supra.

19 For the meaning of 'relevant school' see PARA 334 note 13 ante.

20 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(3). See note 14 *supra*.

21 *Ibid* reg 30(3). See note 14 *supra*.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **335 Appointment of other teachers**

NOTES 6, 8, 14--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(A) Community, Voluntary Controlled, Community Special and Maintained Nursery Schools/(a) Schools having a Delegated Budget/336. Appointment of support staff.

### **336. Appointment of support staff.**

Where the governing body<sup>1</sup> of a community<sup>2</sup>, voluntary controlled<sup>3</sup>, community special<sup>4</sup> or maintained nursery school<sup>5</sup> identifies a support staff<sup>6</sup> post to be filled, it may recommend a person to the authority<sup>7</sup> for appointment<sup>8</sup>. Any such recommendation must be sent to the authority with a job specification for the post<sup>9</sup>. The job specification must include the governing body's recommendations as to:

- 739 (1) the duties to be performed<sup>10</sup>;
- 740 (2) the hours of work, where the post is part-time<sup>11</sup>;
- 741 (3) the duration of appointment<sup>12</sup>;
- 742 (4) the grade<sup>13</sup>; and
- 743 (5) the remuneration<sup>14</sup>.

If within a period of seven days after receiving the job specification the authority makes written representations to the governing body relating to the grade or remuneration to be paid, the governing body must consider those representations, and where it decides not to change the grade or remuneration to be paid, it must notify the authority in writing of its reasons<sup>15</sup>.

Subject to any person so appointed meeting all relevant staff qualification requirements<sup>16</sup>, the authority must appoint a person recommended to the post by the governing body, unless the governing body has determined to appoint that person otherwise than under a contract of employment<sup>17</sup>.

Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff, the collaborating governing bodies<sup>18</sup> may delegate the appointment of support staff to<sup>19</sup>:

- 744 (a) the head teacher of one or more of the collaborating schools<sup>20</sup>;
- 745 (b) one or more governors from any of the collaborating schools<sup>21</sup>;
- 746 (c) one or more head teachers with one or more governors from any of the collaborating schools<sup>22</sup>.

Any decision relating to the appointment of a member of staff must be unanimous<sup>23</sup>. Where the collaborating governing bodies have delegated the appointment of a member of staff, other than to the head teacher of the relevant school<sup>24</sup>, the head teacher of the relevant school is entitled to attend and offer advice<sup>25</sup>. Such advice must be considered by the person or persons to whom the delegation has been made<sup>26</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to community schools see PARA 102 et seq ante.

3 As to voluntary controlled schools see PARA 102 et seq ante.

4 As to community special schools see PARA 102 et seq ante.

5 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

6 For these purposes, 'support staff' means any member of a school's staff other than a teacher: School Staffing (England) Regulations 2003, SI 2003/1963, reg 3(1). For the meaning of 'teacher' see PARA 335 note 6 ante. References to support staff include support staff employed, or engaged otherwise than under a contract of employment, to provide community facilities and services under the Education Act 2002 s 27 (power of governing body to provide community facilities etc: see PARA 232 ante): School Staffing (England) Regulations 2003, SI 2003/1963, reg 3(4).

As to the application of reg 3, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 1.

7 For the meaning of 'the authority' see PARA 334 note 6 ante.

8 School Staffing (England) Regulations 2003, SI 2003/1963, regs 10, 15(1). This is subject to reg 18 (school meals staff: see PARA 341 post): reg 15(1). The governing body may delegate its function under reg 15 to the head teacher, to one or more governors, or to one or more governors and the head teacher: reg 4(1)(a), (2). Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to whom the delegation has been made: reg 4(3). As to the appointment to a post of head teacher or deputy head teacher see PARA 334 ante; and as to the appointment of governors of a maintained school see PARA 267 et seq ante. Where a governing body recommends a person for appointment under reg 15(1), it is for the governing body to determine whether that person is appointed: (1) under a contract of employment with the authority (reg 11(1)(a)); (2) by the authority otherwise than under a contract of employment (reg 11(1)(b)); or (3) by the governing body otherwise than under a contract of employment (reg 11(1)(c)). Any person so appointed must meet all relevant staff qualification requirements: reg 11(2). As to staff qualification requirements see reg 3(3); and PARA 334 note 16 ante.

Regulations 4, 11, 15 apply where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and have effect for that purpose as if: (a) any reference to a 'governing body' were a reference to a temporary governing body; and (b) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 4, 10, 33, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3-4, 14.

As to the appointment of non-teaching staff at community, voluntary controlled and community special schools in Wales see PARA 359 post.

9 School Staffing (England) Regulations 2003, SI 2003/1963, reg 15(2). See note 8 supra.

10 Ibid reg 15(2)(a). See note 8 supra.

11 Ibid reg 15(2)(b). See note 8 supra.

12 Ibid reg 15(2)(c). See note 8 supra.

13 Ibid reg 15(2)(d). The grade must be on the scale of grades applicable in relation to employment with the authority, and such as the governing body considers appropriate: reg 15(3). See note 8 supra.

14 Ibid reg 15(2)(e). Where the authority has discretion with respect to remuneration, it must exercise that discretion in accordance with the governing body's recommendation: reg 15(4). The authority may be regarded as having discretion if any provisions regulating the rates of remuneration or allowances payable to persons in the authority's employment either do not apply in relation to that appointment, or leave to the authority any degree of discretion as to the rate of remuneration: reg 15(4). See note 8 supra.

15 Ibid reg 15(5). See note 8 supra.

16 Ie subject to ibid reg 11(2): see note 8 supra.

17 Ibid reg 15(6). See note 8 supra. The text refers to the authority having to appoint the person so recommended unless reg 11(1)(c) (see note 8 supra) applies.

18 For the meaning of 'collaborating governing bodies' see PARA 334 note 13 ante. As to collaboration between schools generally see PARA 214 ante.

19 School Staffing (England) Regulations 2003, SI 2003/1963, regs 28(1), 30(1).

As to the application of reg 30, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 13.

20 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(1)(a). See note 19 supra.

21 Ibid reg 30(1)(b). See note 19 supra.

22 Ibid reg 30(1)(c). See note 19 supra.

23 Ibid reg 30(2). See note 19 supra.

24 For the meaning of 'relevant school' see PARA 334 note 13 ante.

25 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(3). See note 19 supra.

26 Ibid reg 30(3). See note 19 supra.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **336 Appointment of support staff**

TEXT AND NOTES--The School Support Staff Negotiating Body has been established: see PARA 336A.

NOTES 6, 8, 19--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

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### **336A. Pay and conditions of support staff.**

The School Support Staff Negotiating Body (the 'SSSNB') has been established: see Apprenticeships, Skills, Children and Learning Act 2009 ss 227, 239, Sch 15, School Support Staff Negotiating Body (Prescribed Organisations) Regulations 2009, SI 2009/3337. The matters within the SSSNB's remit relate to the remuneration of school support staff or conditions of employment relating to the duties or working time of school support staff: Apprenticeships, Skills, Children and Learning Act 2009 s 228(1). A person is within the definition of 'school support staff' if he (1) is employed by a local education authority in England or the governing body of a school maintained by a local education authority in England, under a contract of employment providing for him to work wholly at a school or schools maintained by a local education authority in England; and (2) is not a school teacher, or a person of a prescribed description; 'school teacher' means a person who is a school teacher for the purposes of Education Act 2002 s 122 (see PARA 864): see Apprenticeships, Skills, Children and Learning Act 2009 ss 240, 241, School Support Staff Negotiating Body (Excluded Persons) Regulations 2010, SI 2010/856. The Secretary of State may include or exclude matters by order: see Apprenticeships, Skills, Children and Learning Act 2009 s 228(2). The Secretary of State may also refer matters within the SSSNB's remit for consideration by it: see Apprenticeships, Skills, Children and Learning Act 2009 s 229. The SSSNB may also consider and reach agreement on other matters within its remit and submit any agreement it reaches to the Secretary of State: see Apprenticeships, Skills, Children and Learning Act 2009 s 230. Where the SSSNB submits an agreement to the Secretary of State, he may either ratify the agreement or refer it back for reconsideration (see Apprenticeships, Skills, Children and Learning Act 2009 ss 231-233), and in the absence of an SSSNB agreement on a matter the Secretary of State has specified powers (see Apprenticeships, Skills, Children and Learning Act 2009 s 234). Provision is made for the effect of orders by the Secretary of State ratifying agreements submitted by the SSSNB: see Apprenticeships, Skills, Children and Learning Act 2009 ss 235-237. The Secretary of State and, with the Secretary of State's approval, the SSSNB may issue guidance relating to agreements: see Apprenticeships, Skills, Children and Learning Act 2009 s 238.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs



19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(A) Community, Voluntary Controlled, Community Special and Maintained Nursery Schools/(a) Schools having a Delegated Budget/337. Conduct and discipline.

### **337. Conduct and discipline.**

The governing body of a maintained school<sup>1</sup> must establish procedures: (1) for the regulation of the conduct and discipline of staff at the school; and (2) by which staff may seek redress for any grievance relating to their work at the school<sup>2</sup>. Where the implementation of any determination made by the governing body in operation of the procedures requires any action which is not within the functions exercisable by the governing body by or under the Education Act 2002, but is within the power of the authority<sup>3</sup>, the authority must take that action at the request of the governing body<sup>4</sup>.

The governing body must establish procedures for dealing with lack of capability on the part of staff at the school<sup>5</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 School Staffing (England) Regulations 2003, SI 2003/1963, reg 6(1). Regulation 6 applies where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to community schools, voluntary controlled schools and community special schools see PARA 102 et seq ante. For the meaning of 'maintained nursery school' see PARA 98 note 3 ante. As to proposed schools see PARA 131 et seq ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to delegated budgets see PARA 320 ante.

As to the application of regs 6, 33, with modifications, in relation to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3, 14.

As to conduct and discipline at community, voluntary controlled and community special schools in Wales see PARA 360 post.

3 For the meaning of 'the authority' see PARA 334 note 6 ante.

4 School Staffing (England) Regulations 2003, SI 2003/1963, reg 6(2). See note 2 supra.

5 Ibid reg 7. Regulation 7 applies (with modifications: see reg 33; and note 2 supra) where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget: reg 34.

As to the application of reg 7, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 3.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be

trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **337 Conduct and discipline**

NOTES 2, 5--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(A) Community, Voluntary Controlled, Community Special and Maintained Nursery Schools/(a) Schools having a Delegated Budget/338. Local education authority's report on performance of head teacher.

### **338. Local education authority's report on performance of head teacher.**

Where the authority<sup>1</sup> has any serious concerns about the performance of the head teacher<sup>2</sup> of a school<sup>3</sup>:

- 747 (1) it must make a written report of its concerns to the chair of the governing body<sup>4</sup> of the school, at the same time sending a copy to the head teacher<sup>5</sup>; and
- 748 (2) the chair<sup>6</sup> of the governing body must notify the authority in writing of the action he proposes to take in the light of the report<sup>7</sup>.

1 For the meaning of 'the authority' see PARA 334 note 6 ante.

2 As to the appointment to a post of head teacher see PARA 334 ante.

3 School Staffing (England) Regulations 2003, SI 2003/1963, reg 5. For the meaning of 'school' see PARA 81 ante.

Regulation 5 applies where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to community schools, voluntary controlled schools and community special schools see PARA 102 et seq ante. For the meaning of 'maintained nursery school' see PARA 98 note 3 ante. As to proposed schools see PARA 131 et seq ante; as to temporary governing bodies and temporary governors see PARA 212 ante; and as to delegated budgets see PARA 320 ante.

As to the application of regs 5, 33, with modifications, in relation to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 2, 14.

As to the local education authority's report on the performance of head teachers at community, voluntary controlled and community special schools in Wales see PARA 361 post.

4 As to the governing bodies of maintained schools see PARA 203 et seq ante.

5 School Staffing (England) Regulations 2003, SI 2003/1963, reg 5(a). See note 3 supra.

6 As to the appointment to the chair of the governing body see PARA 288 ante.

7 School Staffing (England) Regulations 2003, SI 2003/1963, reg 5(b). See note 3 supra.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained

nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **338 Local education authority's report on performance of head teacher**

NOTE 3--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(A) Community, Voluntary Controlled, Community Special and Maintained Nursery Schools/(a) Schools having a Delegated Budget/339. Suspension of staff.

### **339. Suspension of staff.**

Both the governing body<sup>1</sup> of a community<sup>2</sup>, voluntary controlled<sup>3</sup>, community special<sup>4</sup> or maintained nursery school<sup>5</sup> and the head teacher<sup>6</sup> have power to suspend<sup>7</sup> any person employed or engaged otherwise than under a contract of employment to work at the school<sup>8</sup> where, in the opinion of the governing body or (as the case may be) the head teacher, his suspension is required<sup>9</sup>. The governing body or head teacher must, when exercising that power, immediately inform the authority<sup>10</sup> and the head teacher or (as the case may be) governing body<sup>11</sup>.

A suspension under these provisions may only be ended by the governing body<sup>12</sup>; and the governing body must, on ending such a suspension, immediately inform the authority and the head teacher<sup>13</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to community schools see PARA 102 et seq ante.

3 As to voluntary controlled schools see PARA 102 et seq ante.

4 As to community special schools see PARA 102 et seq ante.

5 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

6 As to the appointment to a post of head teacher see PARA 334 ante.

7 For these purposes, 'suspend' means suspend without loss of emoluments: School Staffing (England) Regulations 2003, SI 2003/1963, reg 16(5).

Regulation 16 applies where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 16, 33, with modifications, in relation to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 5, 14.

As to the suspension of staff at community, voluntary controlled and community special schools in Wales see PARA 362 post.

8 As to the employment and engagement of staff at a school see PARAS 334-336 ante.

9 School Staffing (England) Regulations 2003, SI 2003/1963, regs 10, 16(1). This is subject to reg 18 (school meals staff: see PARA 341 post): reg 16(1).

As to the application of reg 10 with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 4.

10 For the meaning of 'the authority' see PARA 334 note 6 ante.

11 School Staffing (England) Regulations 2003, SI 2003/1963, reg 16(2). See note 7 supra.

12 Ibid reg 16(3). See note 7 *supra*.

13 Ibid reg 16(4). See note 7 *supra*.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **339 Suspension of staff**

NOTES 7, 9--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

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### **340. Dismissal of staff.**

Where the governing body<sup>1</sup> of a community<sup>2</sup>, voluntary controlled<sup>3</sup>, community special<sup>4</sup> or maintained nursery school<sup>5</sup> determines that any person employed or engaged<sup>6</sup> by the authority<sup>7</sup> to work at the school should cease to work there, it must notify the authority in writing of its determination and the reasons for it<sup>8</sup>. If the person concerned is employed or engaged to work solely at the school and does not resign, the authority must, before the end of the period of 14 days beginning with the date on which such notification is given, either:

- 749 (1) give him such notice terminating his contract with the authority as is required under that contract<sup>9</sup>; or
- 750 (2) terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of his conduct<sup>10</sup>.

If the person concerned is not employed or engaged by the authority to work solely at the school, the authority must require him to cease to work at the school<sup>11</sup>.

A representative of the authority may attend and offer advice at all proceedings relating to the dismissal<sup>12</sup> of any teacher<sup>13</sup>. Such advice must be considered by the governing body or any person or persons to whom such functions have been delegated when reaching any such decision<sup>14</sup>.

Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff, the collaborating governing bodies may delegate the determination that a member of staff (other than the head teacher) should cease to work at a relevant school<sup>15</sup>, or the power to dismiss a member of staff (other than the head teacher) from a relevant school<sup>16</sup>. Any such delegation may be made:

- 751 (a) to the head teacher of one or more of the collaborating schools<sup>17</sup>;
- 752 (b) to one or more governors from any of the collaborating schools<sup>18</sup>;
- 753 (c) to one or more head teachers acting with one or more governors from any of the collaborating schools<sup>19</sup>.

The collaborating governing bodies may delegate to one or more governors the determination that the head teacher should cease to work at, or the decision to dismiss the head teacher from, a relevant school<sup>20</sup>.

- 1 As to the governing bodies of maintained schools see PARA 203 et seq ante.
- 2 As to community schools see PARA 102 et seq ante.
- 3 As to voluntary controlled schools see PARA 102 et seq ante.
- 4 As to community special schools see PARA 102 et seq ante.
- 5 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.



6 As to the employment and engagement of staff at a school see PARAS 334-336 ante.

7 For the meaning of 'the authority' see PARA 334 note 6 ante.

8 School Staffing (England) Regulations 2003, SI 2003/1963, regs 10, 17(1). This is subject to reg 18 (school meals staff: see PARA 341 post): reg 17(1). The governing body may delegate its function under reg 17 to the head teacher, to one or more governors, or to one or more governors and the head teacher: reg 4(1)(a), (2). Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to whom the delegation has been made: reg 4(3). The governing body may delegate any decision whether or not to make a determination that the head teacher should cease to work at the school, or to dismiss the head teacher, to one or more governors: reg 4(4). As to the appointment to a post of head teacher or deputy head teacher see PARA 334 ante; and as to the appointment of governors of a maintained school see PARA 267 et seq ante.

Regulations 4, 17 apply where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and have effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 4, 10, 17, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3-4, 6, 14.

As to the dismissal of staff at community, voluntary controlled and community special schools in Wales see PARA 363 post.

9 School Staffing (England) Regulations 2003, SI 2003/1963, reg 17(2)(a). See note 8 supra.

10 Ibid reg 17(2)(b). See note 8 supra.

11 Ibid reg 17(3). See note 8 supra.

12 For these purposes, 'dismissal' is to be interpreted in accordance with the Employment Rights Act 1996 s 95 (as amended) (circumstances in which an employee is dismissed: see EMPLOYMENT vol 40 (2009) PARA 719) and s 136 (as amended) (circumstances in which an employee is dismissed by reason of redundancy: see EMPLOYMENT vol 40 (2009) PARA 819): School Staffing (England) Regulations 2003, SI 2003/1963, reg 3(1).

As to the application of reg 3, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 1.

13 School Staffing (England) Regulations 2003, SI 2003/1963, reg 12(1). Where the authority has an entitlement to offer advice to any individual governing body, the authority has the same entitlement to offer advice to other collaborating governing bodies: reg 32. For the meaning of 'collaborating governing bodies' see PARA 334 note 13 ante. As to collaboration between schools generally see PARA 214 ante.

Regulation 12 applies (with modifications: see reg 33; and note 8 supra) where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget: reg 34.

14 Ibid reg 12(2). See note 13 supra.

15 For the meaning of 'relevant school' see PARA 334 note 13 ante.

16 School Staffing (England) Regulations 2003, SI 2003/1963, regs 28(1), 31(1). As to the application of reg 31, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 13.

17 School Staffing (England) Regulations 2003, SI 2003/1963, reg 31(2)(a). See note 16 supra.

18 Ibid reg 31(2)(b). See note 16 supra.

19 Ibid reg 31(2)(c). See note 16 supra.

20 Ibid reg 31(3). See note 16 supra.

## UPDATE

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **340 Dismissal of staff**

NOTES 8, 12, 16--SI 2004/2042 replaced: School Governance (Federations) (England) Regulations 2007, SI 2007/960 (amended by SI 2007/3464, SI 2009/1556).

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### **341. School meals staff.**

The authority<sup>1</sup> is responsible for the appointment, discipline, suspension and dismissal of school meals staff who work or are to work at a community<sup>2</sup>, voluntary controlled<sup>3</sup>, community special<sup>4</sup> or maintained nursery school<sup>5</sup>. Before exercising any such function the authority must consult the school's governing body<sup>6</sup> to such extent as the authority thinks fit<sup>7</sup>.

Where an order is in force<sup>8</sup> imposing on the governing body of a school a duty corresponding to a duty of the authority to provide school lunches<sup>9</sup> or to provide school lunches free of charge<sup>10</sup>:

- 754 (1) where the governing body has entered into an agreement with the authority that the authority should provide lunches at the school, then where the governing body determines that any school meals staff member should cease to work at the school it must notify the authority in writing of its determination and the reason for it, and the authority must then require the person to cease to work at the school<sup>11</sup>; or
- 755 (2) where no such agreement has been entered into, then the regulations relating to the conduct and discipline of staff<sup>12</sup>, the appointment of support staff<sup>13</sup>, and the suspension and dismissal of staff<sup>14</sup> apply to such staff members<sup>15</sup>.

1 For the meaning of 'the authority' see PARA 334 note 6 ante.

2 As to community schools see PARA 102 et seq ante.

3 As to voluntary controlled schools see PARA 102 et seq ante.

4 As to community special schools see PARA 102 et seq ante.

5 School Staffing (England) Regulations 2003, SI 2003/1963, regs 10, 18(1). For the meaning of 'maintained nursery school' see PARA 98 note 3 ante. As to the appointment, discipline, suspension and dismissal of non-school meals staff at a school see PARAS 334-340 ante.

Regulation 18 applies where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school has a delegated budget (reg 34); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 10, 18, 33, with modifications, in relation to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 4, 7-8, 14.

As to school meals staff at community, voluntary controlled and community special schools in Wales see PARA 364 post.

6 As to the governing bodies of maintained schools see PARA 203 et seq ante.

7 School Staffing (England) Regulations 2003, SI 2003/1963, reg 18(1). See note 5 supra.

8 Ie under the Education Act 1996 s 512A(1) (as added) (see PARA 542 post).

- 9     Ie the duty mentioned in ibid s 512(3), (4) (as substituted) (see PARA 542 post).
- 10    School Staffing (England) Regulations 2003, SI 2003/1963, reg 18(2). See note 5 supra. As to the duty to provide school lunches free of charge see the duty mentioned in the Education Act 1996 s 512ZB(1) (as added); and PARA 542 post.
- 11    School Staffing (England) Regulations 2003, SI 2003/1963, reg 18(3). See note 5 supra.
- 12    Ie ibid reg 6 (see PARA 337 ante).
- 13    Ie ibid reg 15 (see PARA 336 ante).
- 14    Ie ibid regs 16-17 (see PARAS 339-340 ante).
- 15    Ibid reg 18(4). See note 5 supra.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **341 School meals staff**

NOTE 5--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

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*(b) Schools not having a Delegated Budget*

**342. Staffing of schools on suspension of delegated budget.**

If at any time a community school<sup>1</sup>, a voluntary controlled school<sup>2</sup>, a community special school<sup>3</sup> or a maintained nursery school<sup>4</sup> does not have a delegated budget<sup>5</sup>, the usual provisions relating to the staffing at such schools<sup>6</sup> do not apply and the following provisions apply instead<sup>7</sup>.

In such circumstances, the arrangements for the staffing of the school are to be determined by the local education authority<sup>8</sup>, and the authority may appoint, suspend and dismiss teachers and other staff at the school as it thinks fit<sup>9</sup>. The authority must, in connection with the exercise of these functions<sup>10</sup>, consult the governing body to such extent as it thinks fit<sup>11</sup>.

1 As to community schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 As to voluntary controlled schools see PARA 102 et seq ante.

3 As to community special schools see PARA 102 et seq ante.

4 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

5 I.e. by virtue of any suspension under the School Standards and Framework Act 1998 s 17 (as amended) (see PARA 1269 post), or s 51, Sch 15 (as amended) (see PARAS 322-325 ante). In the Education Act 2002 Pt 3 Ch 1 (ss 19-40) (as amended): (1) references to a school having a delegated budget are references to the governing body of the school being entitled to manage the school's budget share; and (2) where a school has a delegated budget the governing body is accordingly said to have a right to a delegated budget: s 39(2). As to the governing bodies of maintained schools see PARA 203 et seq ante. 'Budget share' has the same meaning as in the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) (see PARA 312 ante); Education Act 2002 s 39(1).

6 I.e. the regulations made under *ibid* s 35(4) (currently in force in relation to England only) (see PARA 333 et seq ante).

7 *Ibid* s 35(1), (7).

Section 35 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 for the purposes of s 35(4), (5) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) and 1 September 2003 for the purposes of the Education Act 2002 s 35(1)-(3), (6)-(8) (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

As to the staffing of community schools, voluntary controlled schools, community special schools or maintained nursery schools without a delegated budget in Wales see the School Standards and Framework Act 1998 s 54; and PARA 366 post.

8 Education Act 2002 Sch 2 para 1. As to local education authorities see PARA 20 ante. Schedule 2 Pt 1 is to be brought into force by order made under s 216(4) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed.

Schedule 2 Pt 1 (not yet in force) applies also where a proposed school which will be a community, voluntary controlled, community special or maintained nursery school does not have a delegated budget (School Staffing

(England) Regulations 2003, SI 2003/1963, reg 36); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of reg 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 14.

Functions exercisable by or on behalf of a local education authority under the Education Act 2002 Sch 2 (not yet in force) are relevant functions for the purposes of the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 ante): s 127(6)(q) (added by the Education Act 2002 s 215(1), Sch 21 para 110(1), (3)(c)). The School Standards and Framework Act 1998 s 127(6)(q) (as added) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

9 Education Act 2002 Sch 2 para 2. In relation to teachers at a voluntary controlled school who are reserved teachers within the meaning of the School Standards and Framework Act 1998 s 58 (as amended) (appointment and dismissal of certain teachers at schools with a religious character: see PARA 388 post), the Education Act 2002 Sch 2 para 2 (not yet in force) has effect subject to the provisions of the School Standards and Framework Act 1998 s 58 (as amended): Education Act 2002 Sch 2 para 4. See note 8 supra.

10 In the functions under ibid Sch 2 para 2 (not yet in force) (see the text and note 9 supra). As to the meaning of 'functions' generally see PARA 14 note 5 ante; definition applied by virtue of s 212(2), (3).

11 Ibid Sch 2 para 3. See note 8 supra.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **342 Staffing of schools on suspension of delegated budget**

NOTE 7--Day now appointed in relation to Wales: SI 2006/879.

NOTE 8--Education Act 2002 Sch 2 in force: SI 2003/1667 (England), SI 2006/879 (Wales). 1998 Act s 127(6) repealed: Education and Inspections Act 2006 s 58(6), Sch 18 Pt 2. SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

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## (B) FOUNDATION, VOLUNTARY AIDED AND FOUNDATION SPECIAL SCHOOLS

### *(a) Schools having a Delegated Budget*

#### **343. In general.**

Except as provided by regulations<sup>1</sup>, any teacher<sup>2</sup> or other member of staff<sup>3</sup> who is appointed to work under a contract of employment<sup>4</sup> at a foundation school<sup>5</sup>, a voluntary aided school<sup>6</sup> or a foundation special school<sup>7</sup> is to be employed by the governing body of the school<sup>8</sup>. The teaching staff of any such school must include a person appointed as head teacher<sup>9</sup> or a person appointed to carry out the functions<sup>10</sup> of the head teacher of the school pending the appointment of a head teacher or in the absence of the head teacher<sup>11</sup>. Regulations may make further provision with respect to the staffing of such schools<sup>12</sup> and may, in particular:

- 756 (1) make provision with respect to the appointment, discipline, suspension and dismissal of teachers and other staff<sup>13</sup>;
- 757 (2) make provision with respect to the appointment of teachers and other staff to work at a school otherwise than under a contract of employment<sup>14</sup>;
- 758 (3) make provision with respect to staff employed, or engaged otherwise than under a contract of employment, wholly or partly for the purposes of the provision of facilities and services<sup>15</sup> or any other activities which are not school activities but are carried on the school premises<sup>16</sup> under the management or control of the governing body<sup>17</sup>;
- 759 (4) enable teachers and other staff to be employed by the local education authority<sup>18</sup> in prescribed<sup>19</sup> cases<sup>20</sup>; and
- 760 (5) confer functions on local education authorities, governing bodies and head teachers<sup>21</sup>.

In discharging any function conferred by such regulations, a local education authority or the governing body or head teacher of a maintained school<sup>22</sup> must have regard to any guidance given from time to time by the Secretary of State<sup>23</sup>.

1 The regulations under the Education Act 2002 s 36(4) (see the text and notes 11-12 infra). 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 36 see the School Staffing (England) Regulations 2003, SI 2003/1963 (amended by SI 2003/2725) (cited in PARA 344 et seq post).

As to the application of the School Staffing (England) Regulations 2003, SI 2003/1963 (as amended), with modifications, in relation to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9.

2 As to the appointment of teaching staff see PARAS 344-345 post.

3 As to the appointment of support staff see PARA 346 post.

4 For the meaning of 'contract of employment' see PARA 333 note 3 ante.

5 As to foundation schools see PARA 102 ante.



6 As to voluntary aided schools see PARA 102 ante.

7 As to foundation special schools see PARA 102 ante.

8 Education Act 2002 s 36(1), (2).

Section 36 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 for the purposes of s 36(4), (5) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) and 1 September 2003 for the purposes of the Education Act 2002 s 36(1)-(3), (6)-(8) (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

As to education action forums and a governing body's functions under the Education Act 2002 s 36 see the School Standards and Framework Act 1998 s 12(4) (as amended in relation to England; prospectively amended in relation to Wales); and PARA 453 et seq post.

As to the staffing of foundation, voluntary aided and foundation special schools in Wales see the School Standards and Framework Act 1998 s 55, Sch 17 (Sch 17 as amended); and PARAS 367-380 post.

9 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the appointment of head teachers see PARA 344 post.

10 Ibid s 36(3). See note 8 supra.

11 As to the meaning of 'functions' generally see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

12 Ibid s 36(4). See note 8 supra.

Regulations under s 36(4) have effect subject to the School Standards and Framework Act 1998 s 58 (appointment and dismissal of certain teachers at schools with a religious character: see PARA 388 post); Education Act 2002 s 36(6). As to schools not having a delegated budget see s 36(7), Sch 2 Pt 2 (paras 5-10); and PARA 352 post.

13 Ibid s 36(5)(a). See note 8 supra. As to the appointment, discipline, suspension and dismissal of teachers and other staff in foundation, voluntary aided and foundation special schools see the School Staffing (England) Regulations 2003, SI 2003/1963, regs 5-7, Pt 3 (regs 19-27); and PARAS 344-351 post.

14 Education Act 2002 s 36(5)(b). See note 8 supra. As to the manner of appointment of teachers and other staff in foundation, voluntary aided and foundation special schools see the School Staffing (England) Regulations 2003, SI 2003/1963, reg 20.

15 Ie under the Education Act 2002 s 27 (power of governing body to provide community facilities etc: see PARA 232 ante).

16 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

17 Ibid s 36(5)(c). See note 8 supra.

18 As to local education authorities see PARA 20 ante. Functions exercisable by or on behalf of a local education authority under ibid s 36 are relevant functions for the purposes of the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 ante): s 127(6)(p) (added by the Education Act 2002 s 215(1), Sch 21 para 110(1), (3)(c)). The School Standards and Framework Act 1998 s 127(6)(p) (as added) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

19 'Prescribed' means prescribed by regulations: Education Act 2002 s 212(1). See the School Staffing (England) Regulations 2003, SI 2003/1963, regs 23-24; and PARAS 345-346 post.

20 Education Act 2002 s 36(5)(d). See note 8 supra.

21 Ibid s 36(5)(e). See note 8 supra.

22 For the meaning of 'maintained school' see PARA 98 note 3 ante.

23 Education Act 2002 s 36(8). See note 8 *supra*. As to the Secretary of State see PARA 52 *ante*.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **343 In general**

NOTE 1--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

NOTES 8, 18--Day now appointed in relation to Wales: SI 2006/879.

NOTE 18--1998 Act s 127(6) repealed: Education and Inspections Act 2006 s 58(6), Sch 18 Pt 2.

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### **344. Appointment of head teacher and deputy head teacher.**

The governing body<sup>1</sup> of a foundation school<sup>2</sup>, a voluntary aided school<sup>3</sup> or a foundation special school<sup>4</sup> must notify the authority<sup>5</sup> of any vacancy<sup>6</sup> for the head teacher<sup>7</sup>, and, where it identifies the post of deputy head teacher as one to be filled, that post<sup>8</sup>.

The governing body must advertise any such vacancy or post in such manner as it considers appropriate<sup>9</sup>; and must appoint a selection panel consisting of at least three of its members:

- 761 (1) to select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the authority in writing of the names of the applicants so selected<sup>10</sup>;
- 762 (2) to interview such of those applicants as attend for the purpose<sup>11</sup>; and
- 763 (3) where it considers it appropriate, to recommend to the governing body for approval one of the applicants interviewed by it<sup>12</sup>.

If within a period of seven days beginning with the date when it receives notification under head (1) above, the authority makes written representations to the selection panel that any applicant is not a suitable person for the appointment, the selection panel must consider those representations, and where it decides to recommend for appointment any person about whom representations have been made, notify the authority in writing of its reasons<sup>13</sup>.

Subject to any person appointed meeting all relevant staff qualification requirements<sup>14</sup>, the governing body may appoint the person recommended by the selection panel to the vacancy or the post to be filled<sup>15</sup>. If the selection panel does not recommend a person to the governing body<sup>16</sup>, or if the governing body declines to approve the person recommended by the selection panel<sup>17</sup>, the selection panel may select another person for appointment<sup>18</sup>.

Subject to any person appointed meeting all relevant staff qualification requirements<sup>19</sup>, if the governing body has good reason not to advertise and conduct a selection process to fill the vacancy or post in accordance with the above provisions<sup>20</sup>, the governing body may appoint such other person it has identified to fill the vacancy or post to be filled<sup>21</sup>.

The authority is entitled to advise the governing body in relation to the exercise of any of the governing body's functions of appointment and engagement of any teacher, to the extent provided by, and subject to, any relevant agreement<sup>22</sup>. In the absence of a relevant agreement, it is for the Secretary of State<sup>23</sup> to determine the extent to which the authority is entitled to advise the governing body in relation to the exercise of any of those functions<sup>24</sup>. The governing body, or any other person to whom the functions in question have been delegated, must consider any advice given by the authority pursuant to an entitlement under these provisions<sup>25</sup>. The Secretary of State may at any time withdraw a determination<sup>26</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to foundation schools see PARA 102 ante.

3 As to voluntary aided schools see PARA 102 ante.

4 As to foundation special schools see PARA 102 ante.

5 For the meaning of 'the authority' see PARA 334 note 6 ante.

6 As to the meaning of references to a vacancy in any post see PARA 334 note 7 ante.

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

8 School Staffing (England) Regulations 2003, SI 2003/1963, regs 19, 22(1).

Regulation 22 applies where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 19, 22, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 9-10, 14.

As to the appointment of head teachers and deputy head teachers of foundation, voluntary aided and foundation special schools in Wales see PARA 369 post.

9 School Staffing (England) Regulations 2003, SI 2003/1963, reg 22(2). See note 8 supra. The provisions of reg 22(2)-(7) are subject to reg 27 (appointment of head teachers for schools of Roman Catholic religious orders: see PARA 351 post): reg 22(8).

10 Ibid reg 22(3)(a). See notes 8, 9 supra.

11 Ibid reg 22(3)(b). See notes 8, 9 supra.

12 Ibid reg 22(3)(c). See notes 8, 9 supra. Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff: (1) the selection panel must consist of at least three governors taken from any of the collaborating governing bodies; and (2) the selection panel must make its recommendation to the governing body of the relevant school: regs 28(1), 29(1). If the recommendation is not approved by that governing body the selection process must be repeated by the selection panel of the collaborating governing bodies unless the relevant school's governing body withdraws from the agreement to collaborate: reg 29(2). For the meanings of 'collaborating governing bodies' and 'relevant school' see PARA 334 note 13 ante. As to collaboration between schools generally see PARA 214 ante. As to the appointment of governors of a maintained school see PARA 267 et seq ante.

As to the application of reg 28, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 12; and as to the application of the School Staffing (England) Regulations 2003, SI 2003/1963, reg 29, with modifications, to the staffing of federations see the Federation of Schools (Community Schools, Community Special Schools, Voluntary Controlled Schools and Maintained Nursery Schools) (England) Regulations 2003, SI 2003/1965, reg 26, Sch 8 para 7.

13 School Staffing (England) Regulations 2003, SI 2003/1963, reg 22(4). See notes 8, 9 supra.

14 Ie subject to ibid reg 20(2): see note 15 infra.

15 Ibid reg 22(5). See notes 8, 9 supra. Where the governing body has selected a person for appointment, he may be appointed: (1) under a contract of employment (reg 20(1)(a)); or (2) otherwise than under a contract of employment (reg 20(1)(b)). Any person so appointed must meet all relevant staff qualification requirements: reg 20(2). As to staff qualification requirements see reg 3(3); and PARA 334 note 16 ante.

Regulation 20 applies (with modifications: see reg 33; and note 8 supra) where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget: reg 35.

The governing body may delegate its power to appoint any member of staff at a foundation, voluntary aided or foundation special school to the head teacher, to one or more governors, or to one or more governors and the head teacher: regs 4(1)(b), (2), 19. Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to whom the delegation has been made: reg 4(3).

As to the application of reg 4, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 3.

16 School Staffing (England) Regulations 2003, SI 2003/1963, reg 22(6)(a). See notes 8, 9 supra.

17 Ibid reg 22(6)(b). See notes 8, 9 supra.

18 Ibid reg 22(6). This does not prevent the selection of an existing applicant: reg 22(6). See notes 8, 9 supra.

19 Ie subject to ibid reg 20(2): see note 15 supra.

20 Ie in accordance with ibid reg 22(2)-(4): see the text and notes 9-13 supra.

21 Ibid reg 22(7). See notes 8, 9 supra. See also note 15 supra.

22 Ibid reg 21(1). For these purposes, a 'relevant agreement' is an agreement in writing between the authority and the governing body which gives the authority an entitlement to advise the governing body in relation to the exercise of some or all of its functions of appointment, engagement and dismissal, and which has not been terminated by notice in writing given by the governing body to the authority: reg 21(2). Where the authority has an entitlement to offer advice to any individual governing body, the authority has the same entitlement to offer advice to other collaborating governing bodies: reg 32.

Regulation 21 applies (with modifications: see reg 33; and note 8 supra) where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget: reg 35.

23 As to the Secretary of State see PARA 52 ante.

24 School Staffing (England) Regulations 2003, SI 2003/1963, reg 21(3). See note 22 supra.

25 Ibid reg 21(4). See note 22 supra.

26 Ibid reg 21(5). See note 22 supra.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **344 Appointment of head teacher and deputy head teacher**

NOTES 8, 12, 15--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/345. Appointment of other teachers.

### **345. Appointment of other teachers.**

Where the governing body<sup>1</sup> of a foundation school<sup>2</sup>, a voluntary aided school<sup>3</sup> or a foundation special school<sup>4</sup> identifies any post of teacher<sup>5</sup>, other than a post of head teacher or deputy head teacher<sup>6</sup>, which is to be filled for a period of more than four months, it must send a specification for the post to the authority<sup>7</sup>.

The authority is entitled to advise the governing body in relation to the exercise of any of the governing body's functions of appointment and engagement of any teacher, to the extent provided by, and subject to, any relevant agreement<sup>8</sup>. In the absence of a relevant agreement, it is for the Secretary of State<sup>9</sup> to determine the extent to which the authority is entitled to advise the governing body in relation to the exercise of any of those functions<sup>10</sup>. The governing body, or any other person to whom the functions in question have been delegated, must consider any advice given by the authority pursuant to an entitlement under these provisions<sup>11</sup>. The Secretary of State may at any time withdraw a determination<sup>12</sup>.

Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff, the collaborating governing bodies may delegate the appointment of any teacher (other than the head teacher and deputy head teacher) to<sup>13</sup>:

- 764 (1) the head teacher of one or more of the collaborating schools<sup>14</sup>;
- 765 (2) one or more governors from any of the collaborating schools<sup>15</sup>;
- 766 (3) one or more head teachers with one or more governors from any of the collaborating schools<sup>16</sup>.

Any decision relating to the appointment of a member of staff must be unanimous<sup>17</sup>. Where the collaborating governing bodies have delegated the appointment of a member of staff, other than to the head teacher of the relevant school<sup>18</sup>, the head teacher of the relevant school is entitled to attend and offer advice<sup>19</sup>. Such advice must be considered by the person or persons to whom the delegation has been made<sup>20</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to foundation schools see PARA 102 ante.

3 As to voluntary aided schools see PARA 102 ante.

4 As to foundation special schools see PARA 102 ante.

5 For the meaning of 'teacher' see PARA 335 note 6 ante.

6 As to the appointment to a post of head teacher or deputy head teacher see PARA 344 ante.

7 School Staffing (England) Regulations 2003, SI 2003/1963, regs 19, 23. For the meaning of 'the authority' see PARA 334 note 6 ante. The governing body may delegate its function under reg 23 to the head teacher, to one or more governors, or to one or more governors and the head teacher: reg 4(1)(a), (2). Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to

whom the delegation has been made: reg 4(3). As to the appointment of governors of a maintained school see PARA 267 et seq ante.

Regulations 4 and 23 apply where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and have effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 4, 19, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3, 9, 14.

As to the appointment of teachers other than head teachers and deputy head teachers of foundation, voluntary aided and foundation special schools in Wales see PARA 370 post.

8 School Staffing (England) Regulations 2003, SI 2003/1963, reg 21(1). For the meaning of 'relevant agreement' see PARA 344 note 22 ante. Where the authority has an entitlement to offer advice to any individual governing body, the authority has the same entitlement to offer advice to other collaborating governing bodies: reg 32. For the meaning of 'collaborating governing bodies' see PARA 334 note 13 ante. As to collaboration between schools generally see PARA 214 ante.

Regulation 21 applies (with modifications: see reg 33; and note 7 supra) where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget: reg 35.

9 As to the Secretary of State see PARA 52 ante.

10 School Staffing (England) Regulations 2003, SI 2003/1963, reg 21(3). See note 8 supra.

11 Ibid reg 21(4). See note 8 supra.

12 Ibid reg 21(5). See note 8 supra.

13 Ibid regs 28(1), 30(1).

As to the application of regs 28, 30, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 12-13.

14 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(1)(a). See note 13 supra.

15 Ibid reg 30(1)(b). See note 13 supra.

16 Ibid reg 30(1)(c). See note 13 supra.

17 Ibid reg 30(2). See note 13 supra.

18 For the meaning of 'relevant school' see PARA 334 note 13 ante.

19 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(3). See note 13 supra.

20 Ibid reg 30(3). See note 13 supra.

## UPDATE

### 333-353 Staffing of Particular Categories of Schools in England

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs



19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **345 Appointment of other teachers**

NOTES 7, 13--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/346. Appointment of support staff.

### **346. Appointment of support staff.**

Any appointment of support staff<sup>1</sup> must be made by the governing body<sup>2</sup> of a foundation school<sup>3</sup>, voluntary aided school<sup>4</sup> or foundation special school<sup>5</sup> unless the governing body and the authority<sup>6</sup> agree that the appointment should be made by the authority<sup>7</sup>.

Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff, the collaborating governing bodies<sup>8</sup> may delegate the appointment of any support staff to<sup>9</sup>:

- 767 (1) the head teacher of one or more of the collaborating schools<sup>10</sup>;
- 768 (2) one or more governors from any of the collaborating schools<sup>11</sup>;
- 769 (3) one or more head teachers with one or more governors from any of the collaborating schools<sup>12</sup>.

Any decision relating to the appointment of a member of staff must be unanimous<sup>13</sup>. Where the collaborating governing bodies have delegated the appointment of a member of staff, other than to the head teacher of the relevant school<sup>14</sup>, the head teacher of the relevant school is entitled to attend and offer advice<sup>15</sup>. Such advice must be considered by the person or persons to whom the delegation has been made<sup>16</sup>.

1 For the meaning of 'support staff' see PARA 336 note 6 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 As to foundation schools see PARA 102 ante.

4 As to voluntary aided schools see PARA 102 ante.

5 As to foundation special schools see PARA 102 ante.

6 For the meaning of 'the authority' see PARA 334 note 6 ante.

7 School Staffing (England) Regulations 2003, SI 2003/1963, regs 19, 24. As to the appointment of a person selected by the governing body see PARA 344 note 15 ante. The governing body may delegate its function under reg 24, and its power to appoint any member of staff at a foundation, voluntary aided or foundation special school, to the head teacher, to one or more governors, or to one or more governors and the head teacher: regs 4(1)(a), (b), (2), 19. Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to whom the delegation has been made: reg 4(3). As to the appointment to a post of head teacher or deputy head teacher see PARA 334 ante; and as to the appointment of governors of a maintained school see PARA 267 et seq ante.

Regulations 4 and 24 apply where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and have effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 4, 19, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3, 9, 14.

As to the appointment of non-teaching staff at foundation, voluntary aided and foundation special schools in Wales see PARA 373 post.

8 For the meaning of 'collaborating governing bodies' see PARA 334 note 13 ante. As to collaboration between schools generally see PARA 214 ante.

9 School Staffing (England) Regulations 2003, SI 2003/1963, regs 28(1), 30(1).

As to the application of regs 28, 30, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 12-13.

10 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(1)(a). See note 9 supra.

11 Ibid reg 30(1)(b). See note 9 supra.

12 Ibid reg 30(1)(c). See note 9 supra.

13 Ibid reg 30(2). See note 9 supra.

14 For the meaning of 'relevant school' see PARA 334 note 13 ante.

15 School Staffing (England) Regulations 2003, SI 2003/1963, reg 30(3). See note 9 supra.

16 Ibid reg 30(3). See note 9 supra.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **346 Appointment of support staff**

NOTES 7, 9--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/347. Conduct and discipline.

### **347. Conduct and discipline.**

The governing body of a maintained school<sup>1</sup> must establish procedures: (1) for the regulation of the conduct and discipline of staff at the school; and (2) by which staff may seek redress for any grievance relating to their work at the school<sup>2</sup>. Where the implementation of any determination made by the governing body in operation of the procedures requires any action which is not within the functions exercisable by the governing body by or under the Education Act 2002, but is within the power of the authority<sup>3</sup>, the authority must take that action at the request of the governing body<sup>4</sup>.

The governing body must establish procedures for dealing with lack of capability on the part of staff at the school<sup>5</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 School Staffing (England) Regulations 2003, SI 2003/1963, reg 6(1). Regulation 6 applies where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to foundation schools, voluntary aided schools and foundation special schools see PARA 102 ante; as to proposed schools see PARA 131 et seq ante; as to temporary governing bodies and temporary governors see PARA 212 ante; and as to delegated budgets see PARA 320 ante.

As to the application of regs 6, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3, 14.

As to the conduct and discipline of staff at foundation, voluntary aided and foundation special schools in Wales see PARA 374 post.

3 For the meaning of 'the authority' see PARA 334 note 6 ante.

4 School Staffing (England) Regulations 2003, SI 2003/1963, reg 6(2). See note 2 supra.

5 Ibid reg 7. Regulation 7 applies (with modifications: see reg 33; and note 2 supra) where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget: reg 35.

As to the application of reg 7, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 3.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained

nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **347 Conduct and discipline**

NOTES 2, 5--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/348. Local education authority's report on performance of head teacher.

### **348. Local education authority's report on performance of head teacher.**

Where the authority<sup>1</sup> has any serious concerns about the performance of the head teacher<sup>2</sup> of a school<sup>3</sup>:

- 770 (1) it must make a written report of its concerns to the chair of the governing body<sup>4</sup> of the school, at the same time sending a copy to the head teacher<sup>5</sup>; and  
 771 (2) the chair<sup>6</sup> of the governing body must notify the authority in writing of the action he proposes to take in the light of the report<sup>7</sup>.

1 For the meaning of 'the authority' see PARA 334 note 6 ante.

2 As to the appointment to a post of head teacher see PARA 344 ante.

3 School Staffing (England) Regulations 2003, SI 2003/1963, reg 5. For the meaning of 'school' see PARA 81 ante.

Regulation 5 applies where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to foundation schools, voluntary aided schools and foundation special schools see PARA 102 ante; as to proposed schools see PARA 131 et seq ante; as to temporary governing bodies and temporary governors see PARA 212 ante; and as to delegated budgets see PARA 320 ante.

As to the application of regs 5, 33, with modifications, in relation to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 2, 14.

As to the local education authority's report on the performance of head teachers at foundation, voluntary aided and foundation special schools in Wales see PARA 375 post.

4 As to the governing bodies of maintained schools see PARA 203 et seq ante.

5 School Staffing (England) Regulations 2003, SI 2003/1963, reg 5(a). See note 3 supra.

6 As to the appointment to the chair of the governing body see PARA 288 ante.

7 School Staffing (England) Regulations 2003, SI 2003/1963, reg 5(b). See note 3 supra.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained

nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **348 Local education authority's report on performance of head teacher**

NOTE 3--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/349. Suspension of staff.

### 349. Suspension of staff.

Both the governing body<sup>1</sup> of a foundation school<sup>2</sup>, a voluntary aided school<sup>3</sup> or a foundation special school<sup>4</sup> and the head teacher<sup>5</sup> have power to suspend<sup>6</sup> any person employed or engaged otherwise than under a contract of employment to work at the school<sup>7</sup> where, in the opinion of the governing body or (as the case may be) the head teacher, his suspension is required<sup>8</sup>. The governing body or head teacher must, in exercising that power, immediately inform the head teacher or (as the case may be) the governing body<sup>9</sup>. A suspension under these provisions may only be ended by the governing body<sup>10</sup>; and the governing body must, on ending such a suspension, inform the head teacher<sup>11</sup>.

In the case of support staff<sup>12</sup> at a foundation, voluntary aided or foundation special school employed, or engaged otherwise than under a contract of employment, by the authority<sup>13</sup>, the same procedure applies except that the governing body or head teacher must, when exercising the power to suspend, immediately inform the authority as well as the head teacher or (as the case may be) governing body; and the governing body must, on ending a suspension, immediately inform the authority as well as the head teacher<sup>14</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to foundation schools see PARA 102 ante.

3 As to voluntary aided schools see PARA 102 ante.

4 As to foundation special schools see PARA 102 ante.

5 As to the appointment to a post of head teacher see PARA 344 ante.

6 For these purposes, 'suspend' means suspend without loss of emoluments: School Staffing (England) Regulations 2003, SI 2003/1963, reg 25(5).

Regulation 25 applies where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 25, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3, 14.

As to the suspension of staff at foundation, voluntary aided and foundation special schools in Wales see PARA 376 post.

7 As to the employment and engagement of staff at a school see PARAS 344-346 ante.

8 School Staffing (England) Regulations 2003, SI 2003/1963, regs 19, 25(1). See note 6 supra.

As to the application of reg 19 with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 9.

9 School Staffing (England) Regulations 2003, SI 2003/1963, reg 25(2). See note 6 supra.

10 Ibid reg 25(3). See note 6 supra.



11 Ibid reg 25(4). See note 6 supra.

12 For the meaning of 'support staff' see PARA 336 note 6 ante.

13 Ie under the School Staffing (England) Regulations 2003, SI 2003/1963, reg 24 (see PARA 346 ante). For the meaning of 'the authority' see PARA 334 note 6 ante.

14 Ibid reg 16; applied by reg 26. See note 6 supra.

As to the application of reg 16, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 5.

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **349 Suspension of staff**

NOTES 6, 8, 14--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/A. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN ENGLAND/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/350. Dismissal of staff.

### **350. Dismissal of staff.**

Where the governing body<sup>1</sup> of a foundation<sup>2</sup>, voluntary aided<sup>3</sup> or foundation special school<sup>4</sup> determines that any person employed or engaged by the authority<sup>5</sup> to work as support staff<sup>6</sup> at the school should cease to work there, it must notify the authority in writing of its determination and the reasons for it<sup>7</sup>. If the person concerned is employed or engaged to work solely at the school and does not resign, the authority must, before the end of the period of 14 days beginning with the date on which such notification is given, either:

- 772 (1) give him such notice terminating his contract with the authority as is required under that contract<sup>8</sup>; or
- 773 (2) terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of his conduct<sup>9</sup>.

If the person concerned is not employed or engaged by the authority to work solely at the school, the authority must require him to cease to work at the school<sup>10</sup>.

The authority is entitled to advise the governing body in relation to the exercise of the governing body's function of dismissal of any teacher, to the extent provided by, and subject to, any relevant agreement<sup>11</sup>. In the absence of a relevant agreement, it is for the Secretary of State<sup>12</sup> to determine the extent to which the authority is entitled to advise the governing body in relation to the exercise of that function<sup>13</sup>. The governing body, or any other person to whom the function in question has been delegated, must consider any advice given by the authority pursuant to an entitlement under these provisions<sup>14</sup>. The Secretary of State may at any time withdraw a determination<sup>15</sup>.

Where two or more governing bodies decide to collaborate on any function relating to individual members of the school staff, the collaborating governing bodies may delegate the determination that a member of staff (other than the head teacher) should cease to work at a relevant school<sup>16</sup>, or the power to dismiss a member of staff (other than the head teacher) from a relevant school<sup>17</sup>. Any such delegation may be:

- 774 (a) to the head teacher of one or more of the collaborating schools<sup>18</sup>;
- 775 (b) to one or more governors from any of the collaborating schools<sup>19</sup>;
- 776 (c) to one or more head teachers acting with one or more governors from any of the collaborating schools<sup>20</sup>.

The collaborating governing bodies may delegate to one or more governors the determination that the head teacher should cease to work at, or the decision to dismiss the head teacher from, a relevant school<sup>21</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to foundation schools see PARA 102 ante.

3 As to voluntary aided schools see PARA 102 ante.

4 As to foundation special schools see PARA 102 ante.

5 le under the School Staffing (England) Regulations 2003, SI 2003/1963, reg 24 (see PARA 346 ante). For the meaning of 'the authority' see PARA 334 note 6 ante.

6 For the meaning of 'support staff' see PARA 336 note 6 ante.

7 School Staffing (England) Regulations 2003, SI 2003/1963, regs 17(1), 19 (reg 17(1) applied by reg 26). The governing body may delegate its function under reg 17 (as so applied), and its power to dismiss any member of staff at a foundation, voluntary aided or foundation special school, to the head teacher, to one or more governors, or to one or more governors and the head teacher: regs 4(1)(a), (b), (2), 19. Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to whom the delegation has been made: reg 4(3). As to the appointment to a post of head teacher or deputy head teacher see PARA 334 ante; and as to the appointment of governors of a maintained school see PARA 267 et seq ante. For the meaning of 'dismissal' see PARA 340 note 12 ante.

Regulations 4, 26 apply where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and have effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 4, 17, 19, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 3, 6, 9, 14.

As to the dismissal of staff at foundation, voluntary aided and foundation special schools in Wales see PARA 377 post.

8 School Staffing (England) Regulations 2003, SI 2003/1963, reg 17(2)(a); applied by reg 26. See note 7 supra.

9 Ibid reg 17(2)(b); applied by reg 26. See note 7 supra.

10 Ibid reg 17(3); applied by reg 26. See note 7 supra.

11 Ibid reg 21(1). For the meaning of 'relevant agreement' see PARA 344 note 22 ante. Where the authority has an entitlement to offer advice to any individual governing body, the authority has the same entitlement to offer advice to other collaborating governing bodies: reg 32. For the meaning of 'collaborating governing bodies' see PARA 334 note 13 ante. As to collaboration between schools generally see PARA 214 ante.

Regulation 21 applies (with modifications: see reg 33; and note 7 supra) where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget: reg 35.

12 As to the Secretary of State see PARA 52 ante.

13 School Staffing (England) Regulations 2003, SI 2003/1963, reg 21(3). See note 11 supra.

14 Ibid reg 21(4). See note 11 supra.

15 Ibid reg 21(5). See note 11 supra.

16 For the meaning of 'relevant school' see PARA 334 note 13 ante.

17 School Staffing (England) Regulations 2003, SI 2003/1963, regs 28(1), 31(1).

As to the application of regs 28, 31, with modifications, in relation to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 12-13.

18 School Staffing (England) Regulations 2003, SI 2003/1963, reg 31(2)(a). See note 17 supra.

19 Ibid reg 31(2)(b). See note 17 supra.

20 Ibid reg 31(2)(c). See note 17 supra.

21 Ibid reg 31(3). See note 17 supra.

## UPDATE

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **350 Dismissal of staff**

NOTES 7, 17--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

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### **351. Appointment of head teachers for schools of Roman Catholic religious orders.**

The governing body<sup>1</sup> of a voluntary aided school<sup>2</sup> must notify the authority<sup>3</sup> of any vacancy<sup>4</sup> for the head teacher<sup>5</sup>, and, where it identifies the post of deputy head teacher as one to be filled, that post<sup>6</sup>. If the trustees under a trust deed<sup>7</sup> relating to a voluntary aided school are also trustees of a Roman Catholic religious order<sup>8</sup> ('the order'), then the governing body must notify the Major Superior<sup>9</sup> in writing of any vacancy in the post of head teacher of the school<sup>10</sup>.

The governing body must:

- 777 (1) interview such persons who are members of the order as are proposed as candidates for appointment to the post by the Major Superior<sup>11</sup>; and
- 778 (2) appoint to the post one of the persons so interviewed unless<sup>12</sup> the governing body has good reason for not making any such appointment<sup>13</sup>.

If no appointment is made by the governing body under head (2) above, then the usual provisions relating to the advertisement of the vacancy in the post of head teacher, the selection process and the appointment to the vacancy or post<sup>14</sup> have effect in relation to the filling of the vacancy<sup>15</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to voluntary aided schools see PARA 102 ante.

3 For the meaning of 'the authority' see PARA 334 note 6 ante.

4 As to the meaning of references to a vacancy in any post see PARA 334 note 7 ante.

5 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

6 School Staffing (England) Regulations 2003, SI 2003/1963, regs 19, 22(1).

Regulation 22 applies where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget (reg 35); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to delegated budgets see PARA 320 ante. As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of regs 19, 22, 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 paras 9-10, 14.

As to the appointment of head teachers at voluntary aided schools of Roman Catholic religious orders in Wales see PARA 379 post.

7 As to the meaning of 'trust deed' generally see PARA 104 note 6 ante.

8 For these purposes, 'Roman Catholic religious order' means a Roman Catholic religious institute or society of apostolic life: School Staffing (England) Regulations 2003, SI 2003/1963, reg 27(6).

As to the application of reg 27, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 11.

The School Staffing (England) Regulations 2003, SI 2003/1963, reg 27 applies (with modifications: see reg 33; and note 6 supra) where a proposed school which will be a foundation, voluntary aided or foundation special school has a delegated budget: reg 35.

9 For these purposes, 'the Major Superior' means the Major Superior of the order: *ibid* reg 27(6).

10 *Ibid* reg 27(1), (3). If the trustees as mentioned in the text are also trustees of a Roman Catholic religious order, then reg 27(3), (4) (see the text and notes 11-13 *infra*) has effect in the filling of a vacancy in the post of head teacher of the school in place of reg 22(2)-(7) (see PARA 344 ante): reg 27(2).

11 *Ibid* reg 27(2), (4)(a).

12 *Ie* by virtue of *ibid* reg 20(2) (staff qualification requirements) or otherwise. As to staff qualification requirements see reg 3(3); and PARA 334 note 16 ante.

13 *Ibid* reg 27(2), (4)(b).

The governing body may delegate its power to appoint any member of staff at a voluntary aided school, to the head teacher, to one or more governors, or to one or more governors and the head teacher: regs 4(1)(b), (2), 19. Where the governing body has made any such delegation to one or more governors, the head teacher may attend and offer advice at all relevant proceedings; and such advice must be considered by the governor or governors to whom the delegation has been made: reg 4(3). As to the appointment to a post of head teacher or deputy head teacher see PARA 334 ante; and as to the appointment of governors of a maintained school see PARA 267 *et seq* ante.

As to the application of reg 4, with modifications, to the staffing of federations see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 3.

14 *Ie* the School Staffing (England) Regulations 2003, SI 2003/1963, reg 22(2)-(7) (see PARA 344 ante).

15 *Ibid* reg 27(5).

## **UPDATE**

### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **351 Appointment of head teachers for schools of Roman Catholic religious orders**

NOTES 6, 8, 13--SI 2004/2042 reg 30, Sch 9 now School Governance (Federations)  
(England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

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*(b) Schools not having a Delegated Budget*

**352. Staffing of school on suspension of delegated budget.**

If at any time a foundation school<sup>1</sup>, a voluntary aided school<sup>2</sup> or a foundation special school<sup>3</sup> does not have a delegated budget<sup>4</sup> the usual provisions relating to the staffing at such schools<sup>5</sup> have effect subject to the following provisions<sup>6</sup>.

In such circumstances, the arrangements for the staffing of the school are determined by the local education authority<sup>7</sup>. Except with the consent of the authority, the governing body must not appoint any teacher to work at the school, or dismiss any teacher at the school<sup>8</sup>. The authority may give the governing body directions:

- 779 (1) as to the educational qualifications of the teachers to be appointed for giving secular education<sup>9</sup>; or
- 780 (2) requiring them to dismiss any teacher at the school<sup>10</sup>,

but the authority must not give any directions under head (1) above except after consulting the governing body<sup>11</sup>. The authority may give directions to the governing body as to the number and conditions of service of persons employed at the school for the purposes of the care and maintenance of the school premises<sup>12</sup>.

1 As to foundation schools see PARA 102 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 As to voluntary aided schools see PARA 102 ante.

3 As to foundation special schools see PARA 102 ante.

4 Ie by virtue of any suspension under the School Standards and Framework Act 1998 s 17 (as amended) (see PARA 1269 post), or s 51, Sch 15 (as amended) (see PARAS 322-325 ante). For the meaning of references to 'school having a delegated budget' see PARA 342 note 5 ante.

5 Ie the regulations made under the Education Act 2002 s 36(4) (currently in force in relation to England only) (see PARA 343 et seq ante).

6 Ibid s 36(1), (7).

Section 36 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 for the purposes of s 36(4), (5) (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) and 1 September 2003 for the purposes of the Education Act 2002 s 35(1)-(3), (6)-(8) (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

As to the staffing of foundation schools, voluntary aided schools or foundation special schools without a delegated budget in Wales see the School Standards and Framework Act 1998 s 55 (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 380 post.



7 Education Act 2002 Sch 2 para 5. As to local education authorities see PARA 20 ante. The provisions of Sch 2 Pt 2 paras 5-10 are to be brought into force by order made under s 216(4) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed.

Schedule 2 Pt 2 (not yet in force) applies also where a proposed school which will be a foundation, voluntary aided or foundation special school does not have a delegated budget (School Staffing (England) Regulations 2003, SI 2003/1963, reg 37); and has effect for that purpose as if: (1) any reference to a 'governing body' were a reference to a temporary governing body; and (2) any reference to a 'governor' were a reference to a temporary governor (reg 33). As to temporary governing bodies and temporary governors see PARA 212 ante. As to proposed schools see PARA 131 et seq ante.

As to the application of reg 33, with modifications, to the staffing of federations (as to which see PARA 213 ante) see the School Governance (Federations) (England) Regulations 2004, SI 2004/2042, reg 30, Sch 9 para 14.

Functions exercisable by or on behalf of a local education authority under the Education Act 2002 Sch 2 (not yet in force) are relevant functions for the purposes of the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 ante): s 127(6)(q) (added by the Education Act 2002 s 215(1), Sch 21 para 110(1), (3)(c)). The School Standards and Framework Act 1998 s 127(6)(q) (as added) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

8 Education Act 2002 Sch 2 para 6. See note 7 supra. Schedule 2 para 6 (not yet in force) has effect subject to the provisions of the School Standards and Framework Act 1998 s 58 (as amended) (appointment and dismissal of certain teachers at schools with a religious character: see PARA 388 post): Education Act 2002 Sch 2 para 10.

As to education action forums and a governing body's functions under Sch 2 (not yet in force) see the School Standards and Framework Act 1998 s 12(4) (as amended in relation to England; prospectively amended in relation to Wales); and PARA 453 et seq post.

9 Education Act 2002 Sch 2 para 7(a). See note 7 supra. Schedule 2 para 7 (not yet in force) has effect subject to the provisions of the School Standards and Framework Act 1998 s 58 (as amended): Education Act 2002 Sch 2 para 10.

10 Ibid Sch 2 para 7(b). See notes 7, 9 supra.

Where a teacher in a foundation, voluntary aided or foundation special school is dismissed by the governing body of the school in pursuance of a requirement of the local education authority under Sch 2 para 7 (not yet in force), the Employment Rights Act 1996 Pt X (ss 94-134A) (as amended) (see EMPLOYMENT vol 40 (2009) PARA 714 et seq) has effect in relation to the dismissal (with modifications): see the Employment Rights Act 1996 s 134(1) (as amended); and EMPLOYMENT vol 40 (2009) PARA 714.

11 Education Act 2002 Sch 2 para 7. See notes 7, 9 supra.

12 Ibid Sch 2 para 8. See note 7 supra. As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 212(2), (3).

Where the trust deed relating to the school provides for a person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control authorised by regulations under s 31: see PARA 237 ante) the use of those premises is or would be under the control of any such person, the reference in Sch 2 para 8 (not yet in force) to the governing body must be read as a reference to that person: Sch 2 para 9. As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of s 212(2), (3).

## UPDATE

### 333-353 Staffing of Particular Categories of Schools in England

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment

of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

### **352 Staffing of school on suspension of delegated budget**

NOTES 6, 7--Day now appointed in relation to Wales: SI 2006/879.

NOTE 7--Education Act 2002 Sch 2 in force: SI 2003/1667 (England), SI 2006/879 (Wales). 1998 Act s 127(6) repealed: Education and Inspections Act 2006 s 58(6), Sch 18 Pt 2. SI 2004/2042 reg 30, Sch 9 now School Governance (Federations) (England) Regulations 2007, SI 2007/960, reg 32, Sch 9.

NOTE 12--Education Act 2002 Sch 2 para 11 added: Apprenticeships, Skills, Children and Learning Act 2009 s 237(7).

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## (C) NEW SCHOOLS

### **353. Staffing of new schools in England.**

The powers contained in regulations made under the Education Act 2002 relating to the staffing of schools in England<sup>1</sup> apply, with modifications<sup>2</sup>, to the appointment of staff and the taking of other steps in relation to staffing which are appropriate in preparation for the opening of a proposed school<sup>3</sup>. The modifications apply in relation to a proposed school which will be: (1) a community, voluntary controlled, community special or maintained nursery school having a delegated budget<sup>4</sup> or without a delegated budget<sup>5</sup>; or (2) a foundation, voluntary aided or foundation special school having a delegated budget<sup>6</sup> or without a delegated budget<sup>7</sup>.

1 See the School Staffing (England) Regulations 2003, SI 2003/1963, made under the Education Act 2002 ss 35-36; see PARAS 333 et seq, 344 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante. As to the staffing of new schools in Wales see PARA 381 post.

2 See the School Staffing (England) Regulations 2003, SI 2003/1963, reg 33.

3 See ibid Pt 5 (regs 33-37); and PARAS 334 et seq, 344 et seq ante.

4 See ibid reg 34; and PARAS 334-341 ante. As to community, voluntary and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post. For the meaning of 'maintained nursery school' see PARA 98 note 3 ante. For the meaning of 'school having a delegated budget' see PARA 320 ante.

5 See ibid reg 36; and PARA 342 ante.

6 See ibid reg 35; and PARAS 344-351 ante. As to foundation, voluntary aided and foundation special schools see PARA 102 et seq ante.

7 See ibid reg 37; and PARA 352 ante.

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## ***B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES***

### **(A) COMMUNITY, VOLUNTARY CONTROLLED AND COMMUNITY SPECIAL SCHOOLS**

#### ***(a) Schools having a Delegated Budget***

#### **UPDATE**

#### **333-353 Staffing of Particular Categories of Schools in England**

SI 2003/1963 replaced: School Staffing (England) Regulations 2009, SI 2009/2680. The 2009 Regulations make general provision for the delegation of authority by the governing body of a school (reg 4), the management and performance of the head teacher (regs 5, 6), and the conduct, discipline and capability of staff (regs 7, 8). At least one person involved in the interviewing of job applicants at a school must be trained in safer recruitment techniques: reg 9. Provision is made for the appointment of staff in community, voluntary controlled, community special, and maintained nursery schools (regs 12-18, Sch 2), including requirements as to identity checks and the obtaining of enhanced criminal record certificates in respect of appointees. Provision is also made for the suspension and dismissal of staff in such schools (regs 19, 20), the local education authority's entitlement to offer advice at all proceedings relating to the selection or dismissal of a teacher (reg 14), and the appointment of school meals staff (reg 21). Where a member of staff who was appointed before 12 May 2006 moves from a post which did not bring him regularly into contact with children or young persons to a post which does, the governing body must obtain an enhanced criminal record certificate in respect of the person before, or as soon as practicable after, the move: reg 22. Corresponding provision is made in relation to foundation, voluntary aided, and foundation special schools: regs 23-33, Sch 2. The appointment of head teachers for schools of Roman Catholic religious orders is dealt with in reg 34, collaboration between schools in regs 35-39, and the staffing of new schools in regs 40-44.

#### **354. In general.**

Provision is made by the School Standards and Framework Act 1998<sup>1</sup> in relation to the staffing of community, voluntary controlled and community special schools in Wales<sup>2</sup>.

In relation to the appointment of staff, provision is made in relation to head teachers and deputy head teachers<sup>3</sup>, the appointment of other teachers<sup>4</sup> and the appointment of non-teaching staff<sup>5</sup>. Further provision is made in relation to the power of the chief education officer of a local education authority to offer advice with respect to the appointment or engagement of any teacher at such a school<sup>6</sup>, and in relation to a voluntary controlled school, the power of the appropriate diocesan authority to offer such advice<sup>7</sup>. The School Standards and Framework Act 1998 further provides for the regulation of conduct and discipline<sup>8</sup>, the suspension<sup>9</sup> and the

dismissal<sup>10</sup> of such staff. In relation to head teachers of such schools, where the local education authority has serious concerns about their performance, provision is made requiring the authority to make a written report of its concerns to the chairman of the governing body of the school<sup>11</sup>. Separate provision is made as to the appointment, discipline, suspension and dismissal of persons employed, or to be employed, at such a school in connection with the provision of meals<sup>12</sup>.

1 le by School Standards and Framework Act 1998 s 54(1), Sch 16 (as amended): see PARAS 355-365 post.

2 Ibid s 54(1). As to community, voluntary controlled and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

Section 54 is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the staffing of community, voluntary controlled and community special schools in England see PARA 333 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

3 As to the appointment of head teachers and deputy head teachers see PARA 355 post.

4 As to the appointment of other teachers see PARA 356 post.

5 As to the appointment of non-teaching staff see PARA 359 post.

6 As to the advice of the chief education officer on the appointment of teachers see PARA 358 post.

7 For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 ante. As to the advisory rights for appropriate diocesan authorities see PARA 365 post.

8 As to staff discipline see PARA 360 post.

9 As to the suspension of staff see PARA 362 post.

10 As to the dismissal of staff see PARA 363 post.

11 As to reports by local education authorities on the performance of head teachers see PARA 361 post.

12 As to school meals staff see PARA 364 post.

## UPDATE

### 354-382 Staffing of Particular Categories of Schools in Wales

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/355. Appointment of head teacher and deputy head teacher.

### **355. Appointment of head teacher and deputy head teacher.**

In relation to the filling of a vacancy in the post<sup>1</sup> of head teacher<sup>2</sup> or deputy head teacher of the school<sup>3</sup>, the governing body<sup>4</sup> must notify the local education authority<sup>5</sup> of the vacancy in writing before taking any of the steps mentioned below<sup>6</sup>.

Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the statutory procedure described below<sup>7</sup> before the date on which it falls vacant, the governing body:

- 781 (1) must recommend a person for appointment as acting head teacher<sup>8</sup>; or
- 782 (2) instead of making such a recommendation, may for the purpose of filling the vacancy engage, or make arrangements for the engagement of, a person to provide his services as acting head teacher otherwise than under a contract of employment<sup>9</sup> with the local education authority<sup>10</sup>.

Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the statutory procedure described below<sup>11</sup> before the date on which it falls vacant, the governing body:

- 783 (a) may recommend a person for appointment as acting deputy head teacher<sup>12</sup>;  
or
- 784 (b) instead of making such a recommendation, may for the purpose of filling the vacancy engage, or make arrangements for the engagement of, a person to provide his services as acting head teacher otherwise than under a contract of employment with the local education authority<sup>13</sup>.

If the governing body recommends a person for appointment as acting head teacher or acting deputy head teacher, the local education authority must appoint the person recommended unless he does not meet any staff qualification requirements<sup>14</sup> which are applicable in relation to his appointment<sup>15</sup>. If the authority declines to appoint a person recommended by the governing body for appointment as acting head teacher, the governing body must recommend another person for appointment<sup>16</sup>. No person must be engaged under head (2) or head (b) above unless he meets all the staff qualification requirements applicable in relation to the head teacher or, as the case may be, deputy head teacher at the school<sup>17</sup>.

The statutory procedure for the appointment of a head teacher or deputy head teacher requires that the governing body must advertise the vacancy in such publications circulating throughout Wales as it considers appropriate<sup>18</sup>. The governing body must appoint a selection panel consisting of at least three of its members<sup>19</sup>. The selection panel must:

- 785 (i) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the local education authority in writing of the names of the applicants so selected<sup>20</sup>;
- 786 (ii) interview such of those applicants as attend for the purpose<sup>21</sup>;
- 787 (iii) where it considers it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by it<sup>22</sup>; and
- 788 (iv) if its recommendation is approved by the governing body, recommend the applicant in question to the local education authority for appointment<sup>23</sup>.

Any decision of the selection panel must be taken by a vote representing an absolute majority of all the members of the panel, whether or not taking part in the vote<sup>24</sup>. If, within the period of 14 days beginning with the date when it receives a notification under head (i) above, the authority makes written representations to the selection panel that any of the applicants selected by the panel is not a suitable person for the appointment, the panel must not recommend that person to the governing body for appointment unless the panel has considered those representations, and notified the authority in writing of its response to the representations; and when making such a recommendation the panel must supply the governing body with a copy of those representations and of the panel's response to them<sup>25</sup>. If the panel does not recommend a person to the governing body, or if the governing body does not approve its recommendation, the governing body may, if it thinks fit, re-advertise the vacancy in the required manner<sup>26</sup>, and whether or not it re-advertises the vacancy, may require the panel to repeat the steps mentioned in heads (i) to (iv) above<sup>27</sup>. In determining whether a person is suitable for appointment as head teacher the authority must have regard to any guidance given from time to time by the National Assembly for Wales<sup>28</sup>.

Where the governing body approves a recommendation of the selection panel, the local education authority must appoint the person recommended by the panel unless he does not meet any staff qualification requirements which are applicable in relation to his appointment<sup>29</sup>. If the authority declines to appoint the person recommended by the panel, the governing body may, if it thinks fit, re-advertise the vacancy in the manner required<sup>30</sup>, and whether or not it re-advertises the vacancy, may require the panel to repeat the steps mentioned in heads (i) to (iv) above<sup>31</sup>.

For the purpose of giving advice, the chief education officer of the local education authority<sup>32</sup> is entitled to attend all proceedings, including interviews, of the governing body, and of any selection panel<sup>33</sup>, relating to such appointments or engagements<sup>34</sup>.

1 References in the School Standards and Framework Act 1998 s 54, Sch 16 (as amended) (see PARAS 356-365 post) to a vacancy in any post include a prospective vacancy in the post: Sch 16 para 1(2).

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the appointment of head teachers and deputy head teachers of community, voluntary controlled and community special schools in England see PARA 334 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For these purposes, 'the school' means a community, voluntary controlled or community special school: *ibid* Sch 16 para 1(1). See note 1 *supra*.

4 As to the governing bodies of maintained schools in Wales see PARA 251 *et seq* ante.

5 As to local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 Sch 16 paras 2, 3. See note 1 *supra*.

7 le ibid Sch 16 paras 5-7: see the text and notes 18-31 infra.

8 Ibid Sch 16 para (4)(1)(a). See notes 1 supra, 10 infra.

9 For these purposes, 'contract of employment' has the meaning given by the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2): School Standards and Framework Act 1998 s 142(1).

10 Ibid Sch 16 para 4(1)(b), (5). The governing body may, in connection with any absence of the person for the time being holding the post of head teacher or deputy head teacher of the school, take either of the steps mentioned in Sch 16 para 4(1) (prospectively repealed in relation to Wales) (see heads (1) and (2) in the text) or, as the case may be, Sch 16 para 4(2) (prospectively repealed in relation to Wales) (see heads (a) and (b) in the text): Sch 16 para 8(1). References in Sch 16 (as amended; prospectively repealed in relation to Wales) to a person's absence are references to his absence, or prospective absence, from the school: Sch 16 para 1(2). For the purposes of Sch 16 para 8 (prospectively repealed in relation to Wales), the provisions of Sch 16 para 4(3) (prospectively repealed in relation to Wales) (see the text and notes 14-15 infra) apply in relation to any recommendation made by virtue of Sch 16 para 8(1) (prospectively repealed in relation to Wales) as they apply in relation to any recommendation made by virtue of Sch 16 para 4(1) (prospectively repealed in relation to Wales) or Sch 16 para 4(2) (prospectively repealed in relation to Wales); and the provisions of Sch 16 para 4(5), (6) (prospectively repealed in relation to Wales) (see the text and notes 13, 27 infra) apply in connection with any such absence as is mentioned in Sch 16 para 8(1) (prospectively repealed in relation to Wales) as they apply for the purpose of filling any such vacancy as is mentioned in Sch 16 para 4(1) (prospectively repealed in relation to Wales) or Sch 16 para 4(2) (prospectively repealed in relation to Wales) (see the text and notes 11-13 infra): Sch 16 para 8(2). See note 1 supra.

11 le ibid Sch 16 paras 5-7 (prospectively repealed in relation to Wales): see the text and notes 18-31 infra.

12 Ibid Sch 16 para 4(2)(a). See note 1 supra.

13 Ibid Sch 16 para 4(2)(b), (5). See notes 1, 10 supra.

14 References in ibid Sch 16 (as amended; prospectively repealed in relation to Wales) (see PARAS 356-365 post) to staff qualification requirements are references to any requirements with respect to: (1) qualifications; (2) registration; (3) health and physical capacity; or (4) fitness on educational grounds or in any other respect, of teachers or other persons employed, or otherwise engaged to provide their services, in work that brings them regularly into contact with persons who have not attained the age of 19 which for the time being apply under regulations under the Education Reform Act 1988 s 218 (as amended) (regulations relating to employment of teachers etc), or of the Teaching and Higher Education Act 1998 s 19 (as amended) (induction training) (see PARA 774 post): School Standards and Framework Act 1998 Sch 16 para 1(3). See note 1 supra. 'Employment' (except in s 92(4) (prospectively substituted in relation to Wales) (see PARA 402 note 19 post)) means employment under a contract of employment; and 'employed' must be construed accordingly: s 142(1).

15 Ibid Sch 16 para 4(3). See note 1 supra.

16 Ibid Sch 16 para 4(4). See note 1 supra.

17 Ibid Sch 16 para 4(6). See note 1 supra.

18 Ibid Sch 16 para 5. See note 1 supra.

19 Ibid Sch 16 para 6(1). See note 1 supra. The panel exercises the functions conferred on the governing body by Sch 16 para 6 (prospectively repealed in relation to Wales): see the text to notes 20-28 infra. As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8).

20 Ibid Sch 16 para 6(2)(a). See note 1 supra.

21 Ibid Sch 16 para 6(2)(b). See note 1 supra.

22 Ibid Sch 16 para 6(2)(c). See note 1 supra.

23 Ibid Sch 16 para 6(2)(d). See note 1 supra.

24 Ibid Sch 16 para 6(3). See note 1 supra.

25 Ibid Sch 16 para 6(4). See note 1 supra.

26 le the manner required by ibid Sch 16 para 5 (prospectively repealed in relation to Wales): see the text to note 18 supra.



27 Ibid Sch 16 para 6(5). See note 1 supra.

28 Ibid Sch 16 para 6(6). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

29 Ibid Sch 16 para 7(1). See note 1 supra.

30 Ibid Sch 16 para 7(2)(a). The text refers to the manner required by Sch 16 para 5 (prospectively repealed in relation to Wales): see the text to note 18 supra. See note 1 supra.

31 Ibid Sch 16 para 7(2)(b). See note 1 supra.

32 References in ibid Sch 16 (as amended; prospectively repealed in relation to Wales) (see PARAS 356-365 post) to the chief education officer of the local education authority include any officer of the authority nominated by the chief education officer: Sch 16 para 1(4). See note 1 supra. As to the appointment of the chief education officer see PARA 51 ante.

33 He appointed under ibid Sch 16 para 6 (prospectively repealed in relation to Wales): see the text and notes 19-28 supra.

34 Ibid Sch 16 para 18(1)(a). This applies to appointments and engagements to which Sch 16 paras 3-8 (prospectively repealed in relation to Wales) (see the text and notes 1-31 supra) apply: Sch 16 para 18(1)(a). Except in relation to the appointment of a head teacher, Sch 16 para 18(1) (prospectively repealed in relation to Wales) (see PARA 356 post) applies in relation to the head teacher, if not otherwise entitled to be present at the proceedings there mentioned, as it applies in relation to the chief education officer: Sch 16 para 19(a). See note 1 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/356. Appointment of other teachers.

### **356. Appointment of other teachers.**

The following provision is made<sup>1</sup> in relation to the filling of a vacancy in any teaching post<sup>2</sup>, whether full-time or part-time, at the school<sup>3</sup>, other than the post of head teacher<sup>4</sup> or deputy head teacher<sup>5</sup>. Before taking any of the steps mentioned below, the governing body<sup>6</sup> must determine a specification for the post in consultation with the head teacher, and send a copy of the specification to the local education authority<sup>7</sup>. The local education authority may nominate for consideration for appointment to the post any person who appears to it to be qualified to fill it and who at the time of his nomination either is one of its employees<sup>8</sup> or has been appointed to take up employment<sup>9</sup> with it at a future date, or is employed<sup>10</sup> by the governing body of a foundation, voluntary aided or foundation special<sup>11</sup> school maintained by it<sup>12</sup>. No person who is employed at any school maintained by the authority<sup>13</sup> may be so nominated by it without the consent of the governing body of the school<sup>14</sup>. The governing body may advertise the vacancy at any time after it has sent a copy of the specification for the post to the local education authority<sup>15</sup>, and must do so unless either it accepts for appointment to the post a person nominated by the local education authority<sup>16</sup>, or it decides to recommend to the authority for appointment to the post a person who is already employed to work at the school<sup>17</sup>. Where the governing body advertises the vacancy, it must do so in a manner likely in its opinion to bring it to the notice of persons, including employees of the authority, who are qualified to fill it<sup>18</sup>. Where the governing body advertises the vacancy, it must also:

- 789 (1) interview such applicants for the post and such of the persons, if any, nominated by the local education authority<sup>19</sup> as it thinks fit<sup>20</sup>; and
- 790 (2) where it considers it appropriate to do so, either recommend to the authority for appointment one of the applicants interviewed by it or notify the authority that it accepts for appointment any person so nominated by the authority<sup>21</sup>.

If the governing body is unable to agree on a person to recommend or accept for appointment, it may repeat the steps mentioned in heads (1) and (2) above, with or without first re-advertising the vacancy<sup>22</sup>. The local education authority must appoint the person recommended or accepted for appointment by the governing body unless he does not meet any staff qualification requirements<sup>23</sup> which are applicable in relation to his appointment<sup>24</sup>. If the authority declines to appoint a person recommended by the governing body, the governing body must repeat such of the steps mentioned in heads (1) and (2) above as it thinks fit, with or without first re-advertising the vacancy<sup>25</sup>.

The governing body may, in connection with any absence<sup>26</sup> of the person for the time being holding any teaching post, whether full-time or part-time, other than the post of head teacher or deputy head teacher<sup>27</sup>, engage or make arrangements for the engagement of a person to provide his services as a teacher at the school otherwise than under a contract of employment with the local education authority<sup>28</sup>. No person may be so engaged unless he meets all the staff qualification requirements applicable in relation to a teacher in the post in which he would be acting as a temporary teacher<sup>29</sup>.

The governing body may, in relation to a particular vacancy or absence, or a vacancy or absence of a kind specified by it, delegate any of its functions<sup>30</sup> under the provisions described

above<sup>31</sup> to one or more governors, to the head teacher, or to one or more governors and the head teacher acting together<sup>32</sup>.

For the purpose of giving advice, the chief education officer of the local education authority<sup>33</sup> is entitled to attend all proceedings, including interviews, of the governing body, and of any persons to whom any functions of the governing body under the provisions described above<sup>34</sup> are delegated, relating to appointments or engagements to which any of those provisions apply<sup>35</sup>.

1     Ie by the School Standards and Framework Act 1998 s 54(1), Sch 16 paras 11-15: see the text and notes 6-25 *infra*.

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the appointment of teachers (other than head teachers and deputy head teachers) of community, voluntary controlled and community special schools in England see PARA 335 *ante*. For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*.

2     As to the meaning of 'vacancy in any post' see PARA 355 note 1 *ante*.

3     For the meaning of 'the school' for these purposes see PARA 355 note 3 *ante*.

4     As to the meaning of 'head teacher' see PARA 93 note 13 *ante*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5     Ibid Sch 16 para 9. However, this does not apply in relation to any temporary appointment or engagement in any such post for a period not exceeding four months: see Sch 16 para 10(1); and PARA 357 *post*. See note 1 *supra*. As to the temporary appointment of other teachers see PARA 357 *post*.

6     As to the governing bodies of maintained schools in Wales see PARA 251 *et seq ante*.

7     School Standards and Framework Act 1998 Sch 16 para 11. See note 1 *supra*. As to local education authorities see PARA 20 *ante*.

8     For these purposes, 'employee' has the same meaning as in the Employment Rights Act 1996 s 230(1) (see EMPLOYMENT vol 39 (2009) PARA 2): School Standards and Framework Act 1998 s 142(1).

9     For the meaning of 'employment' see PARA 355 note 14 *ante*.

10    For the meaning of 'employed' see PARA 355 note 14 *ante*.

11    As to foundation, voluntary aided and foundation special schools see PARA 102 *et seq ante*. As to special schools see PARA 1027 *et seq post*.

12    School Standards and Framework Act 1998 Sch 16 para 12(1). See note 1 *supra*.

13    For the meaning of 'school maintained by a local education authority' see PARA 94 *ante*.

14    School Standards and Framework Act 1998 Sch 16 para 12(2). See note 1 *supra*.

15    Ie in accordance with *ibid* Sch 16 para 11 (prospectively repealed in relation to Wales): see the text to notes 6-7 *supra*.

16    Ie under *ibid* Sch 16 para 12 (prospectively repealed in relation to Wales): see the text and notes 8-14 *supra*.

17    Ibid Sch 16 para 13(1). See note 1 *supra*. A person employed by a local education authority is to be regarded as employed to work at a school if his employment with the authority for the time being involves work at that school: s 142(7)(a).

18    Ibid Sch 16 para 13(2). See note 1 *supra*.

19    Ie under *ibid* Sch 16 para 12 (prospectively repealed in relation to Wales): see the text to notes 8-14 *supra*.

- 20 Ibid Sch 16 para 14(1)(a). See note 1 supra.
- 21 Ibid Sch 16 para 14(1)(b). See note 1 supra.
- 22 Ibid Sch 16 para 14(2). See note 1 supra. The text refers to re-advertising the vacancy in accordance with Sch 16 para 13(2) (prospectively repealed in relation to Wales): see the text to note 18 supra.
- 23 As to references to 'staff qualification requirements' see PARA 355 note 14 ante.
- 24 School Standards and Framework Act 1998 Sch 16 para 15(1). See note 1 supra.
- 25 Ibid Sch 16 para 15(2). See note 1 supra. The text refers to re-advertising the vacancy in accordance with Sch 16 para 13(2) (prospectively repealed in relation to Wales): see the text to note 18 supra.
- 26 As to the meaning of 'absence' see PARA 355 note 10 ante.
- 27 Ie such post as is mentioned in the School Standards and Framework Act 1998 Sch 16 para 9 (prospectively repealed in relation to Wales): see the text to notes 1-5 supra.
- 28 Ibid Sch 16 para 16(1). See note 1 supra.
- 29 Ibid Sch 16 para 16(2). See note 1 supra.
- 30 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).
- 31 Ie under ibid Sch 16 paras 10-16 (prospectively repealed in relation to Wales): see the text and notes 6-29 supra.
- 32 Ibid Sch 16 para 17. See note 1 supra.
- 33 As to references to the chief education officer of the local education authority see PARA 355 note 32 ante.
- 34 Ie under the School Standards and Framework Act 1998 Sch 16 paras 10-16 (prospectively repealed in relation to Wales): see the text and notes 6-29 supra.
- 35 Ibid Sch 16 para 18(1)(b). Except in relation to the appointment of a head teacher, Sch 16 para 18(1) (prospectively repealed in relation to Wales) applies in relation to the head teacher, if not otherwise entitled to be present at the proceedings there mentioned, as it applies in relation to the chief education officer: Sch 16 para 19(a). See note 1 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/357. Temporary appointments of other teachers for less than four months.

### **357. Temporary appointments of other teachers for less than four months.**

In relation to any temporary appointment or engagement to fill a vacancy in any teaching post<sup>1</sup> at the school<sup>2</sup> for a period not exceeding four months, or where it appears to the governing body<sup>3</sup> that the period for which the person appointed or engaged will act in the post in question will not exceed four months, the following provisions apply<sup>4</sup>.

Where it appears to the governing body in the case of any post that it would be appropriate for such an appointment to be made, it may recommend a person for appointment to the post on such terms as to the duration of the appointment as it may specify, and the local education authority<sup>5</sup> must appoint the person recommended on the terms specified unless he does not meet any staff qualification requirements<sup>6</sup> which are applicable in relation to his appointment<sup>7</sup>. Where it appears to the governing body in the case of any post that it would be appropriate for such an engagement to be made, the governing body may engage, or make arrangements for the engagement of, a person to provide his services as a teacher at the school otherwise than under a contract of employment<sup>8</sup> with the local education authority<sup>9</sup>. Any such engagement must be on such terms as to the duration of the engagement as the governing body may specify; but no person may be so engaged unless he meets all the staff qualification requirements applicable in relation to a teacher in the post in which he would be acting as a temporary teacher<sup>10</sup>.

1   le any teaching post, whether full or part-time, other than the post of head teacher: School Standards and Framework Act 1998 s 54(1), Sch 16 para 10(1). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8).

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2   For the meaning of 'the school' for these purposes see PARA 355 note 3 ante.

3   As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

4   School Standards and Framework Act 1998 Sch 16 para 10(1). See note 1 supra.

5   As to local education authorities see PARA 20 ante.

6   As to references to 'staff qualification requirements' see PARA 355 note 14 ante.

7   School Standards and Framework Act 1998 Sch 16 para 10(2). See note 1 supra.

8   For the meaning of 'contract of employment' see PARA 62 note 7 ante.

9   School Standards and Framework Act 1998 Sch 16 para 10(3). See note 1 supra.

10   Ibid Sch 16 para 10(4). See note 1 supra.

### **UPDATE**

**354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/358. Advice of chief education officer on appointments of teachers.

### **358. Advice of chief education officer on appointments of teachers.**

The chief education officer of the local education authority<sup>1</sup> must offer such advice as he considers appropriate with respect to the appointment of a head teacher<sup>2</sup> or deputy head teacher or the appointment or engagement of an acting head teacher or acting deputy head teacher, or any matter arising in connection with any such appointment or engagement<sup>3</sup>. If requested to do so by the governing body<sup>4</sup>, the chief education officer must give such advice as he considers appropriate in relation to any appointment or engagement to which any of the provisions relating to the appointment of teachers<sup>5</sup> apply<sup>6</sup>. Any advice given by the chief education officer to the governing body, to any selection panel<sup>7</sup>, or to any persons to whom any functions<sup>8</sup> of the governing body<sup>9</sup> are delegated, with respect to any matter which relates to an appointment or engagement and falls to be determined by it, must be considered by it before determining that matter, whether or not the advice was given at its request<sup>10</sup>.

1 As to references to the chief education officer of the local education authority see PARA 355 note 32 ante. As to local education authorities see PARA 20 ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid s 54(1), Sch 16 para 18(2).

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'Wales' see PARA 52 note 13 ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 Ie the provisions of the School Standards and Framework Act 1998 Sch 16 paras 10-16 (prospectively repealed in relation to Wales): see PARA 357 ante.

6 Ibid Sch 16 para 18(3). See note 3 supra.

7 Ie appointed under ibid Sch 16 para 6 (prospectively repealed in relation to Wales): see PARA 355 ante.

8 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).

9 Ie under ibid Sch 16 paras 10-16 (prospectively repealed in relation to Wales): see PARA 357 ante.

10 Ibid Sch 16 para 18(4). Except in relation to the appointment of a head teacher, Sch 16 para 18(4) (prospectively repealed in relation to Wales) applies in relation to advice given by the head teacher as it applies in relation to advice given by the chief education officer: Sch 16 para 19(b). See note 3 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.





Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/359. Appointment of non-teaching staff.

### **359. Appointment of non-teaching staff.**

Where the governing body<sup>1</sup> desires the appointment of a person to work in a non-teaching post at the school<sup>2</sup>, it may recommend a person to the local education authority<sup>3</sup> for appointment to the post<sup>4</sup>. Such a recommendation must be in writing and must specify:

- 791 (1) the duties to be performed by the person appointed (including, where the post is part-time, his hours of work) and such terms, if any, as to the duration of his appointment as are proposed by the governing body<sup>5</sup>;
- 792 (2) the grade, on the scale of grades currently applicable in relation to employment<sup>6</sup> with the authority, which the governing body considers appropriate for the post<sup>7</sup>; and
- 793 (3) where the authority has a discretion with respect to the remuneration to be paid to a person appointed to the post, the determination of any matter to which that discretion applies and which the governing body considers appropriate in the case of the person recommended for appointment<sup>8</sup>.

Before selecting a person to recommend, and determining in relation to such a recommendation any matters mentioned in heads (1) to (3) above, the governing body must consult the head teacher<sup>9</sup>, where he would not otherwise be involved in the decision, and the chief education officer of the authority<sup>10</sup>. The local education authority must appoint a person so recommended to it unless he does not meet any staff qualification requirements<sup>11</sup> which are applicable in relation to his appointment<sup>12</sup>. Any such appointment must be on such terms as to give effect, so far as they relate to any matter mentioned in heads (1) to (3) above, to the governing body's recommendation in respect of that matter<sup>13</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

2 For the meaning of 'the school' for these purposes see PARA 355 note 3 ante.

3 As to local education authorities see PARA 20 ante.

4 School Standards and Framework Act 1998 s 54(1), Sch 16 para 20(1).

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the appointment of support staff at community, voluntary controlled and community special schools in England see PARA 336 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 School Standards and Framework Act 1998 Sch 16 para 20(2)(a). See note 4 supra.

6 For the meaning of 'employment' see PARA 355 note 14 ante.

7 School Standards and Framework Act 1998 Sch 16 para 20(2)(b). See note 4 supra.

8 Ibid Sch 16 para 20(2)(c). For the purposes of Sch 16 para 20(2)(c) (prospectively repealed in relation to Wales), the authority is to be regarded as having a discretion with respect to the remuneration to be paid to a person appointed to a post if any provisions regulating the rates of remuneration or allowances payable to persons in the authority's employment either do not apply in relation to that appointment, or leave to the authority any degree of discretion as to rate of remuneration or allowances in the case of that appointment: Sch 16 para 20(4). See note 4 supra.

9 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

10 Ibid Sch 16 para 20(3). See note 4 supra. As to references to the chief education officer of the local education authority see PARA 355 note 32 ante.

11 As to references to 'staff qualification requirements' see PARA 355 note 14 ante.

12 School Standards and Framework Act 1998 Sch 16 para 21(1). See note 4 supra.

13 Ibid Sch 16 para 21(2). See note 4 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/360. Conduct and discipline.

### **360. Conduct and discipline.**

The regulation of conduct and discipline in relation to the staff of the school<sup>1</sup>, and any procedures for giving members of the staff opportunities for seeking redress of any grievances relating to their employment<sup>2</sup>, is under the control of the governing body<sup>3</sup>. The governing body must establish:

- 794 (1) disciplinary rules and procedures, including such rules and procedures for dealing with lack of capability on the part of members of the staff<sup>4</sup>; and
- 795 (2) procedures for giving members of the staff opportunities for seeking redress of any grievances relating to their employment<sup>5</sup>,

and must take such steps as appear to the governing body to be appropriate for making them known to members of the staff<sup>6</sup>.

In determining the capability of members of the staff the governing body must have regard to any guidance given from time to time by the National Assembly for Wales<sup>7</sup>. If the Assembly determines that any prescribed<sup>8</sup> rules and procedures are to apply to the school or to any class or description of school to which the school belongs: (a) the governing body must act in accordance with those rules and procedures in determining the capability of members of the staff<sup>9</sup>; and (b) in the event of any inconsistency, those rules and procedures must prevail over any rules and procedures established by the governing body under head (1) above<sup>10</sup>. Where the implementation of any determination made by the governing body in the exercise of its control over the conduct and discipline of the staff requires any action which is not within the functions<sup>11</sup> exercisable by the governing body by virtue of the School Standards and Framework Act 1998, but is within the power of the local education authority<sup>12</sup>, the authority must take that action at the request of the governing body<sup>13</sup>.

1 For the meaning of 'the school' for these purposes see PARA 355 note 3 ante.

2 For the meaning of 'employment' see PARA 355 note 14 ante.

3 School Standards and Framework Act 1998 s 54(1), Sch 16 para 22(1). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to conduct and discipline at community, voluntary controlled and community special schools in England see PARA 337 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 School Standards and Framework Act 1998 Sch 16 para 22(2)(a). See note 3 supra.

5 Ibid Sch 16 para 22(2)(b). See note 3 supra. The text refers to the procedures mentioned in Sch 16 para 22(1) (prospectively repealed in relation to Wales); see the text to notes 1-3 supra.

6 Ibid Sch 16 para 22(2). See note 3 supra.

7 Ibid Sch 16 para 22(3). See note 3 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

9 Ibid Sch 16 para 22(4)(a). See note 3 supra.

10 Ibid Sch 16 para 22(4)(b). See note 3 supra.

11 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).

12 As to local education authorities see PARA 20 ante.

13 School Standards and Framework Act 1998 Sch 16 para 22(5). See note 3 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/361. Local education authority report on performance of head teacher.

### **361. Local education authority report on performance of head teacher.**

Where the local education authority<sup>1</sup> has any serious concerns about the performance of the head teacher<sup>2</sup> of the school<sup>3</sup>: (1) it must make a written report of its concerns to the chairman of the governing body<sup>4</sup> at the same time sending a copy to the head teacher<sup>5</sup>; and (2) the chairman of the governing body must notify the authority in writing of the action which he proposes to take in the light of the report<sup>6</sup>. In determining whether to make such a report the authority must have regard to any guidance given from time to time by the National Assembly for Wales<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For the meaning of 'the school' for these purposes see PARA 355 note 3 ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante; and as to the appointment to the chair of the governing body see PARA 288 ante.

5 School Standards and Framework Act 1998 s 54(1), Sch 16 para 23(1)(a).

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the local education authority's report on the performance of head teachers at community, voluntary controlled and community special schools in England see PARA 338 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

6 School Standards and Framework Act 1998 Sch 16 para 23(1)(b). See note 5 supra.

7 Ibid Sch 16 para 23(2). See note 5 supra. The guidance referred to in the text is contained in the *Code of Practice for LEA-School Relations* made under the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 ante). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/362. Suspension of staff.

### **362. Suspension of staff.**

Both the governing body<sup>1</sup> and the head teacher<sup>2</sup> have power to suspend<sup>3</sup> any person employed<sup>4</sup> to work at the school<sup>5</sup> where, in the opinion of the governing body or, as the case may be, the head teacher, his exclusion from the school is required<sup>6</sup>. The governing body or head teacher must, when exercising that power, immediately inform the local education authority<sup>7</sup> and the head teacher or, as the case may be, governing body<sup>8</sup>. Such a suspension may only be ended by the governing body<sup>9</sup>. The governing body must, on ending such a suspension, immediately inform the authority and the head teacher<sup>10</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For these purposes, 'suspend' means suspend without loss of emoluments: *ibid* s 54(1), Sch 16 para 24(5). Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the suspension of staff at community, voluntary controlled and community special schools in England see PARA 339 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 For the meaning of 'employed' see PARA 355 note 14 ante.

5 As to the meaning of 'employed to work at a school' see PARA 356 note 17 ante. For the meaning of 'the school' for these purposes see PARA 355 note 3 ante.

6 School Standards and Framework Act 1998 Sch 16 para 24(1). See note 3 supra.

7 As to local education authorities see PARA 20 ante.

8 School Standards and Framework Act 1998 Sch 16 para 24(2). See note 3 supra.

9 *Ibid* Sch 16 para 24(3). See note 3 supra.

10 *Ibid* Sch 16 para 24(4). See note 3 supra.

### **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/363. Dismissal of staff.

### **363. Dismissal of staff.**

Where the governing body<sup>1</sup> determines that any person employed<sup>2</sup> by the local education authority<sup>3</sup> to work at the school<sup>4</sup> should cease to work there, it must notify the authority in writing of its determination and the reasons for it<sup>5</sup>. If the person concerned is employed to work solely at the school<sup>6</sup>, and he does not resign, the authority must, before the end of the period of 14 days, beginning with the date on which the notification is given, either give him such notice terminating his contract of employment<sup>7</sup> with the authority as is required under that contract, or terminate that contract without notice if the circumstances are such that it is entitled to do so by reason of his conduct<sup>8</sup>. If the person concerned is not employed to work solely at the school, the authority must require him to cease to work at the school<sup>9</sup>. In these circumstances<sup>10</sup>, no part of the costs incurred by the local education authority in respect of the emoluments of the person concerned, so far as they relate to any period falling after the expiration of his contractual notice period<sup>11</sup>, must be met from the school's budget share<sup>12</sup>.

The governing body must make arrangements for giving any person in respect of whom it proposes to make a determination<sup>13</sup> an opportunity of making representations as to the action it proposes to take (including, if he so wishes, oral representations to such person or persons as the governing body may appoint for the purpose), and have regard to any representations made by him<sup>14</sup>. The governing body must also make arrangements for giving any person in respect of whom it has made such a determination an opportunity of appealing against it before it notifies the local education authority of the determination<sup>15</sup>. For the purpose of giving advice, the head teacher<sup>16</sup> (except where he is the person concerned) and the chief education officer of the local education authority<sup>17</sup> are entitled to attend all proceedings of the governing body relating to a determination<sup>18</sup> concerning the dismissal of a person employed by the local education authority to work at the school<sup>19</sup>. The governing body must consider any advice given by a person who is entitled to attend such proceedings before making such a determination<sup>20</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

2 For the meaning of 'employed' see PARA 355 note 14 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the meaning of 'employed to work at a school' see PARA 356 note 17 ante. For the meaning of 'the school' for these purposes see PARA 355 note 3 ante.

5 School Standards and Framework Act 1998 s 54(1), Sch 16 para 25(1). See *Cornelius v Southwark London Borough Council* [1998] ELR 563, [1998] Ed CR 165, CA. The Education Act 1996 s 136, Sch 14 para 23(1) (repealed), which was the forerunner to the School Standards and Framework Act 1998 Sch 16 para 25(1) (prospectively repealed in relation to Wales) was held to be mandatory in its terms: see *Howard v Brixington Infants School and Devon County Council* [1999] ELR 191, sub nom *Howard v Governors of Brixington Infants School* [1999] ICR 1096, EAT.

The School Standards and Framework Act 1998 s 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the dismissal of staff at community, voluntary controlled and community special schools in England see PARA 340 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

6 A person employed by a local education authority is to be regarded as employed to work solely at a school if his only employment with the authority, disregarding any employment under a separate contract with the authority, is for the time being at that school: School Standards and Framework Act 1998 s 142(7)(b). For the meaning of 'employment' see PARA 355 note 14 ante.

7 For the meaning of 'contract of employment' see PARA 62 note 7 ante.

8 School Standards and Framework Act 1998 Sch 16 para 25(2). The local education authority must not dismiss a person employed by it to work solely at the school except as provided by Sch 16 para 25 (prospectively repealed in relation to Wales): Sch 16 para 29(1). Schedule 16 para 29(1) (prospectively repealed in relation to Wales) does not apply in a case where: (1) the dismissal of the person in question is required by virtue of regulations under the Education Reform Act 1988 s 218 (as amended), or the Teaching and Higher Education Act 1998 s 19 (as amended) (see PARA 774 post); or (2) the person in question is a teacher who is subject to a conditional registration, suspension or prohibition order made under the Teaching and Higher Education Act 1998 s 6, Sch 2 (as amended) (disciplinary powers of General Teaching Council: see PARAS 827-833 post): School Standards and Framework Act 1998 Sch 16 para 29(2). See note 5 supra.

9 Ibid Sch 16 para 25(3). See note 5 supra.

10 Ie where ibid s 25(3) applies: see the text to note 9 supra.

11 The reference in ibid Sch 16 para 26(1) (prospectively repealed in relation to Wales) (see the text to note 12 infra) to the person's contractual notice period is a reference to the period of notice that would have been required under his contract of employment with the authority for termination of that contract if such notice had been given on the date on which the notification under Sch 16 para 25(1) (prospectively repealed in relation to Wales) (see the text to notes 1-5 supra) was given: Sch 16 para 26(2). See note 5 supra.

12 Ibid Sch 16 para 26(1). See note 5 supra. For the meaning of 'budget share' see PARA 312 ante.

13 Ie under ibid Sch 16 para 25(1) (prospectively repealed in relation to Wales): see the text to notes 1-5 supra.

14 Ibid Sch 16 para 27(1). See note 5 supra. Nothing in Sch 16 para 27 (as amended; prospectively repealed in relation to Wales), however, applies to a person who is due to cease to work at the school by reason of the termination of his contract of employment by effluxion of time, and has not been continuously employed at the school, within the meaning of the Employment Rights Act 1996 (see EMPLOYMENT vol 40 (2009) PARA 816 et seq), for a period of at least one year (ie the period for the time being specified in s 108(1) (qualifying period for unfair dismissal: see EMPLOYMENT vol 40 (2009) PARA 715)): School Standards and Framework Act 1998 Sch 16 para 27(3) (amended by the Employment Relations Act 1999 s 40(1)); Employment Rights Act 1996 s 108(1) (amended by the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999, SI 1999/1436, arts 1(2), 3). See note 5 supra.

15 School Standards and Framework Act 1998 Sch 16 para 27(2). See notes 5, 14 supra. As to appeals see also *Howard v Brixington Infants School and Devon County Council* [1999] ELR 191, sub nom *Howard v Governors of Brixington Infants School* [1999] ICR 1096, EAT (a case concerning the Education Act 1996 s 136, Sch 14 para 25, which was the forerunner of the Schools Standards and Framework Act 1998 Sch 16 para 27 (prospectively repealed in relation to Wales)).

16 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

17 As to references to the chief education officer of the local education authority see PARA 355 note 32 ante.

18 Ie under the School Standards and Framework Act 1998 Sch 16 para 25(1) (prospectively repealed in relation to Wales): see the text to notes 1-5 supra.

19 Ibid Sch 16 para 28(1). See note 5 supra. See also *R (on the application of McNally) v Secretary of State for Education* [2001] EWCA Civ 332, [2002] ICR 15 (decided under previous legislation). At [24], Kennedy LJ held that the head teacher and the chief education officer are entitled, rather than required, to attend, and that proceedings remain valid even if one or other of those persons (or both) choose not to attend or if either (or both) are excluded for a good reason. Also, at [40], Dyson LJ held that the entitlement to attend must be exercised in accordance with the rules of natural justice, which will be conditioned by the facts of the case and the nature of the issues surrounding the advice given to the governing body.

20 School Standards and Framework Act 1998 Sch 16 para 28(2). See note 5 supra.

## UPDATE



**354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/364. School meals staff.

### **364. School meals staff.**

The National Assembly for Wales<sup>1</sup> may by regulations<sup>2</sup> make provision as to the appointment, discipline, suspension and dismissal of persons employed<sup>3</sup> or to be employed to work at a community, voluntary controlled or community special school in Wales<sup>4</sup> solely<sup>5</sup> in connection with the provision of meals<sup>6</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made in relation to the appointment, discipline, suspension and dismissal of school meals staff employed at a school generally see the Education (School Meals Staff) (Wales) Regulations 1999, SI 1999/2802, reg 2. As to the position where the governing body is responsible for school meals see reg 4. As to the position where the governing body is responsible for school meals but the meals continue to be supplied by the local education authority see reg 3.

3 For the meaning of 'employed' see PARA 355 note 14 ante.

4 As to community, voluntary controlled and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post. For the meaning of 'Wales' see PARA 52 note 13 ante.

5 As to the meaning of 'employed to work solely at a school' see PARA 363 note 6 ante.

6 School Standards and Framework Act 1998 s 54(1), Sch 16 para 30.

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to school meals staff at community, voluntary controlled and community special schools in England see PARA 341 ante. For the meaning of 'England' see PARA 52 note 11 ante.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(A) Community, Voluntary Controlled and Community Special Schools/(a) Schools having a Delegated Budget/365. Advisory rights for appropriate diocesan authorities.

### **365. Advisory rights for appropriate diocesan authorities.**

Provision<sup>1</sup> is made in relation to advisory rights for appropriate diocesan authorities<sup>2</sup> for voluntary controlled schools<sup>3</sup> which are Church of England<sup>4</sup>, Church in Wales<sup>5</sup> or Roman Catholic Church schools<sup>6</sup>. The governing body<sup>7</sup> may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer<sup>8</sup> with respect to all teachers at the school, or with respect to any particular description of such teachers, the same advisory rights in relation to their appointment, engagement or dismissal as are exercisable by the chief education officer<sup>9</sup>. The agreement of the governing body for these purposes must be given in writing and may only be withdrawn by notice in writing to the appropriate diocesan authority<sup>10</sup>.

<sup>1</sup> See by the School Standards and Framework Act 1998 s 54(1), Sch 16 para 31: see the text and notes 2-10 *infra*.

Section 54 and Sch 16 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*.

<sup>2</sup> For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 *ante*.

<sup>3</sup> As to voluntary controlled schools see PARA 102 *et seq ante*.

<sup>4</sup> For the meaning of 'Church of England school' see PARA 42 note 15 *ante*.

<sup>5</sup> For the meaning of 'Church in Wales school' see PARA 42 note 15 *ante*.

<sup>6</sup> School Standards and Framework Act 1998 Sch 16 para 31(1). See note 1 *supra*. For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 *ante*.

<sup>7</sup> As to the governing bodies of maintained schools in Wales see PARA 251 *et seq ante*.

<sup>8</sup> For these purposes, 'the appropriate diocesan officer' means such person as the appropriate diocesan authority may nominate: School Standards and Framework Act 1998 Sch 16 para 31(5).

<sup>9</sup> *Ibid* Sch 16 para 31(2). The text refers to the same advisory rights as are exercisable by the chief education officer in accordance with Sch 16 para 18 (prospectively repealed in relation to Wales) (see PARAS 355-356 *ante*) and Sch 16 para 28 (prospectively repealed in relation to Wales) (see PARA 363 *ante*). As to references to the chief education officer of the local education authority see PARA 355 note 32 *ante*. In Sch 16 paras 18 (prospectively repealed in relation to Wales) (see PARAS 355-356 *ante*) and Sch 16 para 28 (prospectively repealed in relation to Wales) (see PARA 363 *ante*), as they apply to a voluntary controlled school within Sch 16 para 31(1) (prospectively repealed in relation to Wales) (see the text to notes 1-6 *supra*), references to the chief education officer accordingly include the appropriate diocesan officer, so far as necessary for giving effect to any advisory rights exercisable by him under Sch 16 para 31 (prospectively repealed in relation to Wales): Sch 16 para 31(4). See note 1 *supra*.

<sup>10</sup> *Ibid* Sch 16 para 31(3). See note 1 *supra*.

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*(b) Schools not having a Delegated Budget*

**UPDATE**

**354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

**366. Staffing of schools on suspension of delegated budget.**

If at any time a community, voluntary controlled or community special school<sup>1</sup> does not have a delegated budget<sup>2</sup>, the usual provisions relating to the staffing at such schools<sup>3</sup> do not apply and instead<sup>4</sup> it is provided that the number of teachers and non-teaching staff to be employed<sup>5</sup> at the school must be determined by the local education authority<sup>6</sup>, and the authority may appoint, suspend and dismiss teachers and other staff at the school as it thinks fit<sup>7</sup>. The authority must, in connection with the exercise of its functions<sup>8</sup>, consult the governing body<sup>9</sup> to such extent as it thinks fit<sup>10</sup>.

1 As to community, voluntary controlled and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

2 I.e. by virtue of any suspension under the School Standards and Framework Act 1998 s 17 (as amended) (see PARA 1269 post), or s 51, Sch 15 (as amended) (see PARAS 322-325 ante). For the meaning of 'school having a delegated budget' see PARA 320 ante. For the transitional provisions and savings in relation to references in s 54 to any suspension of a school's delegated budget under Sch 15 (as amended) see PARA 320 note 2 ante.

3 I.e. ibid Sch 16 (as amended; prospectively repealed in relation to Wales) (see PARAS 355-365 ante).

4 Ibid s 54(2).

Section 54 is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the staffing of community, voluntary controlled and community special schools in England on suspension of the delegated budget see PARA 342 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 For the meaning of 'employed' see PARA 355 note 14 ante.

6 School Standards and Framework Act 1998 s 54(3). See note 4 supra. As to local education authorities see PARA 20 ante.

7 Ibid s 54(4). In relation to reserved teachers at a voluntary controlled school, the provisions of Sch 16 (as amended; prospectively repealed in relation to Wales) (see PARAS 355-365 ante) or, as the case may be, s 54(4) have effect subject to s 58 (as amended) (appointment and dismissal of certain teachers at schools with a religious character: see PARA 388 post): s 54(6). See note 4 supra.

8 I.e. under ibid s 54(4) (see the text to note 7 supra). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8).

9 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

10 School Standards and Framework Act 1998 s 54(5). See note 4 supra.

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## (B) FOUNDATION, VOLUNTARY AIDED AND FOUNDATION SPECIAL SCHOOLS

### *(a) Schools having a Delegated Budget*

#### **UPDATE**

#### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

#### **367. In general.**

Provision is made by the School Standards and Framework Act 1998<sup>1</sup> in relation to the staffing of foundation, voluntary aided and foundation special schools in Wales<sup>2</sup>. In relation to the appointment of staff, provision is made in relation to head teachers and deputy head teachers<sup>3</sup>, the appointment of other teachers<sup>4</sup> and the appointment of non-teaching staff<sup>5</sup>. Separate provision is made in relation to the appointment of head teachers for schools of Roman Catholic religious orders<sup>6</sup>. Further provision is made in relation to the power of the chief education officer of a local education authority to offer advice with respect to the appointment or engagement of any teacher at such a school<sup>7</sup>, and the power of the appropriate diocesan authority to offer such advice in relation to voluntary aided or foundation schools which are Church of England, Church in Wales or Roman Catholic Church schools<sup>8</sup>. The School Standards and Framework Act 1998 further provides for the regulation of conduct and discipline<sup>9</sup>, the suspension<sup>10</sup> and the dismissal<sup>11</sup> of such staff. In relation to head teachers of such schools, where the local education authority has serious concerns about their performance, provision is made requiring the authority to make a written report of its concerns to the chairman of the governing body of the school<sup>12</sup>.

1 le by the School Standards and Framework Act 1998 s 55, Sch 17 (as amended): see PARAS 368-379 post.

2 Ibid s 55(1). As to foundation, voluntary aided and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

Section 55 is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the staffing of foundation, voluntary aided and foundation special schools in England see PARA 343 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

3 As to the appointment of head teachers and deputy head teachers see PARA 369 post.

4 As to the appointment of other teachers see PARA 370 post.

5 As to the appointment of non-teaching staff see PARA 373 post.

6 As to the appointment of head teachers for schools of Roman Catholic religious orders see PARA 379 post.

7 As to the advice of the chief education officer on the appointment of teachers see PARAS 368, 372 post.

8 As to the advisory rights for appropriate diocesan authorities see PARA 378 post. For the meanings of 'Church of England school', 'Church in Wales school', 'Roman Catholic Church school' and 'appropriate diocesan authority' see PARA 42 note 15 ante.

9 As to the regulation of staff conduct and discipline see PARA 374 post.

10 As to the suspension of staff see PARA 376 post.

11 As to the dismissal of staff see PARA 377 post.

12 As to reports by local education authorities on the performance of head teachers see PARA 375 post.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

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### **368. Advisory rights of chief education officer.**

Where: (1) the governing body<sup>1</sup> of the school<sup>2</sup> has agreed with the local education authority<sup>3</sup> to accord to the authority's chief education officer<sup>4</sup> advisory rights in relation to the appointment, engagement or dismissal of teachers at the school<sup>5</sup>; or (2) in default of such agreement, the National Assembly for Wales<sup>6</sup> has determined that it would be appropriate that such advisory rights should be accorded to the chief education officer<sup>7</sup>, the following applies<sup>8</sup>.

Advisory rights accorded by an agreement or determination must be framed by reference to the rights conferred on the chief education officer<sup>9</sup> and may relate to the appointment and engagement or dismissal, or both to the appointment and engagement and to the dismissal, either of head teachers<sup>10</sup> and deputy head teachers alone, or of all teachers at the school<sup>11</sup>. During any period when such an agreement or determination<sup>12</sup> is effective, the chief education officer is entitled to exercise such of the rights conferred on him<sup>13</sup> as are accorded to him by virtue of the agreement or determination<sup>14</sup>. The agreement of a governing body for the purposes of head (1) above must be given in writing and may only be withdrawn by notice in writing to the local education authority<sup>15</sup>. A determination by the Assembly for the purposes of head (2) above may be withdrawn at any time, without prejudice to a further determination for those purposes<sup>16</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

2 For the purposes of the School Standards and Framework Act 1998 s 55(1), Sch 17 (as amended) (see PARAS 369-379 post), 'the school' means a foundation or voluntary aided or foundation special school: Sch 17 para 1(1). As to foundation, voluntary aided and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

Section 55 and Sch 17 (as amended) are repealed by order made under the Education Act 2002 s 216(4) as from a day to be appointed: see s 215(2), Sch 22 Pt 3. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

3 As to local education authorities see PARA 20 ante.

4 References in the School Standards and Framework Act 1998 Sch 17 (as amended; prospectively repealed in relation to Wales) (see PARAS 369-379 post) to the chief education officer of the local education authority include any officer of the authority nominated by the chief education officer: Sch 17 para 2(7). See note 2 supra. As to the appointment of the chief education officer see PARA 51 ante.

5 Ibid Sch 17 para 2(1)(a). See note 2 supra.

6 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 School Standards and Framework Act 1998 Sch 17 para 2(1)(b). See note 2 supra.

8 Ibid Sch 17 para 2(1). See note 2 supra.

9 Ie by ibid Sch 17 paras 3-30 (as amended; prospectively repealed in relation to Wales): see PARAS 369-379 post.



10 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 142(8).

11 *Ibid* Sch 17 para 2(2). See note 2 *supra*.

12 *Ie* under *ibid* Sch 17 para 2(1) (prospectively repealed in relation to Wales): see the text to notes 1-8 *supra*.

13 *Ie* under *ibid* Sch 17 paras 3-30 (as amended; prospectively repealed in relation to Wales): see PARAS 369-379 *post*.

14 *Ibid* Sch 17 para 2(3). The chief education officer is not entitled to exercise any of the rights so conferred except in accordance with Sch 17 para 2(3) (prospectively repealed in relation to Wales): Sch 17 para 2(4). See note 2 *supra*.

15 *Ibid* Sch 17 para 2(5). See note 2 *supra*.

16 *Ibid* Sch 17 para 2(6). See note 2 *supra*.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/369. Appointment of head teacher and deputy head teacher.

### **369. Appointment of head teacher and deputy head teacher.**

In relation to the filling of a vacancy in the post<sup>1</sup> of head teacher<sup>2</sup> or deputy head teacher of the school<sup>3</sup>, the governing body<sup>4</sup> must notify the local education authority<sup>5</sup> of the vacancy in writing before taking any of the steps mentioned below<sup>6</sup>. Where the vacancy is in the post of head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the statutory procedure described below<sup>7</sup> before the date on which it falls vacant, the governing body:

- 796 (1) must appoint a person as acting head teacher<sup>8</sup>; or
- 797 (2) instead of making such an appointment, may for the purpose of filling the vacancy engage or make arrangements for the engagement of a person to provide his services as acting head teacher otherwise than under a contract of employment<sup>9</sup>.

Where the vacancy is in the post of deputy head teacher and either the post has not been filled, or it appears to the governing body that the post will not be filled, by an appointment made in accordance with the statutory procedure described below<sup>10</sup> before the date on which it falls vacant, the governing body:

- 798 (a) may appoint a person as acting deputy head teacher<sup>11</sup>; or
- 799 (b) instead of making such an appointment, may for the purpose of filling the vacancy engage or make arrangements for the engagement of a person to provide his services as acting deputy head teacher otherwise than under a contract of employment<sup>12</sup>.

A person may not be appointed under head (1) or head (a) above unless he meets all the staff qualification requirements<sup>13</sup> which are applicable in relation to his appointment<sup>14</sup>. No person may be engaged under head (2) or head (b) above unless he meets all the staff qualification requirements applicable in relation to the head teacher or, as the case may be, deputy head teacher at the school<sup>15</sup>.

The statutory procedure for the appointment of a head teacher or deputy head teacher requires that the governing body must advertise the vacancy in such publications circulating throughout Wales as it considers appropriate<sup>16</sup>. The governing body must appoint a selection panel consisting of at least three of its members<sup>17</sup>. The selection panel must:

- 800 (i) select for interview such applicants for the post as it thinks fit and, where the post is that of head teacher, notify the local education authority in writing of the names of the applicants so selected<sup>18</sup>;
- 801 (ii) interview such of those applicants as attend for the purpose<sup>19</sup>; and
- 802 (iii) where it considers it appropriate to do so, recommend to the governing body for appointment one of the applicants interviewed by it<sup>20</sup>.

Any decision of the selection panel must be taken by a vote representing an absolute majority of all the members of the panel, whether or not taking part in the vote<sup>21</sup>. If, within the period of 14 days beginning with the date when it receives a notification under head (i) above, the authority makes written representations to the selection panel that any of the applicants selected by the panel is not a suitable person for the appointment, the panel must not recommend that person to the governing body for appointment unless the panel has considered those representations, and notified the authority in writing of its response to the representations; and when making such a recommendation the panel must supply the governing body with a copy of those representations and of the panel's response to them<sup>22</sup>. If the panel does not recommend a person to the governing body, or the governing body does not approve its recommendation, the governing body may, if it thinks fit, re-advertise the vacancy in the required manner<sup>23</sup>, and whether or not it re-advertises the vacancy, may require the panel to repeat the steps mentioned in heads (i) to (iii) above<sup>24</sup>.

The chief education officer<sup>25</sup> is entitled to attend, for the purpose of giving advice, all proceedings, including interviews, of the governing body, and of any selection panel<sup>26</sup>, relating to such appointments or engagements<sup>27</sup>. Where the chief education officer has no advisory rights<sup>28</sup> with respect to the appointment of head teachers and deputy head teachers, the selection panel's notification under head (i) above must be accompanied by such information relating to each of the persons selected for interview as will enable the authority to determine his suitability for the appointment<sup>29</sup>. In determining whether a person is suitable for appointment as head teacher the authority must have regard to any guidance given from time to time by the National Assembly for Wales<sup>30</sup>. Where the governing body approves a recommendation of the selection panel, the governing body must appoint the person recommended by the panel unless he does not meet any staff qualification requirements which are applicable in relation to his appointment<sup>31</sup>.

1 References in the School Standards and Framework Act 1998 s 55(1), Sch 17 (as amended) (see PARAS 368 ante, 370-379 post) to a vacancy in any post include a prospective vacancy in the post: Sch 17 para 1(2).

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the appointment of head teachers and deputy head teachers of foundation, voluntary aided and foundation special schools in England see PARA 344 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid Sch 17 para 3. See note 1 supra. For the meaning of 'the school' for these purposes see PARA 368 note 2 ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 As to local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 Sch 17 para 4. The text refers to the steps mentioned in Sch 17 paras 5-8 (prospectively repealed in relation to Wales) (see the text and notes 7-31 infra), or, in a case where Sch 17 para 29 (prospectively repealed in relation to Wales) (see PARA 379 post), or Sch 17 para 30 (prospectively repealed in relation to Wales) (see note 31 infra) applies, any of the steps falling to be taken under that provision: Sch 17 para 4. See note 1 supra.

7 If an appointment made in accordance with ibid Sch 17 paras 6-8 (prospectively repealed in relation to Wales) (see the text and notes 16-31 infra). In Sch 17 para 5(1) (prospectively repealed in relation to Wales) (see the text to notes 8-9 infra) the reference to an appointment made in accordance with Sch 17 paras 6-8 (prospectively repealed in relation to Wales) (see the text and notes 16-31 infra) includes a reference to Sch 17 para 29 (prospectively repealed in relation to Wales) (see PARA 379 post), or Sch 17 para 30 (prospectively repealed in relation to Wales) (see note 31 infra): Sch 17 para 5(6). See note 1 supra.

8 Ibid Sch 17 para 5(1)(a). See note 1 supra.

9 Ibid Sch 17 para 5(1)(b), (4). See note 1 supra. For the meaning of 'contract of employment' see PARA 62 note 7 ante.

10 I.e. ibid Sch 17 para 6-8 (prospectively repealed in relation to Wales) (see the text and notes 16-31 infra). In Sch 17 para 5(2) (prospectively repealed in relation to Wales) (see the text to notes 11-12 infra) the reference to Sch 17 paras 6-8 (prospectively repealed in relation to Wales) (see the text and notes 16-31 infra) includes a reference to Sch 17 para 30 (prospectively repealed in relation to Wales) (see note 31 infra): Sch 17 para 5(6). See note 1 supra.

11 Ibid Sch 17 para 5(2)(a). See note 1 supra.

12 Ibid Sch 17 para 5(2)(b), (4). See note 1 supra.

13 References in ibid Sch 17 (as amended; prospectively repealed in relation to Wales) to staff qualification requirements are references to any requirements with respect to: (1) qualifications; (2) registration; (3) health and physical capacity; or (4) fitness on educational grounds or in any other respect, of teachers or other persons employed, or otherwise engaged to provide their services, in work that brings them regularly into contact with persons who have not attained the age of 19 which for the time being apply under regulations under the Education Reform Act 1988 s 218 (as amended) (regulations relating to employment of teachers etc) or the Teaching and Higher Education Act 1998 s 19 (as amended) (induction training: see PARA 774 post): School Standards and Framework Act 1998 Sch 17 para 1(3). See note 1 supra. For the meaning of 'employed' see PARA 355 note 14 ante.

14 Ibid Sch 17 para 5(3). See note 1 supra.

15 Ibid Sch 17 para 5(5). The governing body may, in connection with any absence of the person for the time being holding the post of head teacher or deputy head teacher of the school, take either of the steps mentioned in Sch 17 para 5(1)(a), (b) (prospectively repealed in relation to Wales) or, as the case may be, Sch 17 para 5(2)(a), (b) (prospectively repealed in relation to Wales) (see the text and notes 10-12 supra): Sch 17 para 9(1). References in Sch 17 (as amended; prospectively repealed in relation to Wales) to a person's absence are references to his absence, or prospective absence, from the school: Sch 17 para 1(2). For the purposes of Sch 17 para 9 (prospectively repealed in relation to Wales), the provisions of Sch 17 para 5(3) (prospectively repealed in relation to Wales) (see the text to notes 13-14 supra) apply in relation to any appointment made by virtue of Sch 17 para 9(1) as they apply in relation to any appointment made by virtue of Sch 17 para 5(1) or (2) (prospectively repealed in relation to Wales) (see the text and notes 7-12 supra); and the provisions of Sch 17 para 5(4) (prospectively repealed in relation to Wales) (see the text to note 12 supra), Sch 17 para 5(5) (prospectively repealed in relation to Wales) apply in connection with any such absence as is mentioned in Sch 17 para 9(1) (prospectively repealed in relation to Wales) as they apply for the purpose of filling any such vacancy as is mentioned in Sch 17 para 5(1) or (2) (prospectively repealed in relation to Wales) (see the text and notes 7-12 supra): Sch 17 para 9(2). See note 1 supra.

16 Ibid Sch 17 para 6. See note 1 supra.

17 Ibid Sch 17 para 7(1). The panel exercises the functions conferred on the governing body by Sch 17 para 7 (prospectively repealed in relation to Wales) (see the text to notes 18-24 infra). See note 1 supra. As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8).

18 Ibid Sch 17 para 7(2)(a). See note 1 supra.

19 Ibid Sch 17 para 7(2)(b). See note 1 supra.

20 Ibid Sch 17 para 7(2)(c). See note 1 supra.

21 Ibid Sch 17 para 7(3). See note 1 supra.

22 Ibid Sch 17 para 7(4). See note 1 supra.

23 I.e. in the manner required by ibid Sch 17 para 6 (prospectively repealed in relation to Wales): see the text to note 16 supra.

24 Ibid Sch 17 para 7(5). See note 1 supra.

25 As to references to the chief education officer of the local education authority see PARA 355 note 32 ante.

26 I.e. appointed under the School Standards and Framework Act 1998 Sch 17 para 7 (prospectively repealed in relation to Wales): see the text to notes 17-24 supra.

27 Ibid Sch 17 para 18(1)(a). This applies to appointments and engagements to which any of the provisions of Sch 17 paras 4-9 (prospectively repealed in relation to Wales) (see the text and notes 4-24 *supra*, 28-31 *infra*), or Sch 17 para 29 (prospectively repealed in relation to Wales) (see PARA 379 *post*), Sch 17 para 30 (prospectively repealed in relation to Wales) (see note 31 *infra*) apply: Sch 17 para 18(1)(a). Schedule 17 para 18 (prospectively repealed in relation to Wales) has effect subject to Sch 17 para 2(3), (4) (prospectively repealed in relation to Wales) (see PARA 368 *ante*): Sch 17 para 18(4). Except in relation to the appointment of a head teacher, Sch 17 para 18(1) (prospectively repealed in relation to Wales) applies in relation to the head teacher, if not otherwise entitled to be present at the proceedings there mentioned, as it applies in relation to the chief education officer: Sch 17 para 19(1)(a). Schedule 17 para 18 (prospectively repealed in relation to Wales) has effect for the purposes of Sch 17 para 19(1) (prospectively repealed in relation to Wales) as if Sch 17 para 18(4) (prospectively repealed in relation to Wales) were omitted: Sch 17 para 19(2). See note 1 *supra*.

28 Ibid under Sch 17 para 2 (prospectively repealed in relation to Wales): see PARA 368 *ante*.

29 Ibid Sch 17 para 7(6). See note 1 *supra*.

30 Ibid Sch 17 para 7(7). See note 1 *supra*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

31 Ibid Sch 17 para 8. If the governing body of a voluntary aided school so determines (and Sch 17 para 29 (prospectively repealed in relation to Wales) (see PARA 379 *post*) does not apply), the provisions of Sch 17 para 30(2)-(6) apply in relation to the filling of a vacancy in the post of head teacher or deputy head teacher of the school, in place of Sch 17 paras 7, 8 (prospectively repealed in relation to Wales) (see the text and notes 17-30 *supra*): Sch 17 para 30(1). No selection panel need be appointed by the governing body under Sch 17 para 7(1) (prospectively repealed in relation to Wales) (see the text to note 17 *supra*), but the following provisions, namely, Sch 17 para 7(2)(a), (b) (prospectively repealed in relation to Wales) (selection for interview, notification and interview) (see heads (i), (ii) in the text), Sch 17 para 7(3) (prospectively repealed in relation to Wales) (decision by panel by absolute majority vote) (see the text to note 21 *supra*), and Sch 17 para 7(6) (prospectively repealed in relation to Wales) (notification under Sch 17 para 7(2)(a) (prospectively repealed in relation to Wales)) (see the text to note 18 *supra*), apply to the governing body or, as the case may be, to any decision of that body taken by virtue of Sch 17 para 30 (prospectively repealed in relation to Wales) as they apply to a selection panel or, as the case may be, to any decision of such a panel taken under Sch 17 para 7 (prospectively repealed in relation to Wales) (decision of panel on appointment of head or deputy head teacher) (see the text to notes 17-30 *supra*): Sch 17 para 30(2). If within the period of 14 days beginning with the date when it receives a notification under Sch 17 para 7(2)(a) (prospectively repealed in relation to Wales) (see head (i) in the text), as it applies in accordance with Sch 17 para 30(2) (prospectively repealed in relation to Wales), the local education authority makes written representations to the governing body that any of the applicants selected by it is not a suitable person for appointment to the post of head teacher, the governing body must not appoint that person unless it has considered those representations, and notified the authority of its response to the representations: Sch 17 para 30(3). The governing body must not appoint any person if he does not meet any staff qualification requirements which are applicable in relation to his appointment: Sch 17 para 30(4). If the governing body does not appoint any person interviewed by it, the governing body may, if it thinks fit, re-advertise the vacancy in the manner required by Sch 17 para 6 (prospectively repealed in relation to Wales) (see the text to note 16 *supra*), and whether or not it re-advertises the vacancy, may repeat the steps mentioned in Sch 17 para 7(2)(a), (b) (prospectively repealed in relation to Wales) (see heads (i), (ii) in the text) (as they apply in accordance with Sch 17 para 30(2) (prospectively repealed in relation to Wales)): Sch 17 para 30(5). See note 1 *supra*.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/370. Appointment of other teachers.

### **370. Appointment of other teachers.**

The following provision is made<sup>1</sup> in relation to the filling of a vacancy<sup>2</sup> in any teaching post, whether full-time or part-time, at the school<sup>3</sup>, other than the post of head teacher<sup>4</sup> or deputy head teacher<sup>5</sup>. Before taking any of the steps mentioned below, the governing body<sup>6</sup> must determine a specification for the post in consultation with the head teacher, and must send a copy of the specification to the local education authority<sup>7</sup>. The local education authority may nominate for consideration for appointment to the post any person who appears to the authority to be qualified to fill it and who at the time of his nomination either is its employee<sup>8</sup> or has been appointed to take up employment<sup>9</sup> with it at a future date, or is employed<sup>10</sup> by the governing body of a foundation, voluntary aided or foundation special school<sup>11</sup> maintained by it<sup>12</sup>. No person who is employed at any school maintained by the authority<sup>13</sup> may be so nominated by it without the consent of the governing body of the school<sup>14</sup>. The governing body may advertise the vacancy at any time after it has sent a copy of the specification for the post to the local education authority<sup>15</sup>, and must do so unless it appoints to the post either a person nominated by the local education authority<sup>16</sup>, or a person who is already employed to work at the school<sup>17</sup>. Where the governing body advertises the vacancy, it must do so in a manner likely in its opinion to bring it to the notice of persons, including employees of the authority, who are qualified to fill it<sup>18</sup>. Where the governing body advertises the vacancy, it must also:

803 (1) interview such applicants for the post and such of the persons, if any, nominated by the local education authority<sup>19</sup> as it thinks fit<sup>20</sup>; and

804 (2) where it considers it appropriate to do so, appoint to the post either one of the applicants interviewed by it or a person so nominated by the authority<sup>21</sup>,

and the person so appointed must be employed by the governing body under a contract of employment<sup>22</sup>. If the governing body is unable to agree on a person to appoint to the post, it may repeat the steps mentioned in head (1) and head (2) above, with or without first re-advertising the vacancy<sup>23</sup>. A person must not be so appointed unless he meets all the staff qualification requirements which are applicable in relation to his appointment<sup>24</sup>.

The governing body may, in connection with any absence<sup>25</sup> of the person for the time being holding any teaching post, whether full-time or part-time, other than the post of head teacher or deputy head teacher<sup>26</sup> engage, or make arrangements for the engagement of, a person to provide his services as a teacher at the school otherwise than under a contract of employment<sup>27</sup>. No person may be so engaged unless he meets all the staff qualification requirements applicable in relation to a teacher in the post in which he would be acting as a temporary teacher<sup>28</sup>.

The governing body may, in relation to a particular vacancy or absence or a vacancy or absence of a kind specified by it, delegate any of its functions<sup>29</sup> under the provisions described above<sup>30</sup> to one or more governors, to the head teacher, or to one or more governors and the head teacher acting together<sup>31</sup>. The chief education officer<sup>32</sup> is entitled to attend, for the purpose of giving advice, all proceedings, including interviews, of the governing body, and of any persons to whom any functions of the governing body under the provisions described

above<sup>33</sup> are delegated, relating to appointments or engagements to which any of those provisions apply<sup>34</sup>.

1     Ie by the School Standards and Framework Act 1998 s 55(1), Sch 17 paras 12-15: see the text and notes 6-24 infra.

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the appointment of teachers other than head teachers and deputy head teachers of foundation, voluntary aided and foundation special schools in England see PARA 345 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2     For the meaning of 'vacancy in any post' see PARA 369 note 1 ante.

3     For the meaning of 'the school' for these purposes see PARA 368 note 2 ante.

4     As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5     Ibid Sch 17 para 10. However, this does not apply in relation to any temporary appointment or engagement in any such post for a period not exceeding four months: see Sch 17 para 11(1) (prospectively repealed in relation to Wales); and PARA 371 post. See note 1 supra. As to the temporary appointment of other teachers see PARA 371 post.

6     As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

7     School Standards and Framework Act 1998 Sch 17 para 12. See note 1 supra. As to local education authorities see PARA 20 ante.

8     For the meaning of 'employee' see PARA 356 note 8 ante.

9     For the meaning of 'employment' see PARA 355 note 14 ante.

10    For the meaning of 'employed' see PARA 355 note 14 ante.

11    As to foundation, voluntary aided and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

12    School Standards and Framework Act 1998 Sch 17 para 13(1). See note 1 supra.

13    For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

14    School Standards and Framework Act 1998 Sch 17 para 13(2). See note 1 supra.

15    Ie in accordance with ibid Sch 17 para 12 (prospectively repealed in relation to Wales): see the text to notes 6-7 supra.

16    Ie under ibid Sch 17 para 13 (prospectively repealed in relation to Wales): see the text and notes 8-14 supra.

17    Ibid Sch 17 para 14(1). See note 1 supra.

18    Ibid Sch 17 para 14(2). See note 1 supra.

19    Ie under ibid Sch 17 para 13 (prospectively repealed in relation to Wales): see the text to notes 8-14 supra.

20    Ibid Sch 17 para 15(1)(a). See note 1 supra.

21    Ibid Sch 17 para 15(1)(b). See note 1 supra.

22    Ibid Sch 17 para 15(1). See note 1 supra. For the meaning of 'contract of employment' see PARA 62 note 7 ante.

23 Ibid Sch 17 para 15(2). The text refers to advertising the vacancy in accordance with Sch 17 para 14(2) (prospectively repealed in relation to Wales): see the text to note 18 supra. See note 1 supra.

24 Ibid Sch 17 para 15(3). See note 1 supra. As to references to 'staff qualification requirements' see PARA 369 note 13 ante.

25 As to the meaning of 'absence' see PARA 369 note 15 ante.

26 Ie such post as is mentioned in the School Standards and Framework Act 1998 Sch 17 para 10 (prospectively repealed in relation to Wales): see the text to notes 1-5 supra.

27 Ibid Sch 17 para 16(1). See note 1 supra.

28 Ibid Sch 17 para 16(2). See note 1 supra.

29 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).

30 Ie under ibid Sch 17 paras 11-16 (prospectively repealed in relation to Wales): see the text and notes 6-28 supra; and PARA 371 post.

31 Ibid Sch 17 para 17. See note 1 supra.

32 As to references to the chief education officer of the local education authority see PARA 368 note 4 ante.

33 Ie under the School Standards and Framework Act 1998 Sch 17 paras 11-16 (prospectively repealed in relation to Wales): see the text and notes 6-28 supra; and PARA 371 post.

34 Ibid Sch 17 para 18(1)(b). Schedule 17 para 18 (prospectively repealed in relation to Wales) has effect subject to Sch 17 para 2(3), (4) (prospectively repealed in relation to Wales) (see PARA 368 ante): Sch 17 para 18(4). Except in relation to the appointment of a head teacher, Sch 17 para 18(1) (prospectively repealed in relation to Wales) applies in relation to the head teacher, if not otherwise entitled to be present at the proceedings there mentioned, as it applies in relation to the chief education officer: Sch 17 para 19(1)(a). Schedule 17 para 18 (prospectively repealed in relation to Wales) has effect for the purposes of Sch 17 para 19(1) (prospectively repealed in relation to Wales) as if Sch 17 para 18(4) (prospectively repealed in relation to Wales) were omitted: Sch 17 para 19(2). See note 1 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/371. Temporary appointments of other teachers for less than four months.

### **371. Temporary appointments of other teachers for less than four months.**

In relation to any temporary appointment or engagement to fill a vacancy in any teaching post<sup>1</sup> at the school<sup>2</sup> for a period not exceeding four months, or where it appears to the governing body<sup>3</sup> that the period for which the person appointed or engaged will act in the post in question will not exceed four months, the following provisions apply<sup>4</sup>.

Where it appears to the governing body in the case of any post that it would be appropriate for such an appointment to be made, it may appoint a person to the post on such terms as to the duration of the appointment as it thinks fit<sup>5</sup>. A person must not be so appointed unless he meets all the staff qualification requirements<sup>6</sup> which are applicable in relation to his appointment<sup>7</sup>. Where, in the case of any post, it appears to the governing body that it would be appropriate for such an engagement to be made, the governing body may engage, or make arrangements for the engagement of, a person to provide his services as a teacher at the school otherwise than under a contract of employment<sup>8</sup>. Any such engagement must be on such terms as to the duration of the engagement as the governing body may specify; but no person must be so engaged unless he meets all the staff qualification requirements applicable in relation to a teacher in the post in which he would be acting as a temporary teacher<sup>9</sup>.

<sup>1</sup> Other than the post of head teacher or deputy head teacher: School Standards and Framework Act 1998 s 55(1), Sch 17 paras 10, 11(1). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8). For the meaning of 'vacancy in any post' see PARA 369 note 1 ante.

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

<sup>2</sup> For the meaning of 'the school' for these purposes see PARA 368 note 2 ante.

<sup>3</sup> As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

<sup>4</sup> School Standards and Framework Act 1998 Sch 17 para 11(1). See note 1 supra.

<sup>5</sup> Ibid Sch 17 para 11(2). See note 1 supra.

<sup>6</sup> As to references to 'staff qualification requirements' see PARA 369 note 13 ante.

<sup>7</sup> School Standards and Framework Act 1998 Sch 17 para 11(3). See note 1 supra.

<sup>8</sup> Ibid Sch 17 para 11(4). See note 1 supra. For the meaning of 'contract of employment' see PARA 62 note 7 ante.

<sup>9</sup> Ibid Sch 17 para 11(5). See note 1 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/372. Advice of chief education officer on appointments of teachers.

### **372. Advice of chief education officer on appointments of teachers.**

The chief education officer<sup>1</sup> is entitled to offer such advice as he considers appropriate with respect to the appointment of a head teacher<sup>2</sup> or deputy head teacher or the appointment or engagement of an acting head teacher or an acting deputy head teacher<sup>3</sup>, or with respect to any matter arising in connection with any such appointment or engagement<sup>4</sup>. Any advice given by the chief education officer to the governing body<sup>5</sup>, any selection panel<sup>6</sup>, or any persons to whom any functions<sup>7</sup> of the governing body<sup>8</sup> are delegated, with respect to any matter which relates to an appointment or engagement and falls to be determined by it, must be considered by it before determining that matter, whether or not the advice was given at its request<sup>9</sup>. However, during any period when an agreement between the governing body and the local education authority<sup>10</sup> in relation the advisory rights of the chief education officer, or a determination by the National Assembly for Wales<sup>11</sup> that he should be accorded such rights, is effective, the chief education officer is entitled to exercise such of the rights conferred on him under the provisions relating to the staffing of foundation, voluntary aided and foundation special schools<sup>12</sup> as are accorded to him by virtue of the agreement or determination<sup>13</sup>.

1 As to references to the chief education officer of the local education authority see PARA 368 note 4 ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid s 55(1), Sch 17 para 18(2)(a).

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 School Standards and Framework Act 1998 Sch 17 para 18(2)(b). See note 3 supra.

5 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

6 Ie appointed under the School Standards and Framework Act 1998 Sch 17 para 7 (prospectively repealed in relation to Wales): see PARA 369 ante.

<sup>7</sup> As to the meaning of 'functions' see PARA 14 note 5; definition applied by virtue of ibid s 142(8).

8 Ie under ibid Sch 17 paras 11-16 (prospectively repealed in relation to Wales): see PARAS 370-371 ante.

9 Ibid Sch 17 para 18(3). Schedule 17 para 18(3) (prospectively repealed in relation to Wales) applies in relation to advice given by the head teacher as it applies in relation to advice given by the chief education officer: Sch 17 para 19(1)(b). Schedule 17 para 18 (prospectively repealed in relation to Wales) (see the text and notes 1-8 supra; and PARA 370 ante) has effect for the purposes of Sch 17 para 19(1) (prospectively repealed in relation to Wales) as if Sch 17 para 18(4) (prospectively repealed in relation to Wales) (which applies Sch 17 para 2(3), (4) (prospectively repealed in relation to Wales) relating to advisory rights of the chief education officer: see PARA 368 ante) were omitted: Sch 17 para 19(2). See note 3 supra.

10 As to local education authorities see PARA 20 ante.

11 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

12 As to foundation, voluntary aided and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

13 School Standards and Framework Act 1998 Sch 17 paras 2(3), 18(4). The chief education officer is not entitled to exercise any of the rights so conferred except in accordance with Sch 17 para 2(3) (prospectively repealed in relation to Wales): Sch 17 paras 2(4), 18(4). See note 3 supra. See further PARA 368 ante.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/373. Appointment of non-teaching staff.

### **373. Appointment of non-teaching staff.**

Except in a case where the governing body<sup>1</sup> and the local education authority<sup>2</sup> agree that the appointment of a person to work in a non-teaching post at the school<sup>3</sup> should be made by the authority, any such appointment must be made by the governing body, and the person appointed must be employed<sup>4</sup> by the governing body under a contract of employment<sup>5</sup> on such terms as it thinks fit<sup>6</sup>. Before making such an appointment the governing body must consult the head teacher<sup>7</sup>, where he would not otherwise be involved in the decision to make the appointment<sup>8</sup>. No person must be appointed to work in a non-teaching post at the school, whether by the governing body, or by the authority, unless he meets all the staff qualification requirements<sup>9</sup> which are applicable in relation to his appointment<sup>10</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'the school' for these purposes see PARA 368 note 2 ante.

4 For the meaning of 'employed' see PARA 355 note 14 ante.

5 For the meaning of 'contract of employment' see PARA 62 note 7 ante.

6 School Standards and Framework Act 1998 s 55(1), Sch 17 para 20(1).

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the appointment of support staff at foundation, voluntary aided and foundation special schools in England see PARA 346 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ibid Sch 17 para 20(2). See note 6 supra.

9 As to references to 'staff qualification requirements' see PARA 369 note 13 ante.

10 School Standards and Framework Act 1998 Sch 17 para 20(3). See note 6 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/374. Conduct and discipline of staff.

### **374. Conduct and discipline of staff.**

The regulation of conduct and discipline in relation to the staff of the school<sup>1</sup>, and any procedures for giving members of the staff opportunities for seeking redress of any grievances relating to their employment<sup>2</sup>, is under the control of the governing body<sup>3</sup>. The governing body must establish disciplinary rules and procedures, including such rules and procedures for dealing with lack of capability on the part of members of the staff<sup>4</sup>, and procedures for giving members of the staff opportunities for seeking redress of any grievances relating to their employment<sup>5</sup>, and must take such steps as appears to the governing body to be appropriate for making them known to members of the staff<sup>6</sup>. In determining the capability of members of the staff the governing body must have regard to any guidance given from time to time by the National Assembly for Wales<sup>7</sup>. If the Assembly determines that any prescribed<sup>8</sup> rules and procedures are to apply to the school or to any class or description of school to which the school belongs: (1) the governing body must act in accordance with those rules and procedures in determining the capability of members of the staff<sup>9</sup>; and (2) in the event of any inconsistency, those rules and procedures prevail over any rules and procedures established by the governing body<sup>10</sup>.

1 For the meaning of 'the school' for these purposes see PARA 368 note 2 ante.

2 For the meaning of 'employment' see PARA 355 note 14 ante.

3 School Standards and Framework Act 1998 s 55(1), Sch 17 para 21(1). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the conduct and discipline of staff at foundation, voluntary aided and foundation special schools in England see PARA 347 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 School Standards and Framework Act 1998 Sch 17 para 21(2)(a). See note 3 supra.

5 Ie mentioned in ibid Sch 17 para 21(1) (prospectively repealed in relation to Wales): see the text to notes 1-3 supra.

6 Ibid Sch 17 para 21(2)(b). See note 3 supra.

7 Ibid Sch 17 para 21(3). See note 3 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under Sch 17 para 21 (prospectively repealed in relation to Wales).

9 Ibid Sch 17 para 21(4)(a). See note 3 supra.

10 Ibid Sch 17 para 21(4)(b). See note 3 supra. The text refers to any rules and procedures established by the governing body under Sch 17 para 21(2)(a) (prospectively repealed in relation to Wales): see the text to note 4 supra.

**UPDATE**

**354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/375. Local education authority report on performance of head teacher.

### **375. Local education authority report on performance of head teacher.**

Where the local education authority<sup>1</sup> has any serious concerns about the performance of the head teacher<sup>2</sup> of the school<sup>3</sup> (1) it must make a written report of its concerns to the chairman of the governing body<sup>4</sup> at the same time sending a copy to the head teacher<sup>5</sup>; and (2) the chairman of the governing body must notify the authority in writing of the action which he proposes to take in the light of the report<sup>6</sup>. In determining whether to make such a report the authority must have regard to any guidance given from time to time by the National Assembly for Wales<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For the meaning of 'the school' for these purposes see PARA 368 note 2 ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante; and as to the appointment to the chair of the governing body see PARA 288 ante.

5 School Standards and Framework Act 1998 s 55(1), Sch 17 para 22(1)(a).

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the local education authority's report on the performance of head teachers at foundation, voluntary aided and foundation special schools in England see PARA 348 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

6 School Standards and Framework Act 1998 Sch 17 para 22(1)(b). See note 5 supra.

7 Ibid Sch 17 para 22(2). See note 5 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. The guidance is contained in the *Code of Practice for LEA-School Relations* made under the School Standards and Framework Act 1998 s 127 (as amended) (code of practice for securing effective relationships between local education authorities and maintained schools: see PARA 99 ante). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/376. Suspension of staff.

### **376. Suspension of staff.**

Both the governing body of a maintained school<sup>1</sup> and the head teacher<sup>2</sup> have power to suspend<sup>3</sup> any person employed to work at the school<sup>4</sup>, whether or not he is employed by the governing body, where, in the opinion of the governing body or, as the case may be, the head teacher, his exclusion from the school is required<sup>5</sup>. The governing body or head teacher must, when exercising that power, immediately inform the head teacher or, as the case may be, governing body<sup>6</sup>. Such a suspension may only be ended by the governing body<sup>7</sup>; and the governing body must, on ending such a suspension, immediately inform the head teacher<sup>8</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 For these purposes, 'suspend' means suspend without loss of emoluments: *ibid* s 55(1), Sch 17 para 23(5). Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the suspension of staff at foundation, voluntary aided and foundation special schools in England see PARA 349 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 For the meaning of 'employed to work at a school' see PARA 356 note 17 ante. For the meaning of 'the school' for these purposes see PARA 368 note 2 ante.

5 School Standards and Framework Act 1998 Sch 17 para 23(1). See note 3 *supra*.

6 *Ibid* Sch 17 para 23(2). See note 3 *supra*.

7 *Ibid* Sch 17 para 23(3). See note 3 *supra*.

8 *Ibid* Sch 17 para 23(4). See note 3 *supra*.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/377. Dismissal of staff.

### **377. Dismissal of staff.**

Before making a decision that a person employed<sup>1</sup> to work at the school<sup>2</sup> should have his contract of employment<sup>3</sup> with the governing body<sup>4</sup> terminated or should not have that contract renewed, the governing body must: (1) make arrangements for giving that person an opportunity of making representations as to the action it proposes to take, including, if he so wishes, oral representations to such person or persons as the governing body may appoint for the purpose<sup>5</sup>; and (2) have regard to any representations made by him<sup>6</sup>. The governing body must also make arrangements for giving any person in respect of whom it has made such a decision an opportunity of appealing against the decision before it gives effect to it<sup>7</sup>. Where its decision is that a person should have his contract of employment terminated, then, subject to any such appeal, the governing body must give effect to that decision by: (a) giving the person in question such notice terminating his contract of employment as is required under that contract<sup>8</sup>; or (b) terminating that contract without notice if the circumstances are such that it is entitled to do so by reason of his conduct<sup>9</sup>.

The head teacher<sup>10</sup> (except where he is the person concerned) and the chief education officer of the local education authority<sup>11</sup> are entitled to attend, for the purpose of giving advice, all proceedings of the governing body relating to such a decision<sup>12</sup>. The governing body must consider any advice given by a person who is entitled to attend such proceedings before making any such decision<sup>13</sup>.

1 For the meaning of 'employed' see PARA 355 note 14 ante.

2 For the meaning of 'employed to work at a school' see PARA 356 note 17 ante. For the meaning of 'the school' for these purposes see PARA 368 note 2 ante. Nothing in the School Standards and Framework Act 1998 s 55(1), Sch 17 para 24 (as amended; prospectively repealed in relation to Wales) (see the text and notes 3-9 infra) applies in relation to a person employed by the local education authority to work at the school: Sch 17 para 27(1). The provisions of Sch 16 paras 25-29 (as amended; prospectively repealed in relation to Wales) (see PARA 363 ante) apply in relation to the dismissal or withdrawal from the school of any member of the staff who is employed by the authority as they apply in relation to the dismissal or withdrawal from a school to which Sch 16 (as amended; prospectively repealed in relation to Wales) (see PARAS 355-365 ante) applies of a person who is employed to work at the school: Sch 17 para 27(2). Any regulations in force under Sch 16 para 30 (prospectively repealed in relation to Wales) (school meals staff: see PARA 364 ante) apply to any person who is, or is to be, employed by the authority to work at the school solely in connection with the provision of meals as if it were a school to which Sch 16 (as amended; prospectively repealed in relation to Wales) (see PARAS 355-365 ante) applies: Sch 17 para 27(3). 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to local education authorities see PARA 20 ante.

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the dismissal of staff at foundation, voluntary aided and foundation special schools in England see PARA 350 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

3 For the meaning of 'contract of employment' see PARA 62 note 7 ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 School Standards and Framework Act 1998 Sch 17 para 24(1)(a). See note 2 supra. See *Cornelius v Southwark London Borough Council* [1998] ELR 563, [1998] Ed CR 165, CA.

6 School Standards and Framework Act 1998 Sch 17 para 24(1)(b). See note 2 supra. See also *R v Secretary of State for Education, ex p Prior* [1994] ELR 231, [1994] ICR 877.

7 School Standards and Framework Act 1998 Sch 17 para 24(2). See note 2 supra.

8 Ibid Sch 17 para 24(3)(a). See note 2 supra.

9 Ibid Sch 17 para 24(3)(b). Nothing in Sch 17 para 24 (as amended; prospectively repealed in relation to Wales), however, applies to a person who is due to cease to work at the school by reason of the termination of his contract of employment by effluxion of time, and who has not been continuously employed at the school, within the meaning of the Employment Rights Act 1996 (see EMPLOYMENT vol 40 (2009) PARA 816 et seq), for a period of at least one year (ie the period for the time being specified in s 108(1) (qualifying period for unfair dismissal: see EMPLOYMENT vol 40 (2009) PARA 715)): School Standards and Framework Act 1998 Sch 17 para 24(4) (amended by the Employment Relations Act 1999 s 40(2)); Employment Rights Act 1996 s 108(1) (amended by the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999, SI 1999/1436, art 3). See note 2 supra.

The governing body is not required to comply with the School Standards and Framework Act 1998 Sch 17 para 24 (as amended; prospectively repealed in relation to Wales) in relation to the making of such a decision as is mentioned in Sch 17 para 24(1) (prospectively repealed in relation to Wales) (see the text and notes 1-6 supra) in a case where:

88 (1) the termination or non-renewal of the contract of employment of the person in question is required by virtue of regulations under the Education Reform Act 1988 s 218 (as amended), or the Teaching and Higher Education Act 1998 s 19 (as amended) (see PARA 774 post) (School Standards and Framework Act 1998 Sch 17 para 26(a)); or

89 (2) the person in question is a teacher who is subject to a conditional registration, suspension or prohibition order made under the Teaching and Higher Education Act 1998 s 6, Sch 2 (as amended) (disciplinary powers of General Teaching Council: see PARAS 827-833 post) (School Standards and Framework Act 1998 Sch 17 para 26(b)).

10 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

11 As to references to the chief education officer of the local education authority see PARA 368 note 4 ante.

12 School Standards and Framework Act 1998 Sch 17 para 25(1). The text refers to such a decision as is mentioned in Sch 17 para 24(1) (prospectively repealed in relation to Wales) (see the text to notes 1-6 supra). Schedule 17 para 25(1) (prospectively repealed in relation to Wales), so far as relating to the chief education officer, has effect subject to Sch 17 para 2(3), (4) (prospectively repealed in relation to Wales) (see PARA 368 ante): Sch 17 para 25(3). See note 2 supra.

See also *R (on the application of McNally) v Secretary of State for Education* [2001] EWCA Civ 332, [2002] ICR 15 (decided under previous legislation); and PARA 363 note 19 ante.

13 School Standards and Framework Act 1998 Sch 17 para 25(2). See note 2 supra.

## UPDATE

### 354-382 Staffing of Particular Categories of Schools in Wales

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/B. STAFFING OF PARTICULAR CATEGORIES OF SCHOOLS IN WALES/(B) Foundation, Voluntary Aided and Foundation Special Schools/(a) Schools having a Delegated Budget/378. Advisory rights for appropriate diocesan authorities.

### **378. Advisory rights for appropriate diocesan authorities.**

Provision is made<sup>1</sup> in relation to advisory rights for appropriate diocesan authorities for voluntary aided or foundation schools<sup>2</sup> which are Church of England<sup>3</sup>, Church in Wales<sup>4</sup> or Roman Catholic Church schools<sup>5</sup>.

If the school is a voluntary aided school, the appropriate diocesan officer<sup>6</sup> has the same advisory rights in relation to the appointment, engagement or dismissal of teachers at the school as are for the time being exercisable by the chief education officer<sup>7</sup>.

If the school is a foundation school, the governing body<sup>8</sup> may agree with the appropriate diocesan authority to accord to the appropriate diocesan officer with respect to all teachers at the school, or with respect to any particular description of such teachers, the same advisory rights in relation to their appointment, engagement or dismissal as are exercisable by the chief education officer<sup>9</sup>. The agreement of the governing body for these purposes must be given in writing and may only be withdrawn by notice in writing to the appropriate diocesan authority<sup>10</sup>.

<sup>1</sup> See by the School Standards and Framework Act 1998 s 55(1), Sch 17 para 28: see the text and notes 2-10 *infra*.

Section 55 and Sch 17 (as amended) are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*.

<sup>2</sup> As to voluntary aided and foundation schools see PARA 102 *et seq ante*. For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 *ante*.

<sup>3</sup> For the meaning of 'Church of England school' see PARA 42 note 15 *ante*.

<sup>4</sup> For the meaning of 'Church in Wales school' see PARA 42 note 15 *ante*.

<sup>5</sup> School Standards and Framework Act 1998 Sch 17 para 28(1). For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 *ante*.

<sup>6</sup> For these purposes, 'the appropriate diocesan officer' means such person as the appropriate diocesan authority may nominate: *ibid* Sch 17 para 28(6). For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 *ante*.

<sup>7</sup> *Ibid* Sch 17 para 28(2). The text refers to the advisory rights of the chief education officer in accordance with Sch 17 para 2(3) (prospectively repealed in relation to Wales) (see PARA 368 *ante*). As to references to the chief education officer of the local education authority see PARA 368 note 4 *ante*. In Sch 17 para 18 (prospectively repealed in relation to Wales) (see PARA 372 *ante*) and Sch 17 para 25 (prospectively repealed in relation to Wales) (see PARA 377 *ante*), as they apply to a school within Sch 17 para 28(2), (3) (prospectively repealed in relation to Wales) (see the text and notes 6 *supra*, 8-9 *infra*) references to the chief education officer accordingly include the appropriate diocesan officer, so far as necessary for giving effect to any advisory rights exercisable by him under Sch 17 para 28 (prospectively repealed in relation to Wales): Sch 17 para 28(5). See note 1 *supra*.

<sup>8</sup> As to the governing bodies of maintained schools in Wales see PARA 251 *et seq ante*.

9 School Standards and Framework Act 1998 Sch 17 para 28(3). The text refers to the advisory rights of the chief education officer in accordance with Sch 17 para 2(3) (prospectively repealed in relation to Wales) (see PARA 368 ante). See notes 1, 7 supra.

10 Ibid Sch 17 para 28(4). See note 1 supra.

## **UPDATE**

### **354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

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### **379. Appointment of head teachers for schools of Roman Catholic religious orders.**

Provision is made<sup>1</sup> in relation to the appointment of a head teacher<sup>2</sup> for a voluntary aided school<sup>3</sup> where the trustees under a trust deed<sup>4</sup> relating to the school are also the trustees of a Roman Catholic religious order<sup>5</sup>. The governing body<sup>6</sup> must notify the Major Superior<sup>7</sup> of the vacancy in writing<sup>8</sup>. The governing body must: (1) interview such persons who are members of the order as are proposed as candidates for appointment to the post by the Major Superior<sup>9</sup>; and (2) appoint to the post one of the persons so interviewed by it unless it has good reason for not making any such appointment<sup>10</sup>. No person may be appointed under head (2) above if he does not meet any staff qualification requirements<sup>11</sup> which are applicable in relation to his appointment<sup>12</sup>.

1     Ie by the School Standards and Framework Act 1998 s 55(1), Sch 17 para 29: see the text and notes 2-12 infra. Schedule 17 para 29(3)-(5) (prospectively repealed in relation to Wales) (see the text to notes 6-12 infra) has effect in relation to the filling of a vacancy in the post of head teacher of the school in place of Sch 17 paras 6-8 (prospectively repealed in relation to Wales) (see PARA 369 ante): Sch 17 para 29(2), which is expressed to be subject to Sch 17 para 29(6) (prospectively repealed in relation to Wales) (see note 10 infra).

Section 55 and Sch 17 (as amended) are repealed by order made under the Education Act 2002 s 216(4) as from a day to be appointed: see s 215(2), Sch 22 Pt 3. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the appointment of head teachers at voluntary aided schools in England where the trustees are also trustees of a Roman Catholic religious order see PARA 351 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2     As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3     As to voluntary aided schools see PARA 102 et seq ante.

4     As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). See generally TRUSTS.

5     Ibid Sch 17 para 29(1). For these purposes, 'Roman Catholic religious order' means a Roman Catholic religious institute or society of apostolic life: Sch 17 para 29(7). See note 1 supra.

6     As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

7     For these purposes, 'the Major Superior' means the Major Superior of the order; and 'the order' means the order mentioned in the School Standards and Framework Act 1998 Sch 17 para 29(1) (prospectively repealed in relation to Wales) (see the text to notes 1-5 supra): Sch 17 para 29(7). See note 1 supra.

8     Ibid Sch 17 para 29(3). See note 1 supra.

9     Ibid Sch 17 para 29(4)(a). See note 1 supra.

10    Ibid Sch 17 para 29(4)(b). If no appointment is made by the governing body under Sch 17 para 29(4)(b) (prospectively repealed in relation to Wales), then the provisions of Sch 17 paras 6-8 (prospectively repealed in relation to Wales) (see PARA 369 ante) have effect in relation to the filling of the vacancy: Sch 17 para 29(6). See note 1 supra.

11    As to the meaning of references to 'staff qualification requirements' see PARA 369 note 13 ante.

12 School Standards and Framework Act 1998 Sch 17 para 29(5). See note 1 *supra*.

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*(b) Schools not having a Delegated Budget*

**UPDATE**

**354-382 Staffing of Particular Categories of Schools in Wales**

Repeal of these provisions now in force also in relation to Wales: SI 2006/879.

**380. Staffing of schools on suspension of delegated budget.**

If at any time a foundation, voluntary aided or foundation special school<sup>1</sup> does not have a delegated budget<sup>2</sup>, the usual provisions<sup>3</sup> relating to the staffing of such schools generally apply<sup>4</sup>. However, the number of teachers and non-teaching staff to be employed<sup>5</sup> at the school must be determined by the local education authority<sup>6</sup>. Except with the consent of the authority, the governing body<sup>7</sup> must not appoint any teacher to be employed at the school or engage, or make arrangements for the engagement of, any person to provide his services as a teacher at the school, or dismiss any teacher at the school<sup>8</sup>. The authority may, after consulting the governing body, give the governing body directions as to the educational qualifications of the teachers to be employed for giving secular education<sup>9</sup>. The authority may give the governing body directions requiring it to dismiss any teacher at the school<sup>10</sup>. The authority may give directions to the governing body as to the number and conditions of service of persons employed at the school for the purposes of the care and maintenance of the school premises<sup>11</sup>.

1 As to foundation, voluntary aided and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

2 I.e. by virtue of any suspension under the School Standards and Framework Act 1998 s 17 (as amended) (see PARA 1269 post), or s 51, Sch 15 (as amended) (see PARAS 322-325 ante). For the meaning of 'school having a delegated budget' see PARA 320 ante. For transitional provisions and savings as to references in s 55 to any suspension of a school's delegated budget under Sch 15 (as amended) see PARA 320 note 2 ante.

3 I.e. ibid s 55(1), Sch 17 (as amended; prospectively repealed in relation to Wales): see PARAS 368-379 ante. See also note 4 infra.

4 Ibid s 55(2). Section 55 is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the staffing of foundation, voluntary aided and foundation special schools in England on suspension of the delegated budget see PARA 352 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 For the meaning of 'employed' see PARA 355 note 14 ante.

6 School Standards and Framework Act 1998 s 55(3). See note 4 supra. As to local education authorities see PARA 20 ante.

7 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.



8 School Standards and Framework Act 1998 s 55(4). See notes 4 supra, 9 infra.

9 Ibid s 55(5)(a). The provisions of Sch 17 (as amended; prospectively repealed in relation to Wales) (see PARAS 368-379 ante) or, as the case may be, s 55(4) (prospectively repealed in relation to Wales) (see the text to notes 7-8 supra) and s 55(5) (prospectively repealed in relation to Wales) have effect subject to s 58 (see PARA 388 post): s 55(8). See note 4 supra.

10 Ibid s 55(5)(b). See notes 4, 9 supra.

11 Ibid s 55(6). Where the trust deed relating to the school provides for a person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that (disregarding any transfer of control agreement under Sch 13 (prospectively repealed) (see PARAS 1420-1427 post)) the use of those premises is or would be under the control of any such person, the reference in s 55(6) (prospectively repealed in relation to Wales) to the governing body must be read as a reference to that person: s 55(7). See note 4 supra. As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of s 142(8). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 142(8).

## **UPDATE**

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## (C) NEW SCHOOLS

### **381. Staffing of new schools in Wales.**

The powers contained in the School Standards and Framework Act 1998 relating to the staffing of schools in Wales<sup>1</sup> apply, with modifications<sup>2</sup>, to the appointment of staff and the taking of other steps in relation to staffing which are appropriate in preparation for the opening of a proposed school<sup>3</sup>. The modifications apply in relation to a proposed school which will be: (1) a community, voluntary controlled or community special school having a delegated budget<sup>4</sup> or without a delegated budget<sup>5</sup>; or (2) a foundation, voluntary aided or foundation special school having a delegated budget<sup>6</sup> or without a delegated budget<sup>7</sup>. Provision is also made in relation to foundation and voluntary schools having a religious character<sup>8</sup>, and to foundation special, or foundation or voluntary aided schools not having a religious character<sup>9</sup>.

1    In the Schools Standards and Framework Act 1998 ss 54-60, Schs 16-17 (as amended; prospectively repealed in relation to Wales): see PARAS 354-380 ante, 385, 388-382 post. As to the staffing of new schools in England see PARA 353 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2    See the Education (New Schools) (Wales) Regulations 1999, SI 1999/2243, reg 48.

3    See *ibid* Pt VI (regs 45-52). 'Proposed school' means a proposed school (that is to say, one which has not yet opened) for which there is a temporary governing body constituted under School Standards and Framework Act 1998 s 44 (repealed), a transitional governing body treated as so constituted by virtue of the Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999, SI 1999/362, reg 13(5) (revoked, in relation to England, by SI 2003/2694), or a temporary governing body treated as so constituted by virtue of the Education (Transition to New Framework) (School Organisation Proposals) Regulations 1999, SI 1999/704, reg 13: Education (New Schools) (Wales) Regulations 1999, SI 1999/2243, reg 45(a). As to references to a proposed school of a particular category or description with or without a delegated budget see reg 46. As to temporary governing bodies see PARA 263 ante.

4    See *ibid* reg 49. As to community, voluntary and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post. As to delegated budgets see PARA 320 ante.

5    See *ibid* reg 51.

6    See *ibid* reg 50. As to foundation and foundation special schools see PARA 102 et seq ante.

7    See *ibid* reg 52.

8    As to references to schools having, or not having, a religious character see *ibid* reg 47.

9    See *ibid* regs 49-52.

## **UPDATE**

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## (D) STAFFING FOR NON-SCHOOL ACTIVITIES

### **382. Staffing for non-school activities in Wales.**

In relation to a maintained school in Wales<sup>1</sup>, if activities other than school activities ('non-school activities') are carried on on the school premises<sup>2</sup> and all non-school activities which are so carried on are carried on under the management or control of the school's governing body<sup>3</sup>, the relevant staffing provisions<sup>4</sup>, to such extent as the local education authority<sup>5</sup> may determine, apply in relation to persons employed<sup>6</sup>:

- 805 (1) to work partly for the purposes of school activities and partly for the purposes of non-school activities carried on on the school premises<sup>7</sup>; or
- 806 (2) to work solely for the purposes of non-school activities so carried on<sup>8</sup>,

as if all activities so carried on were school activities<sup>9</sup>. The local education authority must give the governing body notice in writing of any such determination<sup>10</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid s 56(1). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante. Nothing in s 56 (prospectively repealed in relation to Wales) applies to a school within s 56(1) (prospectively repealed in relation to Wales) at any time when the school does not have a delegated budget by virtue of any suspension under s 17 (as amended) (see PARA 1269 post), or s 51, Sch 15 (as amended) (see PARAS 322-325 ante): s 56(5). For the meaning of 'school having a delegated budget' see PARA 320 ante. For transitional provisions and savings as to references in s 56 (prospectively repealed in relation to Wales) to any suspension of a school's delegated budget under Sch 15 (as amended) see PARA 320 note 2 ante.

Section 56 is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 For these purposes, 'the relevant staffing provisions' means: (1) in relation to a community, voluntary controlled or community special school, the provisions of the School Standards and Framework Act 1998 s 54(1), Sch 16 (as amended; prospectively repealed in relation to Wales) (see PARAS 355-365 ante), and s 57 (prospectively repealed in relation to Wales) (see PARA 385 post); and (2) in relation to a foundation, voluntary aided or foundation special school, the provisions of s 55(1), Sch 17 (as amended; prospectively repealed in relation to Wales) (see PARAS 368-379 ante), and s 57 (prospectively repealed in relation to Wales) (see PARA 373 ante): s 56(4). See note 3 supra. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

5 As to local education authorities see PARA 20 ante.

6 For the meaning of 'employed' see PARA 355 note 14 ante.

7 School Standards and Framework Act 1998 s 56(2)(a). See note 3 supra.

8 Ibid s 56(2)(b). See note 3 supra.

9 Ibid s 56(2). See note 3 supra.

10 Ibid s 56(3). See note 3 supra.

## **UPDATE**

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### **C. APPLICATION OF EMPLOYMENT LAW**

#### **383. Application of employment law during financial delegation.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make such modifications<sup>3</sup> in any enactment relating to employment<sup>4</sup>, and in particular in any enactment conferring powers or imposing duties on employers<sup>5</sup>, conferring rights on employees<sup>6</sup>, or otherwise regulating the relations between employers and employees, as he considers necessary or expedient<sup>7</sup>. Before making any such order the Secretary of State must consult such associations of local authorities<sup>8</sup>, such bodies representing the interests of governors of foundation or voluntary schools<sup>9</sup>, and such organisations representing staff in maintained schools<sup>10</sup>, as appear to him to be concerned<sup>11</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the orders made under s 81 see, in relation to England, the Education (Modification of Enactments Relating to Employment) (England) Order 2003, SI 2003/1964 (amended by SI 2004/2325); and, in relation to Wales, the Education (Modification of Enactments Relating to Employment) Order 1999, SI 1999/2256 (revoked, in relation to England, by SI 2003/1964). As to the general modifications of employment enactments which have been made see the Education (Modification of Enactments Relating to Employment) Order 1999, SI 1999/2256, art 3, Schedule (revoked, in relation to England, by SI 2003/1964); and the Education (Modification of Enactments Relating to Employment) (England) Order 2003, SI 2003/1964, art 3, Schedule (Schedule amended by SI 2004/2325). Modifications have been made in relation to dismissals (see the Education (Modification of Enactments Relating to Employment) Order 1999, SI 1999/2256, art 4 (revoked, in relation to England, by SI 2003/1964); and the Education (Modification of Enactments Relating to Employment) (England) Order 2003, SI 2003/1964, art 4), trade disputes (see the Education (Modification of Enactments Relating to Employment) Order 1999, SI 1999/2256, art 5 (revoked, in relation to England, by SI 2003/1964); and the Education (Modification of Enactments Relating to Employment) (England) Order 2003, SI 2003/1964, art 5), and applications to employment tribunals (see the Education (Modification of Enactments Relating to Employment) Order 1999, SI 1999/2256, art 6 (revoked, in relation to England, by SI 2003/1964); and the Education (Modification of Enactments Relating to Employment) (England) Order 2003, SI 2003/1964, art 6). In *Green v Governing Body of Victoria Road Primary School* [2004] EWCA Civ 11, [2004] 2 All ER 763, [2004] ICR 684, it was held that, by virtue of the Education (Modification of Enactments Relating to Employment) Order 1999, SI 1999/2256, arts 3(1)(a), 6, the governing body of a school was to be treated as the appropriate respondent in an unfair dismissal claim brought in an employment tribunal (held under legislation now replaced in relation to England but with no material difference between the provisions). In *Murphy v Slough Borough Council* [2005] EWCA Civ 122, [2005] ICR 721, [2005] IRLR 382, it was held that if a complaint is made under the Disability Discrimination Act 1995 regarding the exercise of an employment power retained by the local education authority, then the authority should be named as a respondent.

3 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 For the meaning of 'employment' see PARA 355 note 14 ante.

5 For these purposes, 'employer' has the same meaning as in the Employment Rights Act 1996 s 230(4) (see EMPLOYMENT vol 39 (2009) PARA 2): School Standards and Framework Act 1998 s 142(1).

6 For the meaning of 'employee' see PARA 356 note 8 ante.

7 School Standards and Framework Act 1998 s 81(1). The text refers to the Secretary of State making such modifications in any enactment relating to employment as he considers necessary or expedient in consequence of the operation of the Education Act 2002 s 35 (see PARA 333 ante), s 36 (see PARA 343 ante) and s 37 (see PARA 384 post), or of regulations made under ss 35-37: School Standards and Framework Act 1998 s 81(1) (amended

by the Education Act 2002 s 215(1), Sch 21 para 107). The amendment made by Sch 21 para 107 is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 August 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the references to the Education Act 2002 ss 35-37 and regulations made thereunder should be read as references to the School Standards and Framework Act 1998 s 54 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARAS 354, 366 ante), s 57(1)-(3) (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 385 post), Sch 16 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARAS 355-365 ante) and s 55, Sch 17 para 27 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 377 ante). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

8 For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of *ibid* s 142(8).

9 As to foundation and voluntary schools see PARA 102 et seq ante.

10 For the meaning of 'maintained school' see PARA 94 ante.

11 School Standards and Framework Act 1998 s 81(2).

## **UPDATE**

### **383 Application of employment law during financial delegation**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--SI 1999/2256 replaced in relation to Wales: Education (Modification of Enactments Relating to Employment) (Wales) Order 2006, SI 2006/1073.

NOTE 7--Day now appointed in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/C. APPLICATION OF EMPLOYMENT LAW/384. Payments in respect of dismissal etc under the Education Act 2002.

### **384. Payments in respect of dismissal etc under the Education Act 2002.**

It is for the governing body of a maintained school<sup>1</sup> to determine: (1) whether any payment should be made by the local education authority<sup>2</sup> in respect of the dismissal<sup>3</sup>, or for the purpose of securing the resignation, of any member of the staff of the school<sup>4</sup>; and (2) the amount of any such payment<sup>5</sup>. The local education authority: (a) must take such steps as may be required for giving effect to any determination of the governing body<sup>6</sup>; and (b) must not make, or agree to make, a payment<sup>7</sup> except in accordance with such a determination<sup>8</sup>.

Costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school must be met from the school's budget share<sup>9</sup> for one or more funding periods except in so far as the authority agrees with the governing body in writing, whether before or after the retirement occurs, that they will not be so met<sup>10</sup>. Costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school must not be met from the school's budget share for any financial year except in so far as the authority has good reason for deducting those costs, or any part of those costs, from that share<sup>11</sup>. Where a local education authority incurs costs: (i) in respect of any premature retirement of any member of the staff of a maintained school who is employed for community purposes<sup>12</sup>; or (ii) in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school who is employed for those purposes<sup>13</sup>, it must recover those costs from the governing body except in so far as the authority agrees with the governing body in writing, whether before or after the retirement, dismissal or resignation occurs, that they will not be so recoverable<sup>14</sup>. Where a person is employed partly for community purposes and partly for other purposes, any payment or costs in respect of that person is to be apportioned between the two purposes; and the provisions<sup>15</sup> apply separately to each part of the payment or costs<sup>16</sup>.

1 As to the governing bodies of maintained schools in England see PARA 203 et seq ante. As to the governing bodies of maintained schools in Wales see PARA 251 ante. For the meaning of 'maintained school' see PARA 98 note 3 ante. At the date at which this volume states the law, these provisions were not yet in force in Wales (see note 4 infra). As to payments in respect of dismissal etc in Wales under the School Standards and Framework Act 1998 see PARA 385 post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to local education authorities see PARA 20 ante.

3 As to the dismissal of persons employed or engaged to work at schools see PARAS 340, 350, 363, 377 ante.

4 Education Act 2002 s 37(1)(a). Section 37(1) does not apply in relation to a payment which the local education authority is required to make: (1) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or (2) under any statutory provision: s 37(2). For the meaning of 'statutory provision' see PARA 227 note 2 ante. The provisions of s 37(1)-(6) (as amended in relation to England; prospectively amended in relation to Wales) do not apply to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under the School Standards and Framework Act 1998 s 17 (as amended; further amended in relation to England; prospectively further amended in relation to Wales) (see PARA 1269 post), or s 51, Sch 15 (as amended; further amended in relation to England; prospectively further amended in relation to Wales) (see PARAS 322-325 ante): Education Act 2002 s 37(11). For the meaning of references to 'school having a delegated budget' see PARA 342 note 5 ante.

As to education action forums and a governing body's functions under s 37 see the School Standards and Framework Act 1998 s 12(4) (as amended in relation to England; prospectively amended in relation to Wales); and PARA 453 et seq post.

The Education Act 2002 s 37 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

5 Education Act 2002 s 37(1)(b). See note 4 supra.

6 Ibid s 37(3)(a). The text refers to any determination of the governing body under s 37(1) (see the text and notes 1-5 supra). See note 4 supra.

7 Ie a payment in relation to which ibid s 37(1) (see the text and notes 1-5 supra) applies.

8 Ibid s 37(3)(b). See note 4 supra.

9 For the meaning of 'budget share' see PARA 342 note 5 ante.

10 Education Act 2002 s 37(4) (amended by the Education Act 2005 Sch 18 para 14(1), (2)). See note 4 supra. The amendment made by the Education Act 2005 Sch 18 para 14(1), (2) is brought into force as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'funding period' should be read as a reference to 'financial year'. For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

'Funding period' has the meaning given by the School Standards and Framework Act 1998 s 45(1B) (added in relation to England; prospectively added in relation to Wales) (see PARA 312 note 4 ante): Education Act 2002 s 37(12) (definition added by the Education Act 2005 s 117, Sch 18 para 14(1), (4)). See note 4 supra. The amendment made by the Education Act 2005 Sch 18 para 14(1), (4) is brought into force as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The Education Act 2002 s 37(4) (as amended in relation to England; prospectively amended in relation to Wales) is subject to s 37(7) (see the text and notes 13-15 infra): s 37(4).

11 Ibid s 37(5) (amended by the Education Act 2005 Sch 18 para 14(1), (3)). The amendment made by the Education Act 2005 Sch 18 para 14(1), (3) is brought into force as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'funding period' should be read as a reference to 'financial year'.

The Education Act 2002 s 37(5) (as amended in relation to England; prospectively amended in relation to Wales) is subject to s 37(7) (see the text and notes 13-15 infra): s 37(5). The fact that the authority has a policy precluding dismissal of its employees by reason of redundancy is not to be regarded as a good reason for the purposes of s 37(5) (as amended in relation to England; prospectively amended in relation to Wales); and in s 37(6), the reference to dismissal by reason of redundancy must be read in accordance with the Employment Rights Act 1996 s 139 (see EMPLOYMENT vol 40 (2009) PARA 825): Education Act 2002 s 37(6). See note 4 supra.

12 Ibid s 37(7)(a). 'Community purposes' means the purposes of the provision of facilities or services under s 27 (see PARA 227 ante): s 37(12). See note 4 supra.

13 Ibid s 37(7)(b). See note 4 supra.

14 Ibid s 37(7). Any amount payable by virtue of s 37(7) by the governing body of a maintained school to the local education authority must not be met by the governing body out of the school's budget share for any funding period: s 37(8) (amended by the Education Act 2005 Sch 18 para 14(1), (3)). The amendment made by the Education Act 2005 Sch 18 para 14(1), (3) is brought into force as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 November 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 8) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'funding period' should be read as a reference to 'financial year'.



Regulations may make provision with respect to the recovery from governing bodies of amounts payable by virtue of the Education Act 2002 s 37(7); s 37(10). 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no such regulations had been made under s 37(10). See note 4 supra.

15     le the provisions of *ibid* s 37(1)-(8) (as amended in relation to England; prospectively amended in relation to Wales) (see the text and notes 1-14 supra).

16     *Ibid* s 37(9). See note 4 supra.

## **UPDATE**

### **384 Payments in respect of dismissal etc under the Education Act 2002**

NOTE 10--Day now appointed in relation to Wales: SI 2006/879.

NOTE 14--Day now appointed in relation to Wales: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/C. APPLICATION OF EMPLOYMENT LAW/385. Payments in respect of dismissal etc in Wales under the School Standards and Framework Act 1998.

**385. Payments in respect of dismissal etc in Wales under the School Standards and Framework Act 1998.**

The following provisions apply until a day to be appointed<sup>1</sup>.

It is for the governing body of a maintained school in Wales<sup>2</sup> to determine: (1) whether any payment should be made by the local education authority in respect of the dismissal<sup>3</sup>, or for the purpose of securing the resignation, of any member of the staff of the school<sup>4</sup>; and (2) the amount of any such payment<sup>5</sup>. The local education authority: (a) must take such steps as may be required for giving effect to any such determination of the governing body<sup>6</sup>; and (b) must not make, or agree to make, a payment<sup>7</sup> except in accordance with such a determination<sup>8</sup>. Costs incurred by the local education authority in respect of any premature retirement of a member of the staff of a maintained school must be met from the school's budget share<sup>9</sup> for one or more financial years<sup>10</sup> except in so far as the authority agrees with the governing body in writing, whether before or after the retirement occurs, that it must not be so met<sup>11</sup>. Costs incurred by the local education authority in respect of the dismissal, or for the purpose of securing the resignation, of any member of the staff of a maintained school must not be met from the school's budget share for any financial year except in so far as the authority has good reason<sup>12</sup> for deducting those costs, or any part of those costs, from that share<sup>13</sup>.

1 The School Standards and Framework Act 1998 s 57 is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to payments in respect of dismissal etc in England under the Education Act 2002 see PARA 384 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante. For the meaning of 'maintained school' see PARA 94 ante.

3 As to local education authorities see PARA 20 ante. As to the dismissal of persons employed or engaged to work at schools in Wales see PARAS 363, 377 ante.

4 School Standards and Framework Act 1998 s 57(1)(a). Section 57(1) does not apply in relation to a payment which the local education authority is required to make: (1) by virtue of any contract other than one made in contemplation of the impending dismissal or resignation of the member of staff concerned; or (2) under any statutory provision: s 57(2). See note 1 supra.

5 Ibid s 57(1)(b). See note 1 supra.

6 Ibid s 57(3)(a). The text refers to any determination of the governing body under s 57(1) (see the text and notes 1-5 supra). See note 1 supra.

7 Ie a payment in relation to which ibid s 57(1) (see the text and notes 1-5 supra) applies.

8 Ibid s 57(3)(b). See note 1 supra.

9 For the meaning of 'budget share' see PARA 312 ante.

10 For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

11 Ibid s 57(4). See note 1 supra.

12 The fact that the authority has a policy precluding dismissal of its employees by reason of redundancy is not to be regarded as a good reason for the purposes of *ibid* s 57(5); and for these purposes, 'dismissal for redundancy' must be read in accordance with the Employment Rights Act 1996 s 139 (see *EMPLOYMENT* vol 40 (2009) PARA 825): School Standards and Framework Act 1998 s 57(6). See note 1 supra. For the meaning of 'employee' see PARA 356 note 8 ante.

13 Ibid s 57(5). Nothing in s 57 applies to a maintained school at any time when the school does not have a delegated budget by virtue of any suspension under s 17 (as amended) (see PARA 1269 post), or s 51, Sch 15 (as amended) (see PARAS 322-325 ante): s 57(7). See note 1 supra. For the meaning of 'school having a delegated budget' see PARA 320 ante. For transitional provisions and savings as to references in s 57 to any suspension of a school's delegated budget under Sch 15 (as amended) see PARA 320 note 2 ante.

## **UPDATE**

### **385 Payments in respect of dismissal etc in Wales under the School Standards and Framework Act 1998**

TEXT AND NOTE 1--Day now appointed: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/C. APPLICATION OF EMPLOYMENT LAW/386. Unfair dismissal of teachers at foundation, voluntary aided or foundation special schools.

### **386. Unfair dismissal of teachers at foundation, voluntary aided or foundation special schools.**

Where a teacher in a foundation, voluntary aided or foundation special school<sup>1</sup> is dismissed by the governing body<sup>2</sup> in pursuance of a requirement of the local education authority<sup>3</sup>, Part X of the Employment Rights Act 1996<sup>4</sup> has effect in relation to the dismissal<sup>5</sup> as if: (1) the local education authority had at all times been the teacher's employer<sup>6</sup>; (2) the local education authority had dismissed him<sup>7</sup>; and (3) the reason or principal reason for which it dismissed him had been the reason or principal reason for which it required his dismissal<sup>8</sup>.

1 As to foundation, voluntary aided and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 Ie (in England) under the Education Act 2002 s 36(7), Sch 2 para 7 (see PARA 352 ante) or (in Wales) under the School Standards and Framework Act 1998 s 55(5) (see PARA 380 ante). As from a day to be appointed, the Employment Rights Act 1996 s 134(1) (as amended) is amended further by the Education Act 2002 s 215(1), Sch 21 para 30 so as to repeal the reference to the School Standards and Framework Act 1998 s 55(5) and refer instead to the Education Act 2002 Sch 2 para 7 in relation to Wales also. At the date at which this volume states the law, no such day had been appointed. As to local education authorities see PARA 20 ante.

4 Ie the Employment Rights Act 1996 Pt X (ss 94-134A) (as amended): see EMPLOYMENT vol 40 (2009) PARA 714 et seq.

5 Ibid s 134(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 55; and the Education Act 2002 Sch 21 para 30). For the purpose of a complaint under the Employment Rights Act 1996 s 111 (as amended) (see EMPLOYMENT vol 40 (2009) PARA 757) as it has effect by virtue of s 134(1) (as amended), modifications have in particular been made to the provisions relating to the disapplication of an additional award of compensation (s 117(4)(a) (as amended) (see EMPLOYMENT vol 40 (2009) PARA 768)) and the determination of loss sustained by a complainant attributable to action taken by an employer (s 123(5) (see EMPLOYMENT vol 40 (2009) PARA 773)): see s 134(2); and EMPLOYMENT vol 40 (2009) PARA 714.

6 Ibid s 134(1)(a). For the meaning of 'employer' see s 230(4); and EMPLOYMENT vol 39 (2009) PARA 2.

7 Ibid s 134(1)(b).

8 Ibid s 134(1)(c).

#### **UPDATE**

### **386 Unfair dismissal of teachers at foundation, voluntary aided or foundation special schools**

NOTE 3--Day now appointed in relation to Wales: SI 2006/879.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/C. APPLICATION OF EMPLOYMENT LAW/387. Avoidance of certain terms in a contract made with an employee.

### **387. Avoidance of certain terms in a contract made with an employee.**

In so far as a contract made after 20 November 1987 between: (1) a local education authority<sup>1</sup> in its capacity as such an authority or the governing body<sup>2</sup> of a foundation, voluntary aided or foundation special school<sup>3</sup>; and (2) any person employed by it<sup>4</sup>,

not being a contract made in contemplation of the employee's<sup>5</sup> pending dismissal by reason of redundancy<sup>6</sup>, provides that the employee is not to be dismissed by reason of redundancy or that, if he is so dismissed, he is to be paid a sum in excess of the sum which the employer<sup>7</sup> is liable to pay him under the Employment Rights Act 1996<sup>8</sup>, that contract is void and of no effect<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 For these purposes, 'governing body', in relation to an institution, includes a body corporate established for the purpose of conducting that institution: Education Reform Act 1988 s 221(3).

3 Ibid s 221(1) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I para 52, Sch 9; and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 16, 18). As to foundation schools, voluntary schools and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

4 Education Reform Act 1988 s 221(1) (as amended: see note 3 supra). 'Employed' means employed under a contract of employment: Education Reform Act 1988 s 235(1). 'Contract of employment' has the same meaning as in the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2); definition applied by the Education Reform Act 1988 s 235(1) (definition amended by the Employment Rights Act 1996 s 240, Sch 1 para 37(1), (5) (a)).

5 For these purposes, 'employee' has the same meaning as in the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2); Education Reform Act 1988 s 235(1) (definition amended by the Employment Rights Act 1996 s 240, Sch 1 para 37).

6 Education Reform Act 1988 s 221(1) (as amended: see note 3 supra).

7 For these purposes, 'employer' has the same meaning as in the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2); Education Reform Act 1988 s 235(1) (as amended: see note 5 supra).

8 Ie under the Employment Rights Act 1996 s 135 (right to redundancy payment: see EMPLOYMENT vol 40 (2009) PARA 791).

9 Education Reform Act 1988 s 221(2) (amended by the Employment Rights Act 1996 s 240, Sch 1 para 37(1), (4)). As to void contracts see CONTRACT vol 9(1) (Reissue) PARAS 836 et seq, 867, 876 et seq.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(viii) Staffing of Schools/D. APPOINTMENT AND DISMISSAL OF TEACHERS OF RELIGIOUS EDUCATION/388. Appointment and dismissal of certain teachers at schools with a religious character.

## ***D. APPOINTMENT AND DISMISSAL OF TEACHERS OF RELIGIOUS EDUCATION***

### **388. Appointment and dismissal of certain teachers at schools with a religious character.**

In relation to a foundation or voluntary controlled school which has a religious character<sup>1</sup>, where the number of teachers is more than two, the teachers must include persons<sup>2</sup>: (1) who are selected for their fitness and competence to give religious education as is required by arrangements<sup>3</sup> for religious education in accordance with the school's trust deed<sup>4</sup> or with the tenets of the school's specified religion or religious denomination<sup>5</sup>; and (2) who are specifically appointed to do so<sup>6</sup>. The number of reserved teachers<sup>7</sup> in such a school must not exceed one-fifth of the total number of teachers, including the head teacher<sup>8</sup>. The head teacher of such a school must not, while he remains head teacher of the school, be a reserved teacher<sup>9</sup>. Where the appropriate body<sup>10</sup> proposes to appoint a person to be a reserved teacher in such a school, that body must consult the foundation governors<sup>11</sup>, and must not so appoint that person unless the foundation governors are satisfied as to his fitness and competence to give such religious education as is mentioned in head (1) above<sup>12</sup>. If the foundation governors of such a school consider that a reserved teacher has failed to give such religious education efficiently and suitably, they may<sup>13</sup>: (a) in the case of a teacher who is an employee<sup>14</sup>, require the appropriate body to dismiss him from employment<sup>15</sup> as a reserved teacher at the school<sup>16</sup>; and (b) in the case of a teacher who is engaged otherwise than under a contract of employment<sup>17</sup>, require the governing body to terminate his engagement<sup>18</sup>.

In relation to a voluntary aided school<sup>19</sup>, if a teacher appointed to give religious education fails to give such education efficiently and suitably, he may be dismissed on that ground by the governing body without the consent of the local education authority<sup>20</sup>. However, this does not apply: (i) where the school has a delegated budget<sup>21</sup>; or (ii) to religious education in accordance with an agreed syllabus<sup>22</sup>.

1 The School Standards and Framework Act 1998 s 58(2)-(6) (see the text and notes 2-18 *infra*) applies to a foundation or voluntary controlled school which has a religious character: s 58(1)(a). References in Pt II Ch V (ss 54-63) (as amended) (see PARA 354 *et seq ante*) to a school which has, or does not have, a religious character are to be construed in accordance with s 69(3) (see PARA 951 note 9 *post*): s 58(1). As to foundation and voluntary controlled schools see PARA 102 *et seq ante*.

2 Ibid s 58(2) (amended by the Education Act 2002 s 40, Sch 3 para 6(1), (2)). The amendment made by Sch 3 para 6(1), (2) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the references to 'teachers' should be read as references to 'teaching staff'. For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*.

3 *Ie* under the School Standards and Framework Act 1998 s 69, Sch 19 para 3(3) (see PARA 953 *post*).

4 As to the meaning of 'trust deed' see PARA 104 note 6 *ante*; definition applied by virtue of *ibid* s 142(8). See generally TRUSTS.

5 Ibid s 58(2)(a).

6 Ibid s 58(2)(b).

7 'Reserved teacher', in relation to a foundation or voluntary controlled school, means a person employed or engaged at the school in pursuance of *ibid* s 58(2) (see the text to notes 1-6 *supra*): s 58(9) (definition amended by the Education Act 2002 Sch 3 para 6(1), (6)). The amendment made by the Education Act 2002 Sch 3 para 6(1), (6) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'employed or engaged' should be read simply as a reference to 'employed'. For the meaning of 'employed' see *PARA* 355 note 14 *ante*.

8 School Standards and Framework Act 1998 s 58(3) (amended by the Education Act 2002 Sch 3 para 6(1), (3)). For this purpose, where the total number of teachers is not a multiple of five, it must be treated as if it were the next higher multiple of five: School Standards and Framework Act 1998 s 58(3) (as so amended). As to the meaning of 'head teacher' see *PARA* 93 note 13 *ante*; definition applied by virtue of s 142(8).

The amendment made by the Education Act 2002 Sch 3 para 6(1), (3) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the references to 'the total number of teachers', where they occur, should be read as references to 'the number of the teaching staff'.

9 School Standards and Framework Act 1998 s 58(4) (amended by the Education Act 2002 Sch 3 para 6(1), (4)). The amendment made by the Education Act 2002 Sch 3 para 6(1), (4) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'while he remains head teacher' should be read as a reference to 'while holding the post of head teacher'.

10 'The appropriate body' means: (1) in relation to a foundation school, the governing body; and (2) in relation to a voluntary controlled school, the local education authority: School Standards and Framework Act 1998 s 58(9). As to the governing bodies of maintained schools see *PARA* 203 *et seq ante*. As to local education authorities see *PARA* 20 *ante*.

11 For the meaning of 'foundation governor' see *PARA* 104 note 6 *ante*.

12 School Standards and Framework Act 1998 s 58(5).

13 *Ibid* s 58(6).

14 For the meaning of 'employee' see *PARA* 356 note 8 *ante*.

15 For the meaning of 'employment' see *PARA* 355 note 14 *ante*.

16 School Standards and Framework Act 1998 s 58(6)(a) (s 58(6)(a), (b) added by the Education Act 2002 Sch 3 para 6(1), (5)). The amendment made by the Education Act 2002 Sch 3 para 6(1), (5) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, in place of heads (a) and (b) in the text, the requirement is simply that the appropriate body should dismiss the teacher from employment as a reserved teacher in the school.

17 As to the engagement of teaching staff see *PARAS* 333 *et seq*, 355 *et seq ante*.

18 School Standards and Framework Act 1998 s 58(6)(b) (as added: see note 16 *supra*).

19 *Ibid* s 58(7) (see the text to note 20 *infra*) applies to a voluntary aided school which has a religious character: s 58(1)(b).

20 *Ibid* s 58(7).

21 *Ibid* s 58(8)(a). For the meaning of 'school having a delegated budget' see *PARA* 320 *ante*.

22 Ibid s 58(8)(b). For the meaning of 'agreed syllabus' see PARA 947 note 2 post; definition applied by virtue of s 142(8).

## **UPDATE**

### **388-390 Appointment and dismissal of certain teachers at schools with a religious character ... Staff at foundation or voluntary school with religious character**

Amendments made by Education Act 2002 Sch 3 now in force in relation to Wales: SI 2006/879.

### **388 Appointment and dismissal of certain teachers at schools with a religious character**

TEXT AND NOTE 9--School Standards and Framework Act 1998 s 58(4) repealed: Education and Inspections Act 2006 s 37(1), Sch 18 Pt 6.



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## ***E. RELIGIOUS OPINIONS OF STAFF***

### **389. Religious opinions of staff at community, secular foundation or voluntary, or special school.**

In relation to: (1) a community school or a community or foundation special school<sup>1</sup>; or (2) a foundation or voluntary school which does not have a religious character<sup>2</sup>, no person may be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher at the school, or from being employed<sup>3</sup> or engaged for the purposes of the school otherwise than as a teacher<sup>4</sup>. No teacher at the school may be required to give religious education<sup>5</sup>. No teacher at the school is to receive any less remuneration or be deprived of or disqualified for, any promotion or other advantage<sup>6</sup>: (a) by reason of the fact that he does or does not give religious education<sup>7</sup>; or (b) by reason of his religious opinions or of his attending or omitting to attend religious worship<sup>8</sup>.

1 School Standards and Framework Act 1998 s 59(1)(a). As to community and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

2 Ibid s 59(1)(b). References in Pt II Ch V (ss 54-63) (as amended) (see PARA 354 et seq ante) to a school which has, or does not have, a religious character are to be construed in accordance with s 69(3) (see PARA 951 note 9 post): s 58(1). As to foundation and voluntary controlled schools see PARA 102 et seq ante.

3 For the meaning of 'employed' see PARA 355 note 14 ante.

4 School Standards and Framework Act 1998 s 59(2) (amended by the Education Act 2002 s 40, Sch 3 para 7). The amendment made by the Education Act 2002 Sch 3 para 7 is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'employed or engaged' should be read simply as a reference to 'employed'. For the meaning of 'employed' see PARA 355 note 14 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 School Standards and Framework Act 1998 s 59(3).

6 Ibid s 59(4).

7 Ibid s 59(4)(a).

8 Ibid s 59(4)(b).

## **UPDATE**

### **388-390 Appointment and dismissal of certain teachers at schools with a religious character ... Staff at foundation or voluntary school with religious character**

Amendments made by Education Act 2002 Sch 3 now in force in relation to Wales: SI 2006/879.



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### **390. Staff at foundation or voluntary school with religious character.**

Provision is made<sup>1</sup> in relation to staff at foundation and voluntary schools<sup>2</sup> which have religious characters<sup>3</sup>.

If the school is a foundation or voluntary controlled school, no person may be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being a teacher at the school, or from being employed or engaged for the purposes of the school otherwise than as a teacher<sup>4</sup>. No teacher at the school may be required to give religious education<sup>5</sup>. No teacher at the school is to receive any less remuneration or be deprived of or disqualified for, any promotion or other advantage by reason of the fact that he does or does not give religious education, or by reason of his religious opinions or of his attending or omitting to attend religious worship<sup>6</sup>. These provisions<sup>7</sup> do not apply to a reserved teacher<sup>8</sup> at such a school, and instead head (1) and head (2) below apply in relation to such a teacher as they apply in relation to a teacher at a voluntary aided school<sup>9</sup>. In connection with the appointment of a person to be head teacher<sup>10</sup> of the school, whether foundation or voluntary controlled, regard may be had to that person's ability and fitness to preserve and develop the religious character of the school<sup>11</sup>.

If the school is a voluntary aided school:

807 (1) preference may be given, in connection with the appointment, remuneration or promotion of teachers at the school, to persons<sup>12</sup>:

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56. (a) whose religious opinions are in accordance with the tenets of the religion or religious denomination specified<sup>13</sup> in relation to the school<sup>14</sup>;

57. (b) who attend religious worship in accordance with those tenets<sup>15</sup>; or

58. (c) who give, or are willing to give, religious education at the school in accordance with those tenets<sup>16</sup>; and

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808 (2) regard may be had, in connection with the termination of the employment<sup>17</sup> or engagement of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified<sup>18</sup>.

If the school is a voluntary aided school, no person may be disqualified by reason of his religious opinions, or of his attending or omitting to attend religious worship, from being employed or engaged for the purposes of the school otherwise than as a teacher<sup>19</sup>.

1. Ie by the School Standards and Framework Act 1998 s 60 (as amended in relation to England; prospectively amended in relation to Wales): see the text and notes 2-19 infra.

2. As to foundation and voluntary schools see PARA 102 et seq ante.

3. School Standards and Framework Act 1998 s 60(1). References in Pt II Ch V (ss 54-63) (as amended) (see PARA 354 et seq ante) to a school which has, or does not have, a religious character are to be construed in accordance with s 69(3) (see PARA 951 note 9 post): s 58(1). As to provision made in relation to the employment of teachers at independent schools having a religious character see PARA 473 post.

Where immediately before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) a teacher at a school which on that day became a school to which s 60 applied enjoyed, by virtue of the Education Act 1996 ss 304, 305 (both repealed) (religious opinions of staff etc), any rights not conferred on him by the School Standards and Framework Act 1998 s 60 as a teacher at a school to which it applied, he continues to enjoy those rights (in addition to those conferred by s 60) until he ceases to be employed as a teacher at the school: s 60(7). For the meaning of 'employed' see PARA 355 note 14 ante.

4 Ibid s 59(2) (amended by the Education Act 2002 s 40, Sch 3 para 7), School Standards and Framework Act 1998 s 60(2). The amendment made by the Education Act 2002 Sch 3 para 7 is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'employed or engaged' should be read simply as a reference to 'employed'. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 School Standards and Framework Act 1998 ss 59(3), 60(2).

6 Ibid ss 59(4), 60(2).

7 Ie ibid s 59(2)-(4), applied by s 60(2) (see the text and notes 4-6 supra).

8 'Reserved teacher', in relation to a foundation or voluntary controlled school, means a person employed at the school in pursuance of ibid s 58(2) (see PARA 388 ante): s 60(8).

9 Ibid s 60(3).

10 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

11 Ibid s 60(4).

12 Ibid s 60(5)(a).

13 As to the meaning of 'specified religion or religious denomination' see PARA 42 note 15 ante.

14 School Standards and Framework Act 1998 s 60(5)(a)(i). The text refers to the religion or religious denomination specified in relation to the school under s 69(4) (see PARA 951 post).

15 Ibid s 60(5)(a)(ii).

16 Ibid s 60(5)(a)(iii).

17 For the meaning of 'employment' see PARA 355 note 14 ante.

18 School Standards and Framework Act 1998 s 60(5)(b) (amended by the Education Act 2002 Sch 3 para 8(1), (2)). The amendment made by the Education Act 2002 Sch 3 para 8(1), (2) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'employment or engagement' should be read simply as a reference to 'employment'.

19 School Standards and Framework Act 1998 s 60(6) (amended by the Education Act 2002 Sch 3 para 8(1), (3)). The amendment made by the Education Act 2002 Sch 3 para 8(1), (3) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'employed or engaged' should be read simply as a reference to 'employed'.

## UPDATE

### **388-390 Appointment and dismissal of certain teachers at schools with a religious character ... Staff at foundation or voluntary school with religious character**

Amendments made by Education Act 2002 Sch 3 now in force in relation to Wales: SI 2006/879.

**390 Staff at foundation or voluntary school with religious character**

NOTE 11--School Standards and Framework Act 1998 s 60(4) amended: Education and Inspections Act 2006 s 37(2).

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## ***F. TRANSFER OF STAFF ON 1 SEPTEMBER 1999***

### **391. Transfer of staff on appointed day.**

A reallocation of schools to the categories of community, foundation and voluntary schools<sup>1</sup> was introduced on 1 September 1999<sup>2</sup> by the School Standards and Framework Act 1998 and provision was made in relation to the transfer of staff on the date of reallocation<sup>3</sup>. The staff transfer provisions provided that the contract of employment<sup>4</sup> between a person to whom the provisions<sup>5</sup> apply and his former employer<sup>6</sup> had effect from 1 September 1999 as if originally made between him and his new employer<sup>7</sup>; and without prejudice to this principle:

- 809 (1) all the former employer's rights, powers, duties and liabilities<sup>8</sup> under or in connection with the contract of employment were thereby transferred to the new employer on 1 September 1999<sup>9</sup>; and
- 810 (2) anything done before that date by or in relation to the former employer in respect of that contract or the employee was deemed from that day to have been done by or in relation to the new employer<sup>10</sup>.

The staff transfer provisions<sup>11</sup> applied where on 1 September 1999:

- 811 (a) a special agreement school<sup>12</sup> became a voluntary aided school<sup>13</sup>;
- 812 (b) a grant-maintained school<sup>14</sup> became a community or voluntary controlled school<sup>15</sup>; or
- 813 (c) a grant-maintained special school<sup>16</sup> became a community special school<sup>17</sup>.

The staff transfer provisions applied in the circumstances mentioned in heads (a) to (c) above to any person who immediately before 1 September 1999:

- 814 (i) was employed<sup>18</sup> by the local education authority to work solely<sup>19</sup> at an existing school within head (a) above<sup>20</sup>;
- 815 (ii) was employed by the local education authority to work at such an existing school and was designated for these purposes by an order made by the Secretary of State<sup>21</sup>; or
- 816 (iii) was employed by the governing body of an existing school within head (b) or head (c) above<sup>22</sup>.

The staff transfer provisions did not apply:

- 817 (A) to any person employed as mentioned in heads (i) to (iii) above whose contract of employment terminated on 31 August 1999<sup>23</sup>; or
- 818 (B) to any person employed as mentioned in head (i) or head (ii) above who before that day had been appointed or assigned by the local education authority to work solely at another school as from that day, or had been withdrawn from work at the school with effect from that day<sup>24</sup>.

A person who, before 1 September 1999, had been appointed or assigned by the local education authority, or the governing body of an existing school within head (b) or head (c) above, to work at a school, or, as the case may be, at the existing school, as from that day was treated for these purposes as if he had been employed by the authority or governing body immediately before that day to do such work at the school<sup>25</sup> as he would have been required to do on or after that day under his contract of employment with the authority or that body<sup>26</sup>.

- 1 As to community, foundation and voluntary schools see PARA 102 et seq ante.
- 2 Ie the appointed day: see PARA 102 note 3 ante.
- 3 See the School Standards and Framework Act 1998 s 73(5)-(7) ('the staff transfer provisions'); and the text and notes 4-26 infra.
- 4 For the meaning of 'contract of employment' see PARA 62 note 7 ante.
- 5 Ie the School Standards and Framework Act 1998 s 73(5)-(7): see the text and notes 6-26 infra.
- 6 For the purposes of ibid s 73, 'the former employer' and 'the new employer': (1) where the staff transfer provisions applied by virtue of s 73(2)(a) or s 73(2)(b) (see heads (i)-(ii) in the text), means the local education authority and the governing body of the new school respectively; and (2) where the staff transfer provisions applied by virtue of s 73(2)(c) (see head (iii) in the text), means the governing body of the existing school and the local education authority respectively: s 73(8). 'Existing school' means a school which became a school of a different category on 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) as mentioned in s 73(1) (see the text to notes 11-17 infra); and 'new school' means the school of a different category which an existing school then became: s 73(8). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8). As to the governing bodies of maintained schools see PARA 203 et seq ante; and as to local education authorities see PARA 20 ante.
- 7 Ibid s 73(5). Section 73(5), (6) is without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer effected by s 73: s 73(7). For the meaning of 'employer' see PARA 383 note 5 ante; and for the meaning of 'employee' see PARA 356 note 8 ante.
- 8 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).
- 9 Ibid s 73(6)(a). See note 7 supra.
- 10 Ibid s 73(6)(b). See note 7 supra.
- 11 Ie ibid s 73(5)-(7): see the text and notes 1-10 supra.
- 12 As to special agreement schools see PARA 102 note 14 ante.
- 13 School Standards and Framework Act 1998 s 73(1)(a). The changes in the categories of schools mentioned in head (a) and head (b) in the text took place in accordance with s 20, Sch 2 (s 20 as amended) (see PARAS 105-111 ante): s 73(1). As to voluntary schools see PARA 102 et seq ante.
- 14 As to grant-maintained schools see PARAS 102 note 16, 104 et seq ante.
- 15 School Standards and Framework Act 1998 s 73(1)(b). As to community schools see PARA 102 et seq ante. See note 13 supra.
- 16 As to grant-maintained special schools see PARAS 102 note 16, 104 et seq ante.
- 17 School Standards and Framework Act 1998 s 73(1)(c). See note 13 supra.
- 18 For the meaning of 'employed' see PARA 355 note 14 ante.
- 19 As to the meaning of 'employed to work solely at a school' see PARA 363 note 6 ante.
- 20 School Standards and Framework Act 1998 s 73(2)(a). A person employed by a local education authority in connection with the provision of meals is not regarded for the purposes of s 73(2)(a) as employed to work solely at a school unless the meals are provided solely for consumption by persons at the school: s 73(9).

21 Ibid s 73(2)(b). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. An order under s 73 may designate a person either individually or as a member of a class or description of employees: s 73(10). Such orders are not to be made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante.

22 Ibid s 73(2)(c).

23 Ibid s 73(3)(a).

24 Ibid s 73(3)(b).

25 As to the meaning of 'employed to work at a school' see PARA 356 note 17 ante.

26 School Standards and Framework Act 1998 s 73(4).



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## **(ix) Admission**

### **A. TIME FOR ADMISSION OF PUPILS**

#### **392. Time for admission.**

A local education authority<sup>1</sup> is required to secure that sufficient schools<sup>2</sup> for providing primary education<sup>3</sup> and secondary education<sup>4</sup> are available for its area<sup>5</sup>. However, this must not be construed as imposing any obligation on the proprietor<sup>6</sup> of a school to admit children<sup>7</sup> as pupils<sup>8</sup> otherwise than at the beginning of a school term<sup>9</sup>. Where, however, a child was prevented from entering a school at the beginning of a term:

- 819 (1) by his being ill or by other circumstances beyond his parent's<sup>10</sup> control<sup>11</sup>; or
- 820 (2) by his parent's having been then resident at a place from which the school was not accessible with reasonable facility<sup>12</sup>,

the school's proprietor is not entitled<sup>13</sup> to refuse to admit the child as a pupil during the currency of the term<sup>14</sup>. In cases where heads (1) and (2) above do not apply, the governing body of a school maintained by a local education authority<sup>15</sup> must comply with any general directions given by the authority as to the time of admission of children as pupils<sup>16</sup>.

Despite the duty of the parent of a child of compulsory school age<sup>17</sup> to cause him to receive full-time education<sup>18</sup>, a parent is not under a duty to cause a child to receive full-time education during any period during which, having regard to the provisions described above<sup>19</sup>, it is not practicable for the parent to arrange for the child to be admitted as a pupil at a school<sup>20</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'school' see PARA 81 ante.

3 For the meaning of 'primary education' see PARA 16 ante.

4 For the meaning of 'secondary education' see PARA 17 ante.

5 See the Education Act 1996 s 14 (as amended); and PARA 26 ante.

6 For the meaning of 'proprietor' see PARA 60 note 7 ante.

7 For the meaning of 'child' see PARA 16 note 2 ante.

8 For the meaning of 'pupil' see PARA 16 note 4 ante.

9 Education Act 1996 s 433(1).

Any function of a local education authority in England which is conferred by or under s 433 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (cc). For the meaning of 'England' see PARA 52 note 11 ante.

10 As to the meaning of 'parent' see PARA 510 note 1 post.

11 Education Act 1996 s 433(2)(a).

12 Ibid s 433(2)(b).

13 Ie by virtue of ibid s 433(1): see the text and notes 1-9 supra.

14 Ibid s 433(2).

15 For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante; and as to maintained schools generally see PARA 94 et seq ante.

16 Education Act 1996 s 433(3).

17 As to the meaning of 'compulsory school age' see PARA 15 ante.

18 Ie the duty under the Education Act 1996 s 7: see PARA 510 post.

19 Ie ibid s 433(1), (2): see the text and notes 1-14 supra.

20 Ibid s 433(5).

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## **B. ADVICE**

### **393. Code of practice on admission arrangements.**

The Secretary of State<sup>1</sup> must issue, and may from time to time revise, a code of practice containing such practical guidance as he thinks appropriate in respect of the discharge by:

- 821 (1) local education authorities<sup>2</sup>;
- 822 (2) the governing bodies of maintained schools<sup>3</sup>;
- 823 (3) appeal panels<sup>4</sup>; and
- 824 (4) adjudicators<sup>5</sup>,

of their respective functions in relation to admission arrangements<sup>6</sup>. The code may include guidelines setting out aims, objectives and other matters in relation to the discharge of functions in relation to admission arrangements<sup>7</sup> by local education authorities and governing bodies of maintained schools<sup>8</sup>. The Secretary of State must publish the code as for the time being in force<sup>9</sup>.

It is the duty of each of the bodies and persons mentioned in heads (1) to (4) above when exercising such functions<sup>10</sup>, and any other person when exercising any function for the purposes of the discharge by a local education authority or the governing body of a maintained school of such functions<sup>11</sup>, to have regard to any relevant provisions of the code<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 School Standards and Framework Act 1998 s 84(1)(a). As to local education authorities see PARA 20 ante.

3 Ibid s 84(1)(b). For the purposes of Pt III Ch I (ss 84-98) (as amended), 'maintained school' means a community, foundation or voluntary school: s 84(6). As to the governing bodies of maintained schools see PARA 203 et seq ante. As to community, foundation and voluntary schools see PARA 102 et seq ante.

4 Ibid s 84(1)(c). For the purposes of Pt III Ch I (as amended), 'appeal panel' means a panel constituted in accordance with regulations under s 94(5) (see PARA 415 post) or s 95(3) (see PARA 423 post) for the purpose of hearing an appeal under Pt III Ch I (as amended): s 84(6) (amended by the Education Act 2002 s 51, Sch 4 para 2). As to transitional provisions, in relation to England, where a notice of appeal against a decision concerning the admission of a child to a maintained school in any school year earlier than 2004-2005 has been given by a parent, but has not, before 20 January 2003, been determined by an appeal panel see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, arts 2-3, Schedule para 3; and, in relation to Wales, where a parent has given a notice of appeal in accordance with the School Standards and Framework Act 1998 s 94, Sch 24 para 9 (repealed), or a governing body has given notice of appeal in accordance with s 95, Sch 25 para 5 (repealed) before 31 May 2005, see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(3)-(4), Schedule. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 School Standards and Framework Act 1998 s 84(1)(d). For the meaning of 'adjudicator' see PARA 124 ante.

6 Ibid s 84(1). The reference in the text to admission arrangements is a reference to admission arrangements under Pt III Ch I (as amended) (see PARAS 398-404 post). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8). As to the application of s 84 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

The Secretary of State may under the School Standards and Framework Act 1998 s 84(1) (see heads (1)-(4) in the text): (1) make separate provision (by means of separate codes of practice) in relation to different functions under Pt III Ch I (as amended) of the bodies and persons mentioned in s 84(1); and (2) make different provision for England and for Wales (whether or not by means of separate codes of practice): s 84(5). For these purposes, references to 'the code' or to functions under Pt III Ch I (as amended) have effect, in relation to any such separate code of practice, as references to that code or to functions under Pt III Ch I (as amended) to which it relates (as the case may be): s 84(5).

7 le under ibid Pt III Ch I (as amended).

8 Ibid s 84(2).

9 Ibid s 84(4). As to the codes of practice made by the Secretary of State see the *School Admissions Code of Practice* (February 2003) (Ref: DfES/0031/2003); and the *School Admission Appeals Code of Practice* (February 2003) (Ref: DfES/0030/2003). See also the Education (School Admissions Code of Practice and School Admission Appeals Code of Practice) (Appointed Day) (England) Order 2003, SI 2003/163. As to the codes of practice made in relation to Wales see *School Admissions: Welsh Office Code of Practice* (April 1999) and *School Admission Appeals: The National Assembly for Wales Code of Practice* (September 1999). See also the Education (School Admission Appeals: The National Assembly for Wales Code of Practice) (Appointed Day) Order 1999, SI 1999/2893.

10 le functions under the School Standards and Framework Act 1998 Pt III Ch I (as amended).

11 See note 10 supra.

12 School Standards and Framework Act 1998 s 84(3). The duty under s 84(3) is to have regard to any relevant provisions of the code and to take any relevant provisions of the code into account; it is not a duty slavishly to follow those provisions: *Governing Body of the London Oratory School v Official Schools Adjudicator* [2004] EWHC 3014 (Admin), [2005] ELR 162.

## UPDATE

### 393 Code of practice on admission arrangements

TEXT AND NOTE 2--For 'a code of practice containing such practical guidance' read 'a code for school admissions containing such provision': School Standards and Framework Act 1998 s 84(1) (amended by Education and Inspections Act 2006 s 40(2)(a)).

TEXT AND NOTE 5--Head (5) admissions forums: School Standards and Framework Act 1998 s 84(1)(ba) (added by Education and Inspections Act 2006 s 40(2)(b)). 'Admission forum' means a forum established under the School Standards and Framework Act 1998 s 85A (see PARA 395), including a joint admission forum established in pursuance of regulations under s 85A(3)(c): s 84(6) (definition added by the Education and Inspections Act 2006 s 40(6)).

NOTE 6--Words 'of practice' omitted: School Standards and Framework Act 1998 s 84(5) (amended by Education and Inspections Act 2006 Sch 18 Pt 6).

TEXT AND NOTE 7--For 'include guidelines setting out aims, objectives and other matters' read 'impose requirements, and may include guidelines setting out aims, objectives and other matters': School Standards and Framework Act 1998 s 84(2) (amended by Education and Inspections Act 2006 s 40(3)).

NOTE 9--In relation to England, see the School Admissions Code (February 2010) and the School Admission Appeals Code (February 2009). See also the School Admissions Code (Appointed Day) (England) Order 2010, SI 2010/302; and the School Admission Appeals Code (Appointed Day) (England) Order 2009, SI 2009/211.

TEXT AND NOTE 12--For 'have regard to' read 'act in accordance with': School Standards and Framework Act 1998 s 84(3) (amended by Education and Inspections Act 2006 s 40(4)).



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### **394. Making and approval of code of practice.**

Where the Secretary of State<sup>1</sup> proposes to issue or revise a code of practice on admission arrangements<sup>2</sup>, he must prepare a draft of the code or revised code<sup>3</sup>. He must consult such persons about the draft as he thinks fit and must consider any representations made by them<sup>4</sup>. Where he determines to proceed with the draft, either in its original form or with such modifications<sup>5</sup> as he thinks fit, he must lay a copy of the draft before each House of Parliament<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Ie under the School Standards and Framework Act 1998 s 84 (as amended): see PARA 393 ante. As to admission arrangements see PARAS 398-404 post.

3 Ibid s 85(1). As to the code of practice see PARA 393 ante. As to the application of s 85 to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

4 School Standards and Framework Act 1998 s 85(2).

5 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 142(8).

6 Ibid s 85(3). If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State must not take further steps in relation to the proposed code (s 85(4)), but this does not prevent a new draft of a proposed code from being laid before Parliament (s 85(6)). If no such resolution is made within the 40-day period, the Secretary of State may issue the code (or revised code) in the form of the draft, and it will come into force on such date as the Secretary of State may by order appoint: s 85(5). For these purposes, '40-day period', in relation to the draft of a proposed code, means: (1) if the draft is laid before one House on a day later than the day on which it is laid before the other House, the period of 40 days beginning with the later of the two days; and (2) in any other case, the period of 40 days beginning with the day on which the draft is laid before each House: s 85(7). In either case, no account is taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days (see PARLIAMENT vol 78 (2010) PARA 1021 et seq): s 85(7). For these purposes, references to a proposed code include a proposed revised code: s 85(8). An order made under s 85(5) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 138(4) (as amended); and PARA 82 note 15 ante.

In exercise of the powers conferred by s 85(5) the following orders have been made: the Education (Code of Practice on LEA-School Relations) (Appointed Day) (Wales) Order 1999, SI 1999/2022 (*Code of Practice on LEA-School Relations* (June 1999) issued pursuant to the School Standards and Framework Act 1998 s 127 (as amended): see PARA 99 ante); the Education (School Admission Appeals: The National Assembly for Wales Code of Practice) (Appointed Day) Order 1999, SI 1999/2893 (*School Admission Appeals: The National Assembly for Wales Code of Practice* issued pursuant to the School Standards and Framework Act 1998 s 84 (as amended): see PARA 393 ante); and the Local Education Authority--School Relations Code of Practice Order 2001, SI 2001/435 (*Code of Practice on LEA-School Relations* (February 2001) (Ref: DfEE 0027/2001)) issued pursuant to the School Standards and Framework Act 1998 s 127 (as amended): see PARA 99 ante).

## **UPDATE**

### **394 Making and approval of code of practice**

TEXT AND NOTE 2--Words 'of practice' omitted: School Standards and Framework Act 1998 s 85(1) (amended by the Education and Inspections Act 2006 Sch 18 Pt 6).

NOTE 4--In relation to a code for school admissions issued under the School Standards and Framework Act 1998 s 84(1) after the passing of the Education and Inspections Act

2006, the requirement to consult which is imposed by the School Standards and Framework Act 1998 s 85(2) may be satisfied by consultation undertaken before the passing of the Education and Inspections Act 2006, even though the code takes account (to any extent) of any provision made by the Education and Inspections Act 2006: s 40(9).

In relation to a code for school admissions issued under the School Standards and Framework Act 1998 s 84(1) after the passing of the Education and Skills Act 2008 (ie 26 November 2008), the requirement to consult which is imposed by the School Standards and Framework Act 1998 s 85(2) may be satisfied by consultation undertaken before the passing of the Education and Skills Act 2008, even though the code takes account (to any extent) of any provision made by the Education and Skills Act 2008: Education and Skills Act 2008 s 153(2).

NOTE 6--In the case of a code issued or revised by the Welsh Ministers, the School Standards and Framework Act 1998 s 85(7) has effect as if the reference to any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days were to any period during which the National Assembly for Wales is dissolved or is in recess for more than four days: s 85(7A) (added by SI 2007/1388). See also the School Admissions Code (Appointed Day) (England) Order 2010, SI 2010/302 (School Admissions Code (February 2010)); the School Admissions Code (Appointed Day) (Wales) Order 2009, SI 2009/1844 (School Admissions Code (July 2009)); the School Admission Appeals Code (Appointed Day) (England) Order 2009, SI 2009/211 (School Admission Appeals Code (February 2009)); and the School Admission Appeals Code (Appointed Day) (Wales) Order 2009, SI 2009/1845 (School Admission Appeals Code (July 2009)).

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### 395. Admission forums.

A local education authority<sup>1</sup> must in accordance with regulations<sup>2</sup> establish for its area a body, to be known as an 'admission forum', for the purpose of: (1) advising the authority on such matters connected with the exercise of the authority's functions<sup>3</sup> as may be prescribed<sup>4</sup>; and (2) advising the admission authorities for maintained schools<sup>5</sup> in the area for which the forum is established on: (a) such matters connected with the determination of admission arrangements<sup>6</sup>; and (b) such other matters connected with the admission of pupils<sup>7</sup>, as may be prescribed<sup>8</sup>. The authority may establish sub-committees of the forum<sup>9</sup>. Regulations may make provision:

- 825 (i) as to the constitution, meetings and proceedings of an admission forum and of any such sub-committee<sup>10</sup>;
- 826 (ii) as to the manner in which advice is to be given by a forum<sup>11</sup>; and
- 827 (iii) as to the establishment by local education authorities of joint admission forums<sup>12</sup>.

The local education authority must make arrangements for the forum, and any sub-committee<sup>13</sup>, to be provided with accommodation and with such services as the authority considers appropriate<sup>14</sup>.

1 As to local education authorities see PARA 20 ante.

2 'Regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 85A(1) (as added).

3 Ie under ibid Pt III Ch I (ss 84-98) (as amended). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8).

4 Ibid s 85A(1)(a) (s 85A added by the Education Act 2002 s 46). 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1). The body mentioned in s 85A(1)(a) (as added) must have regard, in carrying out its functions, to any relevant advice given to it by an admission forum under s 85A(1) (as added): s 85A(4) (as so added). As to the application of s 85A (as added) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

5 For the meaning of 'maintained school' see PARA 393 note 3 ante.

6 School Standards and Framework Act 1998 s 85A(1)(b)(i) (as added: see note 4 supra). For the meaning of 'admission arrangements' see PARA 398 note 1 post.

7 Ibid s 85A(1)(b)(ii) (as added: see note 4 supra).

8 Ibid s 85A(1)(b) (as added: see note 4 supra). The bodies mentioned in s 85A(1)(b) (as added) must have regard, in carrying out their functions, to any relevant advice given to them by an admission forum under s 85A(1) (as added): s 85A(4) (as so added). As to admission forums and academies see PARA 504 post.

9 Ibid s 85A(2) (as added: see note 4 supra).



10 Ibid s 85A(3)(a) (as added: see note 4 supra). See the Education (Admission Forums) (England) Regulations 2002, SI 2002/2900, regs 4-10, 13; and the Education (Admission Forums) (Wales) Regulations 2003, SI 2003/2962, regs 4-10, 13.

11 School Standards and Framework Act 1998 s 85A(3)(b) (as added: see note 4 supra). See the Education (Admission Forums) (England) Regulations 2002, SI 2002/2900, reg 11; and the Education (Admission Forums) (Wales) Regulations 2003, SI 2003/2962, reg 11.

12 School Standards and Framework Act 1998 s 85A(3)(c) (as added: see note 4 supra). See the Education (Admission Forums) (England) Regulations 2002, SI 2002/2900, reg 12, Schedule; and the Education (Admission Forums) (Wales) Regulations 2003, SI 2003/2962, reg 12.

13 It is established under the School Standards and Framework Act 1998 s 85A(2) (as added) (see the text and note 9 supra).

14 Ibid s 85A(5) (as added: see note 4 supra).

## UPDATE

### 395 Admission forums

TEXT AND NOTES--Regulations may make provision with respect to the expenses of an admission forum for the area of a local education authority in England: School Standards and Framework Act 1998 s 85A(5A) (s 85A(5A), (5B) added by the Education and Inspections Act 2006 s 41(6)). Except as provided by such regulations, the expenses of an admission forum for the area of a local education authority in England are to be defrayed by the local education authority by which the forum was established: s 85A(5B) (as so added).

TEXT AND NOTES 5-8--Also head (c) in the case of an admission forum for the area of a local education authority in England, exercising any other functions that may be imposed on the forum by or under the School Standards and Framework Act 1998 Pt III Ch I (ss 84-98): s 85A(1)(c) (added by the Education and Inspections Act 2006 s 41(2)).

An admission forum for the area of a local education authority in England may prepare and publish reports on such matters connected with the admission of pupils to maintained schools in that area as may be prescribed: School Standards and Framework Act 1998 s 85A(1A) (s 85A(1A)-(1C) added by the Education and Inspections Act 2006 s 41(3)). Such matters are prescribed by the School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008, SI 2008/3091, reg 18. A forum report produced pursuant to s 85A(1A) must be sent to the adjudicator: SI 2008/3091 reg 20. For the purposes of the preparation of a report under the School Standards and Framework Act 1998 s 85A(1A), an admission forum may request any of the following bodies to provide the forum with any information held by it which falls within a prescribed description and is specified by the forum in its request: (i) the local education authority which established the forum; (ii) any local education authority in England for an area which adjoins the area of such an authority; (iii) the governing body of any maintained school in the area for which the forum is established: s 85A(1B). As to the information prescribed see SI 2008/3091 reg 19. A body mentioned in any of heads (i)-(iii) above must comply with a request made by an admission forum in pursuance of s 85A(1B): s 85A(1C).

TEXT AND NOTE 10--SI 2002/2900 regs 4-10, 13 replaced: SI 2008/3091 regs 8-14. As to the purpose and functions of a forum see SI 2008/3091 reg 16. See *R (on the application of Reading BC) v Admissions Appeal Panel for Reading BC* [2005] EWHC 2378 (Admin), [2005] ELR 186.

TEXT AND NOTE 11--SI 2002/2900 reg 11 replaced: SI 2008/3091 reg 17.

TEXT AND NOTE 12--SI 2002/2900 reg 12 replaced: SI 2008/3091 reg 15. Also head (iv) as to the preparation and publication of reports under the School Standards and Framework Act 1998 s 85A(1A): s 85A(3)(ba) (added by the Education and Inspections Act 2006 s 41(4)). Regulations under the School Standards and Framework Act 1998 s 85A(3)(c) may, in relation to England, modify any provision of Pt III Ch I in its application to a joint admission forum: s 85A(3A) (added by the Education and Inspections Act 2006 s 41(5)).

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### **C. PARENTAL PREFERENCES**

#### **396. Parental preferences.**

A local education authority<sup>1</sup> is entitled to apply its admissions policy (provided that it is lawful and not unreasonable) in determining priority for admissions, for example in respect of over-subscribed schools<sup>2</sup>. However, a local authority must make arrangements for enabling the parent<sup>3</sup> of a child<sup>4</sup> in the area of the authority<sup>5</sup>: (1) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions<sup>6</sup>; and (2) to give reasons for his preference<sup>7</sup>.

A local education authority and the governing body of a maintained school<sup>8</sup> must, subject to the restrictions described below<sup>9</sup> and those relating to children excluded from two or more schools<sup>10</sup>, comply with any preference expressed in accordance with such arrangements<sup>11</sup>. However, this duty does not apply:

- 828 (a) if compliance with the preference would prejudice<sup>12</sup> the provision of efficient education or the efficient use of resources<sup>13</sup>; or
- 829 (b) if the arrangements for admission to the preferred school are wholly based on selection by reference to ability or aptitude<sup>14</sup> and are so based with a view to admitting only pupils with high ability or with aptitude, and compliance with the preference would be incompatible with selection under those arrangements<sup>15</sup>;
- 830 (c) in relation to a preference expressed by a parent as to the school at which he wishes secondary education<sup>16</sup> suitable to the requirements of pupils who are over compulsory school age<sup>17</sup> to be provided for his child, if the relevant selection arrangements<sup>18</sup> are wholly based on selection by reference to ability or aptitude and compliance with the preference would be incompatible with selection under those arrangements<sup>19</sup>.

Where the admission arrangements for two or more maintained schools in Wales provide for co-ordinated admissions on the part of those schools<sup>20</sup> and they are approved by the National Assembly for Wales<sup>21</sup>, they have effect in relation to each of those schools<sup>22</sup>.

1 As to local education authorities see PARA 20 ante.

2 See *Cumings v Birkenhead Corp* [1972] Ch 12, [1971] 2 All ER 881, CA; *R v Greenwich London Borough Council, ex p Governors of John Ball Primary School* [1990] Fam Law 469, sub nom *R v Shadow Education Committee of Greenwich London Borough Council, ex p Governors of John Ball Primary School* (1989) 88 LGR 589, CA; *R v Governors of Bishop Challoner Roman Catholic Comprehensive Girls' School, ex p Choudhury* [1992] 2 AC 182, sub nom *Choudhury v Governors of Bishop Challoner Roman Catholic Comprehensive School* [1992] 3 All ER 277, HL; *R v Bradford Metropolitan Borough Council, ex p Sikander Ali* [1994] ELR 299; *R v Governors of the Hasmore High School, ex p N and E* [1994] ELR 343, CA; *R v Lancashire County Council, ex p M* [1994] ELR 478; *R v Lancashire County Council, ex p F* [1995] ELR 33, sub nom *R v Lancashire County Council, ex p Foster* [1995] 1 FCR 212; *R v Rotherham Metropolitan Borough Council, ex p T* [2000] LGR 338, sub nom *R v Rotherham Metropolitan Borough Council, ex p LT* [2000] ELR 76, CA; *R v Stockton-on-Tees Borough Council, ex p W* [2000] ELR 93, CA; *R v South Gloucestershire Education Appeals Committee, ex p Bryant* [2001] ELR 53, CA; *R (on the application of L) v Independent Appeal Panel of St Edward's College* [2001] ELR 542.

3 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of *ibid* s 142(8).

5 For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of *ibid* s 142(8). Arrangements made under s 86(1) may allow the parent of a child to express preferences for more than one school; but nothing in s 86 (as amended) requires the admission authority for a maintained school for which a child's parent has expressed a preference to offer the child admission to the school if, in accordance with a scheme adopted or made by virtue of s 89B (as added) (see PARA 399 post), the child is offered admission to a different school for which the parent has also expressed a preference: s 86(2A) (added by the Education Act 2002 s 51, Sch 4 para 3(1), (3)). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). For the meaning of 'maintained school' see PARA 393 note 3 ante. As to admission arrangements see PARAS 398-404 post. In relation to England, s 86(2A) (as added) was brought into force on 1 October 2002 except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992). In relation to Wales, the School Standards and Framework Act 1998 s 86(2A) (as added) was brought into force on 31 May 2005 except in relation to the admission of a child to a maintained school in any school year earlier than the 2007-2008 school year: see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(1), Schedule. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 86 (as amended; prospectively further amended in relation to Wales) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (v).

The School Standards and Framework Act 1998 s 86 (as amended; prospectively further amended in relation to Wales) does not apply in relation to pupil referral units: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 4, Sch 2 para 1. For the meaning of 'pupil referral unit' see PARA 457 post.

6 School Standards and Framework Act 1998 s 86(1)(a). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 142(8).

A local education authority has to give consideration to the religious convictions of parents when formulating its admissions policy: *R (on the application of K) v Newham London Borough Council* [2002] EWHC 405 (Admin), (2002) Times, 28 February.

7 School Standards and Framework Act 1998 s 86(1)(b). See *R v Rotherham Metropolitan Borough Council, ex p Clark* (1997) 96 LGR 214, [1998] 1 FCR 509, [1998] ELR 152, CA; *R v Sheffield City Council, ex p H* [1999] ELR 511, CA (both decided under previous legislation).

As to the application of the School Standards and Framework Act 1998 s 86 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

8 Where the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, a parent who makes such an application is regarded for the purposes of the School Standards and Framework Act 1998 s 86 (as amended) as having expressed a preference for that school in accordance with arrangements made under s 86(1) (see the text and notes 1-7 *supra*): s 86(7). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8). As to the governing bodies of maintained schools see PARA 203 *et seq* ante.

9 *le* subject to *ibid* s 86(3) (as amended) (see heads (a) and (b) in the text) and s 86(3A) (as added) (see head (c) in the text): s 86(2) (amended by the Education Act 2002 Sch 4 para 3(2)). In relation to England, the amendment made by the Education Act 2002 Sch 4 para 3(2), which applies the School Standards and Framework Act 1998 s 86(3A) (as added) to s 86(2) (as amended), was brought into force on 1 October 2002 except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992). In relation to Wales, the amendment to the School Standards and Framework Act 1998 s 86(2) (as amended) was brought into force on 31 May 2005 except in relation to the admission of a child to a maintained school in any school year earlier than the 2007-2008 school year: see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(1), Schedule.

10 *le* subject to the School Standards and Framework Act 1998 s 87 (as amended) (see PARA 397 post).

11 Ibid s 86(2) (as amended: see note 9 supra). The duty imposed by s 86(2) (as amended) in relation to a preference expressed in accordance with arrangements made under s 86(1) (see the text and notes 1-7 supra) also applies in relation to: (1) any application for the admission to a maintained school of a child who is not in the area of the authority maintaining the school; and (2) any application made by a parent as mentioned in the Education Act 1996 s 438(4) (as amended) (choice of school: see PARA 515 post) or s 440(2) (as amended) (application for a particular school to be named in a school attendance order: see PARA 517 post): School Standards and Framework Act 1998 s 86(8). References in s 86(3) (as amended) (see heads (a) and (b) in the text) and s 86(3A) (as added) (see head (c) in the text) to a preference and a preferred school are to be construed accordingly: s 86(8) (amended by the Education Act 2002 Sch 4 para 3(1), (7)). In relation to England, the amendment made by the Education Act 2002 Sch 4 para 3(1), (7), which applies the School Standards and Framework Act 1998 s 86(8) (as amended) to s 86(3A) (as added), was brought into force on 1 October 2002 except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992). In relation to Wales, the amendment was brought into force on 31 May 2005 except in relation to the admission of a child to a maintained school in any school year earlier than the 2007-2008 school year: see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(1), Schedule.

The duty imposed by the School Standards and Framework Act 1998 s 86(2) (as amended) is a mandatory duty for the purposes of the Race Relations Act 1976 s 41 (as amended) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 486): *R v Cleveland County Council, ex p Commission for Racial Equality* [1993] 1 FCR 597, 91 LGR 139, [1994] ELR 44, CA. See also *R v Richmond upon Thames London Borough Council, ex p JC* [2001] ELR 21, CA (where a failure to uphold a parent's preference did not constitute a breach of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) arts 6, 8 (see PARA 3 ante)).

The effect of head (1) supra is that children who live outside the area of the local education authority must not, for the purposes of the duty in the School Standards and Framework Act 1998 s 86(2) (as amended), be discriminated against merely by reason of that fact: *R v Greenwich London Borough Council, ex p Governors of John Ball Primary School* [1990] Fam Law 469, sub nom *R v Shadow Education Committee of Greenwich London Borough Council, ex p Governors of John Ball Primary School* (1989) 88 LGR 589, CA; *R v Kingston-upon-Thames Royal London Borough Council, ex p Kingwell* [1992] 1 FLR 182, [1992] Fam Law 193; *R v Bromley London Borough Council, ex p C* [1992] 1 FLR 174, 156 LG Rev 282; *R v Essex County Council, ex p Jacobs* [1997] ELR 190; *R v Wiltshire County Council, ex p Razazan* [1997] ELR 370, CA; *R v Rotherham Metropolitan Borough Council, ex p LT* [2000] ELR 76, CA.

The offer of a school place relied upon by a parent and causing a detriment can give rise to a legitimate expectation, which would be a factor to be taken into account in determining whether it would be unreasonable, under the test set out in *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223, [1947] 2 All ER 680, CA (see JUDICIAL REVIEW vol 61 (2010) PARAS 617, 623), to withdraw the place: see *R v Beatrix Potter School, ex p K* [1997] ELR 468 (school place offered in error later withdrawn). See also *R v Birmingham City Council, ex p L* [2001] ELR 543.

12 For these purposes, prejudice of the kind referred to in the text may arise by reason of measures required to be taken in order to ensure compliance with the duty imposed by the School Standards and Framework Act 1998 s 1(6) (duty of local education authority and governing body to comply with limit on infant class sizes) (see PARA 405 post): s 86(4).

In relation to Wales, no prejudice will, however, be taken to arise from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed the relevant standard number or the admission number fixed in accordance with s 93 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 408 post), whichever is the greater: s 86(5). 'Relevant age group', in relation to a school, means an age group in which pupils are normally admitted (or, as the case may be, will normally be admitted) to the school: s 142(1). For the purposes of Pt III Ch I (ss 84-98) (as amended; prospectively amended in relation to Wales), 'the relevant standard number', in relation to a maintained school, a relevant age group and a school year, means the standard number applying under s 93, Sch 23 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARAS 408-414 post) to the school in relation to that age group and year: s 84(6). For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of s 142(8). Section 84(6) (in relation to the definition of 'the relevant standard number') and s 86(5) are repealed by the Education Act 2002 ss 47(1), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002, except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 paras 4, 5(1)(a) (Schedule Pt 2 para 4 amended by SI 2003/2992)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the suspension of the School Standards and Framework Act 1998 s 86(5) (as substituted in relation to England; prospectively substituted in relation to Wales) in relation to the fixing of admission numbers see PARA 408 note 4 post. See also note 11 supra.

In relation to England, no prejudice will be taken to arise for the purposes of s 86(3)(a) (as amended) from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not

exceed the number determined under s 89 (as amended in relation to England; prospectively amended in relation to Wales) (see PARA 398 post) as the number of pupils in that age group that it is intended to admit to the school in that year; but this provision does not apply if the conditions set out in s 86(5A) (as added) are met in relation to the school and the school year: s 86(5) (substituted by the Education Act 2002 s 47(1)). The conditions referred to in the School Standards and Framework Act 1998 s 86(5) (as substituted) are: (1) that the school is one at which boarding accommodation is provided for pupils; and (2) that the determination under s 89 (as amended in relation to England; prospectively amended in relation to Wales) by the admission authority of the admission arrangements which are to apply for that year includes the determinations mentioned in s 89A(2)(a) (as added) and s 89A(2)(b) (as added) (see PARA 398 post): s 86(5A) (added by the Education Act 2002 s 47(1)). Where the conditions set out in the School Standards and Framework Act 1998 s 86(5A) (as added) are met in relation to a maintained school and a school year, no prejudice will be taken to arise for the purposes of s 86(3)(a) (as amended) from either of the following: (a) the admission to the school in that year as boarders of a number of pupils in a relevant age group which does not exceed the number determined under s 89 (as amended in relation to England; prospectively amended in relation to Wales) as the number of pupils in that age group that it is intended to admit to the school in that year as boarders; (b) the admission to the school in that year otherwise than as boarders of a number of pupils in a relevant age group which does not exceed the number determined under s 89 (as amended in relation to England; prospectively amended in relation to Wales) as the number of pupils in that age group that it is intended to admit to the school in that year otherwise than as boarders: s 86(5B) (added by the Education Act 2002 s 47(1)). For the meaning of 'boarder' see PARA 26 note 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). Section 86(5) is substituted, and s 86(5A)-(5B) is added, by the Education Act 2002 s 47(1) as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002, except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

13 School Standards and Framework Act 1998 s 86(3)(a) (amended by the Education Act 2002 Sch 4 para 3(4)(a)). In relation to England, the amendment made by the Education Act 2002 Sch 4 para 3(4)(a), which also repealed the School Standards and Framework Act 1998 s 86(3)(b), was brought into force on 1 October 2002 except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992). In relation to Wales, the amendment was brought into force on 31 May 2005 except in relation to the admission of a child to a maintained school in any school year earlier than the 2007-2008 school year: see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(1), Schedule Pt I.

As to the restriction mentioned in the School Standards and Framework Act 1998 s 86(3)(a) (as amended) see further *R v South Glamorgan Appeals Committee, ex p Evans* (10 May 1984) Lexis; *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033, 87 LGR 221; *R v Governors of Bishop Challoner Roman Catholic Comprehensive Girls' School, ex p Choudhury* [1992] 2 AC 182, sub nom *Choudhury v Governors of Bishop Challoner Roman Catholic Comprehensive School* [1992] 3 All ER 277, HL; *R v Governors of the Hasmore High School, ex p N and E* [1994] ELR 343, CA; *R v Lancashire County Council, ex p M* [1994] ELR 478; *W (A Minor) v Education Appeal Committee of Lancashire County Council* [1994] 3 FCR 1, [1994] ELR 530, CA; *R v Appeal Committee of Brighouse School, ex p G and B* [1997] ELR 39; *R v Education Appeal Committee of Leicestershire County Council, ex p Tarmohamed* [1997] ELR 48; *R v Beatrix Potter School, ex p K* [1997] ELR 468; *R v Education Committee of Blackpool Borough Council, ex p Taylor* [1999] ELR 237; *R v Sheffield City Council, ex p M* [2000] ELR 85; *R v South Gloucestershire Appeals Committee, ex p C* [2000] ELR 220.

14 Where admission arrangements for a school, or arrangements such as are mentioned in the School Standards and Framework Act 1998 s 86(3B) (as added) (see note 18 infra), provide for all pupils selected under the arrangements to be selected by reference to ability or aptitude, those arrangements are taken for the purposes of s 86 (as amended) to be wholly based on selection by reference to ability or aptitude, whether or not they also provide for the use of additional criteria in circumstances where the number of children in a relevant age group who are assessed to be of the requisite ability or aptitude is greater than the number of pupils which it is intended to admit to the school in that age group: s 86(9) (amended by the Education Act 2002 Sch 4 para 3(1), (8)). As to the selection of pupils see PARAS 433-442 post. In relation to England, the amendment made by the Education Act 2002 Sch 4 para 3(1), (8) was brought into force on 1 October 2002 except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992). In relation to Wales, the amendment was brought into force on 31 May 2005 except in relation to the admission of a child to a maintained school in any school year earlier than the 2007-2008 school year: see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(1), Schedule.

15 School Standards and Framework Act 1998 s 86(3)(c). See *R v Wirral Metropolitan Borough Council, ex p Pickard* (11 December 1991) Lexis; *R v Kingston-upon-Thames Royal London Borough Council, ex p Emsden* [1993] 1 FLR 179, 91 LGR 96.

16 For the meaning of 'secondary education' see PARA 17 ante.

17 As to the meaning of 'compulsory school age' see PARA 15 ante.

18 In the School Standards and Framework Act 1998 s 86(3A) (as added), 'the relevant selection arrangements', in relation to a school, means:

90 (1) the arrangements for admission to the school for secondary education suitable to the requirements of pupils who are over compulsory school age; or

91 (2) those arrangements and the arrangements for entry to the sixth form of children who have been admitted to the school,

and references in this provision to entry to the sixth form of children who have been admitted to a school must be construed in accordance with s 94(7) (as added) (see PARA 415 post): s 86(3B) (added by the Education Act 2002 Sch 4 para 3(1), (5)). In relation to England, the Education Act 2002 Sch 4 para 3(1), (5), which added the School Standards and Framework Act 1998 s 86(3A), (3B), was brought into force on 1 October 2002 except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992). In relation to Wales, the Education Act 2002 Sch 4 para 3(1), (5) was brought into force on 31 May 2005 except in relation to the admission of a child to a maintained school in any school year earlier than the 2007-2008 school year: see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(1), Schedule.

19 School Standards and Framework Act 1998 s 86(3A) (added by the Education Act 2002 Sch 4 para 3(1), (5)). See also note 18 supra.

20 School Standards and Framework Act 1998 s 86(6)(a).

Section 86(6) is repealed by the Education Act 2002 Sch 4 para 3(1), (6), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002, except in relation to the admission of a child to a maintained school in any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 4 (amended by SI 2003/2992)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

21 School Standards and Framework Act 1998 s 86(6)(b). See note 20 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

22 Ibid s 86(6). See note 20 supra. The admission arrangements mentioned in s 86(6)(a), (b) (repealed in relation to England; prospectively repealed in relation to Wales) have effect despite anything in s 86(2) (as amended) (see the text and notes 8-11 supra): s 86(6).

## UPDATE

### 396 Parental preferences

TEXT AND NOTES--School Standards and Framework Act 1998 s 86 further amended: Education and Skills Act 2008 Sch 1 para 54, Sch 2. For effect see SI 2008/3077; SI 2009/784.

As from a day to be appointed Education Act 2002 Sch 4 para 3 amended: Education and Skills Act 2008 Sch 2.

For preferences relating to sixth-form education see PARA 396A.

NOTE 5--School Standards and Framework Act 1998 s 86 does not apply in relation to pupil referral units in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 4, Sch 2 para 1. SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 4, Sch 2 para 1.

NOTES 6, 7--A local education authority in England must provide advice and assistance to parents of children in the area of the authority in connection with the preferences expressed or to be expressed by them in accordance with the arrangements made under the School Standards and Framework Act 1998 s 86(1): s 86(1A) (added by Education and Inspections Act 2006 s 42).

TEXT AND NOTE 8--For 'A local education authority ... maintained school' read 'The admission authority for a maintained school' (see PARA 398): School Standards and Framework Act 1998 s 86(2) (amended by Education and Inspections Act 2006 s 43(2)).

NOTES 12, 20--Day now appointed in relation to Wales: SI 2006/172.

NOTE 22--Repeal now in force in relation to Wales: SI 2006/172.



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**396A. Preferences relating to sixth-form education: local education authority arrangements.**

A local education authority must make arrangements for enabling (1) a child in the authority's area to express a preference as to the school at which he wishes sixth form education to be provided for him in the exercise of the authority's functions, (2) a parent of such a child to express a preference as to the school at which he wishes sixth form education to be so provided for his child, (3) a relevant child to express a preference as to the school at which he wishes education other than sixth form education to be provided for him in the exercise of the authority's functions, and (4) a parent of such a child to express a preference as to the school at which he wishes such education to be so provided for his child, and, in each case, for enabling the person expressing the preference to give reasons for his preference: School Standards and Framework Act 1998 s 86A(1) (ss 86A, 86B added by Education and Skills Act 2008 s 150). For the meaning of sixth form education see School Standards and Framework Act 1998 s 98A(1) (added by Education and Skills Act 2008 s 153(1)). In the School Standards and Framework Act 1998 s 86A(1), 'relevant child', in relation to a local education authority and any education, means a child in the authority's area who (a) has ceased to be of compulsory school age, or (b) will have ceased to be of compulsory school age before the education in question is provided for him: s 86A(2). Arrangements made under s 86A(1) must allow (i) a person who is to be able to express a preference under any of heads (1)-(4) to express preferences for more than one school; (ii) preferences to be expressed, in relation to a child, by both the child and a parent of his: s 86A(3). Where (A) the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, and (B) a child (whether or not in the area of the authority maintaining the school) or his parent makes such an application, that person will be regarded for the purposes of the School Standards and Framework Act 1998 Pt 3 Ch 1 as having expressed a preference for that school in accordance with arrangements made under s 86A(1): s 86A(4).

See further School Standards and Framework Act 1998 s 86B (duty in relation to preferences expressed under s 86A: admission authorities of maintained schools).

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### **397. Children permanently excluded from two or more schools.**

The duty of the local education authority<sup>1</sup> and the governing body of a maintained school<sup>2</sup> to comply with the preference of a parent<sup>3</sup> as to the school at which he wishes education to be provided for his child does not apply in the case of a child<sup>4</sup> who has been permanently excluded<sup>5</sup> from two or more schools<sup>6</sup> during the period of two years beginning with the date on which the latest of those exclusions took effect<sup>7</sup>. This applies to a child whatever the length of the period or periods elapsing between those exclusions and regardless of whether it has applied to him on a previous occasion<sup>8</sup>.

However, a child who has been permanently excluded from a school will not be treated for these purposes<sup>9</sup> as having been so excluded: (1) if he was reinstated as a pupil<sup>10</sup> at the school following the giving of a direction to that effect by the relevant authority<sup>11</sup>; (2) if, on a review of his exclusion carried out in accordance with regulations<sup>12</sup> or an appeal made pursuant to regulations<sup>13</sup>, the relevant authority decided: (a) that it would not be practical to give a direction requiring his reinstatement as a pupil at the school<sup>14</sup>; but (b) that it would otherwise have been appropriate to give such a direction<sup>15</sup>; or (3) he was so excluded at a time when he had not attained compulsory school age<sup>16</sup>.

<sup>1</sup> As to local education authorities see PARA 20 ante.

<sup>2</sup> For the meaning of 'maintained school' see PARA 393 note 3 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

<sup>3</sup> I.e. the duty under the School Standards and Framework Act 1998 s 86(2) (as amended): see PARA 396 ante. As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of s 142(8).

<sup>4</sup> Ibid s 87(1). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of s 142(8).

Any function of a local education authority in England which is conferred by or under s 87 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (w). For the meaning of 'England' see PARA 52 note 11 ante.

As to the application of the School Standards and Framework Act 1998 s 87 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

<sup>5</sup> For these purposes, the permanent exclusion of a child from a school is regarded as having taken effect on the school day as from which the head teacher decided that the child should be permanently excluded: School Standards and Framework Act 1998 s 87(6). For the meaning of 'school day' see PARA 533 note 2 post; definition applied by virtue of s 142(8). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8).

<sup>6</sup> For these purposes, 'school' means: (1) in relation to any time before or after 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), a school maintained by a local education authority; or (2) in relation to any time before 1 September 1999, a grant-maintained or grant-maintained special school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 s 87(5). For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to grant-maintained schools and grant-maintained special schools see PARA 102 ante.

<sup>7</sup> Ibid s 87(2). Nothing in s 87 (as amended) applies to a child unless at least one of the two or more exclusions mentioned in s 87(2) took effect on or after 1 September 1997: s 87(7).

Because, as a consequence and part of regulating the right to educational access, s 87 (as amended) only removes the obligation to comply with parental preference and the child would still be educated, that provision

is not incompatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 (see PARA 3 ante): *R (on the application of B) v Head Teacher of Alperton Community School, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of C) v Governing Body of Cardinal Newman High School* [2001] EWHC Admin 229, [2001] ELR 359; affd without comment on this point sub nom *R (on the application of S) v Brent London Borough Council, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693, [2002] ELR 556.

8 School Standards and Framework Act 1998 s 87(3).

9 le for the purposes of *ibid* s 87 (as amended).

10 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of *ibid* s 142(8).

11 *Ibid* s 87(4)(a) (s 87(4) substituted by the Education Act 2002 s 51, Sch 4 para 4). The text refers to the giving of a direction by the relevant authority in accordance with regulations under the Education Act 2002 s 52(3)(b) or (c) (see PARA 562 post). In the School Standards and Framework Act 1998 s 87(4) (as substituted), 'the relevant authority' means: (1) the responsible body as defined by the Education Act 2002 s 52(5) (see PARA 562 post); or (2) a panel constituted in accordance with regulations under s 52(3)(c): School Standards and Framework Act 1998 s 87(4A) (added by the Education Act 2002 Sch 4 para 4).

12 le regulations under the Education Act 2002 s 52(3)(b) (see PARA 562 post).

13 le regulations under *ibid* s 52(3)(c) (see PARA 562 post).

14 School Standards and Framework Act 1998 s 87(4)(b)(i) (as substituted: see note 11 supra).

15 *Ibid* s 87(4)(b)(ii) (as substituted: see note 11 supra).

16 *Ibid* s 87(4)(c) (as substituted: see note 11 supra). As to the meaning of 'compulsory school age' see PARA 15 ante.

## UPDATE

### 397 Children permanently excluded from two or more schools

TEXT AND NOTE 4--School Standards and Framework Act 1998 s 87(1) amended:  
Education and Skills Act 2008 Sch 1 para 55.

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## ***D. ADMISSION ARRANGEMENTS***

### **398. Procedure for determining admission arrangements in England and Wales.**

The admission authority for a maintained school<sup>1</sup> must, before the beginning of each school year<sup>2</sup>, determine the admission arrangements which are to apply for that year<sup>3</sup>.

Before determining the admission arrangements which are to apply for a particular school year in Wales, the admission authority<sup>4</sup> must consult: (1) the local education authority, where the governing body is the admission authority<sup>5</sup>; (2) the admission authorities for all other maintained schools in the relevant area<sup>6</sup> or for such class of such schools as may be prescribed<sup>7</sup>; and (3) the admission authorities for maintained schools of any description prescribed<sup>8</sup>. Before determining the admission arrangements which are to apply for a particular school year in England, the admission authority must consult: (a) whichever of the governing body and the local education authority is not the admission authority<sup>9</sup>; (b) the admission authorities for all other maintained schools in the relevant area<sup>10</sup> or for such class of such schools as may be prescribed<sup>11</sup>; (c) the governing bodies for all community and voluntary controlled schools in the relevant area, so far as not falling within head (a) or head (b) above<sup>12</sup>; and (d) the admission authorities for maintained schools of any prescribed description<sup>13</sup>.

Once the admission authority has carried out any such consultation, the authority must determine that its proposed arrangements<sup>14</sup> are to be the admission arrangements for the school year in question<sup>15</sup> and must notify<sup>16</sup> the appropriate bodies<sup>17</sup> of the admission arrangements<sup>18</sup>.

Where an admission authority<sup>19</sup> has determined the admission arrangements for a particular school year<sup>20</sup>, but at any time before the end of that year considers that the arrangements should be varied in view of a major change in circumstances occurring since they were determined<sup>21</sup>, the authority must refer<sup>22</sup> the proposed variations to the adjudicator<sup>23</sup> and must in every case notify the appropriate bodies of the proposed variations<sup>24</sup>. The adjudicator<sup>25</sup> must then consider whether the arrangements should have effect with those variations until the end of that year<sup>26</sup>. If he determines that the arrangements should have effect or that they should have effect subject to such modification of those variations as he may determine, the arrangements have effect accordingly as from the date of the determination<sup>27</sup>, and the admission authority must notify<sup>28</sup> the appropriate bodies of the variations subject to which the arrangements are to have effect<sup>29</sup>.

A determination<sup>30</sup> by the admission authority for a maintained school in England of the admission arrangements which are to apply for a school year must include a determination of the number<sup>31</sup> of pupils in each relevant age group<sup>32</sup> that it is intended to admit to the school in that year<sup>33</sup>. Such a determination of the admission arrangements<sup>34</sup> may also, if the school is one at which boarding accommodation is provided for pupils, include: (i) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year as boarders<sup>35</sup>; and (ii) a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year otherwise than as boarders<sup>36</sup>. Regulations may make provision about the making of any determination of the number of pupils in each relevant age group to be admitted in any school year<sup>37</sup>, and may in particular require the admission authority for a maintained school to have regard, in making any such determination, to any prescribed method of calculation and any other prescribed matter<sup>38</sup>.

Where a school is a new school<sup>39</sup>, provisions have been made governing the initial admission arrangements<sup>40</sup>.

1 For the purposes of the School Standards and Framework Act 1998 Pt III Ch I (ss 84-98) (as amended), 'the admission authority': (1) in relation to a community or voluntary controlled school, means the local education authority, or where with the governing body's agreement the authority has delegated to it responsibility for determining the admission arrangements for the school, the governing body; and (2) in relation to a foundation or voluntary aided school, means the governing body: s 88(1). For the purposes of Pt III Ch I (as amended), 'admission arrangements', in relation to a maintained school, means the arrangements for the admission of pupils to the school, including the school's admission policy: s 88(2). For the meaning of 'pupil' see PARA 16 note 4 ante. For the meaning of 'maintained school' see PARA 393 note 3 ante. As to community, foundation and voluntary schools see PARA 102 et seq ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. As to local education authorities see PARA 20 ante. As to admission arrangements see PARAS 399-404 post.

Any function of a local education authority in England which is conferred by or under s 88 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (x). For the meaning of 'England' see PARA 52 note 11 ante.

2 For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid s 89(1). Regulations may require the admission authorities for maintained schools to include in their admission arrangements such provision relating to the admission of children who are looked after by a local authority (within the meaning of the Children Act 1989 s 22 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867) as may be prescribed, which may in particular include provision for securing that, subject to the School Standards and Framework Act 1998 s 86(3) (as amended), s 86(3A) (as added) (see PARA 396 ante) and s 87 (as amended) (cases where duty to comply with parental preference does not apply: see PARA 397 ante), such children are to be offered admission in preference to other children: s 89(1A) (added by the Education Act 2005 s 106). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 89(1A) (as added).

Section 89(1A) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 3 October 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 6) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 Where the local education authority is the admission authority for a community or voluntary controlled school it must, when preparing its proposed arrangements for any school year for consultation under the School Standards and Framework Act 1998 s 89(2) (as substituted in relation to England; prospectively substituted in relation to Wales) (see the text and notes 5-13 infra), consult the governing body about the admission arrangements which the authority may propose for the school: s 89(9)(a).

Section 89(9) is substituted by the Education Act 2002 s 51, Sch 4 para 5(1), (6) as from a day to be appointed under s 216(4) so that the School Standards and Framework Act 1998 s 89(9)(a) is effectively repealed and only s 89(9)(b) (see the text and note 19 infra) has effect. In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the provisions relating to England see the text and notes 9-13 infra.

5 School Standards and Framework Act 1998 s 89(2)(a).

Section 89(2) is substituted as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the provisions relating to England see the text and notes 9-13 infra.

6 For these purposes, 'the relevant area' means: (1) the area of the local education authority; or (2) if regulations so provide, such other area (whether more or less extensive than the area of the local education

authority) as may be determined by or in accordance with the regulations: School Standards and Framework Act 1998 s 89(3). As to the areas of local education authorities see PARA 20 ante.

Regulations under s 89 (as amended in relation to England; prospectively amended in relation to Wales) may make provision: (a) specifying matters to which any consultation required by s 89(2) (as substituted in relation to England; prospectively substituted in relation to Wales) is, or is not, to relate; (b) as to the manner in which, and the time by which, any such consultation is to be carried out; (c) as to the manner in which, and the time by which, any notification required by s 89 (as amended in relation to England; prospectively amended in relation to Wales) is to be given; (d) specifying matters which are, or are not, to constitute major changes in circumstances for the purposes of s 89(5)(b) (see the text to note 21 infra); (e) authorising an admission authority, where it has in accordance with s 89(4) (as amended in relation to England; prospectively amended in relation to Wales) (see the text and notes 14-18 infra) determined the admission arrangements which are to apply for a particular school year, to vary those arrangements to such extent or in such circumstances as may be prescribed; (f) for the application of any of the requirements of s 89(5) (as amended in relation to England; prospectively amended in relation to Wales) (see the text and notes 19-24 infra) and s 89(6) (as amended in relation to England; prospectively amended in relation to Wales) (see the text and notes 25-29 infra) to variations proposed to be made by virtue of head (e) supra, or to any prescribed description of such variations, as if they were variations proposed to be made under s 89(5) (as amended in relation to England; prospectively amended in relation to Wales); and (g) as to such other matters connected with the procedure for determining or varying admission arrangements under s 89 (as amended in relation to England; prospectively amended in relation to Wales) as the Secretary of State considers appropriate: s 89(8)(a)-(g). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. Such regulations may also make provision requiring an admission authority which has made a determination of a prescribed description under s 89 (as amended in relation to England; prospectively amended in relation to Wales) to publish such information relating to the determination (including information as to the authority's reasons for making the determination) as may be prescribed: s 89(8)(fa) (added by the Education Act 2002 Sch 4 para 5(1), (4)). The power under the School Standards and Framework Act 1998 s 89(8)(fa) (as added) to require an admission authority to publish information includes power to require the admission authority to publish information: (i) by giving a notice containing the information to prescribed persons; or (ii) in any other prescribed manner: s 89(8A) (added by the Education Act 2002 Sch 4 para 5(1), (5)). 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1). As to the regulations that have been made under s 89 (as amended in relation to England; prospectively amended in relation to Wales) see the Education (Determining School Admission Arrangements for the Initial Year) Regulations 1998, SI 1998/3165; the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999, SI 1999/124; the Education (Determination of Admission Arrangements) Regulations 1999, SI 1999/126 (amended in relation to England by SI 2002/2896); and the Education (Variation of Admission Arrangements) (England) Regulations 2002, SI 2002/2898 (amended by SI 2005/873).

The School Standards and Framework Act 1998 s 89(8)(fa) and s 89(8A) are added as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the provisions relating to England see the text and notes 9-13 infra.

7 School Standards and Framework Act 1998 s 89(2)(b). See notes 5-6 supra.

8 Ibid s 89(2)(c). See notes 5-6 supra.

9 Ibid s 89(2)(a) (s 89(2) substituted by the Education Act 2002 Sch 4 para 5(2)). The School Standards and Framework Act 1998 s 89(2) (as substituted) does not apply in relation to the proposed admission arrangements for a particular school year if the admission authority is the school's governing body, and prescribed conditions are satisfied in relation to that year: s 89(2A) (added by the Education Act 2002 Sch 4 para 5(2)).

The School Standards and Framework Act 1998 s 89(2) is substituted, and s 89(2A) added, as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the provisions relating to Wales see the text and notes 4-8 supra.

10 See note 6 supra.

11 School Standards and Framework Act 1998 s 89(2)(b). See notes 6, 9 supra.

12 Ibid s 89(2)(c). See notes 6, 9 supra.

13 Ibid s 89(2)(d). See notes 6, 9 supra.

14 Ie either in their original form or with such modifications as the authority thinks fit: ibid s 89(4)(a). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8).

15 Ibid s 89(4)(a). See note 6 supra.

16 Ie except in such cases as may be prescribed: ibid s 89(4)(b). See note 6 supra.

17 For these purposes, 'the appropriate bodies', in relation to an admission authority, means the bodies whom they were required to consult under ibid s 89(2) (as substituted in relation to England; prospectively substituted in relation to Wales) (see the text and notes 5-13 supra), or would but for s 89(2A) (as added) (see the text and note 9 supra) have been required so to consult: s 89(10) (added by the Education Act 2002 Sch 4 para 5(1), (7)).

The School Standards and Framework Act 1998 s 89(10) is added as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. See further notes 18, 24 infra.

18 School Standards and Framework Act 1998 s 89(4)(b) (amended by the Education Act 2002 Sch 4 para 5(1), (3)).

The amendment made by the Education Act 2002 Sch 4 para 5(1), (3) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'the appropriate bodies' should be read as a reference to the bodies whom it consulted under the School Standards and Framework Act 1998 s 89(2) (as substituted in relation to England; prospectively substituted in relation to Wales) (see the text and notes 5-13 supra). See note 6 supra.

19 Where the local education authority is the admission authority for a community or voluntary controlled school it must consult the governing body before making any reference under ibid s 89(5) (as amended in relation to England; prospectively amended in relation to Wales) (see the text and notes 20-24 infra): s 89(9)(b). See note 4 supra.

20 Ibid s 89(5)(a). See note 6 supra.

21 Ibid s 89(5)(b). See note 6 supra.

22 Ie except in a case where its proposed variations fall within any description of variations prescribed for the purposes of ibid s 89(5) (as amended in relation to England; prospectively amended in relation to Wales): s 89(5). See note 6 supra.

23 For the meaning of 'adjudicator' see PARA 124 ante. In relation to a maintained school in Wales, the reference to the adjudicator in ibid s 89(5), (6) (as amended in relation to England; prospectively amended in relation to Wales) (see the text and notes 25-29 infra) is to be read as a reference to the National Assembly for Wales: see s 89(7); and see also PARA 53 ante.

24 Ibid s 89(5) (amended by the Education Act 2002 Sch 4 para 5(1), (3)).

The amendment made by the Education Act 2002 Sch 4 para 5(1), (3) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'the appropriate bodies' should be read as a reference to the bodies whom it consulted under the School Standards and Framework Act 1998 s 89(2) (as substituted in relation to England; prospectively substituted in relation to Wales) (see the text and notes 5-13 supra). See note 6 supra.

25 See note 23 supra.

26 School Standards and Framework Act 1998 s 89(6). See note 6 supra.

27 Ibid s 89(6)(a). See note 6 supra.

28 Ie except in such cases as may be prescribed: ibid s 89(6)(b) (as amended in relation to England; prospectively amended in relation to Wales). See note 6 supra.

29 Ibid s 89(6)(b) (amended by the Education Act 2002 Sch 4 para 5(1), (3)).

The amendment made by the Education Act 2002 Sch 4 para 5(1), (3) is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to 'the appropriate bodies' should be read as a reference to the bodies whom it consulted under the School Standards and Framework Act 1998 s 89(2) (see the text and notes 5-13 supra). See note 6 supra.

30 Ie under ibid s 89 (as amended) (see the text and notes 1-29 supra).

31 References in ibid s 89A (as added) to the determination of any number include references to the determination of zero as that number: s 89A(4) (s 89A added by the Education Act 2002 s 47(2)).

The School Standards and Framework Act 1998 s 89A (as added) is brought into force by order made under the Education Act 2002 s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(2)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

32 For the meaning of 'the relevant age group' see PARA 396 note 12 ante.

33 School Standards and Framework Act 1998 s 89A(1) (as added: see note 31 supra).

34 Ie under ibid s 89 (as amended) (see the text and notes 1-29 supra).

35 Ibid s 89A(2)(a) (as added: see note 31 supra). For the meaning of 'boarder' see PARA 26 note 16 ante; definition applied by virtue of s 142(8).

36 Ibid s 89A(2)(b) (as added: see note 31 supra).

37 Ie the determination required by ibid s 89A(1) (as added) (see the text and notes 30-33 supra).

38 Ibid s 89A(3) (as added: see note 31 supra). As to the regulations made under s 89A(3) (as added) see the Education (Determination of Admission Arrangements) Regulations 1999, SI 1999/126, regs 3, 9-10 (amended by SI 2002/2896).

39 For the meaning of 'new school' see PARA 202 ante.

40 See the School Standards and Framework Act 1998 s 72 (as amended); and PARA 202 ante. As to the regulations that have been made under s 72 (as amended) in relation to new school admissions see the New School (Admissions) (England) Regulations 2003, SI 2003/1041; and the New Schools (Admissions) (Wales) Regulations 1999, SI 1999/2800.

## UPDATE

### 398 Procedure for determining admission arrangements in England and Wales

TEXT AND NOTES--School Standards and Framework Act 1998 ss 89, 89A (amended by Education and Skills Act 2008 Sch 1 paras 57, 58, Sch 2) now apply to Wales only. See also School Standards and Framework Act 1998 ss 90ZA, 138A (added by Education and Skills Act 2008 Sch 1 paras 63, 71) (regulations by Welsh Ministers under School Standards and Framework Act 1998 s 89).



No admission arrangements for a maintained school in Wales may require or authorise any interview with an applicant for admission to the school or his parents, where the interview is to be taken into account (to any extent) in determining whether the applicant is to be admitted to the school: School Standards and Framework Act 1998 s 88R(1) (s 88R added by Education and Skills Act 2008 Sch 1 para 56). If the maintained school is one at which boarding accommodation is provided for pupils, the School Standards and Framework Act 1998 s 88R(1) does not apply in relation to any interview intended to assess the suitability of an applicant for a boarding place: s 88R(2). Where the admission arrangements for a maintained school in Wales make provision for a permitted form of selection by aptitude, s 88R(1) does not prevent the arrangements from requiring or authorising any audition or other oral or practical test to be carried out in relation to an applicant solely for the purpose of ascertaining the applicant's aptitude in accordance with the arrangements: s 88R(3). In s 88R 'permitted form of selection by aptitude' is to be read in accordance with s 99(4) (see PARA 433): s 88R(4).

Regulations may require the admission authorities for maintained schools in England to include in their admission arrangements such provision relating to the admission of children who are looked after by a local authority in England as may be prescribed: School Standards and Framework Act 1998 s 88B(1) (ss 88B-88Q added by Education and Skills Act 2008 s 151(4)). Regulations under the School Standards and Framework Act 1998 s 88B(1) may in particular include provision for securing that, subject to ss 86(3), 86B(2) and (4) and 87, such children are to be offered admission in preference to other children: s 88B(2). The admission authority for a maintained school in England must, before the beginning of each school year, determine the admission arrangements which are to apply for that year; and, before determining the admission arrangements that are to apply for a year, carry out such consultation about the proposed arrangements as may be prescribed: see School Standards and Framework Act 1998 s 88C; School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089, regs 12-17 (consultation), 18-20 (notification and publication of determined admission arrangements). A determination under s 88C by the admission authority for a maintained school in England of the admission arrangements which are to apply for a school year must include a determination of the number of pupils in each relevant age group that it is intended to admit to the school in that year: see School Standards and Framework Act 1998 s 88D; SI 2008/3089 reg 4. Where an admission authority (1) have in accordance with s 88C determined the admission arrangements which are to apply for a particular school year, but (2) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must refer their proposed variations to the adjudicator, and notify the appropriate bodies of the proposed variations: see School Standards and Framework Act 1998 s 88E; SI 2008/3089 regs 21, 22. Supplementary provision with respect to ss 88C-88E is made: see School Standards and Framework Act 1998 s 88F. Provision is made with respect to the power to restrict the alteration of admission arrangements following establishment or expansion: see School Standards and Framework Act 1998 s 88G; SI 2008/3089 reg 23. Provision is also made as to the reference of objections to the adjudicator (see School Standards and Framework Act 1998 s 88H; SI 2008/3089 regs 24-28), other functions of the adjudicator relating to admission arrangements (see School Standards and Framework Act 1998 s 88I), changes to be made to admission arrangements by the adjudicator (see School Standards and Framework Act 1998 s 88J) and supplementary provision with respect to ss 88H-88J (see School Standards and Framework Act 1998 s 88K; SI 2008/3089 regs 29-31 (reg 31 amended, reg 31A added: SI 2009/1099)). Restrictions are made on the alteration of admission arrangements following a decision by the adjudicator: see School Standards and Framework Act 1998 s 88L; SI 2008/3089 regs 32, 33. Regulations may require a local education authority in

England (a) to formulate, for any academic year in relation to which prescribed conditions are satisfied, a qualifying scheme for co-ordinating the arrangements for the admission of pupils to maintained schools in their area, and (b) to take prescribed action with a view to securing the adoption of the scheme by themselves and each governing body who are the admission authority for a maintained school in their area; and, subject to specified provision, the Secretary of State may make, in relation to the area of a local education authority in England and an academic year, a scheme for co-ordinating the arrangements, or assisting in the co-ordination of the arrangements, for the admission of pupils to maintained schools in that area: see School Standards and Framework Act 1998 s 88M; School Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008, SI 2008/3090, regs 4, 5, 7-9, Sch 1. Further provision is made about schemes adopted or made by virtue of s 88M: see School Standards and Framework Act 1998 s 88N; SI 2008/3090 reg 10. The Secretary of State may by regulations require local education authorities in England to provide other local education authorities with such information as may be required by them in connection with the exercise of any of their functions under the School Standards and Framework Act 1998 Pt 3 Ch 1: see School Standards and Framework Act 1998 s 88O; SI 2008/3090 reg 6. A local education authority in England must make such reports to the adjudicator about such matters connected with relevant school admissions as may be prescribed: see School Standards and Framework Act 1998 s 88P. Such matters are prescribed by the School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008, SI 2008/3091, reg 4. As to the form, content and timing of reports see SI 2008/3091 regs 5, 7. A relevant person must, on request, provide a local education authority in England with such information as the authority may reasonably require for the purpose of enabling the authority to fulfil their duties under s 88P: see School Standards and Framework Act 1998 s 88Q. A clerk to an appeal panel constituted under the 1998 Act s 94 (see PARA 415) is a relevant person: SI 2008/3091 reg 6.

NOTES 1-3--No admission arrangements for a maintained school may require or authorise any interview with an applicant for admission to the school or his parents, where the interview is to be taken into account, to any extent, in determining whether the applicant is to be admitted to the school: School Standards and Framework Act 1998 s 88A(1) (s 88A added by the Education and Inspections Act 2006 s 44). If the maintained school is one at which boarding accommodation is provided for pupils, the School Standards and Framework Act 1998 s 88A(1) does not apply in relation to any interview intended to assess the suitability of an applicant for a boarding place: s 88A(2). Where the admission arrangements for a maintained school make provision for a permitted form of selection by aptitude, s 88A(1) does not prevent the arrangements from requiring or authorising any audition or other oral or practical test to be carried out in relation to an applicant solely for the purpose of ascertaining the applicant's aptitude in accordance with the arrangements: s 88A(3), (4).

NOTE 1--Where the admission authority for a community or voluntary controlled school is the local education authority, it is the duty of the governing body to implement any decision relating to the admission of pupils to the school which is taken by or on behalf of the admission authority: School Standards and Framework Act 1998 s 88(1A) (s 88(1A), (1B) added by the Education and Inspections Act 2006 s 43(1)). The School Standards and Framework Act 1998 s 88(1A) does not affect (1) any right of appeal which the governing body may have by virtue of arrangements made in pursuance of s 95(2) (see PARA 423); (2) any right to refer the matter to the adjudicator which the governing body may have by virtue of s 95A(3) (see PARA 423); or (3) the application of s 101(2A) (see PARA 435) or s 109(2) (see PARA 442): s 88(1B).

NOTES 3-5--Day now appointed in relation to Wales: SI 2006/1338. As to action to be taken and the circumstances in which an admission authority for a maintained school

must give priority to relevant looked after children in its admission arrangements, see the School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089, regs 7-11. 'Relevant looked after child' means a child who is looked after by a local authority in accordance with the Children Act 1989 s 22 at the time an application for his admission to a school is made, and who the local authority has confirmed will still be looked after at the time when he is admitted to the school: SI 2008/3089 reg 7(2).

NOTES 3, 6--Definitions of 'regulations' and 'prescribed' in School Standards and Framework Act 1998 s 142(1) amended: Education and Skills Act 2008 Sch 1 para 72.

NOTE 3--School Standards and Framework Act 1998 s 89(1A) repealed: Education and Skills Act 2008 Sch 1 para 57(3), Sch 2. The National Assembly for Wales may by regulations make provision about the admission of children looked after by local authorities in Wales to maintained schools in Wales: see School Standards and Framework Act 1998 ss 84(7), 97D (added by the Education and Inspections Act 2006 ss 50(2), 52(1)). In exercise of the power so conferred, the Welsh Ministers have made the Education (Admission of Looked After Children) (Wales) Regulations 2009, SI 2009/821.

NOTES 4, 6, 31--In relation to Wales, the appointed day is 1 February 2006, except in relation to the determination of a maintained school's admission arrangements for any school year earlier than the 2008-09 school year: SI 2006/172.

NOTE 6--SI 1998/3165 revoked: SI 2007/3009. SI 1999/126 replaced in relation to Wales by Education (Determination of Admission Arrangements) (Wales) Regulations 2006, SI 2006/174, and revoked in relation to England by School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099). SI 2002/2898 replaced: see now SI 2008/3089. See also Education (Variation of Admission Arrangements) (Wales) Regulations 2006, SI 2006/177.

TEXT AND NOTE 13--Also, head (e) in the case of a foundation or voluntary school which has a religious character for the purposes of the School Standards and Framework Act 1998 Pt 2 (ss 20-83) (see PARA 951), such body or person representing the religion or religious denomination in question as may be prescribed: s 89(2)(e) (added by the Education and Inspections Act 2006 s 45).

NOTE 17--'The appropriate bodies', in relation to an admission authority, means the bodies or persons which it was required to consult under the School Standards and Framework Act 1998 s 89(2), or would but for s 89(2A) have been required to consult: s 89(10) (substituted by the Education and Inspections Act 2006 s 41(7); amended by Education and Skills At 2008 Sch 1 para 57(8), Sch 2).

NOTE 38--SI 1999/126 regs 3, 9, 10 replaced in relation to Wales by (Education (Determination of Admission Arrangements) (Wales) Regulations 2006, SI 2006/174, regs 4, 11, 12, and revoked in relation to England by School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099).

NOTE 40--SI 1999/2800 replaced: New School (Admissions) (Wales) Regulations 2006, SI 2006/175.

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### **399. Co-ordination of admission arrangements in England.**

Regulations<sup>1</sup> may require a local education authority in England<sup>2</sup>:

- 831 (1) to formulate, for any academic year<sup>3</sup> in relation to which prescribed<sup>4</sup> conditions are satisfied, a qualifying scheme<sup>5</sup> for co-ordinating the arrangements for the admission of pupils<sup>6</sup> to maintained schools<sup>7</sup> in its area<sup>8</sup>; and
- 832 (2) to take prescribed action with a view to securing the adoption of the scheme by it and each governing body which is the admission authority<sup>9</sup> for a maintained school in its area<sup>10</sup>.

Before proposing such a scheme for adoption<sup>11</sup>, a local education authority must comply with such requirements as to consultation as may be prescribed<sup>12</sup>.

The Secretary of State may make, in relation to the area of a local education authority and an academic year, a scheme for co-ordinating the arrangements, or assisting in the co-ordination of the arrangements, for the admission of pupils to maintained schools in that area<sup>13</sup>. Before making such a scheme<sup>14</sup> in relation to the area of any local education authority, the Secretary of State must consult the local education authority, and any governing body who is the admission authority for a school which appears to the Secretary of State to be a school to which the scheme will apply<sup>15</sup>. Such a scheme may not be made<sup>16</sup> in relation to a local education authority and an academic year if, before the prescribed date in the year preceding the year in which that academic year commences: (a) a scheme formulated by the local education authority<sup>17</sup> is adopted in the prescribed manner by the persons mentioned in head (2) above<sup>18</sup>; and (b) the authority provides the Secretary of State with a copy of the scheme and informs him that the scheme has been so adopted<sup>19</sup>. Such a scheme may be varied or revoked by the Secretary of State<sup>20</sup>.

The Secretary of State may by regulations require a local education authority to provide another local education authority with such information as may be required by it in connection with the exercise of any of its functions<sup>21</sup>.

Regulations may provide: (i) that each local education authority must secure that, subject to such exceptions as may be prescribed, no decision made by any admission authority for a maintained school in its area to offer or refuse a child<sup>22</sup> admission to the school will be communicated to the parent<sup>23</sup> of the child except on a single day, designated by the local education authority, in each year<sup>24</sup>; or (ii) that, subject to such exceptions as may be prescribed, a decision made by the admission authority for a maintained school to offer or refuse a child admission to the school will not be communicated to the parent of the child except on a prescribed day<sup>25</sup>.

Regulations may also provide that where any decision as to whether a child is to be granted or refused admission to a maintained school falls to be made in prescribed circumstances, the decision must, if a scheme adopted or made<sup>26</sup> so provides, be made by the local education authority regardless of whether it is the admission authority for the school<sup>27</sup>.

1 For these purposes, 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the making of

regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under s 89B (as added) see the Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002, SI 2002/2903 (amended by SI 2003/2751; SI 2004/1515; SI 2005/2); and the Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002, SI 2002/2904 (amended by SI 2004/1516).

2 As to local education authorities see PARA 20 ante. At the date at which this volume states the law, the provisions of the School Standards and Framework Act 1998 ss 89B, 89C (both as added) were not yet in force in Wales (see notes 3, 8 *infra*). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

Any function of a local education authority in England which is conferred by or under s 89B (as added) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (xa) (added by SI 2003/2704).

3 For the purposes of the School Standards and Framework Act 1998 s 89B (as added), 'academic year' means a period commencing with 1 August and ending with the next 31 July: s 89B(6) (s 89B added by the Education Act 2002 s 48).

The School Standards and Framework Act 1998 s 89B (as added) is brought into force by order made under the Education Act 2002 s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to plans relating to admission numbers in Wales see PARA 406 *et seq* post.

As to the application of the School Standards and Framework Act 1998 s 89B (as added) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

4 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1).

5 For the purposes of *ibid* s 89B (as added), 'qualifying scheme' means a scheme that meets prescribed requirements: s 89B(6) (as added: see note 3 *supra*).

6 For the meaning of 'pupil' see PARA 16 note 4 ante. As to admission arrangements see PARAS 398 ante, 400-404 post.

7 For the meaning of 'maintained school' see PARA 393 note 3 ante.

8 School Standards and Framework Act 1998 s 89B(1)(a) (as added: see note 3 *supra*). As to the formulation of a qualifying scheme see the Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002, SI 2002/2903, reg 3, Sch 1 (reg 3 amended by SI 2003/2751; Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002, SI 2002/2903, reg 3, Sch 1 amended by SI 2004/1515); and the Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002, SI 2002/2904, reg 3, Sch 1 (both amended by SI 2004/1516). Regulations may provide that where a local education authority or the governing body of a maintained school has, in such manner as may be prescribed, adopted a scheme formulated by a local education authority as mentioned in the School Standards and Framework Act 1998 s 89B(1)(a) (as added), the Education Act 1996 s 496 (as amended) (general power of the Secretary of State to prevent the unreasonable exercise of functions by a local education authority or governing body: see PARA 57 ante) and s 497 (as amended) (general power of the Secretary of State to declare a local education authority or governing body in default of its duty: see PARA 58 ante) will apply as if any obligations imposed on the local education authority or governing body under the scheme were duties imposed on it by the Education Act 1996: School Standards and Framework Act 1998 s 89C(2) (s 89C added by the Education Act 2002 s 48). As to the governing bodies of maintained schools in England see PARA 203 *et seq* ante. As to the regulations so made see the Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002, SI 2002/2903, reg 8; and the Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002, SI 2002/2904, reg 8.

The School Standards and Framework Act 1998 s 89C (as added) is brought into force by order made under the Education Act 2002 s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

As to the application of the School Standards and Framework Act 1998 s 89C (as added) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

9 For the meaning of 'admission authority' see PARA 398 note 1 ante.

10 School Standards and Framework Act 1998 s 89B(1)(b) (as added: see note 3 supra). As to the areas of local education authorities see PARA 20 ante. As to the actions so prescribed see the Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002, SI 2002/2903, regs 4-6; and the Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002, SI 2002/2904, regs 4-6.

11 Ie under the School Standards and Framework Act 1998 s 89B(1) (as added) (see the text and notes 1-10 supra).

12 Ibid s 89C(4) (as added: see note 8 supra). Regulations under s 89C(4) (as added) may, in particular, require consultations to be undertaken with a view to securing that the arrangements for the admission of pupils to maintained schools in the areas of different local education authorities are, so far as is reasonably practicable, compatible with each other: s 89C(5) (as so added). As to the areas of local education authorities see PARA 20 ante. As to the consultation so prescribed see the Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002, SI 2002/2903, reg 4; and the Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002, SI 2002/2904, reg 4.

13 School Standards and Framework Act 1998 s 89B(2) (as added: see note 3 supra). Section 89B(2) is subject to s 89B(3) (see the text and notes 16-19 infra): s 89B(2) (as so added). Regulations may make provision about the contents of schemes under s 89B(2) (as added), including provision about the duties that may be imposed by such schemes on local education authorities, and the admission authorities for maintained schools: s 89C(1) (as added: see note 8 supra).

14 Ie under ibid s 89B(2) (as added) (see the text and note 13 supra).

15 Ibid s 89C(6) (as added: see note 8 supra).

16 Ie under ibid s 89B(2) (as added) (see the text and note 13 supra).

17 Ie in accordance with ibid s 89B(1) (as added) (see the text and notes 1-10 supra).

18 Ibid s 89B(3)(a) (as added: see note 3 supra).

19 Ibid s 89B(3)(b) (as added: see note 3 supra).

20 Ibid s 89C(7) (as added: see note 8 supra).

21 Ibid s 89B(4) (as added: see note 3 supra). The text refers to any local education authority functions under Pt III Ch I (ss 84-98) (as amended): s 89B(4) (as so added).

22 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of ibid s 142(8).

23 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 142(8).

24 Ibid s 89B(5)(a) (as added: see note 3 supra).

25 Ibid s 89B(5)(b) (as added: see note 3 supra). As to the date on which decisions are to be communicated to parents see the Education (Co-ordination of Admission Arrangements) (Primary Schools) (England) Regulations 2002, SI 2002/2903, reg 7; and the Education (Co-ordination of Admission Arrangements) (Secondary Schools) (England) Regulations 2002, SI 2002/2904, reg 7.

26 Ie by virtue of the School Standards and Framework Act 1998 s 89C (as added) (see the text and notes 8, 11-15, 20 supra).

27 Ibid s 89C(3) (as added: see note 8 supra).

## UPDATE

### 399 Co-ordination of admission arrangements [ ... ]

TEXT AND NOTES--School Standards and Framework Act 1998 ss 89B, 89C (amended by Education and Skills Act 2008 Sch 1 paras 59, 60) now apply to Wales only. For co-ordination of admission arrangements in England see School Standards and Framework Act 1998 s 88M (added by Education and Skills Act 2008 s 151(4)); and PARA 398.

NOTES 1, 4--Definitions of 'regulations' and 'prescribed' in School Standards and Framework Act 1998 s 142(1) amended: Education and Skills Act 2008 Sch 1 para 72.

NOTES 1, 8, 10, 12, 25--SI 2002/2903, SI 2002/2904 replaced: see now School Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008, SI 2008/3090.

NOTES 3, 8--School Standards and Framework Act 1998 ss 89B, 89C now in force in relation to Wales: SI 2006/172.

NOTE 26--Reference to School Standards and Framework Act 1998 s 89C is now to s 89B: s 89C(3) (amended by the Education and Inspections Act 2006 s 43(3)(a)).

TEXT AND NOTE 27--Where any decision as to whether a child is to be granted or refused admission to a maintained school is, by virtue of regulations under the School Standards and Framework Act 1998 s 89C(3), made by the local education authority although it is not the admission authority, the governing body of the school must implement the decision: s 89(3A) (added by the Education and Inspections Act 2006 s 43(3)(b)).

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#### **400. Reference of objections about admission arrangements in England and Wales.**

Where admission arrangements<sup>1</sup> have been determined by an admission authority<sup>2</sup>, but a body<sup>3</sup> wishes to make an objection about those arrangements<sup>4</sup> and the objection does not fall within any description of objections prescribed<sup>5</sup> for these purposes<sup>6</sup>, that body may refer the objection to the adjudicator in relation to England or to the National Assembly for Wales in relation to Wales<sup>7</sup>. Where admission arrangements have been determined by an admission authority<sup>8</sup>, but any parent<sup>9</sup> of a prescribed description wishes to make an objection about those arrangements<sup>10</sup> and the objection falls within any description of objections prescribed for these purposes<sup>11</sup>, that person may refer the objection to the adjudicator in relation to England or the National Assembly for Wales in relation to Wales<sup>12</sup>.

In relation to England, the adjudicator must either decide whether, and to what extent, the objection should be upheld<sup>13</sup>, or in such cases as may be prescribed, refer the objection to the Secretary of State for that question to be decided by him<sup>14</sup>. In relation to a maintained school<sup>15</sup> in Wales where any objection is referred to the National Assembly for Wales, it must decide whether, and to what extent, the objection should be upheld<sup>16</sup>.

Where it is decided that an objection that has been referred should be upheld to any extent, the decision on the objection may specify the modifications<sup>17</sup> that are to be made to the admission arrangements in question<sup>18</sup>. The decision on any objection that has been referred, and the reasons for it, must be published<sup>19</sup>. The decision on the objection is, in relation to the admission arrangements in question, binding on the admission authority and on all persons by whom an objection about those arrangements may be made<sup>20</sup>. If that decision is to uphold the objection to any extent, those arrangements are forthwith to be revised by the admission authority in such a way as to give effect to the decision<sup>21</sup>.

1 For the meaning of 'admission arrangements' see PARA 398 note 1 ante.

2 School Standards and Framework Act 1998 s 90(1)(a). The reference in the text to a determination by an admission authority is a reference to a determination by an admission authority under s 89(4) (as amended in relation to England): see PARA 398 ante. For the meaning of 'admission authority' see PARA 398 note 1 ante.

3 I.e. a body which was, or would but for *ibid* s 89(2A) (added in relation to England; prospectively added in relation to Wales) (see PARA 398 ante) have been, required to be consulted by the admission authority under s 89(2) (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 398 ante): s 90(1)(b) (amended by the Education Act 2002 s 51, Sch 4 para 6).

The amendment made by the Education Act 2002 Sch 4 para 6 is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002, except in relation to a maintained school's admission arrangements for any school year earlier than the 2004-2005 school year (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 6) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference should be read as a reference to a body consulted by the admission authority under the School Standards and Framework Act 1998 s 89(2) (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 398 ante). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 *Ibid* s 90(1)(b) (as amended: see note 3 supra).

5 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52



ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the prescribed descriptions of objections see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125 (amended, in relation to England, by SI 2002/2901).

6 School Standards and Framework Act 1998 s 90(1)(c). Regulations under s 90 (as amended in relation to England; prospectively amended in relation to Wales) may make provision: (1) as to any conditions which must be satisfied before: (a) an objection can be referred to the adjudicator in relation to England or the National Assembly for Wales in relation to Wales under s 90(1) (as amended in relation to England; prospectively amended in relation to Wales) or s 90(2) (see the text and notes 8-12 infra); or (b) the adjudicator or the Assembly is required to determine an objection referred under s 90(2); (2) prescribing the steps which may be taken by an admission authority where an objection has been referred to the adjudicator or the Assembly under s 90(1) (as amended in relation to England; prospectively amended in relation to Wales) or s 90(2) but has not yet been determined; (3) as to the manner in which any matters required to be published under s 90(7) (see the text to note 19 infra) are to be published; (4) requiring such matters to be notified to such persons, and in such manner, as may be prescribed; (5) prohibiting or restricting the reference under s 90(1) (as amended in relation to England; prospectively amended in relation to Wales) or s 90(2), within such period following a decision by the adjudicator or the Assembly under s 90 (as amended in relation to England; prospectively amended in relation to Wales) as may be prescribed, of any objection raising the same (or substantially the same) issues in relation to the admission arrangements of the school in question; (6) prescribing circumstances in which an admission authority may revise the admission arrangements for its school in the light of any decision by the adjudicator or the Assembly relating to the admission arrangements for another school, and the procedure to be followed in such a case: see s 90(9); and see PARA 53 ante. For the meaning of 'adjudicator' see PARA 124 ante.

7 Ibid s 90(1), (5)(a). As to the cases where an objection may not be referred see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 2 (substituted, in relation to England, by SI 2002/2901). As to the time within which an objection must be referred see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 3. See notes 5, 6 supra.

The adjudicator exercises an original jurisdiction as to the appropriateness of the admission arrangements; he is not reviewing the local education authority's decision: *R v Chief Schools Adjudicator, ex p Wirral Metropolitan Borough Council* [2000] ELR 620. Accordingly, the court's power in relation to an adjudicator's determination is limited to a review on conventional public law grounds: *R (on the application of Wirral Metropolitan Borough Council) v Chief Schools Adjudicator* [2001] ELR 574. Applications for judicial review were allowed in *R (on the application of Wandsworth London Borough Council) v Schools Adjudicator* [2003] EWHC 2969 (Admin), [2004] ELR 274, [2003] All ER (D) 125 (Dec) (remedy chosen was not rationally capable of correcting the unfairness found by the adjudicator); and *Governing Body of the London Oratory School v Official Schools Adjudicator* [2004] EWHC 3014 (Admin), [2005] ELR 162 (application allowed on grounds of irrationality and the adjudicator's failure to take into account highly material considerations). As to the need for the adjudicator to have regard to the code of practice published under the School Standards and Framework Act 1998 s 84 (as amended) see PARA 393 ante.

8 Ibid s 90(2)(a). The reference in the text to a determination by an admission authority is a reference to a determination by an admission authority under s 89(4) (as amended in relation to England; prospectively amended in relation to Wales) (see PARA 398 ante).

9 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 142(8).

10 Ibid s 90(2)(b).

11 Ibid s 90(2)(c).

12 Ibid s 90(2), (5)(a). As to the parents who are eligible to refer an objection see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 4 (substituted, in relation to England, by SI 2002/2901). As to the objections that may be referred by parents see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 5 (amended, in relation to England, by SI 2002/2901). As to the condition to be met before the objections of parents can be determined see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 6. See notes 5, 6 supra.

See *R v Chief Schools Adjudicator, ex p Wirral Metropolitan Borough Council* [2000] ELR 620; *R v St Mary's College* (14 December 2000) Lexis.

13 School Standards and Framework Act 1998 s 90(3)(a), (5)(b). The overall purpose of s 90(3), and the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 9(1) (limitation on subsequent objections: see note 20 infra), is that objectors should, if it is practicable, obtain an adjudicator's decision on their objection on its merits: see *Governing Body of the London Oratory School v Schools Adjudicator* [2005] EWHC 1842 (Admin), [2005] ELR 484, [2005] All ER (D) 61 (Aug). See notes 5, 6 supra.

14 School Standards and Framework Act 1998 s 90(3)(b), (5)(b). Where the objection is referred to the Secretary of State under s 90(3)(b), the adjudicator must, if the Secretary of State so requests, give his advice on the question referred to in s 90(3)(b): s 90(4), (5)(b). Regulations must make provision for the cases to be referred to the Secretary of State under s 90(3)(b) to include cases where the objection is concerned with admissions criteria relating to a person's religion or religious denomination: s 90(10). As to the cases prescribed see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 7. See notes 5, 6, 13 supra. See also *R v Downes, ex p Wandsworth London Borough Council* [2000] ELR 425.

15 For the meaning of 'maintained school' see PARA 393 note 3 ante.

16 School Standards and Framework Act 1998 s 90(5)(c). See notes 5, 6 supra.

17 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 142(8).

18 *Ibid* s 90(6). See notes 5, 6 supra. See *R v Downes, ex p Wandsworth London Borough Council* [2000] ELR 425.

19 School Standards and Framework Act 1998 s 90(7). As to the publication of decisions see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 8 (amended, in relation to England, by SI 2002/2901). See notes 5, 6 supra.

20 School Standards and Framework Act 1998 s 90(8). As to the limitation on later objections see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 9; and as to whether reg 9(1) prevents a second objection being determined in the wake of an earlier objection being decided at a previous judicial review hearing see *Governing Body of the London Oratory School v Schools Adjudicator* [2005] EWHC 1842 (Admin), [2005] ELR 484, [2005] All ER (D) 61 (Aug). See also note 13 supra. As to the power to alter arrangements following a decision on an objection see the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125, reg 10 (amended, in relation to England, by SI 2002/2901). See notes 5, 6 supra.

21 School Standards and Framework Act 1998 s 90(8). See notes 5, 6 supra.

## UPDATE

### 400 Reference of objections about admission arrangements in England and Wales

TEXT AND NOTES--School Standards and Framework Act 1998 s 90 (amended by Education and Skills Act 2008 Sch 1 para 62, Sch 2) now applies to Wales only. See also School Standards and Framework Act 1998 ss 90ZA, 138A (added by Education and Skills Act 2008 Sch 1 paras 63, 71) (regulations by Welsh Ministers under School Standards and Framework Act 1998 s 90). As to reference of objections in England see School Standards and Framework Act 1998 s 88H (added by Education and Skills Act 2008 s 151(4)); and PARA 398.

NOTES--SI 1999/125 replaced: Education (Objections to Admission Arrangements) (Wales) Regulations 2006, SI 2006/176; School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099).

NOTE 3--Day now appointed in relation to Wales: SI 2006/172. The reference to a body, in relation to the admission arrangements determined by an admission authority, is any body or person which the admission authority was required to consult under School Standards and Framework Act 1998 s 89(2) (see PARA 398), or would but for s 89(2A) have been required to consult: s 90(11) (added by Education and Inspections Act 2006 s 41(8); amended by Education and Skills Act 2008 Sch 1 para 62(11), Sch 2).

TEXT AND NOTE 4--1998 Act s 90(1)(b) substituted: Education and Inspections Act 2006 s 41(8); Education and Skills Act 2008 Sch 1 para 62(3).

NOTE 5--Definitions of 'prescribed' and 'regulations' in School Standards and Framework Act 1998 s 142(1) amended: Education and Skills Act 2008 Sch 1 para 72.

NOTE 6--School Standards and Framework Act 1998 s 90(9) amended: Education and Inspections Act 2006 s 47(5); Education and Skills Act 2008 Sch 1 para 62(10), Sch 2.

NOTES 12, 19--See *R (on the application of the Governing Body of Drayton Manor High School) v Office of the Schools Adjudicator* [2008] EWHC 3119 (Admin), [2009] ELR 127, [2008] All ER (D) 270 (Oct).

NOTE 14--1998 Act s 90(10) repealed: Education and Inspections Act 2006 s 47(6), Sch 18 Pt 6).

TEXT AND NOTES 17-19--1998 Act s 90(5A)-(5C) added, s 90(6), (7) repealed: Education and Inspections Act 2006 s 47(2), (3), Sch 18 Pt 6; Education and Skills Act 2008 Sch 1 para 62(6)-(8). Where the Welsh Ministers are required by virtue of the 1998 Act s 90(2A) to decide whether to uphold an objection to admission arrangements, they may consider whether it would be appropriate for changes to be made to any aspect of the admission arrangements, whether or not they would be required to do so for the purpose of determining the objection: s 90(5A). In the case of any objection referred to them under s 90, the Welsh Ministers must publish a report containing the following: (1) their decision on the objection; (2) any decision they have made on whether it would be appropriate for changes to be made to the admission arrangements, whether in the light of their decision on the objection or otherwise; and (3) their reasons for the decisions mentioned in heads (1) and (2): s 90(5B). Where the Welsh Ministers decide that it would be appropriate for changes to be made to the admission arrangements, their decision may specify the modifications that are to be made to the arrangements: s 90(5C).

TEXT AND NOTES 20, 21--1998 Act s 90(8) substituted: Education and Inspections Act 2006 s 47(4); amended by Education and Skills Act 2008 Sch 1 para 62(9). See also SI 2008/3089 reg 33.

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#### **401. Publication of information about admissions in England.**

Regulations made in relation to England<sup>1</sup> may:

- 833 (1) require the publication by a local education authority<sup>2</sup> of such information relating to admissions as may be prescribed<sup>3</sup>;
- 834 (2) require the publication by the governing body<sup>4</sup> of a foundation or voluntary aided school<sup>5</sup> of such information relating to admissions as may be prescribed<sup>6</sup>;
- 835 (3) require or allow the publication by the governing body of any school maintained by a local education authority, or by the local education authority on behalf of the governing body, of such information relating to the school as may be prescribed<sup>7</sup>; and
- 836 (4) make provision as to the time by which, and the manner in which, information required to be published<sup>8</sup> is to be published<sup>9</sup>.

The Secretary of State's general power to make regulations requiring information about schools from governing bodies and proprietors of independent schools must be exercised with a view to, inter alia, assisting parents in choosing schools for their children<sup>10</sup>.

1 For these purposes, 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under s 92 (as substituted in relation to England) see the Education (Special Educational Needs) (Information) (England) Regulations 1999, SI 1999/2506 (amended by SI 2002/2469) (which have effect as if made under the School Standards and Framework Act 1998 s 92(c), (d) (as substituted) (see the text and notes 7-9 infra)); and the Education (School Information) (England) Regulations 2002, SI 2002/2897 (amended by SI 2005/845; SI 2005/2152). See also notes 3, 6-7, 9 infra.

As to the application (with modifications) of the Education (School Information) (England) Regulations 2002, SI 2002/2897 (as amended) to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 14. For the meaning of 'pupil referral units' see PARA 457 post.

At the date at which this volume states the law, the provisions of the School Standards and Framework Act 1998 s 92 (as substituted in relation to England) were not yet in force in Wales (see note 3 infra). As to the publication of information about admissions in Wales see PARA 402 post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the areas of local education authorities see PARA 20 ante.

3 School Standards and Framework Act 1998 s 92(a) (s 92 substituted by the Education Act 2002 s 51, Sch 4 para 7). 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1). As to the requirement for the local education authority to publish a composite prospectus of admission information see the Education (School Information) (England) Regulations 2002, SI 2002/2897, Pt 4 (regs 8-10), Sch 2.

The School Standards and Framework Act 1998 s 92 is substituted by the Education Act 2002 Sch 4 para 7 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the provisions relating to Wales see PARA 402 post.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 92 (as substituted) may be exercised by, or by employees of, such person as may be

authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (y).

As to the application of the School Standards and Framework Act 1998 s 92 (as substituted) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

4 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

5 As to foundation and voluntary aided schools see PARA 102 et seq ante.

6 School Standards and Framework Act 1998 s 92(b) (as substituted: see note 3 supra). As to the publication by governing bodies of school prospectuses see the Education (School Information) (England) Regulations 2002, SI 2002/2897, reg 14 (amended by SI 2005/2152). See note 1 supra.

7 School Standards and Framework Act 1998 s 92(c) (as substituted: see note 3 supra). As to the regulations so made see the Education (School Information) (England) Regulations 2002, SI 2002/2897, reg 14 (amended by SI 2005/2152); and the Education (Special Educational Needs) (Information) (England) Regulations 1999, SI 1999/2506 (amended by SI 2002/2469). See note 1 supra.

8 le by virtue of the School Standards and Framework Act 1998 s 92 (as substituted).

9 Ibid s 92(d) (as substituted: see note 3 supra). As to the time and manner of publication of school prospectuses including information about admissions see the Education (School Information) (England) Regulations 2002, SI 2002/2897, regs 9, 14 (reg 14 amended by SI 2005/2152); and the Education (Special Educational Needs) (Information) (England) Regulations 1999, SI 1999/2506, reg 4 (amended by SI 2002/2469). See note 1 supra.

10 See the Education Act 1996 s 537 (as amended); and PARA 60 ante.

## **UPDATE**

### **401 Publication of information about admissions in England**

NOTES 1, 3, 6, 7, 9--SI 2002/2897 replaced: Education (School Information) (England) Regulations 2008, SI 2008/3093. As to the requirement for the local education authority to publish a composite prospectus of admission information see SI 2008/3093 Pt 2 (regs 5-7), Sch 2; and as to the time and manner of publication of prospectuses see regs 6, 10.

NOTE 1--SI 2005/2039 replaced: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979.

NOTE 3--Day now appointed in relation to Wales: SI 2006/172.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/D. ADMISSION ARRANGEMENTS/402. Publication of information about admissions in Wales.

#### **402. Publication of information about admissions in Wales.**

A local education authority in Wales<sup>1</sup> must, for each school year<sup>2</sup>, publish the prescribed information<sup>3</sup> about:

- 837 (1) the admission arrangements<sup>4</sup> for each of the following: (a) the maintained schools<sup>5</sup> in its area<sup>6</sup>; and (b) if regulations so provide, such maintained schools outside its area as may be determined by or in accordance with the regulations<sup>7</sup>;
- 838 (2) the authority's arrangements for the provision of education at schools maintained by another local education authority or not maintained by a local education authority<sup>8</sup>;
- 839 (3) the arrangements made by the authority under the provisions concerning parental preferences<sup>9</sup> and admission appeals<sup>10</sup>; and
- 840 (4) such other matters of interest to parents<sup>11</sup> of pupils<sup>12</sup> seeking admission to schools within head (1) or head (2) above as may be prescribed<sup>13</sup>.

The governing body of a foundation or voluntary aided school in Wales must, for each school year, publish<sup>14</sup> the prescribed information about: (i) the admission arrangements for the school<sup>15</sup>; (ii) the arrangements made by the governing body in relation to admission appeals<sup>16</sup>; and (iii) such other matters of interest to parents of pupils seeking admission to the school as may be prescribed<sup>17</sup>.

The governing body of a school maintained by a local education authority: (A) must publish<sup>18</sup> such information as respects that school as may be required by regulations<sup>19</sup>; and (B) may publish such other information with respect to the school as it thinks fit<sup>20</sup>.

The general power to make regulations requiring information about schools from governing bodies and proprietors of independent schools must be exercised with a view to, inter alia, assisting parents in choosing schools for their children<sup>21</sup>.

1 As to local education authorities see PARA 20 ante. At the date at which this volume states the law, the provisions of the School Standards and Framework Act 1998 s 92 apply as originally enacted in Wales (see note 3 infra). As to the publication of information about admissions in England see PARA 401 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of ibid s 142(8).

3 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 92 in relation to Wales see the Education (Special Educational Needs) (Information) (Wales) Regulations 1999, SI 1999/1442; and the Education (School Information) (Wales) Regulations 1999, SI 1999/1812 (amended by SI 2001/1111; SI 2001/3710; SI 2002/1400; SI 2004/1736; SI 2004/2914; SI 2005/1396).

Regulations under the School Standards and Framework Act 1998 s 92 may make provision as to: (1) the procedure to be followed by a local education authority before publishing information under s 92(1) (see heads (1)-(4) in the text); and (2) the time by which, and the manner in which, information required to be published under any provision of s 92 is to be published: s 92(6).

Section 92 is substituted by the Education Act 2002 Sch 4 para 7 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume

states the law, no such day had been appointed in relation to Wales. As to the provisions relating to England see PARA 401 ante.

4 For the meaning of 'admission arrangements' see PARA 398 note 1 ante.

5 For the meaning of 'maintained school' see PARA 393 note 3 ante.

6 School Standards and Framework Act 1998 s 92(1)(a)(i). As to the areas of local education authorities see PARA 20 ante. See note 3 supra.

7 Ibid s 92(1)(a)(ii). See note 3 supra.

8 Ibid s 92(1)(b). See note 3 supra.

9 Ie under ibid s 86(1): see PARA 396 ante.

10 Ibid s 92(1)(c). The reference in the text to admission appeals is a reference to admission appeals under s 94(1): see PARA 415 post. See note 3 supra.

11 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 142(1).

12 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(1).

13 Ibid s 92(1)(d). See note 3 supra. See also *R v Stockton-on-Tees Borough Council, ex p W* [2000] ELR 93, CA.

14 A local education authority may, with the agreement of the governing body of any school maintained by the authority, publish on behalf of the governing body the information referred to in the School Standards and Framework Act 1998 s 92(2) (see the text and notes 15-17 infra): s 92(5). For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

15 Ibid s 92(2)(a). See notes 3, 14 supra.

16 Ibid s 92(2)(b). The admission appeals referred to in the text are admission appeals under s 94(2): see PARA 415 post. See note 3 supra.

17 Ibid s 92(2)(c). See notes 3, 14 supra.

18 A local education authority may, with the agreement of the governing body of any school maintained by the authority, publish on behalf of the governing body the information referred to in ibid s 92(3) (see the text and notes 19-20 infra): s 92(5).

19 Ibid s 92(3)(a). For the purposes of s 92(3), information about the continuing education of pupils leaving a school, or the employment or training taken up by such pupils on leaving, is to be treated as information about the school: s 92(4). See note 18 supra.

20 Ibid s 92(3)(b). See note 18 supra.

21 See the Education Act 1996 s 537 (as amended); and PARA 60 ante.

## UPDATE

### 402 Publication of information about admissions in Wales

NOTE 3--SI 1999/1812 further amended: see PARA 60 NOTE 9. Day now appointed in relation to Wales: SI 2006/172.

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### **403. Admission conditions relating to home-school agreements.**

The governing body of a school which is a maintained school<sup>1</sup>, a city technology college<sup>2</sup>, a city college for the technology of the arts<sup>3</sup> or an academy<sup>4</sup> must adopt a home-school agreement<sup>5</sup> for the school, together with a parental declaration<sup>6</sup> to be used in connection with the agreement<sup>7</sup>. Neither the governing body of such a school nor the local education authority<sup>8</sup> where it is the admission authority<sup>9</sup> may: (1) invite any person to sign the parental declaration at a time when the child<sup>10</sup> in question has not been admitted to the school<sup>11</sup>; (2) make it a condition of a child being admitted to the school that the parental declaration is signed in respect of the child<sup>12</sup>; or (3) make any decision as to whether or not to admit a child to the school by reference to whether any such declaration is or is not likely to be signed in respect of the child<sup>13</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to the meaning of 'city technology college' see PARA 496 note 31 post; definition applied by virtue of ibid s 142(8).

3 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 post; definition applied by virtue of ibid s 142(8).

4 As to the meaning of 'academy' see PARA 496 note 29 post; definition applied by virtue of ibid s 142(8).

5 For the meaning of 'home-school agreement' see PARA 82 ante.

6 For the meaning of 'parental declaration' see PARA 82 note 13 ante.

7 School Standards and Framework Act 1998 s 110(1) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 85; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 9). See PARA 82 ante.

8 As to local education authorities see PARA 20 ante.

9 For the meaning of 'admission authority' see PARA 398 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 111(4).

10 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of ibid s 142(8).

11 Ibid s 111(4)(a).

12 Ibid s 111(4)(b).

13 Ibid s 111(4)(c).



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#### **404. Discrimination in relation to admissions in England and Wales.**

It is unlawful to discriminate<sup>1</sup> against a person in the terms on which he is offered admission to a school<sup>2</sup> or by refusing or deliberately omitting to accept an application for his admission as a pupil<sup>3</sup>. However, this prohibition does not apply to the admission of pupils to any single-sex establishment<sup>4</sup> or to schools which are not single-sex establishments but which have some pupils as boarders and others as non-boarders, and which admit as boarders pupils of one sex only<sup>5</sup>. Where at any time the admissions arrangements of such an establishment or school are altered so that the establishment ceases to be a single-sex establishment, or the school ceases to admit single-sex boarders, the responsible body may apply for an order authorising discriminatory admissions during the transitional period specified in the order<sup>6</sup>.

It is unlawful to discriminate on the grounds of race<sup>7</sup> against a person in the terms on which it offers to admit him to the establishment as a pupil<sup>8</sup> or by refusing or deliberately omitting to accept an application for his admission to the establishment as a pupil<sup>9</sup>. It is unlawful also for any responsible body<sup>10</sup> to subject to harassment<sup>11</sup> a person who applies for admission to the establishment as a pupil<sup>12</sup>.

1 References to discrimination refer to any discrimination falling within the Sex Discrimination Act 1975 s 1 (as substituted), s 2, s 2A (as added), s 3 (as substituted) or s 4 (as amended); and related expressions are to be construed accordingly: see s 5(1)(a); and DISCRIMINATION vol 13 (2007 Reissue) PARA 344 et seq.

2 See *ibid* s 22(a); para 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARA 378. 'Pupil' includes any person who receives education at a school or institution to which s 22 applies: s 22A (added by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II paras 75, 77). 'Education' includes any form of training or instruction: Sex Discrimination Act 1975 s 82(1). For the meaning of 'school' see PARA 81 ante; definition applied by s 82(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 36).

3 See the Sex Discrimination Act 1975 s 22(b); and PARA 6 ante. See also DISCRIMINATION vol 13 (2007 Reissue) PARA 378.

4 See *ibid* s 26(1); and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

5 See *ibid* s 26(2) (as amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

6 See *ibid* s 27(1); and DISCRIMINATION vol 13 (2007 Reissue) PARA 381.

7 References to discrimination are references to any discrimination falling within the Race Relations Act 1976 s 1 or s 2: see s 3(3)(a); and DISCRIMINATION vol 13 (2007 Reissue) PARA 439 et seq. See also *R v Cleveland County Council, ex p Commission for Racial Equality* [1993] 1 FCR 597, 91 LGR 139, [1994] ELR 44, CA.

8 See the Race Relations Act s 17(1)(a) (as renumbered); and PARA 8 ante. See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460. For these purposes, 'pupil' includes any person who receives education at a school or institution to which s 17 (as amended) applies: s 17A (added by the Further and Higher Education Act 1992 Sch 8 Pt II para 86). 'Education' includes any form of training or instruction: Race Relations 1976 s 78(1). For the meaning of 'school' see PARA 81 ante; definition applied by s 78(1) (definition amended by the Education Act 1996 Sch 37 para 43). See *Mandla v Dowell Lee* [1983] 2 AC 548, [1983] 1 All ER 1062, HL.

9 See the Race Relations 1976 s 17(1)(b) (as renumbered); and PARA 8 ante. See also DISCRIMINATION vol 13 (2007 Reissue) PARA 460.

10 The responsible body for an educational establishment maintained by a local education authority is the local education authority or governing body, according to which of them has the function in question: see *ibid* s

17(1) (as renumbered), Table para 1 (as amended); and PARA 8 ante. As to local education authorities see PARA 20 ante; and as to the governing bodies of maintained schools see PARA 203 et seq ante.

11 For the meaning of 'harassment' see *ibid* s 3A (as added); and DISCRIMINATION vol 13 (2007 Reissue) PARA 444.

12 See *ibid* s 17(2) (as added); and DISCRIMINATION vol 13 (2007 Reissue) PARA 460.

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#### **405. Duty to set limit on infant class sizes in England and Wales.**

Regulations<sup>1</sup> must be made<sup>2</sup> imposing a limit on class<sup>3</sup> sizes for infant classes<sup>4</sup> at maintained schools<sup>5</sup>, and must specify the school years in relation to which any such limit is to have effect<sup>6</sup>. Any limit so imposed must specify the maximum number of pupils that a class to which the limit applies may contain while an ordinary teaching session is conducted by a single school teacher<sup>7</sup>. Such regulations must be so framed that the maximum number specified is 30<sup>8</sup>. Regulations may provide for any limit imposed to take effect either at the same time in the case of each of the age groups into which the pupils in infant classes fall<sup>9</sup>, or at different times<sup>10</sup> in the case of different such age groups<sup>11</sup>. Such regulations may also provide that, in any circumstances specified in the regulations, any such limit either is not to apply or is to operate in such manner as is so specified<sup>12</sup>.

Where any limit imposed applies to an infant class at a maintained school, the local education authority<sup>13</sup> and the governing body<sup>14</sup> must exercise their functions with a view to securing that that limit is complied with in relation to that class<sup>15</sup>.

1 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. See note 2 infra.

2 As to the regulations made under *ibid* s 1 (as amended) see the Education (Infant Class Sizes) (Wales) Regulations 1998, SI 1998/1943 (amended by SI 2003/2959); and the Education (Infant Class Sizes) (England) Regulations 1998, SI 1998/1973.

3 For the purposes of the School Standards and Framework Act 1998 Pt I Ch I (ss 1-4) (as amended), 'class' means a group in which pupils are taught in an ordinary teaching session: s 4. For the purposes of Pt I Ch I (as amended), 'ordinary teaching session' does not include a school assembly or other school activity usually conducted with large groups of pupils: s 4. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(1).

4 For the purposes of *ibid* Pt I Ch I (as amended), 'infant class' means a class containing pupils the majority of whom will attain the age of five, six or seven during the course of the school year: s 4. For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of s 142(1).

5 *Ibid* s 1(1)(a). For the meaning of 'maintained school' see PARA 94 ante.

As to the application of s 1 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

6 School Standards and Framework Act 1998 s 1(1)(b). See note 5 supra.

7 *Ibid* s 1(2) (amended by the Education Act 2002 Sch 21 para 87). See note 5 supra. For the purposes of the School Standards and Framework Act 1998 Pt I Ch I (as amended), 'school teacher' means a person who is a school teacher for the purposes of the Education Act 2002 s 122 (determination of school teachers' pay and conditions: see PARA 864 post): School Standards and Framework Act 1998 s 4 (definition added by the Education Act 2002 Sch 21 para 88).

8 School Standards and Framework Act 1998 s 1(3)(a). The limit specified by s 1(3)(a) has effect in relation to the 2001-2002 school year and any subsequent year: s 1(3)(b). Section 1(3) may by order be amended by substituting for '30' such other number as is specified in the order, or by substituting for the reference to the 2001-2002 school year a reference to such other school year as is so specified: s 1(5). See note 5 supra. An order made under s 1(5) is not subject to annulment but a draft instrument containing any such order must be approved by a resolution of each House of Parliament: see s 138(5)(a) (as amended); and PARA 82 note 15 ante. At the date at which this volume states the law, no orders had been made under s 1(5). See note 2 supra.

- 9 Ibid s 1(4)(a)(i). See note 5 supra.
- 10 le which may be earlier than the beginning of the school year mentioned in ibid s 1(3): see note 8 supra.
- 11 Ibid s 1(4)(a)(ii). See note 5 supra.
- 12 Ibid s 1(4)(b). See note 5 supra.
- 13 As to local education authorities see PARA 20 ante.
- 14 As to the governing bodies of maintained schools see PARA 203 et seq ante.
- 15 School Standards and Framework Act 1998 s 1(6). See note 5 supra.

## **UPDATE**

### **405 Duty to set limit on infant class sizes in England and Wales**

NOTE 2--SI 1998/1973 amended: SI 2006/3409, SI 2008/3089, SI 2009/828.

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## ***E. ADMISSION NUMBERS IN WALES***

### **(A) LIMIT ON INFANT CLASS SIZES**

#### **406. Plans by local education authority for reducing infant class sizes.**

Every local education authority in Wales<sup>1</sup> must prepare a statement setting out the arrangements which the authority proposes to make for the purpose of securing that any limit on infant class sizes<sup>2</sup> imposed<sup>3</sup> is complied with at schools maintained by the authority<sup>4</sup>. The statement must contain such information as to the proposed arrangements and take such form as may be prescribed<sup>5</sup>. In preparing the statement the authority must have regard to any guidance given from time to time by the National Assembly for Wales<sup>6</sup>. In the course of preparing the statement the authority must carry out such consultation as may be prescribed<sup>7</sup>.

A prescribed body or person, or a body or person falling within any prescribed category, must provide the authority with such documents<sup>8</sup> or information, or with such other assistance, as the authority may reasonably request from that body or person for the purpose of enabling it to prepare the statement<sup>9</sup>.

The authority must submit the statement to the Assembly for its approval by such date as may be prescribed<sup>10</sup>, or by such later date as it may allow, where it is satisfied that it is reasonable to do so in view of any particular circumstances relating to the authority<sup>11</sup>. If the Assembly decides not to approve the authority's proposed arrangements it must notify the authority of its decision and of its reasons for it<sup>12</sup>, and the authority must prepare a revised statement in respect of its proposed arrangements<sup>13</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'infant class' see PARA 405 note 4 ante.

3 Ie under the School Standards and Framework Act 1998 s 1 (as amended): see PARA 405 ante.

4 Ibid s 2(1). For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

Section 2 is repealed by the Children Act 2004 s 64, Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. In relation to England, the appointed day is 1 March 2005: (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(1)(i)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the co-ordination of admission arrangements in England see PARA 399 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

5 School Standards and Framework Act 1998 s 2(2). See note 4 supra. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 2 see the Education (Plans for Reducing Infant Class Sizes) (Wales) Regulations 1998, SI 1998/1942.

6 School Standards and Framework Act 1998 s 2(2). See note 4 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Ibid s 2(3). See note 4 supra.

8 For these purposes, 'document' includes information recorded otherwise than in legible form; and the reference to the provision of a document is, in the case of information so recorded, a reference to the provision of a copy of that information in legible form: *ibid* s 2(8). See note 4 *supra*.

9 *Ibid* s 2(4). See note 4 *supra*.

10 *Ibid* s 2(5)(a). See notes 4, 6 *supra*.

11 *Ibid* s 2(5)(b). Different dates may be prescribed for different authorities: s 2(5). See note 4 *supra*.

12 *Ibid* s 2(6)(a). See notes 4, 6 *supra*.

13 *Ibid* s 2(6)(b). Where the authority is required by s 2(6) to prepare a revised statement, the provisions of s 2(1)-(5) (see the text and notes 1-11 *supra*) apply to it as they applied to the original statement, except that: (1) in preparing the revised statement the authority must have regard to the Assembly's reasons for not approving its original proposals; and (2) the revised statement must be submitted to the Assembly by such date as it may determine: s 2(7). See note 4 *supra*.

## **UPDATE**

### **406 Plans by local education authority for reducing infant class sizes**

NOTE 4--Day now appointed in relation to Wales: SI 2006/885.

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#### **407. Payment of grant in connection with reductions in infant class sizes.**

Regulations<sup>1</sup> must make provision for the payment by the National Assembly for Wales<sup>2</sup> of grants to local education authorities<sup>3</sup> in respect of expenditure incurred or to be incurred by them for the purpose of securing that any limit on infant class size imposed<sup>4</sup> is complied with in relation to infant classes<sup>5</sup> at schools maintained by them<sup>6</sup>. Such regulations must provide for the Assembly<sup>7</sup>: (1) to withhold grants from a local education authority where no proposed arrangements by that authority have been approved by it<sup>8</sup>; and (2) when determining whether any grant (and, if so, what amount) should be paid by it under the regulations to a local education authority, to have regard to its proposed arrangements as approved<sup>9</sup>. Regulations may provide: (a) for the payment of grant to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations<sup>10</sup>; and (b) for requiring local education authorities to whom payments have been made under the regulations to comply with such requirements as may be so determined<sup>11</sup>.

1 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 3 see the Education (Infant Class Sizes) (Grant) Regulations 1999, SI 1999/14.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 As to local education authorities see PARA 20 ante.

4 Ie under the School Standards and Framework Act 1998 s 1 (as amended): see PARA 405 ante.

5 For the meaning of 'infant class' see PARA 405 note 4 ante.

6 School Standards and Framework Act 1998 s 3(1). For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

Section 3 is repealed by the Education Act 2002 ss 18(1)(i), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. In relation to England, see the Education Act 2002 Pt 2 (ss 14-18); and PARA 65 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

7 See note 2 supra.

8 School Standards and Framework Act 1998 s 3(2)(a). See note 6 supra. The reference in the text to implementation is a reference to implementation under s 2: see PARA 406 ante.

9 Ibid s 3(2)(b). See note 6 supra.

10 Ibid s 3(3)(a). See note 6 supra.

11 Ibid s 3(3)(b). See note 6 supra.

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## (B) FIXING ADMISSION NUMBERS

### **408. Fixing admission numbers.**

The admission authority<sup>1</sup> for a maintained school<sup>2</sup> must not fix as the admission number<sup>3</sup> for any relevant age group and any school year a number which is less than the relevant standard number<sup>4</sup>. The admission authority may, subject to the duty of local education authorities<sup>5</sup> and governing bodies<sup>6</sup> to comply with the limit on infant class sizes<sup>7</sup>, fix as the admission number for any relevant age group and any school year a number which exceeds the relevant standard number<sup>8</sup>.

A proposal<sup>9</sup> may be made to the admission authority, by whichever of the governing body and the local education authority is not the admission authority, for fixing as the admission number for any relevant age group and any school year a number which exceeds both the relevant standard number<sup>10</sup>, and any admission number fixed, or proposed to be fixed, for that age group and year by the admission authority<sup>11</sup>. If the admission authority does not give the body making the proposal notice in writing rejecting the proposal within the period of two months beginning with the day after that on which the proposal was received by the admission authority, the admission authority must give effect to the proposal<sup>12</sup>. Where the admission authority gives such notice within that period, the body making the proposal may, within 28 days of receiving the notice, make an application<sup>13</sup> for a decision increasing the relevant standard number<sup>14</sup>.

1 For the meaning of 'admission authority' see PARA 398 note 1 ante.

2 For the meaning of 'maintained school' see PARA 393 note 3 ante.

3 For these purposes, references, in relation to a school, to the 'admission number' for any relevant age group and any school year are references to the number of pupils in that age group it is intended to admit to the school in that school year: School Standards and Framework Act 1998 s 93(10). For the meaning of 'relevant age group' see PARA 396 note 12 ante. For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of s 142(8). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8).

Section 93 is repealed by the Education Act 2002 Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(1)(b)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 School Standards and Framework Act 1998 s 93(1). For the meaning of 'relevant standard number' see PARA 396 note 12 ante. As to the determination, variation and review of standard numbers see s 93(3), Sch 23 (as amended); and PARAS 409-414 post.

Following the coming into force of regulations under s 1 (as amended) (duty to set limit on infant class sizes: see PARA 405 ante) by virtue of which any limit on class sizes is to apply, or be varied, in relation to any infant class, regulations may provide for the operation of s 93(1) and s 86(5) (as substituted in relation to England; prospectively substituted in relation to Wales) (parental preferences: see PARA 396 ante) to be suspended to such extent as is considered appropriate for the purpose of enabling: (1) admission authorities to review under Sch 23 para 11 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 414 post) any standard number applicable to admissions to an infant class at any maintained school; and (2) any application to reduce any such number under Sch 23 para 4(4) (repealed) or Sch 23 para 8(4) (see PARA 411 post) (as the case may be) to be decided in accordance with Sch 23 (as amended) (see PARAS 409-414 post): s



93(8). For the meaning of 'infant class' see PARA 405 note 4 ante; definition applied by virtue of s 93(9). Regulations under s 93(8) may provide for any suspension to apply in relation to such age groups, for such period and subject to such conditions as may be specified in the regulations: s 93(9). See note 3 supra. 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made in relation to Wales for these purposes.

5 As to local education authorities see PARA 20 ante.

6 As to the governing bodies of maintained schools see PARA 203 et seq ante.

7 Ie under the School Standards and Framework Act 1998 s 1(6): see PARA 405 ante.

8 Ibid s 93(2). See note 3 supra.

9 Any such proposal: (1) must be made in writing; (2) may relate to one or more relevant age groups; and (3) may relate to a particular school year or to each school year falling within any period specified in the proposal: ibid s 93(5). See note 3 supra.

10 Ibid s 93(4)(a). See note 3 supra.

11 Ibid s 93(4)(b). See note 3 supra.

12 Ibid s 93(6). See note 3 supra.

13 Ie under ibid Sch 23 para 4(3) (repealed) or Sch 23 para 8(3) (see PARA 411 post).

14 Ibid s 93(7). See note 3 supra.

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## (C) DETERMINATION OF STANDARD NUMBERS FOR ADMISSION TO MAINTAINED SCHOOLS

### **409. Standard numbers for admission to maintained schools.**

The standard number applying to any maintained school<sup>1</sup> which immediately before 1 September 1999<sup>2</sup> was a county, voluntary or grant-maintained school<sup>3</sup> for any relevant age group<sup>4</sup> in any school year<sup>5</sup> beginning on or after 1 September 1999 is: (1) in the case of a school which immediately before 1 September 1999 was a county or voluntary school, the standard number applying to the school under the Education Act 1996<sup>6</sup> for that age group in the last school year beginning before that day<sup>7</sup>; or (2) in the case of a school which immediately before 1 September 1999 was a grant-maintained school, the approved admission number applying to the school under the Education Act 1996<sup>8</sup> for that age group in the school year beginning before that day<sup>9</sup>.

1 For the meaning of 'maintained school' see PARA 393 note 3 ante.

2 I.e. the appointed day: see PARA 102 note 3 ante.

3 I.e. within the meaning of the Education Act 1996: see PARA 102 ante. As to county, voluntary or grant-maintained schools see PARA 102 ante.

4 For the meaning of 'relevant age group' see PARA 396 note 12 ante.

5 For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6 I.e. under the Education Act 1996 ss 417-420 (repealed).

7 School Standards and Framework Act 1998 s 93(3), Sch 23 para 1(1), (2)(a).

Section 93 and Sch 23 para 1 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (except in relation to any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(1)(b)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

8 I.e. under the Education Act 1996 ss 426-428 (repealed).

9 School Standards and Framework Act 1998 Sch 23 para 1(1), (2)(b). See note 7 supra.

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#### **410. Standard numbers on establishment or alteration of school.**

Where proposals for the establishment or alteration or the rationalisation of places<sup>1</sup> have fallen to be implemented in relation to a maintained school<sup>2</sup>: (1) any number stated in the proposals as the number of pupils<sup>3</sup> which it is intended to admit to the school in any relevant age group<sup>4</sup> constitutes the standard number<sup>5</sup> applying to the school for that age group in any school year<sup>6</sup> in relation to which the proposals have been implemented<sup>7</sup>; and (2) in the case of any such proposals which provide for their implementation in stages, any number stated in the proposals as the number of pupils which it is intended to admit to the school in any relevant age group at any particular stage of implementation of the proposals constitutes the standard number applying to the school for that age group in any school year in relation to which that stage of the proposals has been implemented<sup>8</sup>.

<sup>1</sup> *I.e.* under any enactment. References in the School Standards and Framework Act 1998 Sch 23 para 2 (see the text and notes 2-8 *infra*) to proposals under any enactment are references to the proposals with any modifications made, where the school is in Wales, by the National Assembly for Wales under Sch 6 para 8 (prospectively amended) (see PARA 138 *ante*), Sch 6 para 10 (as amended) (see PARA 140 *ante*) or Sch 7 para 14 (prospectively amended) (see PARA 190 *ante*) or by the relevant authority under the Learning and Skills Act 2000 s 113A(5) (as added) (see PARA 1280 *post*) or Sch 7A para 1 (as added) (see PARAS 1282, 1290 *post*): School Standards and Framework Act 1998 s 93(3), Sch 23 para 2(3) (amended by the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2004, SI 2004/1743, reg 5). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*. For the meaning of 'school' see PARA 81 *ante*. As to the meaning of 'modifications' see PARA 43 note 7 *ante*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

Section 93 and Sch 23 para 2 are repealed by the Education Act 2002 Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (except in relation to any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(1)(b)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*.

<sup>2</sup> For the meaning of 'maintained school' see PARA 393 note 3 *ante*.

<sup>3</sup> For the meaning of 'pupil' see PARA 16 note 4 *ante*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

<sup>4</sup> For the meaning of 'relevant age group' see PARA 396 note 12 *ante*.

<sup>5</sup> Any standard number applying under the School Standards and Framework Act 1998 Sch 23 para 2(1) is without prejudice to the application under Sch 23 para 2(1) of a new standard number if further proposals under any enactment fall to be implemented: Sch 23 para 2(2) (amended by the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2004, SI 2004/1743, reg 5).

<sup>6</sup> For the meaning of 'school year' see PARA 15 note 9 *ante*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

<sup>7</sup> *Ibid* Sch 23 para 2(1)(a). See note 1 *supra*.

<sup>8</sup> *Ibid* Sch 23 para 2(1)(b). See note 1 *supra*.

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## (D) VARIATION OF STANDARD NUMBERS

### **411. Variation of standard numbers.**

The National Assembly for Wales<sup>1</sup> may by order<sup>2</sup> applying to maintained schools in Wales<sup>3</sup> of any class or description vary any standard number that would otherwise apply<sup>4</sup>. The Assembly may make a decision varying any standard number that would otherwise apply<sup>5</sup> to an individual school<sup>6</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no such order had been made.

3 For the meaning of 'maintained school' see PARA 393 note 3 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 School Standards and Framework Act 1998 s 93(3), Sch 23 paras 7, 8(1). The reference in the text to any standard number that would otherwise apply is a reference to any standard number that would otherwise apply by virtue of Sch 23 para 1 (see PARA 409 ante) or Sch 23 para 2 (see PARA 410 ante): Sch 23 para 8(1).

Schedule 23 paras 7, 8 are repealed by the Education Act 2002 Sch 22 Pt 3 as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed.

5 Ie by virtue of the School Standards and Framework Act 1998 Sch 23 para 1 (see PARA 409 ante) or Sch 23 para 2 (see PARA 410 ante) or by virtue of any order made under Sch 23 para 8(1) (see the text and notes 1-4 supra): Sch 23 para 8(2).

6 Ibid Sch 23 para 8(2). However, a decision under Sch 23 para 8(2) increasing a standard number may be made on the application of the admission authority for the school or on an application made by the governing body or local education authority in accordance with s 93(7) (see PARA 408 ante): Sch 23 para 8(3). A decision under Sch 23 para 8(2) reducing a standard number may only be made on the application of the admission authority for the school: Sch 23 para 8(4). A decision under Sch 23 para 8(2) is subject to the procedure provided for in Sch 23 para 9 (see PARA 412 post) and Sch 23 para 10 (see PARA 413 post): Sch 23 para 8(5). See notes 1, 4 supra. For the meaning of 'admission authority' see PARA 398 note 1 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. As to local education authorities see PARA 20 ante.

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#### **412. Procedure for application to vary standard number.**

Where the local education authority<sup>1</sup> or the governing body<sup>2</sup> intends to apply for a variation<sup>3</sup> of any standard number applying to a school<sup>4</sup> for any age group in any year:

- 841 (1) the local education authority or the governing body must publish its proposals<sup>5</sup> relating to the variation in such manner and containing such information as may be prescribed<sup>6</sup>; and
- 842 (2) the local education authority or the governing body must send its application, a copy of the published proposals and such information in connection with those proposals as may be prescribed to the National Assembly for Wales<sup>7</sup>.

Before making such an application, the local education authority or the governing body must consult the governing body or the local education authority, as the case may be<sup>8</sup>. In making such an application, the local education authority or the governing body must have regard to any guidance given from time to time by the Assembly, including any such guidance as to the manner in which a school's capacity to accommodate pupils<sup>9</sup> should be calculated<sup>10</sup>.

Any person may make objections to any proposals published under head (1) or head (2) above<sup>11</sup>. Such objections must be sent to the Assembly within such period as may be prescribed<sup>12</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante.

3 Ie under the School Standards and Framework Act 1998 s 93(3), Sch 23 para 8(2): see PARA 411 ante.

4 Ie under ibid Sch 23 para 1 (see PARA 409 ante), Sch 23 para 2 (see PARA 410 ante) or Sch 23 para 8 (see PARA 411 ante). For the meaning of 'school' see PARA 81 ante.

5 Where any proposals published under ibid Sch 23 para 9 relate to a school which is situated in an area other than that of the local education authority which maintains the school, the provisions of Sch 23 para 9 and Sch 23 para 10 (see PARA 413 post) have effect in relation to the proposals with such modifications as may be prescribed: Sch 23 para 9(7). As to areas of local education authorities see PARA 20 ante. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under Sch 23 para 9 see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the areas of local authorities see PARA 20 ante.

Schedule 23 para 9 is repealed by the Education Act 2002 Sch 22 Pt 3 as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed.

6 School Standards and Framework Act 1998 Sch 23 para 9(1)(a). See note 5 supra.

7 Ibid Sch 23 para 9(1)(b). See note 5 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 Ibid Sch 23 para 9(2). Schedule 23 para 9(2) does not apply in relation to any application made by the local education authority or the governing body in accordance with s 93(7) (see PARA 408 ante); Sch 23 para 9(4). See note 5 supra.

9 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

10 Ibid Sch 23 para 9(3). See notes 5, 7 supra.

11 Ibid Sch 23 para 9(5). See note 5 supra.

12 Ibid Sch 23 para 9(6). See notes 5, 7 supra.

## **UPDATE**

### **412 Procedure for application to vary standard number**

NOTE 5--SI 1999/1671 further amended: see PARA 132 NOTE 5.

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#### **413. Decision on application to vary standard number.**

On an application for a decision to vary the standard number<sup>1</sup>, the National Assembly for Wales<sup>2</sup> may:

- 843 (1) make a decision<sup>3</sup> varying the standard number to the number proposed<sup>4</sup>;
- 844 (2) where the application is for an increase in the standard number, make a decision increasing the standard number to such number (less than the number proposed) as it thinks desirable<sup>5</sup>;
- 845 (3) where the application is for a reduction of the standard number, make a decision reducing the standard number to such number (greater than the number proposed) as it thinks desirable<sup>6</sup>; or
- 846 (4) decide not to vary the standard number<sup>7</sup>.

Before making any decision in accordance with head (2) or head (3) above, the Assembly must consult the local education authority<sup>8</sup> and the governing body<sup>9</sup> of the school<sup>10</sup>. When making a decision<sup>11</sup>, the Assembly must have regard to: (a) the school organisation plan for the area in which the school is situated<sup>12</sup>; and (b) where the application is for the reduction of a standard number at a primary school<sup>13</sup>, any limit on infant class sizes imposed<sup>14</sup> which applies to that school and to any other school which is likely to be affected if any reduction of that number were to be made<sup>15</sup>.

The Assembly must not make a decision reducing a standard number unless it is satisfied that the reduction is necessary, having regard to the school's capacity to accommodate pupils<sup>16</sup>. However, where an application is for a reduction of any standard number applicable to admissions to an infant class<sup>17</sup>, and where the Assembly is satisfied that the admission to the school in any school year<sup>18</sup> of a number of children in any relevant age group<sup>19</sup> equal to the relevant standard number<sup>20</sup> would prejudice the provision of efficient education or the efficient use of resources by reason of the duty to comply with the limit on infant class sizes<sup>21</sup>, the Assembly may decide<sup>22</sup> to reduce the standard number by the smallest number which it considers sufficient to avoid such prejudice arising<sup>23</sup>.

1    Ie under the School Standards and Framework Act 1998 s 93(3), Sch 23 para 8(2): see PARA 411 ante.

2    As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3    Ie under the School Standards and Framework Act 1998 Sch 23 para 8(2): see PARA 411 ante.

4    Ibid Sch 23 para 10(1)(a). Where the National Assembly for Wales makes a decision in accordance with Sch 23 para 10(1)(a), then subject to Sch 23 para 10(2) (see the text to notes 8-10 infra), it may decide that the standard number is to be varied with effect from a date other than that specified in the application: Sch 23 para 10(6).

Regulations may make provision for enabling the Assembly to review any of its decisions made in accordance with Sch 23 para 10(1) and (if appropriate) to revoke or vary any such decision, in such circumstances as may be prescribed: Sch 23 para 10(7). See note 2 supra. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante.

As to the regulations that have been made under Sch 23 para 9 see the Education (School Organisation Proposals) (Wales) Regulations 1999, SI 1999/1671 (amended by SI 2004/908).

The School Standards and Framework Act 1998 Sch 23 para 10 is repealed by the Education Act 2002 Sch 22 Pt 3 as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed.

5 School Standards and Framework Act 1998 Sch 23 para 10(1)(b). Where the National Assembly for Wales makes a decision in accordance with Sch 23 para 10(1)(b), then subject to Sch 23 para 10(2) (see the text to notes 8-10 *infra*), it may decide that the standard number is to be varied with effect from a date other than that specified in the application: Sch 23 para 10(6). See notes 2, 4 *supra*.

6 *Ibid* Sch 23 para 10(1)(c). Where the National Assembly for Wales makes a decision in accordance with Sch 23 para 10(1)(c), then subject to Sch 23 para 10(2) (see the text to notes 8-10 *infra*), it may decide that the standard number is to be varied with effect from a date other than that specified in the application: Sch 23 para 10(6). See notes 2, 4 *supra*.

7 *Ibid* Sch 23 para 10(1)(d). See note 4 *supra*.

8 As to local education authorities see PARA 20 *ante*.

9 As to the governing bodies of maintained schools see PARA 203 *et seq ante*. For the meaning of 'maintained school' see PARA 393 note 3 *ante*.

10 School Standards and Framework Act 1998 Sch 23 para 10(2). See notes 2, 4 *supra*.

11 *Ie* in accordance with *ibid* Sch 23 para 10(1): see the text and notes 1-7 *supra*.

12 *Ibid* Sch 23 para 10(3)(a). See notes 2, 4 *supra*.

13 For the meaning of 'primary school' see PARA 81 *ante*; definition applied by virtue of *ibid* s 142(8).

14 *Ie* under *ibid* s 1 (as amended): see PARA 405 *ante*.

15 *Ibid* Sch 23 para 10(3)(b). See note 4 *supra*.

16 *Ibid* Sch 23 para 10(4). See notes 2, 4 *supra*. For the meaning of 'pupil' see PARA 16 note 4 *ante*; definition applied by virtue of s 142(8).

17 *Ibid* Sch 23 para 10(5)(a). For the meaning of 'infant class' see PARA 405 note 4 *ante*; definition applied by virtue of Sch 23 para 10(5)(a). See note 4 *supra*.

18 For the meaning of 'school year' see PARA 15 note 9 *ante*; definition applied by virtue of *ibid* s 142(8).

19 For the meaning of 'relevant age group' see PARA 396 note 12 *ante*.

20 For the meaning of 'relevant standard number' see PARA 396 note 12 *ante*.

21 *Ie* under the School Standards and Framework Act 1998 s 86(3)(a) (see PARA 396 *ante*) by reason of measures required to be taken as mentioned in s 86(4) (see PARA 396 *ante*): Sch 23 para 10(5)(b). See note 4 *supra*.

22 *Ie* under *ibid* Sch 23 para 8(2): see PARA 411 *ante*.

23 *Ibid* Sch 23 para 10(5). See notes 2, 4 *supra*.

## UPDATE

### 413 Decision on application to vary standard number

NOTE 4--SI 1999/1671 further amended: see PARA 132 NOTE 5.



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## (E) REVIEW OF STANDARD NUMBERS

### **414. Review of standard numbers.**

The admission authority<sup>1</sup> for a maintained school<sup>2</sup> must keep under review<sup>3</sup> any standard numbers applying to the school<sup>4</sup>, having regard to: (1) the school's capacity to accommodate pupils<sup>5</sup>; and (2) in the case of any standard number applicable to admissions to an infant class, the need to secure that the admission to the school in any school year<sup>6</sup> of a number of children in any relevant age group<sup>7</sup> equal to the relevant standard number<sup>8</sup> would not prejudice the provision of efficient education or the efficient use of resources<sup>9</sup> by reason of the duty to comply with the limit on infant class sizes<sup>10</sup>. Where, as a result of such a review, the authority considers that any standard number at the school should be varied in order to enable the objective referred to in head (2) above to be achieved, it must make an application for a decision<sup>11</sup> varying the standard number<sup>12</sup>.

1 For the meaning of 'admission authority' see PARA 398 note 1 ante.

2 For the meaning of 'maintained school' see PARA 393 note 3 ante.

3 The admission authority for a maintained school containing any infant class must in particular carry out a review under the School Standards and Framework Act 1998 s 93(3), Sch 23 para 11(1) as soon as reasonably practicable following the coming into force of regulations under s 1 (as amended) (see PARA 396 ante) by virtue of which any limit on class sizes is to apply, or be varied, in relation to any such class at the school: Sch 23 para 11(2). For the meaning of 'infant class' see PARA 405 note 4 ante; definition applied by virtue of Sch 23 para 11(2).

Section 93 and Sch 23 para 11 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (except in relation to any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(1)(b)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 Ie under the School Standards and Framework Act 1998 Sch 23 para 1 (see PARA 409 ante), Sch 23 para 2 (see PARA 410 ante) or Sch 23 para 8 (see PARA 411 ante).

5 Ibid Sch 23 para 11(1)(a). For the purposes of Sch 23 para 11(1), a school's capacity to accommodate pupils is calculated having regard to any guidance given from time to time by the National Assembly for Wales: Sch 23 para 11(4). See note 3 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. For the meaning of 'pupil' see PARA 16 note 4 ante.

6 For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of ibid s 142(8).

7 For the meaning of 'relevant age group' see PARA 396 note 12 ante.

8 For the meaning of 'relevant standard number' see PARA 393 note 12 ante.

9 Ie prejudice of the kind mentioned in the School Standards and Framework Act 1998 s 86(3)(a) (as amended) (see PARA 396 ante).

10 Ibid Sch 23 para 11(1)(b). The duty to comply with the limit on infant class sizes is imposed by s 1(6) (see PARA 405 ante) and prejudice might rise by reason of measures required to be taken as mentioned in s 86(4) (see PARA 396 ante): see Sch 11 para 11(1)(b). See note 3 supra.

- 11     le under ibid Sch 23 para 4(2) (revoked) or Sch 22 para 8(2) (see PARA 411 ante).
- 12     Ibid Sch 23 para 11(3). See note 3 supra.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(A) Appeal Arrangements for Parents/415. Appeal arrangements.

## ***F. ADMISSION APPEALS***

### **(A) APPEAL ARRANGEMENTS FOR PARENTS**

#### **415. Appeal arrangements.**

A local education authority<sup>1</sup> must make arrangements for:

- 847 (1) enabling the parent<sup>2</sup> of a child<sup>3</sup> to appeal against any decision made by or on behalf of the authority as to the school<sup>4</sup> at which education is to be provided for the child in the exercise of the authority's functions<sup>5</sup>, other than a decision leading to or embodied in a direction for admission<sup>6</sup>;
- 848 (2) in the case of a community or voluntary controlled school<sup>7</sup> maintained by the authority<sup>8</sup>, enabling the parent of a child to appeal against any decision made by or on behalf of the governing body<sup>9</sup> refusing the child admission to the school<sup>10</sup>; and
- 849 (3) enabling the parent of a child who has been admitted to a community or voluntary controlled school maintained by the authority to appeal against any decision made by or on behalf of the governing body refusing permission for the child to enter the school's sixth form<sup>11</sup>.

The governing body of a foundation<sup>12</sup> or voluntary aided school must make arrangements for:

- 850 (a) enabling the parent of a child to appeal against any decision made by or on behalf of the governing body refusing the child admission to the school<sup>13</sup>; and
- 851 (b) enabling the parent of a child who has been admitted to the school to appeal against any decision made by or on behalf of the governing body refusing permission for the child to enter the school's sixth form<sup>14</sup>.

Joint arrangements may be made under head (a) or head (b) above<sup>15</sup> by the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority<sup>16</sup>.

An appeal pursuant to any arrangements made under heads (1) to (3) above or head (a) or head (b) above is made to an appeal panel constituted in accordance with regulations<sup>17</sup>. Regulations may make provision about the making of appeals pursuant to such arrangements, including provision: (i) as to the procedure on such appeals<sup>18</sup>; (ii) for the payment by the local education authority of allowances to members of an appeal panel<sup>19</sup>; and (iii) as to the grounds on which an appeal panel may, in the case of any appeal against a decision made on the ground that prejudice in the provision of efficient education or the efficient use of resources<sup>20</sup> would arise by reason of the duty to comply with the limit on infant class sizes<sup>21</sup>, determine that a place is to be offered to the child concerned<sup>22</sup>.

The decision of an appeal panel on an appeal pursuant to any arrangements made under heads (1) to (3) or head (a) or head (b) above is binding on<sup>23</sup>: (A) the local education authority or the governing body by whom or on whose behalf the decision under appeal was made<sup>24</sup>; and (B) in the case of a decision made by or on behalf of a local education authority, the governing body

of a community or voluntary controlled school at which the appeal panel determines that a place should be offered to the child in question<sup>25</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(1).

3 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of ibid s 142(1).

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

5 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).

6 Ibid s 94(1)(a). The reference in the text to a direction for admission is a reference to a direction for admission under s 96 (as amended) (see PARA 430 post).

The School Standards and Framework Act 1998 s 94 (as amended) does not apply in relation to pupil referral units: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 4, Sch 2 para 1. For the meaning of 'pupil referral unit' see PARA 457 post.

As to the application of the School Standards and Framework Act 1998 s 94 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

7 As to community and voluntary schools see PARA 102 et seq ante.

8 For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

9 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante.

10 School Standards and Framework Act 1998 s 94(1)(b).

11 Ibid s 94(1A) (added by the Education Act 2002 s 51, Sch 4 para 8(1), (2)). References in the School Standards and Framework Act 1998 s 94 (as amended), in relation to a child who has been admitted to a school, to his entering the school's sixth form are to his being transferred to a class at the school in which secondary education suitable to the requirements of pupils who are over compulsory school age is provided from a class in which such education is not provided: s 94(7) (added by the Education Act 2002 Sch 4 para 8(1), (7)). For the meaning of 'secondary school' see PARA 81 ante. As to the meaning of 'compulsory school age' see PARA 15 ante.

The School Standards and Framework Act 1998 s 94(1A), (7) (as added) does not apply in England to a notice of appeal against a decision concerning the admission of a child to a maintained school in any school year earlier than 2004-2005 which has been given by a parent, but has not, before 20 January 2003, been determined by an appeal panel: see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, arts 2-3, Schedule para 3. As to transitional provisions in relation to Wales where a parent has given a notice of appeal in accordance with the School Standards and Framework Act 1998 s 94(5), Sch 24 para 9 (repealed) before 31 May 2005 see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(3)(a), Schedule. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

12 As to foundation schools see PARA 102 et seq ante.

13 School Standards and Framework Act 1998 s 94(2).

14 Ibid s 94(2A) (added by the Education Act 2002 Sch 4 para 8(1), (3)).

The School Standards and Framework Act 1998 s 94(2A) (as added) does not apply in England to a notice of appeal against a decision concerning the admission of a child to a maintained school in any school year earlier than 2004-2005 which has been given by a parent, but has not, before 20 January 2003, been determined by an appeal panel: see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, arts 2-3, Schedule para 3. As to transitional provisions in relation to Wales where a parent has given a notice of appeal in accordance with the School Standards and Framework Act 1998 s 94(5), Sch 24 para 9 (repealed) before 31 May 2005 see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(3)(a), Schedule.

15 Ie under the School Standards and Framework Act 1998 s 94(2) (see head (a) in the text) or s 94(2A) (as added) (see head (b) in the text).

16 Ibid s 94(3) (amended by the Education Act 2002 Sch 4 para 8(1), (4)). A local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority may make joint arrangements consisting of: (1) such of the arrangements made by the authority in pursuance of the School Standards and Framework Act 1998 s 94(1) (see heads (1) and (2) in the text) or s 94(1A) (as added) (see head (3) in the text) as the authority may determine; and (2) arrangements made by the governing body or bodies in pursuance of s 94(2) (see head (a) in the text) or s 94(2A) (as added) (see head (b) in the text): s 94(4) (amended by the Education Act 2002 Sch 4 para 8(1), (5)).

17 School Standards and Framework Act 1998 s 94(5) (substituted by the Education Act 2002 s 50). As to the meaning of 'appeal panel' see PARA 393 note 4 ante. Admission appeals panels constituted in accordance with regulations under the School Standards and Framework Act 1998 s 94(5) (as substituted) are under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1), Sch 1 Pt I para 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 94(5) (as substituted) and s 94(5A), (5C) (as added) (see the text and notes 18-22 infra) see the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899; and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398.

The provisions of the School Standards and Framework Act 1998 s 94(5) (as substituted), s 94(5A)-(5C) (as added) do not apply in England to a notice of appeal against a decision concerning the admission of a child to a maintained school in any school year earlier than 2004-2005 which has been given by a parent, but has not, before 20 January 2003, been determined by an appeal panel: see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, arts 2-3, Schedule para 3. As to transitional provisions in relation to Wales where a parent has given a notice of appeal in accordance with the School Standards and Framework Act 1998 s 94(5), Sch 24 para 9 (repealed) before 31 May 2005 see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(3)(a), Schedule.

18 School Standards and Framework Act 1998 s 94(5A)(a) (s 94(5A)-(5C) added by the Education Act 2002 s 50).

19 School Standards and Framework Act 1998 s 94(5A)(b) (as added: see note 18 supra). Regulations made by virtue of s 94(5A)(b) (as added) may provide for any of the provisions of the Local Government Act 1972 ss 173-174 (as amended) (allowances to members of local authorities and other bodies: see LOCAL GOVERNMENT vol 69 (2009) PARAS 171-172, 174) to apply with prescribed modifications in relation to members of an appeal panel: School Standards and Framework Act 1998 s 94(5C) (as so added). 'Prescribed' means prescribed by regulations: s 142(1). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8). See further PARA 419 post. As to appeal panels see PARA 417 et seq post.

20 Ie prejudice of the kind mentioned in ibid s 86(3)(a) (as amended) (see PARA 396 ante).

21 Ie by reason of measures required to be taken as mentioned in ibid s 86(4) (see PARA 396 ante).

22 Ibid s 94(5A)(c), (5B) (as added: see note 18 supra).

23 Ibid s 94(6) (amended by the Education Act 2002 Sch 4 para 8(1), (6)).

24 School Standards and Framework Act 1998 s 94(6)(a).

25 Ibid s 94(6)(b).

## UPDATE

### 415 Appeal arrangements

TEXT AND NOTES--School Standards and Framework Act 1998 s 94 further amended: Education and Skills Act 2008 s 152, Sch 1 para 66, Sch 2. For effect see SI 2008/3077, SI 2009/784.

NOTE 6--The reference is also to a direction for admission under the 1998 Act s 96A: s 94(1) (amended by the Education and Inspections Act 2006 s 51(1)). 1998 Act s 94 does not apply in relation to pupil referral units in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 4,

Sch 2 para 1. SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 4, Sch 2 para 1.

TEXT AND NOTES 7, 8--Head (2). For 'in the case ... the authority' read 'in a case where the governing body of a community or voluntary controlled school maintained by the authority are the admission authority': 1998 Act s 94(1) (amended by Education and Inspections Act 2006 s 43(4)).

NOTE 11--As from a day to be appointed Education Act 2002 Sch 4 para 8(7) repealed: Education and Skills Act 2008 Sch 2.

NOTE 17--SI 2002/2899 amended: SI 2007/3206, SI 2008/3092. SI 2005/1398 amended: SI 2009/823, SI 2009/1500.

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#### **416. Duty to notify parents of arrangements for making an admissions appeal.**

Particulars of the arrangements for making an appeal<sup>1</sup>, including information containing the contact details for whichever body or bodies are responsible for those arrangements, must be set out in any document containing notification to parents<sup>2</sup>:

- 852 (1) of a decision<sup>3</sup> refusing their child<sup>4</sup> admission to a school<sup>5</sup> for which the parents have<sup>6</sup> expressed a preference;
- 853 (2) of a decision<sup>8</sup> as to the school at which education is to be provided for their child<sup>9</sup>; or
- 854 (3) of a decision<sup>10</sup> refusing permission for a child who has already been admitted to a school to enter the school's sixth form<sup>11</sup>.

1 For these purposes, 'appeal' means an appeal made under the arrangements referred to, or specified, in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a)-(d) (see PARAS 417-419 post) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a)-(d) (see PARAS 417-418 post): Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 5, Sch 2 para 1(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 5, Sch 2 para 1(1).

2 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(2). As to the meaning of 'parent' see PARA 510 note 1 post.

3 Ie a decision referred to in the School Standards and Framework Act 1998 s 94(1)(b) (see PARA 415 ante) and s 94(2) (see PARA 415 ante).

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 For the meaning of 'school' see PARA 81 ante.

6 Ie in accordance with the arrangements made under the School Standards and Framework Act 1998 s 86(1) (parental preferences: see PARA 396 ante). In relation to England, this includes any co-ordinated arrangements made in accordance with ss 89B-89C (added in relation to England; prospectively added in relation to Wales) (see PARA 399 ante).

7 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(2) (a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(2)(a).

8 Ie a decision referred to in the School Standards and Framework Act 1998 s 94(1)(a) (see PARA 415 ante).

9 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(2) (b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(2)(b).

10 Ie a decision referred to in the School Standards and Framework Act 1998 s 94(1A) (as added) (see PARA 415 ante) or s 94(2A) (as added) (see PARA 415 ante).

11 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(2)(c); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(2) (c). As the meaning of a child 'entering the school's sixth form' see PARA 415 note 11 ante.

#### **UPDATE**

**416 Duty to notify parents of arrangements for making an admissions appeal**

TEXT AND NOTES--SI 2002/2899 Sch 2 substituted so as to make additional provision for the procedure on appeals by children against decisions refusing their applications for a place in a school sixth form or, in the case of children over compulsory school age, a place at a school in which suitable secondary education is provided: SI 2008/3092 (amended by SI 2009/25). SI 2005/1398 Sch 2 substituted by SI 2009/823 and amended by SI 2009/1500.



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#### **417. Appeal arrangements made by local education authorities.**

An appeal pursuant to arrangements made by a local education authority<sup>1</sup> is made to an appeal panel which consists<sup>2</sup> of three or five members appointed by the authority from: (1) persons who are eligible to be lay members<sup>3</sup>; (2) persons who have experience in education or who are acquainted with educational conditions in the area of the authority<sup>4</sup>; or (3) persons who are parents<sup>5</sup> of registered<sup>6</sup> pupils<sup>7</sup> at a school<sup>8</sup>. Of the members of an appeal panel: (a) at least one must be a person who is eligible to be a lay member and is appointed as such<sup>9</sup>; and (b) at least one must be a person falling within head (2) or head (3) above<sup>10</sup>. In relation to an appeals panel sitting in Wales<sup>11</sup>, the local education authority must appoint one member of the panel to act as chair<sup>12</sup>. Sufficient persons may be appointed by the authority to enable two or more appeal panels to sit at the same time<sup>13</sup>.

The following persons are disqualified for membership of an appeal panel<sup>14</sup>:

- 855 (i) any member of the authority or of the governing body<sup>15</sup> of the school in question<sup>16</sup>;
- 856 (ii) any person employed by the authority or the governing body, other than a person employed as a teacher<sup>17</sup>;
- 857 (iii) any person who has, or at any time has had, any connection with the authority or the school, or with any person within head (ii) above, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the authority or the school<sup>18</sup>.

A person must not be a member of an appeal panel for the consideration of an appeal against a decision if he was among those who made the decision or took part in discussions as to whether the decision should be made<sup>19</sup>. A person who is a teacher at a school must not be a member of an appeal panel for the consideration of an appeal involving a question whether a child<sup>20</sup> is to be admitted to that school<sup>21</sup>.

Where, at any time after an appeal panel consisting of five members has begun to consider an appeal, any of the members: (A) dies<sup>22</sup>; or (B) becomes unable through illness to continue as a member<sup>23</sup>; or (C) in relation to an appeals panel sitting in Wales, becomes unable to continue as a member because doubts may reasonably be raised about his ability to act impartially<sup>24</sup>, the panel may continue with its consideration and determination of the appeal so long as the number of the remaining members is not less than three and the requirements of heads (A) and (B) above (and also, in relation to Wales, head (C) above) are satisfied<sup>25</sup>.

Where an appeal is made pursuant to joint arrangements made by a local education authority and the governing body or bodies of one or more foundation or voluntary aided<sup>26</sup> schools maintained by the authority<sup>27</sup>, these provisions<sup>28</sup> apply with modifications<sup>29</sup>.

1    le under the School Standards and Framework Act 1998 s 94(1) or s 94(1A) (as added) (see PARA 415 ante). As to local education authorities see PARA 20 ante. As to admission appeal arrangements for parents generally see PARA 415 ante.

2    Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a). Admission appeals panels constituted in accordance with regulations under the School Standards and Framework Act 1998

s 94(5) (as substituted) (see PARA 415 ante) are under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1), Sch 1 Pt I para 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

As to the application of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 134-148) to admission appeal panels see *R v Richmond upon Thames London Borough Council, ex p JC* [2001] ELR 21, CA (decided before the Human Rights Act 1998 came into force, but the Convention was relied upon in arguments advanced for the claimant).

3 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a), Sch 1 para 1(1)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a), Sch 1 para 1(1)(a). For these purposes, a person is eligible to be a lay member if he is a person without personal experience in the management of any school or the provision of education in any school, disregarding any such experience as a governor or in any other voluntary capacity: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(3); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(4). As to the duty to advertise for lay members see PARA 420 post.

4 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(1)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(1)(b). As to the areas of local education authorities see PARA 20 ante.

5 As to the meaning of 'parent' see PARA 510 note 1 post.

6 For the meaning of 'registered' see PARA 512 post.

7 For the meaning of 'pupil' see PARA 16 note 4 ante.

8 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(1)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(1)(c). For the meaning of 'school' see PARA 81 ante.

9 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(2)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(2)(a).

10 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(2)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(2)(b).

11 For the meaning of 'Wales' see PARA 52 note 13 ante.

12 Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(3).

13 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(4); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(5).

14 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(5); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(6).

15 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante.

16 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(6)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(7)(a). See note 29 infra.

17 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(6)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(7)(b). See note 29 infra. In the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, any reference to a teacher includes a headteacher: reg 2(2). As to the meaning of 'head teacher' see PARA 93 note 13 ante. For these purposes, 'person employed by the authority' does not include a firm of solicitors retained from time to time: *R (on the application of L) v Independent Appeal Panel of St Edward's College* [2001] EWHC 108 (Admin), [2001] ELR 542.

18 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(6)(c); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(7)(c). A person employed as a teacher by the authority must not be taken, by reason only of that employment, to have such a connection with the authority as is mentioned in head (iii) in the text: Education (Admissions

Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(7); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(8). See note 29 *infra*.

19 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(8); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(9).

20 For the meaning of 'child' see PARA 16 note 2 *ante*.

21 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(9); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(10).

22 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(10)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11)(a).

23 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(10)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11)(b).

24 Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11)(c).

25 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(10); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11).

26 As to foundation and voluntary schools see PARA 102 *et seq ante*.

27 *Ie* in accordance with the School Standards and Framework Act 1998 s 94(4) (as amended) (see PARA 415 *ante*). For the meaning of 'school maintained by a local education authority' see PARA 94 *ante*.

28 *Ie* the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1 and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1 (see the text and notes 1-25 *supra*).

29 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(d), Sch 1 para 4; Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(d), Sch 1 para 4. The Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1 and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1 (see the text and notes 1-25 *supra*) apply in relation to joint arrangements made in accordance with the School Standards and Framework Act 1998 s 94(4) (as amended) (see PARA 415 *ante*) as they apply in relation to arrangements made by a local education authority under s 94(1) or s 94(1A) (as added) (see PARA 415 *ante*), but as if, in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(6) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(7) (see the text notes 15-18 *supra*), as the case may be, any reference to the governing body of the school in question or to that school were a reference to the governing body of any school to which the arrangements relate or to any such school (as the case may be): Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 4; and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 4.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(A) Appeal Arrangements for Parents/418. Appeal arrangements made by governing bodies.

#### **418. Appeal arrangements made by governing bodies.**

An appeal pursuant to arrangements made by the governing body<sup>1</sup> of a foundation or voluntary aided school<sup>2</sup> is made to an appeal panel which consists<sup>3</sup> of three or five members appointed by the governing body from: (1) persons who are eligible to be lay members<sup>4</sup>; and (2) persons who have experience in education or who are acquainted with educational conditions in the area of the authority<sup>5</sup>; or (3) persons who are parents<sup>6</sup> of registered<sup>7</sup> pupils<sup>8</sup> at a school<sup>9</sup>. Of the members of an appeal panel: (a) at least one must be a person who is eligible to be a lay member and is appointed as such<sup>10</sup>; and (b) at least one must be a person falling within head (2) or head (3) above<sup>11</sup>. In relation to an appeals panel sitting in Wales<sup>12</sup>, the local education authority must appoint one member of the panel to act as chair<sup>13</sup>. Sufficient persons may be appointed by the governing body to enable two or more appeal panels to sit at the same time<sup>14</sup>.

The following persons are disqualified for membership of an appeal panel<sup>15</sup>:

- 858 (i) any member of the local education authority<sup>16</sup> by whom the school is maintained or of the governing body<sup>17</sup>;
- 859 (ii) any person employed by the authority or the governing body, other than a person employed as a teacher<sup>18</sup>;
- 860 (iii) any person who has, or at any time has had, any connection with the authority or the school, or with any person within head (ii) above, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the authority or the school<sup>19</sup>.

A person who is a teacher at a school must not be a member of an appeal panel for the consideration of an appeal involving a question whether a child<sup>20</sup> is to be admitted to that school<sup>21</sup>.

Where, at any time after an appeal panel consisting of five members has begun to consider an appeal, any of the members: (A) dies<sup>22</sup>; or (B) becomes unable through illness to continue as a member<sup>23</sup>; or (C) in relation to an appeals panel sitting in Wales, becomes unable to continue as a member because doubts may reasonably be raised about his ability to act impartially<sup>24</sup>, the panel may continue with its consideration and determination of the appeal so long as the number of the remaining members is not less than three and the requirements of heads (A) and (B) above (and also, in relation to Wales, head (C) above) are satisfied<sup>25</sup>.

Where an appeal is made pursuant to joint arrangements made by the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority<sup>26</sup>, these provisions<sup>27</sup> apply with modifications<sup>28</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante. As to admission appeal arrangements for parents generally see PARA 415 ante.

2 I.e. under the School Standards and Framework Act 1998 s 94(2) or s 94(2A) (as added) (see PARA 415 ante). As to foundation and voluntary schools see PARA 102 et seq ante.

3 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(b). Admission appeals panels constituted in accordance with regulations under the School Standards and Framework Act 1998

s 94(5) (as substituted) (see PARA 415 ante) are under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1), Sch 1 Pt I para 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

As to the application of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 134-148) to admission appeal panels see *R v Richmond upon Thames London Borough Council, ex p JC* [2001] ELR 21, CA (decided before the Human Rights Act 1998 came into force, but the Convention was relied upon in arguments advanced for the claimant).

4 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(b), Sch 1 para 2(1)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(b), Sch 1 para 2(1)(a). For these purposes, a person is eligible to be a lay member if he is a person without personal experience in the management of any school or the provision of education in any school, disregarding any such experience as a governor or in any other voluntary capacity: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(3); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(4). As to the duty to advertise for lay members see PARA 420 post.

5 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(1)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(1)(b). As to the areas of local education authorities see PARA 20 ante.

6 As to the meaning of 'parent' see PARA 510 note 1 post.

7 For the meaning of 'registered' see PARA 512 post.

8 For the meaning of 'pupil' see PARA 16 note 4 ante.

9 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(1)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(1)(c). For the meaning of 'school' see PARA 81 ante.

10 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(2)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(2)(a).

11 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(2)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(2)(b).

12 For the meaning of 'Wales' see PARA 52 note 13 ante.

13 Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(3).

14 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(4); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(5).

15 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(5); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(6).

16 As to local education authorities see PARA 20 ante.

17 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(6)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(7)(a). See note 28 infra. For the meaning of 'school maintained by a local education authority' see PARA 94 ante.

18 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(6)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(7)(b). See note 28 infra. As to the meaning of 'teacher' see PARA 417 note 17 ante.

19 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(6)(c); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(7)(c). A person employed as a teacher by the authority is not taken, by reason only of that employment, to have such a connection with the authority as is mentioned in head (iii) in the text: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(7); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(8). See note 28 infra.

20 For the meaning of 'child' see PARA 16 note 2 ante.

21 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(8); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(9).

22 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(9)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(10)(a).

23 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(9)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(10)(b).

24 Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(10)(c).

25 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(9); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(10).

26 le in accordance with the School Standards and Framework Act 1998 s 94(3) (as amended) (see PARA 415 ante).

27 le the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2 and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2 (see the text and notes 1-25 supra).

28 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(c), Sch 1 para 3; Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(c), Sch 1 para 3. The Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2 and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2 (see the text and notes 1-25 supra) apply in relation to joint arrangements made in accordance with the School Standards and Framework Act 1998 s 94(3) (as amended) (see PARA 415 ante) as they apply in relation to arrangements made by a local education authority under s 94(2) or s 94(2A) (as added) (see PARA 415 ante), but as if any reference to the governing body were a reference to the governing bodies of both or all the schools, except in the case of the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2(6) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2(7) (see the text notes 15-18 supra), as the case may be, where any reference to the governing body of the school in question or to that school applies as if it were a reference to any of those governing bodies or to any of those schools: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 3; and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 3.

## **UPDATE**

### **418 Appeal arrangements made by governing bodies**

TEXT AND NOTES--SI 2002/2899 Sch 1 substituted: SI 2007/3206.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(A) Appeal Arrangements for Parents/419. Allowances for members of appeal panels.

#### **419. Allowances for members of appeal panels.**

The provisions of the Local Government Act 1972 relating to financial loss allowances<sup>1</sup> apply, with any necessary modifications, to any member of an appeal panel constituted for admission appeal arrangements made by local education authorities<sup>2</sup> or governing bodies<sup>3</sup>.

<sup>1</sup> The financial loss allowances under the Local Government Act 1972 s 173(4) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 172.

<sup>2</sup> In accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a), (d), Sch 1 paras 1, 4 (see PARA 417 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a), (d), Sch 1 paras 1, 4 (see PARA 417 ante). As to local education authorities see PARA 20 ante.

<sup>3</sup> Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(1). The reference in the text to appeal arrangements made by governing bodies is a reference to appeal arrangements made in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(b)-(d), Sch 1 paras 2-4 or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(b)-(d), Sch 1 paras 2-4 (see PARAS 417-418 ante). For these purposes, the reference to an approved duty in the Local Government Act 1972 s 173(4) (as amended) is to be read as a reference to attendance at a meeting of an appeal panel: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(1). As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante. As to appeal panels for admission appeals see PARAS 417-418 ante.

Such an appeal panel is included in the bodies to which the Local Government Act 1972 s 174(1) (as amended) (travelling and subsistence allowances :see LOCAL GOVERNMENT vol 69 (2009) PARA 174) applies: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(2).

In the Local Government Act 1972 s 174(1) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 174), in its application to a panel constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a)-(d), Sch 1 paras 1-4 (see PARAS 417-418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a)-(d), Sch 1 paras 1-4 (see PARAS 417-418 ante), the reference to payments at rates determined by the body in question is to be read as a reference to payments at rates determined: (1) by the authority, if the panel is constituted under arrangements referred to in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a), (d) (see PARAS 417-418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a), (d) (see PARAS 417-418 ante); and (2) otherwise, by the governing body or bodies of the school or schools in question: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(2).

#### **UPDATE**

#### **419 Allowances for members of appeal panels**

NOTE 3--SI 2002/2899 reg 7(1) amended: SI 2007/3206.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(A) Appeal Arrangements for Parents/420. Duty to advertise for lay members.

#### **420. Duty to advertise for lay members.**

The appropriate authority<sup>1</sup> must, during the periods specified<sup>2</sup>, secure the publication of an advertisement for lay members<sup>3</sup> of appeal panels constituted for admission appeals<sup>4</sup>. Such an advertisement must:

- 861 (1) identify by name, class, or general description, the schools<sup>5</sup> served by the appeal panels to which the advertisement refers<sup>6</sup>;
- 862 (2) be placed in at least one local newspaper circulating in the area in which the schools identified in the advertisement are situated<sup>7</sup>;
- 863 (3) allow a period of at least 21 days from the date of publication of the advertisement for replies<sup>8</sup>.

Before appointing any lay members, the appropriate authority must consider any eligible persons who have applied to the authority in response to the most recent advertisement or series of advertisements placed<sup>9</sup>, indicating that they wish to be considered for such appointment<sup>10</sup>.

1 For these purposes, 'appropriate authority' (or 'awdurdod priodol') means the body or the bodies responsible for making the arrangements described in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3 (see PARAS 417-418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3 (see PARAS 417-418 ante), as the case may be: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(1)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 2(1).

2 In every three-year period following the date upon which an advertisement (or the final advertisement of a series of advertisements) was last published by that authority: see the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(3); and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(2).

3 For this purpose, 'lay member' (or 'aelod lleyg') has the meaning given to it by the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a), Sch 1 para 1(3) (see PARA 417 ante) or reg 3(b), Sch 1 para 2(3) (see PARA 418 ante) or in the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a), Sch 1 para 1(4) (see PARA 417 ante) or reg 3(b), Sch 1 para 2(4) (see PARA 418 ante), as the case may be: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(1)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 2(1).

4 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(1). The reference in the text to appeal panels is a reference to such panels constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a)-(d), Sch 1 paras 1-4 (see PARAS 417-418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a)-(d), Sch 1 paras 1-4 (see PARAS 417-418 ante).

5 For the meaning of 'school' see PARA 81 ante.

6 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(4)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(3)(a).

7 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(4)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(3)(b).



8 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(4)(c); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(3)(c).

9 le placed in pursuance of the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(2) (see the text and notes 1-4 supra) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(1) (see the text and notes 1-4 supra), as the case may be.

10 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(5); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(4).

## **UPDATE**

### **420 Duty to advertise for lay members**

NOTE 1--SI 2002/2899 reg 4(1)(a) revoked: SI 2008/3092.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(A) Appeal Arrangements for Parents/421. Indemnity.

#### **421. Indemnity.**

Any local education authority<sup>1</sup> or governing body<sup>2</sup> required to make admission appeal arrangements<sup>3</sup> must indemnify the members of any appeal panel constituted for the purposes of those arrangements<sup>4</sup> against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that panel<sup>5</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante.

3 I.e. arrangements such as are referred to in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3 (see PARAS 417-418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3 (see PARAS 417-418 ante), as the case may be.

4 As to appeal panels for admission appeals see PARAS 417-418 ante.

5 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 8(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 8(1). Where any such appeal panel is constituted by: (1) the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority; or (2) a local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority, any liability arising under the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 8(1) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 8(1) is a joint and several liability of the bodies by whom the joint arrangements are made unless otherwise previously agreed in writing between those bodies: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 8(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 8(2). As to foundation and voluntary schools see PARA 102 et seq ante. For the meaning of 'school maintained by a local education authority' see PARA 94 ante. For the meaning of 'school' see PARA 81 ante. As to joint arrangements see PARAS 417-418 ante.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(A) Appeal Arrangements for Parents/422. Procedure for admission appeals.

#### **422. Procedure for admission appeals.**

An admission appeal<sup>1</sup> must be by notice in writing setting out the grounds on which it is made<sup>2</sup>. An appeal panel<sup>3</sup> must give the appellant an opportunity of appearing and making oral representations, and may allow him to be accompanied by a friend or to be represented<sup>4</sup>.

The matters to be taken into account by an appeal panel in considering an appeal include any preference as to the choice of school<sup>5</sup> expressed by the appellant in respect of the child<sup>6</sup> and the arrangements for the admission of pupils<sup>7</sup> published<sup>8</sup> by the local education authority<sup>9</sup> or the governing body<sup>10</sup>. Where the decision under appeal was made on the ground that prejudice in the provision of efficient education or the efficient use of resources would arise by reason of the duty to comply with the limit on infant class sizes<sup>11</sup>, an appeal panel must determine that a place is to be offered to the child only if it is satisfied: (1) that the decision was not one which a reasonable admission authority<sup>12</sup> would make in the circumstances of the case<sup>13</sup>; or (2) that the child would have been offered a place if the admission arrangements<sup>14</sup> had been properly implemented<sup>15</sup>.

Appeals are heard in private except when the body or bodies by whom the appeal arrangements<sup>16</sup> are made direct otherwise<sup>17</sup>, but: (a) if the panel so directs, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel constituted<sup>18</sup> by the local education authority<sup>19</sup>; (b) if the panel so directs, one member of the governing body of the school in question may attend, as an observer, any hearing of an appeal by an appeal panel constituted<sup>20</sup> by the local education authority and the governing body or bodies<sup>21</sup>; and (c) one member of the Council on Tribunals<sup>22</sup> may attend, as an observer, any meeting of any appeal panel at which an appeal is considered<sup>23</sup>.

In the event of a disagreement between the members of an appeal panel, the appeal under consideration must be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel has a second or casting vote<sup>24</sup>.

The decision of an appeal panel and the grounds on which it is made<sup>25</sup> must be communicated by the panel in writing to the appellant and the local education authority<sup>26</sup>, and, in the case of an appeal to an appeal panel constituted by governing bodies<sup>27</sup>, to the governing body by whom or on whose behalf the decision appealed against was made<sup>28</sup>.

All matters relating to the procedure on appeals, including the time within which they are to be brought, are determined subject to the provisions described above<sup>29</sup> by the body or bodies by whom the arrangements<sup>30</sup> for admission appeals are made<sup>31</sup>.

Should the panel have to adjourn and re-convene before all appeals are heard and the decisions reached, it should have the same members as heard the earlier appeals<sup>32</sup>. Where there are multiple appeals in relation to a school, the panel should normally hear all of them before deciding<sup>33</sup>.

1 For the meaning of 'appeal' see PARA 416 note 1 ante.

2 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 5, Sch 2 para 1(3); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 5, Sch 2 para 1(3).

3 As to appeal panels for admission appeals see PARAS 417-418 ante.

4 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(4); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(4).

As to the application of the rules of natural justice to appeals committees see *R v Birmingham City Council Education Appeals Committee, ex p B* [1999] ELR 305. Although decisions of a local education authority as to admission arrangements are not in principle immune from challenge on judicial review, it would be quite exceptional for it to be appropriate for an appeal before an appeal panel to be interrupted for such a challenge: *R (on the application of Hounslow London Borough Council) v Schools Admissions Appeal Panel for Hounslow London Borough Council* [2002] EWCA Civ 900 at [60], [2002] 1 WLR 3147 at [60], [2002] ELR 602 at [60] per May LJ, disapproving dicta of Stanley Burnton J in *R (on the application of South Gloucestershire Local Education Authority) v South Gloucestershire Schools Appeal Panel* [2001] EWHC 732 (Admin) at [50]-[51], [2002] ELR 309 at [50]-[51].

5 le as mentioned in the School Standards and Framework Act 1998 s 86 (as amended) (see PARA 396 ante).

6 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 6(1)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 6(1)(a).

7 For the meaning of 'pupil' see PARA 16 note 4 ante.

8 le in accordance with regulations made under the School Standards and Framework Act 1998 s 92 (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 402 ante).

9 As to local education authorities see PARA 20 ante.

10 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 6(1)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 6(1)(b). As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante.

11 le prejudice of the kind referred to in the School Standards and Framework Act 1998 s 86(3)(a) (as amended) (see PARA 396 ante) arising by reason of measures required to be taken as mentioned in s 86(4) (see PARA 396 ante): Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 6(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 6(2). In such cases, the panel determines an appeal under a two stage process: (1) a factual stage, whereby the panel must decide as a matter of fact whether prejudice to efficient education or efficient use of resources would arise if the child in question were admitted; and (2) a balancing stage, where the panel must exercise its discretion in weighing parental factors against the degree of prejudice in admitting the child: see *R v South Glamorgan Appeals Committee, ex p Evans* (10 May 1984) Lexis; *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033, 87 LGR 221; *W (A Minor) v Education Appeal Committee of Lancashire County Council* [1994] 3 FCR 1, [1994] ELR 530, CA. See also PARA 396 note 13 ante.

12 For the meaning of 'admission authority' see PARA 398 note 1 ante.

13 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 6(2)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 6(2)(a). See *R v Richmond-upon-Thames London Borough Council, ex p C* [2001] LGR 146, sub nom *R v Richmond London Borough Council, ex p JC* [2001] ELR 21, CA; *R (on the application of O) v St James' Roman Catholic Primary School Appeal Panel* [2001] ELR 469. It is only where there has been an inflexible application of the admission criteria which has produced a perverse result that an appeal panel will be permitted to review a case: *R (on the application of Hounslow London Borough Council) v Schools Admissions Appeal Panel for Hounslow London Borough Council* [2002] EWCA Civ 900, [2002] 1 WLR 3147, [2002] ELR 602. As to the fairness of a local education authority's policy with regard to admission to infant school classes see *R (on the application of Hounslow London Borough Council) v Schools Admissions Appeal Panel for Hounslow London Borough Council* supra at [62] per May LJ.

14 le as published under the School Standards and Framework Act 1998 s 92 (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 402 ante). For the meaning of 'admission arrangements' see PARA 398 note 1 ante.

15 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 6(2)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 6(2)(b). See *R v South Gloucestershire Education Appeals Committee, ex p Bryant* [2001] ELR 53, CA.

16 le under the School Standards and Framework Act 1998 s 94 (as amended) (see PARA 415 ante).

17 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(5); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(5).

18 le in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a), Sch 1 para 1 (see PARA 417 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a), Sch 1 para 1 (see PARA 417 ante). For these purposes, an appeal to an appeal panel so constituted as it applies by virtue of the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(d), Sch 1 para 4 (see PARA 417 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(d), Sch 1 para 4 (as the case may be) is treated: (1) as an appeal to an appeal panel constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1 or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1 if it relates to a community or voluntary controlled school; and (2) as an appeal to an appeal panel constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(b), Sch 1 para 2 or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(b), Sch 1 para 2 (see PARA 418 ante) if it relates to a foundation or voluntary aided school: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(6); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(6). As to community, foundation and voluntary schools see PARA 102 et seq ante.

19 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(6)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(6)(a).

20 le in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1 (see PARA 417 ante) or Sch 1 para 2 (see PARA 418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1 (see PARA 417 ante) or Sch 1 para 2 (see PARA 418 ante), or in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2 or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2 as it applies by virtue of the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(c), Sch 1 para 3 (see PARA 418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(c), Sch 1 para 3 (see PARA 418 ante), as the case may be: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(6)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(6)(b). See note 18 supra.

21 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(6)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(6)(b).

22 As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-57.

23 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(6)(c); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(6)(c).

24 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(7); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(7). As to the appointment of the chair in Wales see PARAS 417-418 ante.

25 As to reasons given and as to whether a standard form of decision letter is sufficient see *R v South Gloucestershire Appeals Committee, ex p C* [2000] ELR 220 at 225-226 per Dyson J; *R (on the application of C) v Admission Appeal Panel for Nottinghamshire* [2004] EWHC 2988 (Admin), [2005] ELR 182, [2004] All ER (D) 15 (Dec).

26 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(8)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(8)(a). For these purposes, an appeal to an appeal panel constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1 (see PARA 417 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1 (see PARA 417 ante) as it applies by virtue of the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 4 (see PARA 417 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 4 (see PARA 417 ante), as the case may be, is treated as an appeal to an appeal panel constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2 (see PARA 418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2 (see PARA 418 ante), if it relates to a foundation or voluntary aided school: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(9); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(9).

27 le in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 2 (see PARA 418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 2 (see PARA 418 ante), or in accordance with those provisions as they apply by virtue of the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 3 (see PARA 418 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 3 (see PARA 418 ante), as the case may be.

28 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(8)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(8)(b).

29 le subject to the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(1)-(9) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(1)-(9): see the text and notes 1-28 supra.

30 le under the School Standards and Framework Act 1998 s 94 (as amended) (see PARA 415 ante).

31 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 1(10); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 1(10).

32 *R v Camden London Borough Council, ex p S* (1990) 89 LGR 513.

33 *R v Education Appeal Committee of Leicestershire County Council, ex p Tarmohamed* [1997] ELR 48.

## UPDATE

### 422 Procedure for admission appeals

TEXT AND NOTES--SI 2005/1398 Sch 2 substituted: SI 2009/823.

TEXT AND NOTES 6-15--SI 2002/2899 reg 6 substituted (with effect from school year 2010-2011): SI 2008/3092.

NOTE 6--See *R (on the application of M) v Independent Appeal Panel of Haringey LBC* [2009] EWHC 2427 (Admin), [2009] ELR 218, [2009] All ER (D) 175 (Oct), DC (material misdirections made by Independent Appeal Panel in dismissing appeal which had refused mother's application for child to be placed at school of her choice; ruling also given on application of test at first stage of admissions appeal).

TEXT AND NOTE 13--SI 2005/1398 reg 6(2)(a) amended: SI 2009/823.

TEXT AND NOTE 17--SI 2002/2899 Sch 2 substituted: SI 2008/3092.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(B) Appeal Arrangements for Governing Bodies in relation to Decisions to admit Excluded Children/423. Appeal arrangements in relation to excluded children.

## (B) APPEAL ARRANGEMENTS FOR GOVERNING BODIES IN RELATION TO DECISIONS TO ADMIT EXCLUDED CHILDREN

### 423. Appeal arrangements in relation to excluded children.

The provisions relating to arrangements for admission appeals<sup>1</sup> do not require any arrangements to be made for enabling the parent<sup>2</sup> of a child<sup>3</sup> to appeal against a decision made by or on behalf of the admission authority<sup>4</sup> for a maintained school<sup>5</sup> and refusing the child admission to the school<sup>6</sup>, in a case where, at the time when the decision was made, the child was excluded from two or more schools<sup>7</sup>. Where a local education authority<sup>8</sup> is the admission authority for a community or voluntary controlled school<sup>9</sup>, the authority must make arrangements for enabling the governing body<sup>10</sup> of the school to appeal against any decision made by or on behalf of the authority to admit to the school such a child<sup>11</sup>.

An appeal by the governing body pursuant to any such arrangements is made to an appeal panel constituted in accordance with regulations<sup>12</sup>. Regulations may make provision about the making of appeals pursuant to such arrangements, including provision: (1) requiring prescribed<sup>13</sup> information to be given to governing bodies in prescribed circumstances<sup>14</sup>; (2) as to the procedure on such appeals<sup>15</sup>; (3) for the payment by the local education authority of allowances to members of an appeal panel<sup>16</sup>; and (4) as to the matters to which an appeal panel is to have regard in considering an appeal<sup>17</sup>.

The decision of an appeal panel is binding on the local education authority and the governing body<sup>18</sup>.

1    le under the School Standards and Framework Act 1998 s 94(1) or s 94(2): see PARA 415 ante.

2    As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 142(8).

3    For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of ibid s 142(8).

4    For the meaning of 'admission authority' see PARA 398 note 1 ante.

5    School Standards and Framework Act 1998 s 95(1)(a). For the meaning of 'maintained school' see PARA 393 note 3 ante.

As to the application of s 95 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

6    School Standards and Framework Act 1998 s 95(1)(b).

7    Ibid s 95(1). The reference in the text to the exclusion of a child from two or more schools is a reference to the exclusion of a child from two or more schools under s 87(2) (see PARA 397 ante).

8    As to local education authorities see PARA 20 ante.

9    As to community and voluntary schools see PARA 102 et seq ante.

10   As to the governing bodies of maintained schools see PARA 203 et seq ante.

11   School Standards and Framework Act 1998 s 95(2).

12 Ibid s 95(3) (substituted by the Education Act 2002 s 51, Sch 4 para 9). As to the meaning of 'appeal panel' see PARA 393 note 4 ante. Admission appeals panels constituted in accordance with regulations under the School Standards and Framework Act 1998 s 95(3) (as substituted) are under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1), Sch 1 Pt I para 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57. 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 95(3) (as substituted) and s 95(3A), (3B) (as added) (see the text and notes 13-17 infra) see the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899; and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398.

The provisions of the School Standards and Framework Act 1998 s 95(3) (as substituted) and s 95(3A), (3B) (as added) do not apply, in relation to England, to a notice of appeal against a decision concerning the admission of a child to a community or voluntary controlled school in any school year earlier than 2004-2005 which has been given by a governing body, but has not, before 20 January 2003, been determined by an appeal panel: see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, arts 2-3, Schedule para 3. As to transitional provisions in relation to Wales where a governing body has given a notice of appeal in accordance with the School Standards and Framework Act 1998 s 95(3), Sch 25 para 5 (repealed) before 31 May 2005 see the Education Act 2002 (Commencement No 6 and Transitional Provisions) (Wales) Order 2005, SI 2005/1395, arts 4, 5(4)(a), Schedule.

13 'Prescribed' means prescribed by regulations: School Standards and Framework Act 1998 s 142(1).

14 Ibid s 95(3A)(a) (s 95(3A), (3B) added by the Education Act 2002 Sch 4 para 9). See note 12 supra.

15 School Standards and Framework Act 1998 s 95(3A)(b) (as added: see note 14 supra).

16 Ibid s 95(3A)(c) (as added: see note 14 supra). Regulations made by virtue of s 95(3A)(c) (as added) may provide for any of the provisions of the Local Government Act 1972 ss 173-174 (as amended) (allowances to members of local authorities and other bodies: see LOCAL GOVERNMENT vol 69 (2009) PARAS 171-172, 174) to apply with prescribed modifications in relation to members of an appeal panel: School Standards and Framework Act 1998 s 95(3B) (as so added). See note 12 supra. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 142(8). See PARAS 424-429 post.

17 Ibid s 95(3A)(d) (as added: see note 14 supra).

18 Ibid s 95(4).

## UPDATE

### 423 Appeal arrangements in relation to excluded children

TEXT AND NOTES 5-7--School Standards and Framework Act 1998 s 95(1) amended, s 95(1A) added: Education and Skills Act 2008 Sch 1 para 67.

NOTE 11--The 1998 Act s 95(2) does not apply in relation to a decision made by or on behalf of a local education authority in England to admit to a school a child who is looked after by a local authority in England (provision for references to the adjudicator in relation to such a decision being made by s 95A): s 95(2A) (added by the Education and Inspections Act 2006 s 48(1)). Where (1) a local education authority in England is the admission authority for a community or voluntary controlled school, and (2) a decision is made by or on behalf of the authority to admit to the school a child who, at the time when the decision is made, is looked after by a local authority in England and to whom (at that time) the 1998 Act s 87(2) applies, then the local education authority must give notice of the decision to the governing body of the school, and the governing body of the school may, within the period of seven days beginning with the day on which it is notified of the decision, refer the matter to the adjudicator: s 95A(1)-(3) (s 95A added by the 2006 Act s 48(2)). Such a reference to the adjudicator may only be made on the ground that the admission of the child to the school would seriously prejudice the provision of efficient education or the efficient use of resources: 1998 Act s 95A(4). If the adjudicator determines that the admission of the child to the school would seriously prejudice the provision of efficient education or the efficient use



of resources, (a) the decision to admit the child to the school ceases to have effect, but (b) the adjudicator may determine that another maintained school in England is to be required to admit the child: s 95A(5). Such a determination that another maintained school in England is to be required to admit the child may only be made with the agreement of the local authority who look after the child, and such a determination may not be made if the child is permanently excluded from the other school or the admission of the child to the other school would seriously prejudice the provision of efficient education or the efficient use of resources: s 95A(6), (7). If the adjudicator determines under s 95A(5)(b) that another school is to be required to admit the child, the admission authority for the school must admit the child to the school and, if the admission authority is not the governing body of the school, the admission authority must give notice in writing to the governing body and head teacher of the school of the adjudicator's decision: s 95A(8). Regulations may make provision (i) requiring the adjudicator to consult prescribed persons or persons of a prescribed description before making any determination in connection with a reference under s 95A; (ii) requiring an admission authority for a maintained school to provide information which falls within a prescribed description and is requested by the adjudicator for the purposes of any such determination: s 95A(9). See the School Admissions (Adjudicator Determinations Relating to Looked After and Certain Other Children) (England) Regulations 2007, SI 2007/105.

NOTE 12--SI 2002/2899 amended: SI 2007/3206, SI 2008/3092. SI 2005/1398 amended: SI 2009/823, SI 2009/1500.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(B) Appeal Arrangements for Governing Bodies in relation to Decisions to admit Excluded Children/424. Duty to notify governing body of decision to admit an excluded child.

#### **424. Duty to notify governing body of decision to admit an excluded child.**

Where a decision<sup>1</sup> is made by or on behalf of a local education authority<sup>2</sup> to admit a child<sup>3</sup> excluded from two or more schools<sup>4</sup>, the authority must give the governing body<sup>5</sup> of the school notice in writing of that decision<sup>6</sup> and of the governing body's right to appeal against the decision<sup>7</sup>. An appeal<sup>8</sup> by the governing body against any such decision must be made not later than the fifteenth school day<sup>9</sup> after the day on which the governing body is given such a notice<sup>10</sup>.

1    Ie any such decision as is as mentioned in the School Standards and Framework Act 1998 s 95(2) (see PARA 423 ante).

2    As to local education authorities see PARA 20 ante.

3    For the meaning of 'child' see PARA 16 note 2 ante.

4    Ie a child to whom the School Standards and Framework Act 1998 s 87(2) (see PARA 397 ante) applies.

5    As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante.

6    Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 5, Sch 2 para 2(2)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 5, Sch 2 para 2(2)(a).

7    Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 5, Sch 2 para 2(2)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 5, Sch 2 para 2(2)(b). As to appeal arrangements in relation to excluded children see PARA 423 ante.

8    For these purposes, 'appeal' means an appeal made under the arrangements referred to, or specified, in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(e) (see PARA 425 post) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(e) (see PARA 425 post): Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(1).

9    For the meaning of 'school day' (or 'diwrnod ysgol') in relation to Wales see PARA 533 note 7 post; definition applied by virtue of *ibid* reg 2(1).

10   Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(3); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(3).

#### **UPDATE**

#### **424 Duty to notify governing body of decision to admit an excluded child**

TEXT AND NOTES--SI 2002/2899 Sch 2 substituted: SI 2008/3092. SI 2005/1398 Sch 2 substituted by SI 2009/823 and amended by SI 2009/1500.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(B) Appeal Arrangements for Governing Bodies in relation to Decisions to admit Excluded Children/425. Appeal panels in relation to excluded children.

#### **425. Appeal panels in relation to excluded children.**

An appeal by a governing body<sup>1</sup> against a decision<sup>2</sup> by or on behalf of a local education authority<sup>3</sup> to admit a child<sup>4</sup> excluded from two or more schools<sup>5</sup> is made to an appeal panel which consists<sup>6</sup> of three or five members appointed by the authority from: (1) persons who are eligible to be lay members<sup>7</sup>; (2) persons who have experience in education or who are acquainted with educational conditions in the area of the authority<sup>8</sup>; or (3) persons who are parents<sup>9</sup> of registered<sup>10</sup> pupils<sup>11</sup> at a school<sup>12</sup>. Of the members of an appeal panel: (a) at least one must be a person who is eligible to be a lay member and is appointed as such<sup>13</sup>; and (b) at least one must be a person falling within head (2) or head (3) above<sup>14</sup>. In relation to an appeals panel sitting in Wales<sup>15</sup>, the local education authority must appoint one member of the panel to act as chair<sup>16</sup>. Sufficient persons may be appointed by the authority to enable two or more appeal panels to sit at the same time<sup>17</sup>.

The following persons are disqualified for membership of an appeal panel<sup>18</sup>:

- 864 (i) any member of the authority or of the governing body of the school in question<sup>19</sup>;
- 865 (ii) any person employed by the authority or the governing body, other than a person employed as a teacher<sup>20</sup>;
- 866 (iii) any person who has, or at any time has had, any connection with the authority or the school, or with any person within head (ii) above, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to the authority or the school<sup>21</sup>.

A person must not be a member of an appeal panel for the consideration of an appeal against a decision to admit a child excluded from two or more schools<sup>22</sup> if he has to any extent been involved in any previous consideration of the question whether the child in question should or should not be reinstated at any school from which he has at any time been permanently excluded, or in any previous such appeal relating to the child<sup>23</sup>. A person who is a teacher at a school must not be a member of an appeal panel for the consideration of an appeal involving a question whether a child is to be admitted to that school<sup>24</sup>.

Where, at any time after an appeal panel consisting of five members has begun to consider an appeal, any of the members: (A) dies<sup>25</sup>; or (B) becomes unable through illness to continue as a member<sup>26</sup>; or (C) in relation to an appeals panel sitting in Wales, becomes unable to continue as a member because doubts may reasonably be raised about his ability to act impartially<sup>27</sup>, the panel may continue with its consideration and determination of the appeal so long as the number of the remaining members is not less than three and the requirements of heads (A) and (B) above (and also, in relation to Wales, head (C) above) are satisfied<sup>28</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante. As to appeal arrangements in relation to excluded children see PARA 423 ante.

2 As mentioned in the School Standards and Framework Act 1998 s 95(2) (see PARA 423 ante).

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 Is a child to whom the School Standards and Framework Act 1998 s 87(2) applies (see PARA 397 ante).

6 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(e); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(e). Admission appeals panels constituted in accordance with regulations under the School Standards and Framework Act 1998 s 95(3) (as substituted) (see PARA 423 ante) are under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1), Sch 1 Pt I para 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

As to the application of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 134-148) to admission appeal panels see *R v Richmond upon Thames London Borough Council, ex p JC* [2001] ELR 21, CA (decided before the Human Rights Act 1998 came into force, but the Convention was relied upon in arguments advanced for the claimant).

7 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(a), Sch 1 para 1(1)(a) (applied by reg 3(e), Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(a), Sch 1 para 1(1)(a) (applied by reg 3(e), Sch 1 para 5(1)). For these purposes, a person is eligible to be a lay member if he is a person without personal experience in the management of any school or the provision of education in any school, disregarding any such experience as a governor or in any other voluntary capacity: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(3) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(4) (applied by Sch 1 para 5(1)). As to the duty to advertise for lay members see PARA 427 post.

8 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(1)(b) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(1)(b) (applied by Sch 1 para 5(1)). As to the areas of local education authorities see PARA 20 ante.

9 As to the meaning of 'parent' see PARA 510 note 1 post.

10 For the meaning of 'registered' see PARA 512 post.

11 For the meaning of 'pupil' see PARA 16 note 4 ante.

12 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(1)(b) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(1)(c) (applied by Sch 1 para 5(1)). For the meaning of 'school' see PARA 81 ante.

13 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(2)(a) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(2)(a) (applied by Sch 1 para 5(1)).

14 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(2)(b) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(2)(b) (applied by Sch 1 para 5(1)).

15 For the meaning of 'Wales' see PARA 52 note 13 ante.

16 Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(3) (applied by Sch 1 para 5(1)).

17 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(4) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(5) (applied by Sch 1 para 5(1)).

18 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(5) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(6) (applied by Sch 1 para 5(1)).

19 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(6)(a) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(7)(a) (applied by Sch 1 para 5(1)).

20 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(6)(b) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(7)(b) (applied by Sch 1 para 5(1)). As to the meaning of references to 'teacher' and to 'person employed by the authority' see PARA 417 note 17 ante.

21 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(6)(c) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(7)(c) (applied by Sch 1 para 5(1)). A person employed as a teacher by the authority must not be taken, by reason only of that employment, to have such a connection with the authority as is mentioned in head (iii) in the text: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(7) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(8) (applied by Sch 1 para 5(1)).

22 le under the School Standards and Framework Act 1998 s 95(2) (see PARA 423 ante).

23 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 5(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 5(2).

24 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(9) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(10) (applied by Sch 1 para 5(1)).

25 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(10)(a) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11)(a) (applied by Sch 1 para 5(1)).

26 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(10)(b) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11)(b) (applied by Sch 1 para 5(1)).

27 Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11)(c) (applied by Sch 1 para 5(1)).

28 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 1(10) (applied by Sch 1 para 5(1)); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 1(11) (applied by Sch 1 para 5(1)).

## **UPDATE**

### **425 Appeal panels in relation to excluded children**

TEXT AND NOTES--SI 2002/2899 Sch 1 substituted: SI 2007/3206.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(B) Appeal Arrangements for Governing Bodies in relation to Decisions to admit Excluded Children/426. Allowances for members of panels constituted for admission appeals in relation to excluded children.

**426. Allowances for members of panels constituted for admission appeals in relation to excluded children.**

The provisions of the Local Government Act 1972 relating to financial loss allowances<sup>1</sup> apply, with any necessary modifications, to any member of an appeal panel constituted for admission appeal arrangements made by local education authorities<sup>2</sup> or governing bodies<sup>3</sup>.

<sup>1</sup> The financial loss allowances under the Local Government Act 1972 s 173(4) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 172.

<sup>2</sup> In accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(e), Sch 1 para 5 (see PARA 425 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(e), Sch 1 paras 5 (see PARA 425 ante). As to local education authorities see PARA 20 ante.

<sup>3</sup> Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(1). The reference in the text to appeal arrangements made by governing bodies is a reference to appeal arrangements made in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 5 (see PARA 425 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 5 (see PARA 425 ante). For these purposes, the reference to an approved duty in the Local Government Act 1972 s 173(4) (as amended) is to be read as a reference to attendance at a meeting of an appeal panel: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(1). As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante. As to appeal panels for admission appeals see PARAS 417-418 ante.

Such an appeal panel is included in the bodies to which the Local Government Act 1972 s 174(1) (as amended) (travelling and subsistence allowances) (see LOCAL GOVERNMENT vol 69 (2009) PARA 174) applies: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(2).

In the Local Government Act 1972 s 174(1) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 174), in its application to a panel constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 1 para 5 (see PARA 425 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 1 para 5 (see PARA 425 ante), the reference to payments at rates determined by the body in question is to be read as a reference to payments at rates determined: (1) by the authority, if the panel is constituted under arrangements referred to in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(e) (see PARA 425 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(e) (see PARA 425 ante); and (2) otherwise, by the governing body or bodies of the school or schools in question: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 7(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 7(2).

**UPDATE**

**426 Allowances for members of panels constituted for admission appeals in relation to excluded children**

NOTE 3--SI 2002/2899 reg 7(1) amended: SI 2007/3206.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(B) Appeal Arrangements for Governing Bodies in relation to Decisions to admit Excluded Children/427. Duty to advertise for lay members of panels constituted for admission appeals in relation to excluded children.

**427. Duty to advertise for lay members of panels constituted for admission appeals in relation to excluded children.**

The appropriate authority<sup>1</sup> must, during the periods specified<sup>2</sup>, secure the publication of an advertisement for lay members<sup>3</sup> of appeal panels constituted for admission appeals<sup>4</sup>. Such an advertisement must:

- 867 (1) identify by name, class, or general description, the schools<sup>5</sup> served by the appeal panels to which the advertisement refers<sup>6</sup>;
- 868 (2) be placed in at least one local newspaper circulating in the area in which the schools identified in the advertisement are situated<sup>7</sup>;
- 869 (3) allow a period of at least 21 days from the date of publication of the advertisement for replies<sup>8</sup>.

Before appointing any lay members, the appropriate authority must consider any eligible persons who have applied to the authority in response to the most recent advertisement or series of advertisements placed<sup>9</sup>, indicating that they wish to be considered for such appointment<sup>10</sup>.

1 For meaning of 'appropriate authority' see PARA 420 note 1 ante.

2 I.e. in every three-year period following the date upon which an advertisement (or the final advertisement of a series of advertisements) was last published by that authority: see the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(3); and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(2).

3 For meaning of 'lay member' see PARA 420 note 3 ante.

4 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(1). The reference in the text to appeal panels is to such panels constituted in accordance with the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(e), Sch 1 para 5 (see PARA 425 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(e), Sch 1 para 5 (see PARA 425 ante).

5 For the meaning of 'school' see PARA 81 ante.

6 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(4)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(3)(a).

7 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(4)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(3)(b).

8 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(4)(c); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(3)(c).

9 I.e. placed in pursuance of the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(2) (see the text and notes 1-4 supra) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(1) (see the text and notes 1-4 supra), as the case may be.

10 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 4(5);  
Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 4(4).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(B) Appeal Arrangements for Governing Bodies in relation to Decisions to admit Excluded Children/428. Indemnity for members of panels constituted for admission appeals in relation to excluded children.

**428. Indemnity for members of panels constituted for admission appeals in relation to excluded children.**

Any local education authority<sup>1</sup> or governing body<sup>2</sup> required to make admission appeal arrangements<sup>3</sup> must indemnify the members of any appeal panel constituted for the purposes of those arrangements<sup>4</sup> against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that panel<sup>5</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante. For the meaning of 'school' see PARA 81 ante.

3 I.e. arrangements such as are referred to in the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 3(e) (see PARA 425 ante) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 3(e) (see PARA 425 ante), as the case may be.

4 As to appeal panels for admission appeals see PARAS 417-418 ante.

5 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 8(1); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 8(1). Where any such appeal panel is constituted by: (1) the governing bodies of two or more foundation or voluntary aided schools maintained by the same local education authority; or (2) a local education authority and the governing body or bodies of one or more foundation or voluntary aided schools maintained by the authority, any liability arising under the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 8(1) or the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 8(1) is a joint and several liability of the bodies by whom the joint arrangements are made unless otherwise previously agreed in writing between those bodies: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 8(2); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 8(2). As to foundation and voluntary schools see PARA 102 et seq ante. For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to joint arrangements see PARAS 417-418 ante.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/F. ADMISSION APPEALS/(B) Appeal Arrangements for Governing Bodies in relation to Decisions to admit Excluded Children/429. Procedure for appeals by governing bodies in relation to excluded children.

#### **429. Procedure for appeals by governing bodies in relation to excluded children.**

An appeal<sup>1</sup> by a governing body<sup>2</sup> against a decision by or on behalf of a local education authority<sup>3</sup> to admit a child<sup>4</sup> excluded from two or more schools<sup>5</sup> must be by notice in writing setting out the grounds on which it is made<sup>6</sup>. The appeal panel must meet to consider an appeal on such date as the local education authority may determine<sup>7</sup>. On an appeal the panel must allow the local education authority and the governing body to make written representations<sup>8</sup>, and must allow an officer of the authority nominated by the authority, and a governor<sup>9</sup> nominated by the governing body, to appear and make oral representations<sup>10</sup>, and it must also allow the governing body to be represented<sup>11</sup>.

In considering such an appeal, the appeal panel must have regard to the reasons for the local education authority's decision that the child in question should be admitted<sup>12</sup> and any reasons put forward by the governing body as to why the child's admission would be inappropriate<sup>13</sup>.

Appeals must be heard in private except when the local education authority directs otherwise<sup>14</sup>, but: (1) if the panel so directs, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel<sup>15</sup>; and (2) one member of the Council on Tribunals<sup>16</sup> may attend, as an observer, any meeting of an appeal panel at which an appeal is considered<sup>17</sup>. Two or more appeals may be combined and dealt with in the same proceedings if the appeal panel considers that it is expedient to do so because the issues raised by the appeals are the same or connected<sup>18</sup>.

In the event of a disagreement between the members of an appeal panel, the appeal under consideration must be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel has a second or casting vote<sup>19</sup>. The decision of an appeal panel and the grounds on which it is made must be communicated by the panel in writing to the local education authority and the governing body<sup>20</sup>.

All matters relating to the procedure on appeals are determined subject to the provisions described above<sup>21</sup> by the local education authority<sup>22</sup>.

1 For the meaning of 'appeal' see PARA 424 note 8 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 393 note 3 ante.

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 I.e. a child to whom the School Standards and Framework Act 1998 s 87(2) applies (see PARA 397 ante).

6 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(4); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(4).

7 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(5); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(5). The date so determined must not be later than the fifteenth school day after the day on which the appeal is lodged (in relation to England) (Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(5)) or later than the fifteenth school day after the day on which the governing body is

given notice under the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(2) (see PARA 424 ante) (in relation to Wales) (Sch 2 para 2(5)). For the meaning of 'school day' (or 'diwrnod ysgol') in relation to Wales see PARA 533 note 2 post; definition applied by virtue of reg 2(1). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

8 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(6)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(6)(a).

9 As to the governance of schools see PARA 203 et seq ante.

10 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(6)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(6)(b).

11 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(6)(c); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(6)(c).

12 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 6(3)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 6(3)(a).

13 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, reg 6(3)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, reg 6(3)(b).

14 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(7); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(7).

15 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(7)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(7)(a).

16 As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 55-57.

17 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(7)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(7)(b).

18 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(8); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(8).

19 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(9); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(9). As to the appointment of the chair in Wales see PARA 425 ante.

20 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(10)(a); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(10)(a). The decision must be so communicated by the end of the second school day after the conclusion of the hearing of the appeal: Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(10)(b); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(10)(b).

21 In subject to the Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(2)-(10) and the Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(2)-(10): see the text and notes 1-20 supra.

22 Education (Admissions Appeals Arrangements) (England) Regulations 2002, SI 2002/2899, Sch 2 para 2(11); Education (Admission Appeals Arrangements) (Wales) Regulations 2005, SI 2005/1398, Sch 2 para 2(11).

## UPDATE

### 429 Procedure for appeals by governing bodies in relation to excluded children

TEXT AND NOTES--SI 2002/2899 Sch 2 substituted: SI 2008/3092. SI 2005/1398 Sch 2 substituted by SI 2009/823 and by SI 2009/1500.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(ix) Admission/G. POWER TO DIRECT ADMISSION OF CHILD TO SCHOOL/430. Direction to admit child to specified school.

## **G. POWER TO DIRECT ADMISSION OF CHILD TO SCHOOL**

### **430. Direction to admit child to specified school.**

The local education authority<sup>1</sup> may give a direction<sup>2</sup> to the governing body<sup>3</sup> of a school<sup>4</sup> for which it is not the admission authority<sup>5</sup>, if, in the case of any child<sup>6</sup> in its area, either (or both) of the following conditions are satisfied in relation to each school which is a reasonable distance from his home and provides suitable education<sup>7</sup>. The conditions are: (1) he has been refused admission<sup>8</sup> to the school<sup>9</sup>; or (2) he is permanently excluded<sup>10</sup> from the school<sup>11</sup>. Such a direction must specify a school which is a reasonable distance from the child's home<sup>12</sup> and from which the child is not permanently excluded<sup>13</sup>. A direction must, unless it is given on the determination of the Secretary of State<sup>14</sup>, specify a school in the area<sup>15</sup> of the local education authority<sup>16</sup>. A direction to admit a child must not specify a school if his admission would result in prejudice to the provision of efficient education or the efficient use of resources<sup>17</sup> by reason of the duty<sup>18</sup> to comply with the limit on infant class sizes<sup>19</sup>. Where a school is specified in a direction, the governing body must admit the child to the school<sup>20</sup>.

1 As to local education authorities and their areas see PARA 20 ante.

2 I.e. a direction under the School Standards and Framework Act 1998 s 96 (as amended) to admit a child to a specified school. As to the procedure for giving directions to admit a child to a specified school see PARA 431 post.

3 As to the governing bodies of maintained schools see PARA 203 et seq ante.

4 For these purposes, 'school' means a maintained school: School Standards and Framework Act 1998 s 96(8). For the meaning of 'maintained school' see PARA 393 note 3 ante.

5 For the meaning of 'admission authority' see PARA 398 note 1 ante.

6 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7 Ibid s 96(1) (amended by the Education Act 2002 s 51, Sch 4 para 10). For these purposes, 'suitable education', in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have: School Standards and Framework Act 1998 s 96(7). For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of s 142(8). Discretion only arises under s 96(1) (as amended) if the local education authority is satisfied that the conditions are satisfied in relation to 'each' school, meaning 'every' school rather than 'a' school: *R (on the application of B) v Hertfordshire County Council* [2004] EWHC 2324 (Admin), [2005] ELR 17.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 96 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (z). For the meaning of 'England' see PARA 52 note 11 ante.

As to the application of the School Standards and Framework Act 1998 s 96 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

8 As to admission arrangements see PARAS 398-404 ante.

9 School Standards and Framework Act 1998 s 96(1)(a).

10 For the meaning of 'exclude' see PARA 313 note 6 ante.

11 School Standards and Framework Act 1998 s 96(1)(b).

12 Ibid s 96(2)(a).

13 Ibid s 96(2)(b).

14 Ie under ibid s 97(4): see PARA 431 post. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

15 Ie the area specified in ibid s 96(1) (as amended): see the text and notes 1-11 supra.

16 Ibid s 96(3).

17 Ie under ibid s 86(3)(a) (as amended) (see PARA 396 ante).

18 Ie under ibid s 86(4) (see PARA 396 ante).

19 Ibid s 96(4).

20 Ibid s 96(5). However s 96(5) does not affect any power to exclude from a school a pupil who is already a registered pupil there: s 96(6). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8). For the meaning of 'registered' see PARA 512 post; definition applied by virtue of s 142(8).

## UPDATE

### 430 Direction to admit child to specified school

TEXT AND NOTES--A local education authority in England may, in relation to a child looked after by the authority, direct an admission authority for any school in England to admit the child to the school, but such a direction must not specify a school from which the child is permanently excluded: see the 1998 Act ss 84(7), 97A (ss 84(7), 97A, 97B added by the Education and Inspections Act 2006 s 50(1), (2)). As to the procedure to be followed for giving such a direction, and the local education authority's obligation to consult the admission authority before giving a direction, see the 1998 Act s 97B. See further s 97C; and PARA 431. The National Assembly for Wales may by regulations make provision about the admission of children looked after by local authorities in Wales to maintained schools in Wales: see ss 84(7), 97D (added by the 2006 Act ss 50(2), 52(1)). In exercise of the power so conferred, the Welsh Ministers have made the Education (Admission of Looked After Children) (Wales) Regulations 2009, SI 2009/821.

NOTE 14--The reference to the Secretary of State includes a reference to the National Assembly for Wales: 1998 Act s 96(4) (amended by the Education and Inspections Act 2006 s 51(2)). See also s 180.

NOTE 16--A direction under the 1998 Act s 96 must not specify a school which has in place admission arrangements that provide for selection by ability falling within the 1998 Act s 99(2)(c) (see PARA 433) unless the child satisfies the selection criteria: School Standards and Framework Act 1998 s 96(3A) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 43(3)).

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#### **431. Procedure for giving direction to admit child to specified school.**

Before deciding to give a direction to admit a child<sup>1</sup> to a specified school<sup>2</sup>, the local education authority<sup>3</sup> must consult the parent<sup>4</sup> of the child<sup>5</sup> and the governing body<sup>6</sup> of the school it proposes to specify in the direction<sup>7</sup>. Where the local education authority decides to give such a direction specifying any school: (1) it must, before doing so, serve a notice in writing of its decision on the governing body and head teacher<sup>8</sup> of the school<sup>9</sup>; and (2) it must not give the direction until the period for referring the matter to the Secretary of State<sup>10</sup> has expired and, if it is so referred, the Secretary of State has made his determination<sup>11</sup>.

The governing body may, within the period of 15 days beginning with the day on which the notice was served, refer the matter to the Secretary of State and, if it does so, must inform the local education authority<sup>12</sup>. On such a reference, the Secretary of State may determine which school is to be required to admit the child, and if he does so: (a) where the local education authority<sup>13</sup> is the admission authority<sup>14</sup> for that school, it must admit the child to the school and give notice in writing to the governing body and head teacher of the school of the Secretary of State's determination<sup>15</sup>; and (b) in any other case, that school will be specified in the direction<sup>16</sup>. The Secretary of State must not make such a determination in relation to a school if the child's admission to the school would result in prejudice to the provision of efficient education or the efficient use of resources<sup>17</sup> by reason of the duty<sup>18</sup> to comply with the limit on infant class sizes<sup>19</sup>.

A direction to admit a child to a specified school must be given by notice in writing and a copy of the notice must be given by the local education authority to the head teacher of the school<sup>20</sup>.

1 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 *Ibid* s 96 (as amended); see PARA 430 ante. For these purposes, 'school' means a maintained school: s 96(8). For the meaning of 'maintained school' see PARA 393 note 3 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 *Ibid* s 97(1)(a).

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 97 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (aa). For the meaning of 'England' see PARA 52 note 11 ante.

As to the application of the School Standards and Framework Act 1998 s 97 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

6 As to the governing bodies of maintained schools see PARA 203 et seq ante.

7 School Standards and Framework Act 1998 s 97(1)(b).

8 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 142(8).

9 *Ibid* s 97(2)(a).

10    Ie under *ibid* s 97(3): see the text to note 12 *infra*. As to the Secretary of State see PARA 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

11    *Ibid* s 97(2)(b).

12    *Ibid* s 97(3).

13    Ie the authority referred to in *ibid* s 97(1) (see the text and notes 1-7 *supra*).

14    For the meaning of 'admission authority' see PARA 398 note 1 *ante*.

15    School Standards and Framework Act 1998 s 97(4)(a) (s 97(4) substituted by the Education Act 2002 s 51, Sch 4 para 11(1), (2)).

16    School Standards and Framework Act 1998 s 97(4)(b) (as substituted: see note 15 *supra*).

17    Ie under *ibid* s 86(3)(a) (as amended) (see PARA 396 *ante*).

18    Ie under *ibid* s 86(4) (see PARA 396 *ante*).

19    *Ibid* s 97(5).

20    *Ibid* s 97(6) (substituted by the Education Act 2002 Sch 4 para 11(1), (3)).

## UPDATE

### 431 Procedure for giving direction to admit child to specified school

TEXT AND NOTES--References to the Secretary of State include references to the National Assembly for Wales: 1998 Act s 97 (amended by the Education and Inspections Act 2006 s 49). See also s 180.

Regulations may make provision in relation to England (1) requiring the adjudicator to consult prescribed persons or persons of a prescribed description before making any determination in connection with a reference under the 1998 Act s 97 or 97B; (2) requiring an admission authority for a school to provide information which falls within a prescribed description and is requested by the adjudicator for the purposes of any such determination: s 97C (added by the 2006 Act s 51(3)). See the School Admissions (Adjudicator Determinations Relating to Looked After and Certain Other Children) (England) Regulations 2007, SI 2007/105.



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## ***H. NURSERY AND SPECIAL SCHOOLS***

### **432. Special arrangements for the admission of pupils.**

The provisions of Chapter I of Part III of the School Standards and Framework Act 1998<sup>1</sup> govern arrangements for the admission<sup>2</sup> of pupils<sup>3</sup> to maintained schools<sup>4</sup>. However, special provision is made in relation to admissions for nursery education or to nursery<sup>5</sup> or special schools<sup>6</sup> and in relation to children<sup>7</sup> under the compulsory school age<sup>8</sup> or children with statements of special educational needs<sup>9</sup>.

Children admitted to a school for nursery education and subsequently transferred to a reception class<sup>10</sup> at the school are regarded for the purposes of the legislation as admitted to the school, otherwise than for nursery education, on being so transferred<sup>11</sup>.

Nothing in the statutory provisions governing admission<sup>12</sup> applies in relation to nursery schools or to children who will be under compulsory school age at the time of their proposed admission<sup>13</sup>. However, where the arrangements for the admission of pupils to a maintained school provide for the admission to the school of children who will be under compulsory school age at the time of their proposed admission, Chapter I of Part III of the School Standards and Framework Act 1998 applies in relation to the admission of such pupils to the school otherwise than for nursery education<sup>14</sup>.

The person responsible for admitting, or refusing to admit, children to a maintained school for nursery education is the person who<sup>15</sup> is the admission authority for the school<sup>16</sup>.

Nothing in the statutory provisions governing admission<sup>17</sup> applies in relation to special schools<sup>18</sup> or to children for whom statements of special educational needs are maintained<sup>19</sup>.

Regulations may make provision in connection with the arrangements for the admission of pupils to community or foundation special schools<sup>20</sup>, and for the allocation between the local education authority<sup>21</sup> and the governing body<sup>22</sup> of such a school of functions in connection with such arrangements<sup>23</sup>.

1    Ie the School Standards and Framework Act 1998 Pt III Ch I (ss 84-98) (as amended).

2    For the meaning of 'admission arrangements' see PARA 398 note 1 ante.

3    For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4    For the meaning of 'maintained school' see PARA 393 note 3 ante.

5    As to the meaning of 'nursery school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6    As to the meaning of 'special school' see PARA 1027 post; definition applied by virtue of *ibid* s 142(8). As to special schools see PARA 1027 et seq post.

7    For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of *ibid* s 142(8).

8    As to the meaning of 'compulsory school age' see PARA 15 ante.

9 For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

10 'Reception class' means a class in which education is provided which is suitable to the requirements of pupils aged five and any pupils under or over that age whom it is expedient to educate with pupils of that age: *ibid* s 142(1).

11 *Ibid* s 98(1). For the purposes of the School Standards and Framework Act 1998 generally, children are regarded as admitted to a school for nursery education if they are or are to be placed on admission in a nursery class: s 142(5). The admission of children to a school in Wales for nursery education is to be disregarded for the purpose of: (1) applying in relation to a primary school any provision of s 93 (repealed in relation to England; prospectively repealed in relation to Wales) or s 93(3), Sch 23 (repealed in relation to England; prospectively repealed in relation to Wales) (fixing of admission numbers: see PARAS 408-414 ante) which refers to the number of pupils admitted or intended to be admitted to a school in any school year; or (2) determining for the purposes of any provision of s 93 (repealed in relation to England; prospectively repealed in relation to Wales) or Sch 23 (repealed in relation to England; prospectively repealed in relation to Wales) what is a relevant age group in relation to a primary school: s 98(2). The admission of children to a school in England for nursery education is to be disregarded: (a) for the purposes of any determination under s 89 (as amended in relation to England; prospectively amended in relation to Wales) (procedure for determining admission arrangements: see PARA 398 ante) of the number of pupils in any relevant age group that it is intended to admit to a primary school in a school year; and (b) in determining for the purposes of s 89A (added in relation to England; prospectively added in relation to Wales) (determination of admission numbers: see PARA 398 ante) what is a relevant age group in relation to a primary school: s 98(2) (substituted by the Education Act 2002 s 51, Sch 4 para 12(1), (2)). For the meaning of 'relevant age group' see PARA 396 note 12 ante. For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of s 142(8).

The substitution of s 98(2) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 20 January 2003 (except in relation to the admission of a child to a maintained school for nursery education for any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, arts 2-3, Schedule para 2(a)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

As to the application of the School Standards and Framework Act 1998 s 98 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

12 *Ie* apart from the School Standards and Framework Act 1998 s 98(4A), (4B) (as added) (see the text and notes 15-16 *infra*).

13 *Ibid* s 98(3) (amended by the Education Act 2002 Sch 4 para 12(1), (3)).

14 School Standards and Framework Act 1998 s 98(4).

15 *Ie* by virtue of *ibid* s 88(1) (see PARA 398 ante).

16 *Ibid* s 98(4A) (added by the Education Act 2002 Sch 4 para 12(1), (4)). Regulations may make provision as to the person who is to be responsible for admitting, or refusing to admit, children to maintained nursery schools: School Standards and Framework Act 1998 s 98(4B) (added by the Education Act 2002 Sch 4 para 12(1), (4)). 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 98(4B) (as added).

17 *Ie* apart from, in relation to Wales, *ibid* s 92(3)-(6) (as substituted in relation to England; prospectively substituted in relation to Wales) (publication of information about admissions: see PARA 402 ante) and s 98(5) (see the text and notes 18-23 *infra*) or, in relation to England, s 92(c), (d) (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 402 ante) and s 98(5): s 98(6) (amended, in relation to England, by the Education Act 2002 (Modification of Provisions) (No 2) (England) Regulations 2002, SI 2002/2953, reg 4).

18 School Standards and Framework Act 1998 s 98(6). See note 17 *supra*.

19 *Ibid* s 98(7). The reference in the text to statements of special educational needs is a reference to statements of special educational needs maintained under the Education Act 1996 s 324 (as amended) (see PARA 996 post). However, any provision made by, or (as the case may be) by virtue of: (1) the School Standards and Framework Act 1998 s 84 (as amended) (code of practice: see PARA 393 ante); or (2) (in relation to Wales) s 92(3)-(6) (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 402

ante); or (3) (in relation to England) s 92(c), (d) (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 402 ante); or (4) s 98 (as amended; as further amended in relation to England; prospectively further amended in relation to Wales), apart from s 98(4A), (4B) (as added) (see the text and notes 15-16 supra), applies, or (as the case may be) may be made so as to apply, in relation to children for whom statements of special educational needs are maintained: s 98(8) (amended by the Education Act 2002 Sch 4 para 12(1), (5); and, in relation to England, by the Education Act 2002 (Modification of Provisions) (No 2) (England) Regulations 2002, SI 2002/2953, reg 4). For the purposes of the School Standards and Framework Act 1998 s 98(8) (as amended), the reference to any provision made by s 98 (as amended) includes a reference to s 98(4) (see the text to note 14 supra) only so far as it has effect for the purposes mentioned in s 98(9) (as substituted in relation to England; prospectively substituted in relation to Wales): s 98(10). In relation to Wales, children for whom statements of special educational needs are maintained must, in addition, be taken into account for the purposes of: (a) the reference in s 86(5) (as substituted in relation to England; prospectively substituted in relation to Wales) or s 86(9) (as amended) (parental preferences: see PARA 396 ante) to a number of pupils; and (b) the fixing of admission numbers under s 93 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 408 ante) and the determination, variation and review of standard numbers under Sch 23 (repealed in relation to England; prospectively repealed in relation to Wales) (see PARAS 408-414 ante): s 98(9). In relation to England, children for whom statements of special educational needs are maintained must, in addition, be taken into account for the purposes of: (i) the references in s 86(5) (as substituted in relation to England; prospectively substituted in relation to Wales), s 86(5B) (added in relation to England; prospectively added in relation to Wales) and s 86(9) (as amended) (see PARA 396 ante) to a number of pupils; and (ii) any determination under s 89 (as amended in relation to England; prospectively amended in relation to Wales) (procedure for determining admission arrangements: see PARA 398 ante) of the number of pupils in a relevant age group that it is intended to admit, or to admit either as boarders or otherwise than as boarders, to a school in a school year: s 98(9) (substituted by the Education Act 2002 Sch 4 para 12(1), (6)). As to the meaning of 'boarder' see PARA 26 note 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

The substitution of s 98(9) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 20 January 2003 (except in relation to the admission to a maintained school of a child for whom a statement of special educational needs is maintained under the Education Act 1996 s 324 (as amended) for any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, arts 2-3, Schedule para 2(c)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

20 As to community and foundation special schools see PARA 102 et seq ante.

21 As to local education authorities see PARA 20 ante.

22 As to the governing bodies of maintained schools see PARA 203 et seq ante.

23 School Standards and Framework Act 1998 s 98(5). As to the regulations made under s 98(5) see the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780 (amended by SI 2001/3710); and the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212 (amended by SI 2002/2469).

## UPDATE

### 432 Special arrangements for the admission of pupils

NOTES 11, 19--School Standards and Framework Act 1998 s 98(2), (9) amended: Education and Skills Act 2008 Sch 1 para 68.

NOTE 11--1998 Act s 142(5) substituted: Childcare Act 2006 Sch 2 para 35.

Day now appointed in relation to Wales: SI 2006/172.

NOTES 17, 19--References to 1998 Act s 92(3)-(6) are now to s 92(c), (d): s 98(6), (8) (amended, in relation to Wales, by SI 2006/173).

NOTE 23--SI 1999/1780 further amended: see PARA 136 NOTE 4. SI 1999/2212 revoked: SI 2007/1288. As to admission to special schools in England see Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2006/3455, reg 12A (added by SI 2006/3346).



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## ***I. SELECTION OF PUPILS***

### **(A) PARTIAL SELECTION**

#### **433. General restriction on selection by ability or aptitude.**

No admission arrangements<sup>1</sup> for a maintained school<sup>2</sup> may make provision for selection by ability<sup>3</sup> unless they make provision for a permitted form of such selection<sup>4</sup> or unless the school is a grammar school<sup>5</sup>. The following are permitted forms of selection by ability: (1) any selection by ability authorised<sup>6</sup> in relation to pre-existing arrangements<sup>7</sup>; (2) any selection by ability authorised<sup>8</sup> in relation to pupil<sup>9</sup> banding<sup>10</sup>; and (3) any selection by ability conducted in connection with the admission of pupils to the school for secondary education<sup>11</sup> suitable to the requirements of pupils who are over compulsory school age<sup>12</sup>.

No admission arrangements for a maintained school may make provision for selection by aptitude unless they make provision for a permitted form of such selection<sup>13</sup>. The following are permitted forms of selection by aptitude: (a) any selection by aptitude authorised<sup>14</sup> in relation to pre-existing arrangements<sup>15</sup>; and (b) any selection by aptitude authorised<sup>16</sup> in relation to aptitude for particular subjects<sup>17</sup>.

For the purposes of the statutory provisions relating to the selection of pupils<sup>18</sup>, a school's admission arrangements make provision for selection by ability or by aptitude if they make provision for all or any of the pupils who are to be admitted to the school in any relevant age group<sup>19</sup> to be so admitted by reference to ability or to aptitude, as the case may be<sup>20</sup>.

1 For the meaning of 'admission arrangements' see PARA 398 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 99(5)(c). As to admission arrangements generally see PARAS 398-404 ante.

2 For the purposes of *ibid* Pt III Ch II (ss 99-109) (as amended), 'maintained school' means a community, foundation or voluntary school: s 99(5)(d). As to community, foundation and voluntary schools see PARA 102 et seq ante.

3 For the purposes of *ibid* Pt III Ch II (as amended), 'ability' means either general ability or ability in any particular subject or subjects: s 99(5)(b).

4 *Ibid* s 99(1)(a).

As to the application of s 99 to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-6.

5 School Standards and Framework Act 1998 s 99(1)(b). The text refers to grammar schools as defined by s 104(7) (see PARA 438 post). As to grammar schools see PARAS 438-442 post.

6 *Ie* by *ibid* s 100: see PARA 434 post.

7 *Ibid* s 99(2)(a).

8 *Ie* by *ibid* s 101 (as amended): see PARA 435 post.

9 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of *ibid* s 142(8).

10 *Ibid* s 99(2)(b).

- 11 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of *ibid* s 142(8).
- 12 *Ibid* s 99(2)(c). As to the meaning of 'compulsory school age' see PARA 15 ante.
- 13 *Ibid* s 99(3).
- 14 *Ie* by *ibid* s 100: see PARA 434 post.
- 15 *Ibid* s 99(4)(a).
- 16 *Ie* by *ibid* s 102: see PARA 436 post.
- 17 *Ibid* s 99(4)(b).
- 18 *Ie* *ibid* Pt III Ch II (as amended).
- 19 For the meaning of 'relevant age group' see PARA 396 note 12 ante.
- 20 School Standards and Framework Act 1998 s 99(5)(a).

## **UPDATE**

### **433 General restriction on selection by ability or aptitude**

TEXT AND NOTES 1-5, 18-20--1998 Act s 99(1), (5) now Education and Inspections Act 2006 s 39(1)-(3).

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#### **434. Permitted selection: pre-existing arrangements.**

Where at the beginning of the 1997-1998 school year<sup>1</sup> the admission arrangements<sup>2</sup> for a maintained school<sup>3</sup> made provision for selection by ability<sup>4</sup> or by aptitude<sup>5</sup>, and they have at all times since that date continued to do so, the admission arrangements for the school may continue to make such provision so long as there is, as compared with the arrangements in force at the beginning of that year<sup>6</sup>, no increase in the proportion of selective admissions<sup>7</sup> in any relevant age group<sup>8</sup>, and no significant change in the basis of selection<sup>9</sup>.

1 For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 As to admission arrangements see PARAS 398-404 ante.

3 In relation to any time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), the reference in the text to a maintained school is a reference to the school as a county, voluntary or grant-maintained school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 s 100(2). For the meaning of 'maintained school' see PARA 433 note 2 ante. As to county, voluntary and grant-maintained schools see PARA 102 ante.

Nothing in s 100 applies to a school with selective admission arrangements: s 100(4). As to the meaning of 'selective admission arrangements' see PARA 438 post; definition applied by virtue of s 100(4).

4 For the meaning of 'ability' see PARA 433 note 3 ante.

5 As to the meaning of 'make provision for selection by ability or aptitude' see PARA 433 ante.

6 School Standards and Framework Act 1998 s 100(1).

7 For these purposes, 'the proportion of selective admissions', in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to ability or to aptitude (as the case may be): *ibid* s 100(3). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 100 see the Education (Proportion of Selective Admissions) Regulations 1998, SI 1998/2229. For the meaning of 'relevant age group' see PARA 396 note 12 ante. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). See note 3 *supra*.

8 *Ibid* s 100(1)(a).

9 *Ibid* s 100(1)(b).

#### **UPDATE**

#### **434 Permitted selection: pre-existing arrangements**

TEXT AND NOTES 6-9--For 'so long as ... basis of selection' read 'so long as the proportion of selective admissions in any relevant age group does not exceed the permitted proportion, and there is no significant change in the basis of selection': 1998 Act s 100(1) (s 100(1) amended, s 100(1A) added by the Education and Inspections Act 2006 s 53). 'The permitted proportion', in relation to any relevant age group, means the lowest proportion of selective admissions provided for by the school's admission

arrangements at any time since the beginning of the 1997-1998 school year: 1998 Act s 100(1A).

SI 1998/2229 replaced in relation to England: School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099).



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#### **435. Permitted selection: pupil banding.**

The admission arrangements<sup>1</sup> for a maintained school<sup>2</sup> may make provision for selection by ability<sup>3</sup> to the extent that the arrangements are designed to secure: (1) that in any year the pupils<sup>4</sup> admitted to the school in any relevant age group<sup>5</sup> are representative of all levels of ability among applicants for admission to the school in that age group<sup>6</sup>; and (2) that no level of ability is substantially over-represented or substantially under-represented<sup>7</sup>. However, where an applicant for admission has been allocated to a particular range of ability by means of some process of selection by reference to ability, some further such process is required or authorised to be carried out in relation to him for the purpose of determining whether or not he is to be admitted to the school<sup>8</sup>.

Where the admission arrangements for a school provide for selection by ability as mentioned in heads (1) and (2) above and provide for selection by aptitude<sup>9</sup> for particular subjects<sup>10</sup>, nothing in the provisions described above is taken to prevent those arrangements: (a) from authorising or requiring a process of selection to be carried out at any stage for the purpose of establishing that an applicant for admission has a relevant aptitude<sup>11</sup>; or (b) from having the effect of giving priority to such an applicant with a relevant aptitude irrespective of his level of ability<sup>12</sup>.

1 As to admission arrangements see PARAS 398-404 ante.

2 For the meaning of 'maintained school' see PARA 433 note 2 ante.

3 For the meaning of 'ability' see PARA 433 note 3 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 For the meaning of 'relevant age group' see PARA 396 note 12 ante.

6 School Standards and Framework Act 1998 s 101(1)(a). The introduction for a maintained school of admission arrangements to which s 101(1) applies is one of the alterations to such a school which are prescribed for the purposes of s 28 (as amended; prospectively further amended) (proposals for the establishment or alteration of community, foundation or voluntary school) (see PARA 132 ante); s 101(3). Such arrangements are not authorised for any school by s 101 (as amended) unless proposals for the school to have such arrangements have been published, and fallen to be implemented, under any enactment: s 101(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 109). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 101 (as amended). As to the introduction, variation and abandonment of selection see PARA 437 post.

As to the application of s 101 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5, 7.

7 School Standards and Framework Act 1998 s 101(1)(b). See note 6 supra.

8 Ibid s 101(2).

9 As to the meaning of 'make provision for selection by ability or aptitude' see PARA 433 ante.

10 I.e. as is mentioned in the School Standards and Framework Act 1998 s 102(1): see PARA 436 post.

11 Ibid s 101(5)(a).

12 Ibid s 101(5)(b).

## **UPDATE**

### **435 Permitted selection: pupil banding**

TEXT AND NOTES 1-7--The admission authority for a maintained school in England may make provision for selection by ability to the extent that the arrangements are designed to secure (1) that in any year the pupils admitted to the school in any relevant age group are representative of all levels of ability among such one of the following groups as the admission arrangements may specify ('the reference group') (a) children who are applicants for admission in that age group to any of two or more schools (including the school in question) in the area of the local education authority; (b) children in that age group who live in the area of the local education authority; or (c) children in that age group who live in England; and (2) that no level of ability is substantially over-represented or substantially under-represented by comparison with its representation in the reference group: 1998 Act s 101(1A) (added by the Education and Inspections Act 2006 s 54(1)(b)).

TEXT AND NOTE 2--le a maintained school in England or Wales: 1998 Act s 101(1) (amended by the Education and Inspections Act 2006 s 54(1)(a)).

NOTE 6--Now refers to a maintained school in Wales: 1998 Act s 101(3) (amended by the Education and Inspections Act 2006 s 54(1)(e)).

TEXT AND NOTE 8--If the admission authority for a maintained school in England is the local education authority, the authority may only introduce such provision for selection by ability as is mentioned in 1998 Act s 101(1) or (1A) with the consent of the governing body of the school: s 101(2A) (added by the Education and Inspections Act 2006 s 54(1)(d)).

NOTES 9-12--1998 Act s 101(5) also applies to admission arrangements for a school provide for selection by ability as mentioned in s 101(1A) (see TEXT AND NOTES 1-7): s 101(5) (amended by the Education and Inspections Act 2006 s 54(1)(g)).

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#### **436. Permitted selection: aptitude for particular subjects.**

The admission arrangements<sup>1</sup> for a maintained school<sup>2</sup> may make provision for the selection of pupils for admission to the school by reference to their aptitude for one or more prescribed<sup>3</sup> subjects where: (1) the admission authority<sup>4</sup> for the school is satisfied that the school has a specialism in the subject or subjects in question<sup>5</sup>; and (2) the proportion of selective admissions<sup>6</sup> in any relevant age group does not exceed 10 per cent<sup>7</sup>. However, this does not apply if the admission arrangements make provision for any test<sup>8</sup> to be carried out in relation to an applicant for admission which is either a test of ability or one designed to elicit any aptitude of his other than for the subject or subjects in question<sup>9</sup>.

1 As to admission arrangements see PARAS 398-404 ante.

2 For the meaning of 'maintained school' see PARA 433 note 2 ante.

3 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under s 102(1) see the Education (Aptitude for Particular Subjects) Regulations 1999, SI 1999/258.

4 For the meaning of 'admission authority' see PARA 398 note 1 ante.

5 School Standards and Framework Act 1998 s 102(1)(a). As to the introduction, variation and abandonment of selection see PARA 437 post.

As to the application of s 102 to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5.

6 For these purposes, 'the proportion of selective admissions', in relation to a relevant age group, means the proportion of the total number of pupils admitted to the school in that age group (determined in the prescribed manner) which is represented by the number of pupils so admitted by reference to aptitude for the subject or subjects in question: School Standards and Framework Act 1998 s 102(4). For the meaning of 'relevant age group' see PARA 396 note 12 ante. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8). As to the regulations that have been made under s 102(4) see the Education (Proportion of Selective Admissions) Regulations 1998, SI 1998/2229.

7 School Standards and Framework Act 1998 s 102(1)(b).

8 Where, however, the admission arrangements for a school make both such provision for selection by aptitude as is mentioned in *ibid* s 102(1) (see the text and notes 1-7 *supra*) and such provision for selection by ability as is mentioned in s 101(1) (pupil banding; see PARA 435 ante), the reference in s 102(2) to a test of ability does not include any such test for which provision may be made under s 101(1) (see PARA 435 ante): s 102(3). For these purposes, 'test' includes assessment and examination: s 102(5). For the meaning of 'ability' see PARA 433 note 3 ante. As to the meaning of 'make provision for selection by ability or aptitude' see PARA 433 ante.

9 *Ibid* s 102(2).

#### **UPDATE**

#### **436 Permitted selection: aptitude for particular subjects**

NOTE 3--SI 1999/258 replaced in relation to England: School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099).

NOTE 6--SI 1998/2229 replaced in relation to England: School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099).

NOTE 8--The reference is now to the School Standards and Framework Act 1998 s 101(1) or s 101(1A) (see PARA 435); s 102(3) (amended by the Education and Inspections Act 2006 s 54(2)).

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#### **437. Permitted selection: introduction, variation or abandonment of selection.**

In connection with the determination of a maintained school's<sup>1</sup> admission arrangements<sup>2</sup> for a particular school year<sup>3</sup>, the statutory provisions relating to the procedure for determining admission arrangements<sup>4</sup> and relating to the reference of objections<sup>5</sup> apply, except to the specified extent<sup>6</sup>, in relation to the making or abandonment by those arrangements of provision for any permitted form of selection by ability or aptitude as they apply in relation to the making or abandonment by those arrangements of provision for other matters<sup>7</sup>.

1 For the meaning of 'maintained school' see PARA 433 note 2 ante.

2 Any admission arrangements to which the School Standards and Framework Act 1998 s 101(1) (see PARA 435 ante) applies (whether authorised by s 100 (pre-existing arrangements: see PARA 434 ante) or by s 101 (as amended) (pupil banding: see PARA 435 ante)) may be varied if (and only if) the arrangements as varied are designed to secure the objectives mentioned in s 101(1)(a), (b) (see PARA 435 ante): s 103(3). As to admission arrangements see PARAS 398-404 ante.

As to the application of s 103 to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(b), (c), 2-5, 8.

3 For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 *Ie* under *ibid* s 89 (as amended in relation to England; prospectively amended in relation to Wales) (see PARA 398 ante).

5 *Ie* *ibid* s 90 (as amended in relation to England; prospectively amended in relation to Wales) (see PARA 400 ante).

6 For these purposes, 'the specified extent' means the extent to which those admission arrangements would effect an alteration in the provision made by the school's admission arrangements as respects any such form of selection (whether by introducing, varying or abandoning any such form of selection) which constitutes a prescribed alteration for the purposes of *ibid* s 28 (as amended) (proposals for the establishment or alteration of community, foundation or voluntary school: see PARA 132 ante): s 103(2). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 103.

7 *Ibid* s 103(1). See *R (on the application Watford Grammar School for Girls) v Adjudicator for Schools* [2003] EWHC 2480 at [62]-[65], [2004] ELR 40 at [62]-[65] per Collins J (since admission arrangements within the meaning of the School Standards and Framework Act 1998 s 103 are made annually, they may be challenged annually regardless of how long they have been in place).

#### **UPDATE**

#### **437 Permitted selection: introduction, variation or abandonment of selection**

NOTE 2--1998 Act s 103(3) amended: Education and Inspections Act 2006 s 54(3)(b).

NOTE 6--In relation to England, the prescribed alteration referred to is for the purposes of the Education and Inspections Act 2006 s 18 (see PARA 165A.5): 1998 Act s 103(2) (amended by the 2006 Act s 54(3)(a)).

TEXT AND NOTE 7--1998 Act s 103(1) amended: Education and Skills Act 2008 Sch 1 para 69.

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## (B) GRAMMAR SCHOOLS

### **438. Designation of grammar schools.**

Where the Secretary of State<sup>1</sup> is satisfied that a maintained school<sup>2</sup> had selective admission arrangements at the beginning of the 1997-1998 school year, he may by order<sup>3</sup> designate the school as a grammar school<sup>4</sup> for the purposes of the statutory provisions relating to the selection of pupils<sup>5</sup>. A school has 'selective admission arrangements' if its admission arrangements make provision for all, or substantially all, of its pupils to be selected by reference to general ability<sup>6</sup>, with a view to admitting only pupils with high ability<sup>7</sup>.

Regulations may make provision: (1) for enabling the Secretary of State to make an order designating as a grammar school<sup>8</sup> a maintained school established in substitution for one or more discontinued schools each of which either has been or could have been so designated<sup>9</sup>; and (2) for any of the provisions relating to the selection of pupils, or any regulations made under them, to have effect in relation to any such school with such modifications<sup>10</sup> as may be prescribed<sup>11</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For these purposes, 'maintained school' includes, in relation to any time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante): (1) a county or voluntary school within the meaning of the Education Act 1996; or (2) a grant-maintained school, within the meaning of the Education Act 1996: School Standards and Framework Act 1998 s 104(6). In the application of s 104(1) to a maintained school on or after 1 September 1999, the reference to the school is to be read, in connection with determining the nature of its admission arrangements at the beginning of the 1997-1998 school year, as a reference to it as a school within head (1) or head (2) supra: s 104(6). For the meaning of 'maintained school' see also PARA 433 note 2 ante. For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of s 142(8). As to admission arrangements see PARAS 398-404 ante. As to county, voluntary and grant-maintained schools see PARA 102 ante.

3 An order made under *ibid* s 104 is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 138(4) (as amended); and PARA 82 note 15 ante. As to the orders made under s 104(1) see the Education (Grammar School Designation) Order 1998, SI 1998/2219 (amended by SI 1999/2456).

4 For the purposes of the School Standards and Framework Act 1998 Pt III Ch II (ss 99-109) (as amended), 'grammar school' means a school for the time being designated under s 104: s 104(7). Where a maintained school is a grammar school, ss 105-109 (see PARAS 439-442 post) have effect for prescribing procedures for altering the school's admission arrangements so that it no longer has selective admission arrangements, and its admission arrangements must not be so altered except in accordance with ss 105-109: s 104(4). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. Regulations made under s 104(4) are local in nature, and are not recorded in this work.

5 *Ibid* s 104(1). The statutory provisions governing the selection of pupils are contained in Pt III Ch II (as amended). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8).

6 For the meaning of 'ability' see PARA 433 note 3 ante. As to the meaning of 'make provision for selection by ability' see PARA 433 ante.

7 School Standards and Framework Act 1998 s 104(2). For the purpose of deciding whether a school's admission arrangements fall within s 104(2), any such additional criteria as are mentioned in s 86(9) (as amended) (parental preferences: see PARA 396 ante) are disregarded: s 104(3). See PARA 434 note 3 ante.

8     le for the purposes of *ibid* Pt III Ch II (as amended).

9     *Ibid* s 104(5)(a). The reference in the text to designation is a reference to designation under s 104 (whether by virtue of s 104(1) (see the text and notes 1-5 *supra*) or by virtue of the regulations): s 104(5)(a). See note 11 *infra*.

10    As to the meaning of 'modifications' see PARA 43 note 7 *ante*; definition applied by virtue of *ibid* s 142(8).

11    *Ibid* s 104(5)(b). As to the regulations made under s 104(5) see the Education (Substituted Grammar Schools) Regulations 1999, SI 1999/2102.



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#### **439. Procedure for deciding whether grammar schools should retain selective admission arrangements.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision for ballots of parents<sup>3</sup> to be held, at their request, for determining whether the grammar schools<sup>4</sup> to which such ballots relate should retain selective admission arrangements<sup>5</sup>. Ballot regulations<sup>6</sup> may provide for a ballot to relate: (1) to all grammar schools within the area of a prescribed local education authority<sup>7</sup> or within such other area as may be prescribed<sup>8</sup>; (2) to a prescribed group of grammar schools<sup>9</sup>; or (3) to any grammar school not falling within head (1) or head (2) above<sup>10</sup>. Ballot regulations may make provision:

- 870 (a) requiring a request for a ballot to be made by means of a petition signed by parents eligible to request the ballot<sup>11</sup>;
- 871 (b) prescribing the form of any such petition and other requirements (whether as to the procedure to be followed or otherwise) which are to be complied with in relation to any such petition<sup>12</sup>;
- 872 (c) prescribing the body ('the designated body') to which any such petition is to be sent and which, under arrangements made by the Secretary of State, is to make the arrangements for the holding of ballots, and is to discharge such other functions with respect to such petitions and the holding of such ballots as may be prescribed<sup>13</sup>;
- 873 (d) requiring prescribed bodies or persons, or bodies or persons falling within any prescribed category: (i) to provide the designated body or any other person with any prescribed information requested by that body or person<sup>14</sup>; or (ii) to publish prescribed information in such manner as may be prescribed<sup>15</sup>;
- 874 (e) authorising any such bodies or persons to charge a fee<sup>16</sup> for documents supplied by it in pursuance of regulations made by virtue of head (d)(i) above<sup>17</sup>;
- 875 (f) prescribing the terms of the question on which a ballot is to be held and the manner in which such a ballot is to be conducted<sup>18</sup>;
- 876 (g) enabling the Secretary of State, in any prescribed circumstances, to declare a previous ballot void and require the holding of a fresh ballot<sup>19</sup>;
- 877 (h) requiring anything falling to be done under the regulations to be done within such period as may be specified in or determined in accordance with the regulations<sup>20</sup>.

Ballot regulations may provide for parents of any prescribed description to register with the designated body, in such manner and at such time as may be prescribed, in order to be eligible to request or vote in a ballot<sup>21</sup>.

Where a ballot has been held<sup>22</sup> and the result of the ballot was to the effect that the schools or school in question should retain selective admission arrangements<sup>23</sup>, no further ballot relating to the schools or school may be held within such period as is specified in ballot regulations<sup>24</sup>.

Ballot regulations may provide for a parent's eligibility for the purposes of making a request for a ballot<sup>25</sup> or voting in a ballot<sup>26</sup> to be determined by reference to such different times as may be determined in accordance with the regulations<sup>27</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under the School Standards and Framework Act 1998 s 105 see the Education (Grammar School Ballots) Regulations 1998, SI 1998/2876 (amended by SI 1999/2103); and the Education (Proposals for Grammar Schools to cease to have Selective Admission Arrangements) Regulations 1999, SI 1999/2103. The statutory instrument containing the first regulations made under the School Standards and Framework Act 1998 s 105 was not subject to annulment in pursuance of a resolution of either House of Parliament but a draft instrument containing the regulations had to be laid before and approved by a resolution of each House of Parliament: see s 138(5)(b)(iii). If a draft of the statutory instrument containing any such regulations under s 105 would otherwise be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it must proceed in that House as if it were not such an instrument: s 138(6).

3 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of *ibid* s 142(8).

4 As to the meaning of 'grammar school' see PARA 438 note 4 ante.

5 School Standards and Framework Act 1998 s 105(1). For the meaning of 'selective admission arrangements' see PARA 438 ante. As to admission arrangements see PARAS 398-404 ante.

6 Ballot regulations may provide for a request for a ballot under *ibid* s 105 to be made, in any prescribed circumstances, by means of two or more petitions: s 105(5). Ballot regulations may provide for the Education Act 1996 s 496 (as amended) (general power of the Secretary of State to prevent the unreasonable exercise of functions by a local education authority or governing body: see PARA 57 ante) and s 497 (as amended) (general power of the Secretary of State to declare a local education authority or governing body in default of its duty: see PARA 58 ante) to apply to proprietors of independent schools in relation to a duty imposed by or under the regulations: School Standards and Framework Act 1998 s 105(7). For these purposes, 'ballot regulations' means regulations made under s 105: s 105(11). 'Prescribed' means prescribed by regulations: s 142(1). As to independent schools see PARA 465 et seq post. See note 2 supra.

7 As to local education authorities and their areas see PARA 20 ante.

8 School Standards and Framework Act 1998 s 105(2)(a). In relation to a ballot under s 105(2)(a), ballot regulations must provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are: (1) registered parents of registered pupils at the following schools, namely: (a) where the ballot relates to all grammar schools within the area of a prescribed local education authority, all schools maintained by that authority; or (b) where the ballot relates to all grammar schools within a prescribed area, all schools maintained by a local education authority which are situated in such area as may be prescribed, together with (if the regulations so provide) all schools maintained by such local education authority as may be prescribed; (2) registered parents of registered pupils at independent schools where such parents are resident and the schools are situated within the area of the prescribed local education authority or (as the case may be) the prescribed area; and (3) parents of children of a prescribed description where such parents are resident within the area of the prescribed local education authority or (as the case may be) the prescribed area, and have registered with the designated body in accordance with s 105(4)(a) (see the text and note 21 *infra*): s 106(1). Ballot regulations must provide, in relation to a ballot under s 105(2)(a), that a request for such a ballot must be made by a number of eligible parents equal to at least 20% of all parents falling within head (1) or head (2) supra: s 106(3)(a). Ballot regulations must provide for a parent's eligibility for the purposes of determining the number of parents required to make a request by virtue of s 106(3) to be determined by reference to such different times as may be determined in accordance with the regulations: s 106(4)(c). Ballot regulations may make provision for determining whether parents are resident in an area for the purposes of head (2) or head (3) supra: s 106(5). For these purposes, in relation to any time falling before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), a grant-maintained school or a grant-maintained special school within the meaning of the Education Act 1996 is taken: (i) to be a school maintained by a local education authority; and (ii) to be maintained by the authority in whose area it is situated: School Standards and Framework Act 1998 s 105(10). For the meaning of 'school maintained by a local education authority' see PARA 94 ante. For the meaning of 'maintained school' see PARA 433 note 2 ante. For the meaning of 'registered' see PARA 512 post; definition applied by virtue of s 142(8). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of s 142(8). As to grant-maintained and grant-maintained special schools see PARA 102 ante. At the date at which this volume states the law, no regulations had been made under s 106. See note 2 supra. See also *R v Secretary of State for Education and Employment, ex p RCO* [2000] ELR 307.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 105 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority

Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (bb). For the meaning of 'England' see PARA 52 note 11 ante.

9 School Standards and Framework Act 1998 s 105(2)(b). In relation to a ballot under s 105(2)(b), ballot regulations must provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are registered parents of registered pupils at any school from which a prescribed number of pupils have transferred to the grammar school or schools in question at such age or ages and during such period as may be determined in accordance with the regulations: s 106(2). Such regulations may provide that where, within that period, any such grammar school has been established in substitution for another school, the schools are to be treated as a single school for the purposes of determining eligibility: s 106(2). Ballot regulations must provide, in relation to a ballot under s 105(2)(b), that a request for such a ballot must be made by at least 20% of all parents falling within s 106(2): s 106(3)(b). Ballot regulations may provide for a parent's eligibility for the purposes of determining the number of parents required to make a request by virtue of s 106(3) to be determined by reference to such different times as may be determined in accordance with the regulations: s 106(4)(c). See note 8 supra.

10 Ibid s 105(2)(c). In relation to a ballot under s 105(2)(c), ballot regulations must provide that, subject to such exceptions as may be prescribed, the parents eligible to request or vote in the ballot are registered parents of registered pupils at any school from which a prescribed number of pupils have transferred to the grammar school or schools in question at such age or ages and during such period as may be determined in accordance with the regulations: s 106(2). Such regulations may provide that where, within that period, any such grammar school has been established in substitution for another school, the schools are to be treated as a single school for the purposes of determining eligibility: s 106(2). Ballot regulations must provide, in relation to a ballot under s 105(2)(c), that a request for such a ballot must be made by at least 20% of all parents falling within s 106(2): s 106(3)(b). Ballot regulations may provide for a parent's eligibility for the purposes of determining the number of parents required to make a request by virtue of s 106(3) to be determined by reference to such different times as may be determined in accordance with the regulations: s 106(4)(c). See note 8 supra.

11 Ibid s 105(3)(a).

12 Ibid s 105(3)(b).

13 Ibid s 105(3)(c). This may include the determination of any question arising as to the validity of any request for a ballot or as to a person's eligibility to request or vote in a ballot: s 105(3)(c).

14 Ibid s 105(3)(d)(i). The information required to be provided in pursuance of s 105(3)(d) may include the names and addresses of parents of any prescribed description: s 105(6). The Secretary of State may make (or arrange for the making of) payments in respect of any expenses incurred by: (1) the governing body of a school maintained by a local education authority; (2) the proprietor of an independent school; or (3) a local education authority, in complying with any obligations which may be imposed by regulations made under heads (d)(i) and (d)(ii) in the text: s 105(9). Payments under s 105(9) may be made on such terms as the Secretary of State may determine: s 105(9). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 142(8).

15 Ibid s 105(3)(d)(ii). See note 14 supra.

16 Ie not exceeding the cost of supply: ibid s 105(3)(e).

17 Ibid s 105(3)(e).

18 Ibid s 105(3)(f).

19 Ibid s 105(3)(g).

20 Ibid s 105(3)(h).

21 Ibid s 105(4)(a). Ballot regulations may also provide that for all or any prescribed purposes of the regulations references to parents are to be read as excluding those who are not individuals: s 105(4)(b). See *R v Secretary of State for Education and Employment, ex p RCO* [2000] ELR 307.

22 School Standards and Framework Act 1998 s 105(8)(a).

23 Ibid s 105(8)(b).

24 Ibid s 105(8).

25 Ibid s 106(4)(a). See note 8 supra.

26 Ibid s 106(4)(b). See note 8 supra.

27 Ibid s 106(4). See note 8 supra.

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#### **440. Restriction on publication of material relating to ballots.**

Expenditure<sup>1</sup> must not be incurred by any local education authority or by the governing body of any school maintained by a local education authority for the purpose of<sup>2</sup>:

- 878 (1) publishing any material which, in whole or in part, appears designed to influence eligible parents<sup>3</sup> in deciding whether or not to request a ballot<sup>4</sup>, or to influence the outcome of a ballot<sup>5</sup>; or
- 879 (2) assisting any person to publish any such material<sup>6</sup>; or
- 880 (3) influencing, or assisting any person to influence, by any other means, eligible parents in deciding whether or not to request a ballot, or to influence the outcome of a ballot<sup>7</sup>.

However, this must not be taken to prevent a local education authority or body from incurring expenditure on publishing or otherwise providing to any person<sup>8</sup>: (a) any factual information so far as it is presented fairly<sup>9</sup>; or (b) a fair and reasonable assessment<sup>10</sup> by the authority or body of the likely consequences of the result of a ballot<sup>11</sup> being in favour of the school or schools in question ceasing to have selective admission arrangements<sup>12</sup>; or (c) an accurate statement by the authority or body of its intentions or proposals in the event of such a result<sup>13</sup>.

1 For these purposes, any reference to expenditure: (1) in relation to the governing body of a school which has a delegated budget within the meaning of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended) (see PARA 320 ante) (or, in relation to any time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), the Education Act 1996 Pt II (ss 31-182) (repealed)), is a reference to expenditure out of the school's budget share; or (2) in relation to the governing body of a grant-maintained or grant-maintained special school within the meaning of the Education Act 1996 (where the School Standards and Framework Act 1998 s 107 (see the text and notes 2-13 infra) applies to such a school by virtue of s 105(10)), is a reference to expenditure out of maintenance grants paid under the Education Act 1996 Pt III Ch VI (ss 211-217) (repealed): School Standards and Framework Act 1998 s 107(5). For these purposes, in relation to any time falling before 1 October 1998, a grant-maintained school or a grant-maintained special school within the meaning of the Education Act 1996 is taken: (a) to be a school maintained by a local education authority; and (b) to be maintained by the authority in whose area it is situated: School Standards and Framework Act 1998 s 105(10). For the meaning of 'school maintained by a local education authority' see PARA 94 ante. For the meaning of 'maintained school' see PARA 433 note 2 ante. For the meaning of 'budget share' see PARA 312 ante. As to grant-maintained schools and grant-maintained special schools see PARA 102 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. As to local education authorities see PARA 20 ante.

2 Ibid s 107(1), (2)(a), (b).

3 As to the meaning of 'parent' see PARA 510 note 1 post; definition applied by virtue of ibid s 142(8). As to eligible parents see PARA 439 ante.

4 Ie under ibid s 105: see PARA 439 ante.

5 Ibid s 107(1)(a).

6 Ibid s 107(1)(b).

7 Ibid s 107(1)(c).

8 Ie whether or not in pursuance of any duty to do so: ibid s 107(3).

9 Ibid s 107(3)(a). In determining for the purposes of s 107(3) whether any information is presented fairly, regard must be had to any guidance given from time to time by the Secretary of State: s 107(4)(a). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

10 In determining for the purposes of ibid s 107(3) whether an assessment is fair and reasonable, regard must be had to any guidance given from time to time by the Secretary of State: s 107(4)(b).

11 Ie under ibid s 105: see PARA 439 ante.

12 Ibid s 107(3)(b). For the meaning of 'selective admission arrangements' see PARA 438 ante. As to admission arrangements see PARAS 398-404 ante.

13 Ibid s 107(3)(c).

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#### **441. Implementation of decision that school should cease to have selective admission arrangements.**

Where the result of a ballot held to decide whether grammar schools should retain selective admission arrangements<sup>1</sup> shows a simple majority of votes cast<sup>2</sup> in favour of the grammar school<sup>3</sup> or schools to which the ballot related ceasing to have selective admission arrangements<sup>4</sup>, the admission authority<sup>5</sup> for the grammar school to which the ballot related must secure that its admission arrangements are revised<sup>6</sup> so that, as from the beginning of such school year<sup>7</sup> as may be prescribed<sup>8</sup>, the school no longer has selective admission arrangements<sup>9</sup>.

1    Ie held under the School Standards and Framework Act 1998 s 105 (see PARA 439 ante). For the meaning of 'selective admission arrangements' see PARA 438 ante. As to admission arrangements see PARAS 398-404 ante.

2    Ie by persons eligible to vote in the ballot: *ibid* s 108(1). As to eligibility to vote see PARA 439 ante.

3    As to the meaning of 'grammar school' see PARA 438 note 4 ante.

4    School Standards and Framework Act 1998 s 108(1).

5    For the meaning of 'admission authority' see PARA 398 note 1 ante.

6    Ie in accordance with the School Standards and Framework Act 1998 s 89 (as amended in relation to England; prospectively amended in relation to Wales) (procedure for determining admission arrangements: see PARA 398 ante) and s 90 (as amended in relation to England; prospectively amended in relation to Wales) (reference of objections: see PARA 400 ante).

7    For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of *ibid* s 142(8).

8    'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under s 108(2) see the Education (Grammar School Ballots) Regulations 1998, SI 1998/2876 (amended by SI 1999/2103).

The statutory instrument containing the first regulations to be made under the School Standards and Framework Act 1998 s 108(2) (see the text to note 9 *infra*) was not subject to annulment in pursuance of a resolution of either House of Parliament but a draft instrument containing the regulations had to be laid before and approved by a resolution of each House of Parliament: see s 138(5)(b)(iii).

9    *Ibid* s 108(2). Where the Secretary of State is satisfied that, in pursuance of s 108(2), a grammar school no longer has selective admission arrangements, he must revoke the order made by him with respect to the school under s 104 (see PARA 438 ante): s 108(3). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

#### **UPDATE**

#### **441 Implementation of decision that school should cease to have selective admission arrangements**

TEXT AND NOTE 9--School Standards and Framework Act 1998 s 108(2) amended: Education and Skills Act 2008 Sch 1 para 70.





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#### **442. Proposals by governing body of grammar school to end selective admission arrangements.**

The provisions described below have effect for enabling the admission arrangements<sup>1</sup> of a grammar school<sup>2</sup> to be revised<sup>3</sup> so that the school no longer has selective admission arrangements<sup>4</sup> and its admission arrangements instead either: (1) make no provision for selection by ability<sup>5</sup>; or (2) make provision for one or more of the following: (a) any selection by ability<sup>6</sup>; (b) any selection by aptitude<sup>7</sup>; and (c) any selection by ability conducted in connection with the admission of pupils<sup>8</sup> to the school for secondary education<sup>9</sup> suitable to the requirements of pupils who are over compulsory school age<sup>10</sup>. Regulations<sup>11</sup> may provide that: (i) in their application to any proposals for any such revision of the admission arrangements of a grammar school, any of the provisions relating to proposals for the establishment or alteration of community, foundation or voluntary schools<sup>12</sup> are to have effect with such modifications<sup>13</sup> as may be prescribed<sup>14</sup>; (ii) in any prescribed circumstances following the making of a request for a ballot to be held<sup>15</sup>, any such proposals are to be of no effect<sup>16</sup>. Where the Secretary of State is satisfied that, by reason of the implementation of any such proposals, a grammar school no longer has selective admission arrangements, he may revoke the order made by him with respect to the school<sup>17</sup>.

1 As to admission arrangements see PARAS 398-404 ante.

2 As to the meaning of 'grammar school' see PARA 438 note 4 ante.

3 I.e. revised otherwise than in circumstances where the School Standards and Framework Act 1998 s 108(2) (see PARA 441 ante) applies: s 109(1). Any such revision of the admission arrangements of a grammar school is one of the alterations to a maintained school which are prescribed for the purposes of s 28 (as amended) (proposals for the establishment or alteration of community, foundation or voluntary school: see PARA 132 ante): s 109(2). However, any proposals for any such revision of the admission arrangements of a grammar school which is a community school must be published under s 28 (as amended) (see PARA 132 ante) by the governing body and not by the local education authority: s 109(2). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to alterations to maintained schools prescribed for the purposes of s 28 (as amended) see PARA 132 ante. For the meaning of 'maintained school' see PARA 433 note 2 ante. As to community, foundation and voluntary schools see PARA 102 et seq ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. As to local education authorities see PARA 20 ante.

4 For the meaning of 'selective admission arrangements' see PARA 438 ante.

5 School Standards and Framework Act 1998 s 109(1)(a). For the meaning of 'ability' see PARA 433 note 3 ante. As to the meaning of 'make provision for selection by ability or aptitude' see PARA 433 ante.

6 Ibid s 109(1)(b)(i). The reference in the text to selection by ability is a reference to selection by ability authorised by s 101 (as amended) (pupil banding: see PARA 435 ante).

7 Ibid s 109(1)(b)(ii). The reference in the text to selection by aptitude is a reference to selection by aptitude authorised by s 102 (aptitude for particular subjects: see PARA 436 ante).

8 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

9 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 142(8).

10 See *ibid* ss 99(2)(c), 109(1)(b)(iii). As to the meaning of 'compulsory school age' see PARA 15 ante.

11 As to the regulations made under *ibid* s 109 see the Education (Proposals for Grammar Schools to cease to have Selective Admission Arrangements) Regulations 1999, SI 1999/2103.

12 *Ie* under the School Standards and Framework Act 1998 s 28 (as amended) or Sch 6 (as amended): s 109(3)(a).

13 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 142(8).

14 *Ibid* s 109(3)(a).

15 *Ie* under *ibid* s 105 (procedure for deciding whether grammar schools should retain selective admission arrangements: see PARA 439 ante). Regulations made under s 105 may make provision, in relation to cases where any such proposals under s 28 (as amended) (see PARA 132 ante) have fallen to be implemented under Sch 6 para 5 (as amended) (see PARA 140 ante) or Sch 6 para 10 (as amended) (see PARA 140 ante), for requiring the school to which the proposals relate to be disregarded for the purposes of any regulations made under s 105(2): s 109(4). See note 11 *supra*.

16 *Ibid* s 109(3)(b).

17 *Ibid* s 109(5). The order referred to in the text is an order made by the Secretary of State under s 104 (designation of grammar schools: see PARA 438 ante). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

## UPDATE

### **442 Proposals by governing body of grammar school to end selective admission arrangements**

NOTE 3--For 'for the purposes of s 28' read 'under the Education and Inspections Act 2006 s 18'; for 'published under s 28' read 'published under the 2006 Act s 19': 1998 Act s 109(2) (amended by the 2006 Act Sch 3 para 29).

NOTE 12--For 'School Standards and Framework Act 1998 s 28 (as amended) or Sch 6 (as amended)' read 'Education and Inspections Act 2006 ss 19-24': 1998 Act s 109(3) (a) (amended by the 2006 Act Sch 3 para 29).

NOTE 15--For 'under s 28' read 'under the Education and Inspections Act 2006 s 19'; for 'under Sch 6 para 5 or Sch 6 para 10' read 'under the 2006 Act s 24': 1998 Act s 109(4) (amended by the 2006 Act Sch 3 para 29).

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## **(x) Charges in connection with Education at Maintained Schools**

### **443. Prohibition of charges for admission.**

No charge may be made in respect of admission to a maintained school<sup>1</sup>. However, this does not apply to the admission of any person to any maintained school for the purpose of: (1) part-time education suitable to the requirements of persons of any age over compulsory school age<sup>2</sup>; (2) full-time education suitable to the requirements of persons who have attained the age of 19<sup>3</sup>; or (3) training for members of the school workforce<sup>4</sup>.

1 Education Act 1996 s 450(1). For the purposes of Pt VI Ch III (ss 449-462) (as amended), 'maintained school' means any school maintained by a local education authority: s 449 (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 119). For the meaning of 'school' see PARA 81 ante. For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante. As to local education authorities see PARA 20 ante. As to admission arrangements generally see PARAS 398-404 ante.

2 Education Act 1996 s 450(2)(a). As to the meaning of 'compulsory school age' see PARA 15 ante.

3 Ibid s 450(2)(b).

4 Ibid s 450(2)(c) (substituted by the Education Act 2005 s 98, Sch 14 para 17(1), (2)). For this purpose, the reference to training for members of the school workforce is to be read in accordance with the Education Act 2005 s 75(5) and s 96(1) (see PARA 793 notes 4, 7 post): Education Act 1996 s 450(3) (added by the Education Act 2005 Sch 14 para 17(1), (3)).

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#### **444. Prohibition of charges for provision of education.**

In relation to education provided at any maintained school<sup>1</sup> for a registered pupil<sup>2</sup> at the school, no charge may be made in respect of education provided for the pupil<sup>3</sup> during school hours<sup>4</sup>. However, this does not apply in relation to tuition in playing a musical instrument where the tuition is provided either individually or to a group of not more than four pupils, unless the tuition is<sup>5</sup>: (1) required as part of a syllabus for a prescribed public examination<sup>6</sup> which is a syllabus for which the pupil is being prepared at the school<sup>7</sup>; or (2) provided in pursuance of duties imposed in relation to the implementation of the National Curriculum for England<sup>8</sup> or the National Curriculum for Wales<sup>9</sup>, or in relation to securing due provision of religious education<sup>10</sup>. Where the education is provided for the pupil outside school hours no charge must be made in respect of it if it is: (a) required as part of a syllabus for a prescribed public examination which is a syllabus for which the pupil is being prepared at the school; or (b) provided in pursuance of duties imposed in relation to the implementation of the National Curriculum for England<sup>11</sup> or the National Curriculum for Wales<sup>12</sup>, or in relation to securing due provision of religious education<sup>13</sup>. Nothing in the provisions described above is to be read as prohibiting the making of a charge in respect of board and lodging provided for a registered pupil at a maintained school on a residential trip<sup>14</sup>.

Where a period allowed for any educational activity at a maintained school falls partly during school hours and partly outside school hours, then:

- 881 (i) if 50 per cent or more of the time occupied by that period together with any connected school travelling time<sup>15</sup> falls during school hours, so much of the education provided during that period as is provided outside school hours must be treated for the purposes of the statutory provisions prohibiting charges for the provision of education<sup>16</sup> as provided during school hours<sup>17</sup>; and
- 882 (ii) in any other case, so much of the education provided during that period as is provided during school hours is to be treated for those purposes as provided outside school hours<sup>18</sup>.

Where any education provided at a maintained school is provided on a residential trip, then: (A) if the number of school sessions taken up by the trip is equal to or greater than 50 per cent of the number of half days<sup>19</sup> spent on the trip, any education provided on the trip which is provided outside school hours is to be treated as provided during school hours<sup>20</sup>; (B) and in any other case, any education provided on the trip which is provided during school hours is to be treated as provided outside school hours<sup>21</sup>.

1 For the meaning of 'maintained school' see PARA 443 note 2 ante.

2 For the meaning of 'registered pupil' see PARA 512 post.

3 For the meaning of 'pupil' see PARA 16 note 4 ante.

4 Education Act 1996 s 451(1), (2) (s 451(1) amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 120(a), Sch 31). See also *R v Hereford and Worcester Local Education Authority, ex p Jones* [1981] 1 WLR 768, 79 LGR 490 (decided in relation to a similarly worded provision of the Education Act 1944 s 61(1) (now repealed)).

5 Education Act 1996 s 451(3).

6 In *ibid* Pt VI Ch III (ss 449-462) (as amended), references to a public examination, or a prescribed public examination, are references to such an examination as it applies in relation to persons who are entered for a syllabus for that examination with a view to meeting the examination requirements for that syllabus so as to qualify for assessment for the purposes of determining their achievements in that examination on any particular occasion in any year when an assessment takes place: s 462(4). For these purposes, 'an assessment' means an assessment for the purposes of determining the achievements of persons entered for the examination in question: s 462(5)(a). Such an assessment is to be regarded as taking place on any occasion on which it is determined in relation to each person entered for any syllabus in that examination who has met the examination requirements for that syllabus whether he has passed or failed, and, if grades are assigned for the purposes of the examination, the grade to be assigned in his case: s 462(5)(b). 'Examination requirement', in relation to a syllabus for an examination, means a requirement which a pupil must meet in order to qualify for assessment for the purposes of determining his achievements in that examination in that syllabus: s 462(1).

7 *Ibid* s 451(3)(a). For the purposes of Pt VI Ch III (as amended), a pupil is to be regarded as having been prepared at a school for a prescribed public examination if any part of the education provided with a view to preparing him for that examination in that syllabus has been provided for him at that school: s 462(3).

'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see *PARA 52 ante*. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see *PARA 53 ante*. As to the making of regulations generally under the Education Act 1996 see *PARA 40 note 5 ante*. As to the public examinations which have been prescribed see the Education (Prescribed Public Examinations) Regulations 1989, SI 1989/377, which have effect, by virtue of the Education Act 1996 s 582(3), Sch 39 Pt I para 1, as if made under s 451 (as amended).

8 *Ie* a duty imposed by the Education Act 2002 s 88 (implementation of the National Curriculum for England: see *PARA 920 post*). As to the National Curriculum for England see *PARA 916 et seq post*.

9 *Ie* a duty imposed by *ibid* s 109 (implementation of the National Curriculum in schools in Wales: see *PARA 933 post*). As to the National Curriculum for Wales see *PARA 929 et seq post*.

10 Education Act 1996 s 451(3)(b) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 120(b); and the Education Act 2002 s 215(1), Sch 21 para 48(1), (2)). The reference in the text to the duty to secure due provision of religious education is a reference to the duty under the School Standards and Framework Act 1998 s 69 (as amended) (see *PARA 951 post*): Education Act 1996 s 451(3)(b) (as so amended).

11 See note 8 *supra*.

12 See note 9 *supra*.

13 Education Act 1996 s 451(4) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 120(c); and the Education Act 2002 Sch 21 para 48(1), (3)). The reference in the text to the duty to secure due provision of religious education is a reference to the duty under the School Standards and Framework Act 1998 s 69 (as amended) (see *PARA 951 post*): Education Act 1996 s 451(4) (as so amended).

14 *Ibid* s 452(6). For the purposes of Pt VI Ch III (as amended), 'residential trip' means any trip which is arranged for registered pupils at a maintained school by or on behalf of the governing body or the local education authority, and which requires the pupils taking part to spend one or more nights away from their usual overnight accommodation: s 462(2). As to local education authorities see *PARA 20 ante*.

15 For these purposes, 'connected school travelling time' means time spent during school hours by the pupils taking part in the educational activity concerned in getting to or from the place where the activity takes place: *ibid* s 452(2).

16 *Ie* *ibid* s 451 (as amended): see the text and notes 1-13 *supra*.

17 *Ibid* s 452(1)(a).

18 *Ibid* s 452(1)(b).

19 For these purposes, 'half day' means any period of 12 hours ending with noon or midnight on any day: *ibid* s 452(4).

20 *Ibid* s 452(3)(a). Where 50% or more of a half day is spent on a residential trip, the whole of that half day is to be treated as spent on the trip: s 452(5)(a). A school session on any day on which such a session takes

place at the school concerned is to be treated as taken up by a residential trip if the time spent on the trip occupies 50% or more of the time allowed for that session at the school: s 452(5)(b).

21 Ibid s 452(3)(b).

## **UPDATE**

### **444 Prohibition of charges for provision of education**

TEXT AND NOTE 4--Regulations may, in relation to England, prescribe circumstances in which the 1996 Act s 451(2) does not apply in relation to education which is early years provision (as defined by the Childcare Act 2006 s 20) other than (1) early years provision provided in pursuance of the duty imposed by the 2006 Act s 7, or (2) early years provision for a pupil who is of compulsory school age: 1996 Act s 451(2A) (added by 2006 Act s 17(2)).

TEXT AND NOTES 5-10--Replaced. Regulations may prescribe circumstances in which the 1996 s 451(2) does not apply in relation to tuition in singing or in playing a musical instrument: s 451(3) (substituted by the Education and Inspections Act 2006 s 56(1) (in force in relation to England: SI 2007/935)). For transitional provisions in relation to England, see SI 2007/1271 art 5. As to regulations made, in relation to England, in exercise of the powers conferred by the 1996 Act s 451(3), see the Charges for Music Tuition (England) Regulations 2007, SI 2007/2239.

TEXT AND NOTE 13--Or (c) provided in pursuance of the duty imposed by the Childcare Act 2006 s 7: 1996 Act s 451(4) (as further amended by 2006 Act s 17(3)).

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**445. Prohibition of charges in respect of public examinations.**

No charge must be made in respect of the entry of a registered pupil<sup>1</sup> at a maintained school<sup>2</sup> for a prescribed public examination<sup>3</sup> in any syllabus for that examination for which the pupil<sup>4</sup> has been prepared at the school<sup>5</sup>. Despite that, where:

883 (1) the governing body of a maintained school<sup>6</sup> or the local education authority<sup>7</sup> has paid or is liable to pay a fee in respect of the entry of a registered pupil at the school for a public examination in any syllabus for that examination<sup>8</sup>; and

884 (2) the pupil fails without good reason to meet any examination requirement<sup>9</sup> for that syllabus<sup>10</sup>,

that body or authority may recover the amount of the fee from the pupil's parent<sup>11</sup>.

1 For the meaning of 'registered pupil' see PARA 512 post.

2 For the meaning of 'maintained school' see PARA 443 note 2 ante.

3 For the meanings of 'public examination' and 'prescribed public examination' see PARA 444 note 6 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 Education Act 1996 s 453(1). As to references to being prepared at a school for a syllabus for a prescribed examination see PARA 444 note 7 ante.

6 As to the governing bodies of maintained schools see PARA 203 et seq ante.

7 As to local education authorities see PARA 20 ante.

8 Education Act 1996 s 453(2)(a).

9 For the meaning of 'examination requirement' see PARA 444 note 6 ante.

10 Education Act 1996 s 453(2)(b). It is for the body or authority who has paid or is liable to pay the fee in question to determine for these purposes any question whether a pupil who has failed to meet an examination requirement had good reason for the failure: s 453(3).

11 Ibid s 453(2). Any sum payable under s 453(2) by the parent of a registered pupil at a maintained school is recoverable summarily as a civil debt: s 461. As to the meaning of 'parent' see PARA 510 note 1 post.

Any function of a local education authority in England which is conferred by or under s 453 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (kk). For the meaning of 'England' see PARA 52 note 11 ante.

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#### **446. Prohibition of incidental charges.**

Neither the parent<sup>1</sup> of a registered pupil<sup>2</sup> at a maintained school<sup>3</sup> nor the pupil<sup>4</sup> himself is required to pay for or supply any materials, books, instruments or other equipment<sup>5</sup> for use for the purposes of or in connection with: (1) education provided for the pupil at the school in respect of which no charge<sup>6</sup> may be made<sup>7</sup>; or (2) a syllabus for a prescribed public examination<sup>8</sup> which is a syllabus for which the pupil has been prepared at the school<sup>9</sup>. However, this does not prevent the parent of a pupil from being required to pay for or supply any materials for use for the purposes of the production, in the course of the provision of education for the pupil at the school, of any article incorporating those materials, where the parent has indicated before that requirement is made that he wishes the article to be owned by him or by the pupil<sup>10</sup>.

No charge must be made in respect of transport provided for a registered pupil at a maintained school where the transport is either incidental to education provided for the pupil at the school in respect of which no charge<sup>11</sup> may be made<sup>12</sup>, or provided for the purpose of enabling him to meet any examination requirement<sup>13</sup> for any syllabus for a prescribed public examination which is a syllabus for which he has been prepared at the school<sup>14</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 post.

2 For the meaning of 'registered pupil' see PARA 512 post.

3 For the meaning of 'maintained school' see PARA 443 note 2 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 For the purposes of the Education Act 1996 Pt VI Ch III (ss 449-462) (as amended), 'equipment' does not include clothing: s 462(1).

6 I.e. by virtue of *ibid* s 451 (as amended): see PARA 444 ante.

7 *Ibid* s 454(1)(a).

8 For the meaning of 'prescribed public examination' see PARA 444 note 6 ante.

9 Education Act 1996 s 454(1)(b). As to references to being prepared at a school for a syllabus for a prescribed examination see PARA 444 note 7 ante.

10 *Ibid* s 454(2).

11 See note 6 *supra*.

12 Education Act 1996 s 454(3)(a). For these purposes, transport is incidental to education provided for registered pupils at a school if it is provided for the purpose of carrying such pupils: (1) to or from any part of the school premises in which education is provided for those pupils, from or to any other part of those premises; or (2) to or from any place outside the school premises in which education is provided for those pupils under arrangements made by or on behalf of the governing body or the local education authority, from or to the school premises or any other such place: s 454(4). For the meaning of 'premises' see PARA 1352 note 3 post. As to local education authorities see PARA 20 ante.

13 For the meaning of 'examination requirement' see PARA 444 note 6 ante.

14 Education Act 1996 s 454(3)(b).





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#### **447. Permitted charges.**

Provision is made for certain permitted charges<sup>1</sup>. A charge may be made in respect of education provided for a registered pupil<sup>2</sup> at a maintained school<sup>3</sup>, other than education in respect of which no charge<sup>4</sup> may be made<sup>5</sup>. However, a charge may not be so made unless the education is provided by agreement with the pupil's parent<sup>6</sup>.

A charge may also be made in respect of the entry of a registered pupil at a maintained school for a public examination<sup>7</sup> in any syllabus for that examination otherwise than in circumstances in which no charge<sup>8</sup> may be made<sup>9</sup>, but a charge may not be so made unless the pupil is entered for the examination in that syllabus by agreement with the pupil's parent<sup>10</sup>.

Further, a charge may be made in respect of transport provided for a registered pupil at a maintained school other than transport in respect of which no charge<sup>11</sup> may be made<sup>12</sup>, but a charge may not be so made unless the transport is provided by agreement with the pupil's parent<sup>13</sup>.

A charge may also be made in respect of board and lodging provided for a registered pupil at a maintained school on a residential trip<sup>14</sup>.

Any education, examination entry or transport in respect of which a charge may be made by virtue of the provisions described above<sup>15</sup> is referred to as an 'optional extra'<sup>16</sup>.

1    Ie under the Education Act 1996 s 455. As to charges which are prohibited under the Education Act 1996 see PARAS 443-446 ante. As to the Local Government Act 2003 ss 93-98, which provide best value authorities with a power to charge for discretionary services and enable new trading powers to be conferred on best value authorities, see LOCAL GOVERNMENT vol 69 (2009) PARA 502 et seq.

2    For the meaning of 'registered pupil' see PARA 512 post.

3    For the meaning of 'maintained school' see PARA 443 note 2 ante.

4    Ie by virtue of the Education Act 1996 s 451 (as amended): see PARA 444 ante.

5    Ibid s 455(1)(a). Any sum payable under s 455 by the parent of a registered pupil at a maintained school is recoverable summarily as a civil debt: s 461. As to the meaning of 'parent' see PARA 510 note 1 post.

6    Ibid s 455(2)(a).

7    For the meaning of 'public examination' see PARA 444 note 6 ante.

8    Ie by virtue of the Education Act 1996 s 453(1): see PARA 445 ante.

9    Ibid s 455(1)(b).

10   Ibid s 455(2)(b).

11   Ie by virtue of ibid s 454(3) (see PARA 446 ante) or s 509(2) (as amended) (see PARA 534 post).

12   Ibid s 455(1)(c).

13   Ibid s 455(2)(c).

14   Ibid s 455(1)(d). For the meaning of 'residential trip' see PARA 444 note 14 ante.

15 le by virtue of *ibid* s 455(1): see the text and notes 1-14 *supra*.

16 *Ibid* s 455(3).

## **UPDATE**

### **447 Permitted charges**

TEXT AND NOTES 7-10--A charge may also be made for travel arrangements provided under Learner Travel (Wales) Measure 2008 s 6 for a registered pupil at a maintained school in Wales, other than arrangements in respect of which, by virtue of Education Act 1996 s 454(3) or Learner Travel (Wales) Measure 2008 s 3 or s 4, no charge may be made: Education Act 1996 s 455(1)(ba), (2ba) (added by Learner Travel (Wales) Measure 2008 s 22(2)(a), (c), (d)).

TEXT AND NOTES 11-13--This provision applies only to a registered pupil at a maintained school in England: Education Act 1996 s 455(1)(c) (amended by Learner Travel (Wales) Measure 2008 s 22(2)(b), Sch 2).

NOTE 11--Omit 'or s 509(2)' and after 's 454(3)' read 's 508B(1), s 508F(3), or s 508E(2) (d) and Sch 35C para 5(2)': Education Act 1996 s 455(1)(c) (amended by the Education and Inspections Act 2006 Sch 10 para 3, Learner Travel (Wales) Measure 2008 s 22(2) (b), Sch 2).

TEXT AND NOTES 15, 16--Any travel arrangements (TEXT AND NOTES 7-10) in respect of which a charge may be made under the provisions described are also an optional extra: Education Act 1996 s 455(3) (amended by Learner Travel (Wales) Measure 2008 s 22(2)(e)).

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#### **448. Regulation of permitted charges.**

Provision is made in relation to the regulation of permitted charges<sup>1</sup>. The amount of any regulated charge<sup>2</sup> is payable by the parent<sup>3</sup> of the pupil<sup>4</sup> concerned<sup>5</sup>. A regulated charge must not exceed the cost of the provision of the optional extra<sup>6</sup> or the board and lodging in question<sup>7</sup>. The cost of the provision of an optional extra includes costs, or an appropriate proportion of the costs<sup>8</sup>:

- 885 (1) incurred in respect of the provision of any materials, books, instruments or other equipment<sup>9</sup> used for the purposes of or in connection with the provision of the optional extra<sup>10</sup>; or
- 886 (2) attributable to the provision of non-teaching staff for any purpose connected with the provision of the optional extra<sup>11</sup>; or
- 887 (3) attributable to the provision of teaching staff engaged under contracts for services for the purpose of providing it<sup>12</sup>.

Where the optional extra in question consists of tuition in playing a musical instrument, the cost of its provision includes costs, or an appropriate proportion of the costs, attributable to the provision of teaching staff employed for the purpose of providing the tuition<sup>13</sup>.

Where charging is permitted<sup>14</sup> and the charge would be a regulated charge, the question whether any charge should be made, and the amount of any charge to be made, is to be determined: (a) in a case where the cost of the provision of the optional extra or board and lodging in question is met by or from funds at the disposal of the governing body, by the governing body<sup>15</sup>; and (b) in any other case, by the local education authority<sup>16</sup>.

1 Education Act 1996 s 456(1) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 121, Sch 31). The charges referred to in the text are those permitted under the Education Act 1996 s 455 (see PARA 447 ante).

2 Ie a charge to which *ibid* s 456 (as amended) applies: s 456(1).

3 As to the meaning of 'parent' see PARA 510 note 1 post.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 Education Act 1996 s 456(2).

6 For the meaning of 'optional extra' see PARA 447 ante.

7 Education Act 1996 s 456(3).

8 *Ibid* s 456(4). This provision is expressed to be subject to s 456(3) (see the text and notes 6-7 supra): s 456(4).

9 For the meaning of 'equipment' see PARA 446 note 5 ante.

10 Education Act 1996 s 456(4)(a).

11 *Ibid* s 456(4)(b).

12 Ibid s 456(4)(c). Subject to s 456(6) (see the text to note 13 *infra*), the cost of the provision of an optional extra is not to be taken to include any costs attributable to the provision of teaching staff other than staff engaged as mentioned in s 456(4)(c): s 456(5).

13 Ibid s 456(6).

14 *Ie* under *ibid* s 455: see note 1 *supra*.

15 Ibid s 456(7)(a). As to the governing bodies of maintained schools see PARA 203 *et seq ante*.

16 Ibid s 456(7)(b). The whole or any part of the amount of any charge which the local education authority so determines to make is, if the governing body so determines, to be met by or from funds at the disposal of the governing body, and to the extent that it is so met, is not payable by the parent of the pupil concerned: s 456(8). As to local education authorities see PARA 20 *ante*.

Any function of a local education authority in England which is conferred by or under s 456 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (II). For the meaning of 'England' see PARA 52 note 11 *ante*.

## **UPDATE**

### **448 Regulation of permitted charges**

TEXT AND NOTE 7--A charge permitted by virtue of Education Act 1996 s 455(1)(ba) (PARA 447) is excepted from this requirement: Education Act 1996 s 456(3) (amended by Learner Travel (Wales) Measure 2008 s 22(3)).

TEXT AND NOTE 13--Refers also to tuition in singing: 1996 s 456(6) (amended by Education and Inspections Act 2006 s 56(2) (in force in relation to England: SI 2007/935)).

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#### **449. Charges policies and remissions policies.**

Every governing body of a maintained school<sup>1</sup> and every local education authority<sup>2</sup> must determine and keep under review a policy with respect to the provision of, and the classes or descriptions of case in which it proposes to make charges for, any optional extra<sup>3</sup> or board and lodging in respect of which charges are permitted<sup>4</sup>. No such body or authority may make such a charge unless it has both: (1) determined a policy ('a charging policy') with respect to the classes or descriptions of case in which it proposes to make charges<sup>5</sup>; and (2) determined a policy (a 'remissions policy') setting out any circumstances in which it proposes to remit (in whole or in part) any charge which would otherwise be payable to it in accordance with its charging policy<sup>6</sup>. A remissions policy determined by the governing body of a school must set out any circumstances in which the governing body proposes to meet, in whole or in part, any charge payable to the local education authority, in accordance with the authority's charging policy, for an optional extra or board and lodging provided for a registered pupil<sup>7</sup> at the school<sup>8</sup>. A remissions policy must provide for complete remission of any charges otherwise payable in respect of board and lodging provided for a pupil on a residential trip<sup>9</sup> if:

- 888 (a) the education provided on the trip is education in respect of which no charge<sup>10</sup> may be made<sup>11</sup>; and
- 889 (b) the pupil's parent<sup>12</sup> is in receipt of income support<sup>13</sup>, an income-based jobseeker's allowance<sup>14</sup>, or any other benefit or allowance, or is entitled to any tax credit under the Tax Credits Act 2002<sup>15</sup> or element of such a tax credit, prescribed<sup>16</sup> for the purpose, in such circumstances as may be so prescribed, in respect of any period wholly or partly comprised in the time spent on the trip<sup>17</sup>.

A remissions policy must be kept under review by the governing body or local education authority by whom it was determined<sup>18</sup>.

1 For the meaning of 'maintained school' see PARA 443 note 2 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'optional extra' see PARA 447 ante.

4 Education Act 1996 s 457(1) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 122(a), Sch 31). The text refers to charges which are permitted by the Education Act 1996 s 455 (see PARA 447 ante).

5 Ibid s 457(2)(a).

6 Ibid s 457(2)(b).

7 For the meaning of 'registered pupil' see PARA 512 post.

8 Education Act 1996 s 457(3) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 122(b), Sch 31).

9 For the meaning of 'residential trip' see PARA 444 note 14 ante.

- 10 le by virtue of the Education Act 1996 s 451 (as amended): see PARA 444 ante.
- 11 Ibid s 457(4)(a).
- 12 As to the meaning of 'parent' see PARA 510 note 1 post.
- 13 As to income support see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 176 et seq.
- 14 le payable under the Jobseekers Act 1995: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 271 et seq.
- 15 As to tax credits under the Tax Credits Act 2002 see SOCIAL SECURITY AND PENSIONS.
- 16 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the regulations that have been made under s 457(4)(b) see the Education (Residential Trips) (Prescribed Tax Credits) (England) Regulations 2003, SI 2003/381 (amended by 2005/1014); and the Education (Remission of Charges Relating to Residential Trips) (Wales) Regulations 2003, SI 2003/860.
- 17 Education Act 1996 s 457(4)(b) (substituted by the Education Act 2002 s 200).
- 18 Education Act 1996 s 457(5).

## **UPDATE**

### **449 Charges policies and remissions policies**

TEXT AND NOTE 17--1996 Act s 457(4)(b) amended: Welfare Reform Act 2007 Sch 3 para 16(2).

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#### **450. Charges for board and lodging at boarding schools.**

Where a registered pupil<sup>1</sup> at a maintained school<sup>2</sup> is provided at the school with board and lodging, charges are payable to the local education authority<sup>3</sup>, in respect of the board and lodging, by the parent<sup>4</sup> of the pupil<sup>5</sup> concerned; and such charges must not exceed the cost to the authority of providing the board and lodging<sup>6</sup>.

Where the local education authority for that pupil's area is of the opinion that education suitable to his age, ability and aptitude and to any special educational needs<sup>7</sup> he may have cannot otherwise be provided for him, then, where the school is maintained by the local education authority for his area, that authority must remit the whole of the charges so payable and, in any other case, that authority must pay the whole of the charges so payable to the authority which maintains the school<sup>8</sup>.

Where the local education authority for the pupil's area<sup>9</sup> is satisfied that payment of the full charges so payable would involve financial hardship to the parent of the pupil concerned, the authority: (1) in the case of charges payable to the authority, must remit so much of those charges as falls<sup>10</sup> to be so remitted<sup>11</sup>; and (2) in the case of charges payable to another local education authority in respect of board and lodging, must pay so much of those charges as falls<sup>12</sup> to be so paid<sup>13</sup>.

1 For the meaning of 'registered pupil' see PARA 512 post.

2 For the meaning of 'maintained school' see PARA 443 note 2 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the meaning of 'parent' see PARA 510 note 1 post.

5 For the meaning of 'pupil' see PARA 16 note 4 ante.

6 Education Act 1996 s 458(1) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 123(a), Sch 31). The Education Act 1996 s 458(1) (as amended) is expressed to be subject to s 458(2)-(5) (as amended) (see the text and notes 7-13 infra): s 458(1).

Any sum payable under s 458 (as amended) by the parent of a registered pupil at a maintained school is recoverable summarily as a civil debt: s 461.

7 For the meaning of 'special educational needs' see PARA 984 post.

8 Education Act 1996 s 458(2) (amended by the School Standards and Framework Act 1998, Sch 30 para 123(b), Sch 31).

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 458 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (mm). For the meaning of 'England' see PARA 52 note 11 ante.

9 As to areas of local education authorities see PARA 20 ante.

10 The amount that falls to be remitted or paid by a local education authority by virtue of the Education Act 1996 s 458(4)(a), (b) (as amended) is such part of the charges in question as the authority considers ought not to be paid by the pupil's parent in order to avoid financial hardship to the parent of the pupil concerned, or the whole of those charges if, in its opinion, such hardship cannot otherwise be avoided: s 458(5).



11 Ibid s 458(4)(a).

12 See note 10 *supra*.

13 Education Act 1996 s 458(4)(b) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 123(d), Sch 31).

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#### **451. Provision of information.**

Regulations<sup>1</sup> may require, in relation to every maintained school<sup>2</sup>, the local education authority<sup>3</sup>, the governing body<sup>4</sup> or the head teacher<sup>5</sup> to make available either generally or to prescribed<sup>6</sup> persons, in such form and manner and at such times as may be prescribed, such relevant information<sup>7</sup> as to the school hours at the school, and such information as to the policies<sup>8</sup> which apply in relation to the school, as may be prescribed<sup>9</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the regulations that have been made under s 459 see the Education (School Sessions and Charges and Remissions Policies) (Information) (England) Regulations 1999, SI 1999/2255. In relation to Wales, see the Education (School Hours and Policies) (Information) Regulations 1989, SI 1989/398 (revoked in relation to England), which have effect, by virtue of the Education Act 1996 s 582(3), Sch 39 Pt I para 1, as if made under s 459.

2 For the meaning of 'maintained school' see PARA 443 note 2 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the governing bodies of maintained schools see PARA 203 et seq ante.

5 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

6 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1). See note 1 supra.

7 Ie relevant for the purposes of ibid Pt VI Ch III (ss 449-462) (as amended).

8 Ie determined under ibid s 457 (as amended) (see PARA 449 ante).

9 Ibid s 459.

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#### **452. Unaffected contributions and charges.**

Nothing in the provisions relating to charges in connection with maintained schools<sup>1</sup> is to be read as prohibiting or in any way restricting or regulating any request or invitation by or on behalf of the governing body of a maintained school<sup>2</sup> or a local education authority<sup>3</sup> for voluntary contributions for the benefit of the school or any school activities<sup>4</sup>. Any request or invitation made by or on behalf of such a body or authority for contributions for the benefit of a school or school activities is not to be regarded as a request or invitation for voluntary contributions unless it is clear from the terms in which it is made that there is no obligation to make any contribution, and that registered pupils<sup>5</sup> at the school will not be treated differently according to whether or not their parents<sup>6</sup> have made any contribution in response to the request or invitation<sup>7</sup>.

Further, nothing in those provisions<sup>8</sup> relating to charges in respect of a registered pupil at a maintained school is to be read as relating to charges made by persons other than the governing body or the local education authority, or charges to be paid by persons other than the parent of the pupil or the pupil himself<sup>9</sup>.

1     I.e. in the Education Act 1996 Pt VI Ch III (ss 449-462) (as amended) (see PARAS 443-451 ante). For the meaning of 'maintained school' see PARA 443 note 2 ante.

2     As to the governing bodies of maintained schools see PARA 203 et seq ante.

3     As to local education authorities see PARA 20 ante.

4     Education Act 1996 s 460(1).

5     For the meaning of 'registered pupil' see PARA 512 post.

6     As to the meaning of 'parent' see PARA 510 note 1 post.

7     Education Act 1996 s 460(2).

8     See note 1 supra.

9     Education Act 1996 s 460(3).

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## **(xi) Education Action Zones**

### **453. Education action zones and education action forums.**

Education action zones<sup>1</sup> were introduced by the School Standards and Framework Act 1998 in order to raise educational standards, particularly in the most deprived areas, whether urban or rural<sup>2</sup>. The aim is for a group of schools to work in partnership with the local community, including parents and local businesses, to propose innovative strategies and to set targets for improvement. Education action zones receive extra funding from both the private and the public sectors. Each education action zone is managed by an education action forum<sup>3</sup>.

1 As to the establishment of education action zones see PARA 454 post.

2 See the School Standards and Framework Act 1998 Pt I Ch III (ss 10-12) (as amended); and PARAS 454-456 post.

3 As to the establishment of education action forums see PARA 455 post; and as to the functions of education action forums see PARA 456 post.

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#### **454. Education action zones.**

If the Secretary of State<sup>1</sup> considers that it is expedient to do so with a view to improving standards in the provision of education at any particular eligible schools<sup>2</sup>, he may by order provide for those schools to constitute collectively an education action zone<sup>3</sup>. An education action zone must be established in the first instance for three years, but the Secretary of State may, by an order made before the end of that period, provide for the zone to continue in existence for a further two years<sup>4</sup>. No order relating to the establishment<sup>5</sup> or continuation<sup>6</sup> of education action zones may be made by the Secretary of State except on an application made for the purpose with the consent of the governing body<sup>7</sup> of every school which it is proposed should be a participating school<sup>8</sup>.

An education action forum<sup>9</sup> established for an education action zone may add any eligible school<sup>10</sup>, or any new school which has a temporary governing body, to the zone<sup>11</sup>. However, a school may be so added only if it is added in accordance with any procedural requirements specified for these purposes in regulations<sup>12</sup>, and with the consent of the governing body of the school and of the Secretary of State<sup>13</sup>.

An education action forum established for an education action zone may remove a participating school from the zone<sup>14</sup>. However, a school may be so removed only if it is removed in accordance with any procedural requirements specified for these purposes in regulations<sup>15</sup>, and with the consent of the Secretary of State<sup>16</sup>.

1 As to the Secretary of State see PARA 52 ante. Unless the Secretary of State by order otherwise provides, nothing in the School Standards and Framework Act 1998 Pt I Ch III (ss 10-13) (as amended) applies in relation to Wales: s 10(8). At the date at which this volume states the law, no such order had been made. As to the making of orders under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For these purposes, 'eligible school' means: (1) a maintained school; (2) a nursery school; (3) a pupil referral unit; or (4) an independent school: *ibid* s 10(1A) (added by the Education Act 2002 s 187, Sch 15 paras 1, 2(2)). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). In Pt I Ch III (as amended), 'pupil referral unit' has the same meaning as in the Education Act 1996 s 19 (as amended) (see PARA 457 post): School Standards and Framework Act 1998 s 10(6) (c) (added by the Education Act 2002 Sch 15 paras 1, 2(5)). For the meaning of 'maintained school' see PARA 94 ante; for the meaning of 'nursery school' see PARA 81 ante; and for the meaning of 'independent school' see PARA 465 post.

The School Standards and Framework Act 1998 s 10(1A) (as added) is brought into force by order made under the Education Act 2002 s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002 (except in relation to head (2) *supra*: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) or 1 September 2003 (for the purposes of head (2) *supra*: see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, a reference to 'eligible school' should be read simply as a reference to 'maintained school'. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

3 School Standards and Framework Act 1998 s 10(1) (amended by the Education Act 2002 Sch 15 paras 1, 2(1)). Orders constituting education action zones are local in nature, and are not recorded in this work.

4 School Standards and Framework Act 1998 s 10(2). Any school which ceases to be a participating school by virtue of s 10(2) may nevertheless be included in a further order under s 10(1) (as amended) (see the text

and notes 1-3 supra): s 10(5). For the purposes of Pt I Ch III (as amended), 'participating school', in relation to an education action zone, means one of the schools that: (1) for the time being is included in the order under s 10(1) (as amended) by which the zone is established; or (2) has been added to the zone by virtue of s 11B (as added) (see the text and notes 11-13 infra), other than a school that has been removed from the zone in accordance with s 11C (as added) (see the text and notes 14-16 infra): s 10(6)(b) (substituted by the Education Act 2002 Sch 15 paras 1, 2(5)).

5 le under the School Standards and Framework Act 1998 s 10(1) (as amended): see the text and notes 1-3 supra.

6 le under ibid s 10(2): see the text and note 4 supra.

7 For the purposes of ibid Pt I Ch III (as amended), references to a governing body: (1) in relation to an independent school (other than an academy, city technology college or city college for the technology of the arts), are references to the proprietor of the school; and (2) in relation to a new school, include the temporary governing body of the school: s 10(6)(a) (substituted by the Education Act 2002 Sch 15 paras 1, 2(5)). In the School Standards and Framework Act 1998 Pt I Ch III (as amended), 'new school' has the meaning given in s 72(3) (see PARA 202 ante): s 10(6)(d) (added by the Education Act 2002 Sch 15 paras 1, 2(5)). For the meaning of 'proprietor' see PARA 60 note 7 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. As to the meaning of 'academy' see PARA 496 note 29 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'city technology college' see PARA 496 note 31 post; definition applied by virtue of s 142(8). As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 post; definition applied by virtue of s 142(8). As to temporary governing bodies see PARAS 212, 263 ante.

8 Ibid s 10(4) (amended by the Education Act 2002 Sch 15 paras 1, 2(4)).

9 As to the establishment of an education action forum see PARA 455 post.

10 le within the meaning of the School Standards and Framework Act 1998 s 10(1A) (as added) (see note 2 supra).

11 Ibid s 11B(1) (s 11B added by the Education Act 2002 s 187, Sch 15 para 5). For the purposes of the School Standards and Framework Act 1998 s 11B (as added), references to a school being added to an education action zone are references to it becoming one of the schools which constitute collectively the zone: s 11B(3) (as so added).

12 Ibid s 11B(2)(a) (as added: see note 11 supra). The text refers to regulations made under Sch 1 (see PARA 455 post). 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 11B (as added).

13 Ibid s 11B(2)(b) (as added: see note 11 supra).

14 Ibid s 11C(1) (s 11C added by the Education Act 2002 Sch 15 para 5). For the purposes of the School Standards and Framework Act 1998 s 11C (as added), references to a school being removed from an education action zone are references to it ceasing to be one of the schools which constitute collectively the zone: s 11C(3) (as so added).

15 Ibid s 11C(2)(a) (as added: see note 14 supra). The text refers to regulations made under Sch 1 (see PARA 455 post). At the date at which this volume states the law, no regulations had been made under s 11C (as added).

16 Ibid s 11C(2)(b) (as added: see note 14 supra).

## UPDATE

### 454 Education action zones

NOTE 2--Day now appointed in relation to Wales: SI 2007/3611.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(xi) Education Action Zones/455. Education action forums.

#### **455. Education action forums.**

An order establishing an education action zone<sup>1</sup> must provide for the establishment of an education action forum for the zone<sup>2</sup>. An education action forum is a body corporate<sup>3</sup> and a charity which is an exempt charity for the purposes of the Charities Act 1993<sup>4</sup>.

The members of an education action forum must include one person appointed by the governing body<sup>5</sup> of each of the participating schools<sup>6</sup>, unless the governing body of any such school chooses not to make such an appointment<sup>7</sup>, and one or two persons appointed by the Secretary of State, unless he chooses not to make such appointments<sup>8</sup>. Subject to that, an education action forum must initially be constituted in accordance with the order by which the forum is established<sup>9</sup>, and may subsequently alter its membership<sup>10</sup> as set out in that order or as previously altered<sup>11</sup>, any such alteration being duly made only if it is made both in accordance with any procedural requirements specified for the purposes<sup>12</sup> and with the consent of the Secretary of State<sup>13</sup>.

The validity of the proceedings of an education action forum is not affected by a vacancy among the members or any defect in the appointment of a member<sup>14</sup>. The members of an education action forum must elect one of its number to be its chairman, who holds office for such period as is specified in the order by which the education action forum is established<sup>15</sup>. An education action forum may establish a committee for any purpose<sup>16</sup>, and authorise any such committee to exercise such of its functions as it may determine<sup>17</sup>.

The Secretary of State may by regulations<sup>18</sup> make provision as to the meetings and proceedings of an education action forum<sup>19</sup>, but otherwise an education action forum may regulate its own procedure and that of any of its committees<sup>20</sup>. The application of the seal of an education action forum must be authenticated by the signature of: (1) the chairman or some other person authorised either generally or specially by the education action forum to act for that purpose<sup>21</sup>; and (2) one other member<sup>22</sup>. Every document purporting to be an instrument made or issued by or on behalf of an education action forum and to be duly executed under its seal, or to be signed or executed by a person authorised by the education action forum to act in that behalf, is to be received in evidence and to be treated, without further proof, as being so made or issued unless the contrary is shown<sup>23</sup>.

It is the duty of an education action forum:

- 890 (a) to keep proper accounts and proper records in relation to the accounts<sup>24</sup>;
- 891 (b) to prepare in respect of each financial year<sup>25</sup> of the education action forum a statement of accounts<sup>26</sup>; and
- 892 (c) to send copies of the statement to the Secretary of State and to the Comptroller and Auditor General<sup>27</sup> before the end of the month of August next following the financial year to which the statement relates<sup>28</sup>.

The statement of accounts must comply with any directions given by the Secretary of State as to the information to be contained in it<sup>29</sup>, the manner in which the information contained in it is to be presented<sup>30</sup>, or the methods and principles according to which the statement is to be prepared<sup>31</sup>. The Comptroller and Auditor General must examine, certify and report on each

statement received by him in pursuance of these provisions<sup>32</sup>, and he must lay copies of each statement and of his report before each House of Parliament<sup>33</sup>.

An education action forum established for an education action zone must provide the Secretary of State with details of any alteration made to its constitution<sup>34</sup>, any addition of a school to the education action zone<sup>35</sup>, and any removal of a school from the zone<sup>36</sup>. The education action forum must also, on a request being made by any person<sup>37</sup>, provide him with: (i) the name of each member of the education action forum and of the person or body that appointed him<sup>38</sup>; (ii) the name of any other person or body entitled to appoint a member<sup>39</sup>; and (iii) the name of each participating school in relation to the education action zone<sup>40</sup>.

The education action forum established for an education action zone must be dissolved by order of the Secretary of State with effect from the time when the zone ceases<sup>41</sup> to exist<sup>42</sup>.

1     Ie under the School Standards and Framework Act 1998 s 10(1) (as amended): see PARA 454 ante. Unless the Secretary of State by order otherwise provides, nothing in the School Standards and Framework Act 1998 Pt I Ch III (ss 10-13) (as amended) applies in relation to Wales: s 10(8). At the date at which this volume states the law, no such order had been made. As to the making of orders under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2     Ibid s 11(1). As to the functions of an education action forum see PARA 456 post.

3     Ibid s 11(2) (amended by the Education Act 2002 ss 187, 215(2), Sch 15 paras 1, 3(a)). As to bodies corporate see generally COMPANIES; CORPORATIONS.

4     School Standards and Framework Act 1998 s 11(4), Sch 1 para 10. As to charities and the Charities Act 1993 see CHARITIES. As to exempt charities see CHARITIES vol 8 (2010) PARA 315.

5     For the meaning of 'governing body' see PARA 454 note 7 ante.

6     For the meaning of 'participating school' see PARA 454 note 4 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7     Ibid s 11A(1)(a) (s 11A added by the Education Act 2002 Sch 15 paras 1, 4).

8     School Standards and Framework Act 1998 s 11A(1)(b) (as added: see note 7 supra).

9     Ibid s 11A(2)(a) (as added: see note 7 supra). The order referred to in the text is an order under s 10(1) (as amended) (see PARA 454 ante).

10    In ibid s 11A(2) (as added), the references to altering the forum's membership include altering the number of members, and altering who may appoint members: s 11A(3) (as added: see note 7 supra).

11    Ibid s 11A(2)(b) (as added: see note 7 supra).

12    Ie specified for the purposes of ibid s 11A (as added) in regulations under Sch 1 (see note 18 infra).

13    Ibid s 11A(4) (as added: see note 7 supra).

14    Ibid Sch 1 para 5.

15    Ibid Sch 1 para 2. The order referred to in the text is an order under s 10(1) (as amended) (see PARA 454 ante).

16    Ibid Sch 1 para 3(a).

17    Ibid Sch 1 para 3(b).

18    'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made for these purposes see the Education Action Forum (Proceedings) Regulations 1998, SI 1998/1964 (amended by SI 2002/2301).



19 School Standards and Framework Act 1998 Sch 1 para 4.

20 Ibid Sch 1 para 6.

21 Ibid Sch 1 para 8(a).

22 Ibid Sch 1 para 8(b).

23 Ibid Sch 1 para 9.

24 Ibid Sch 1 para 7(1)(a).

25 For these purposes, 'financial year' means the period beginning with the date on which the education action forum is established and ending with the 31 March following that date, and each successive period of 12 months: *ibid* Sch 1 para 7(4).

26 Ibid Sch 1 para 7(1)(b).

27 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

28 School Standards and Framework Act 1998 Sch 1 para 7(1)(c).

29 Ibid Sch 1 para 7(2)(a).

30 Ibid Sch 1 para 7(2)(b).

31 Ibid Sch 1 para 7(2)(c).

32 *Ie* in pursuance of *ibid* Sch 1 para 7(3).

33 Ibid Sch 1 para 7(3).

34 Ibid s 11D(1)(a) (s 11D added by the Education Act 2002 Sch 15 para 6). The text refers to any alteration made under the School Standards and Framework Act 1998 s 11A(2)(b) (as added) (see the text and notes 10-11 *supra*).

35 Ibid s 11D(1)(b) (as added: see note 34 *supra*). The text refers to additions made under s 11B (as added) (see PARA 454 *ante*).

36 Ibid s 11D(1)(c) (as added: see note 34 *supra*). The text refers to removals made under s 11C (as added) (see PARA 454 *ante*).

37 This duty is subject, in such circumstances as the forum may determine, to the payment by the person concerned of a reasonable fee determined by the forum: *ibid* s 11D(3) (as added: see note 34 *supra*).

38 Ibid s 11D(2)(a) (as added: see note 34 *supra*).

39 Ibid s 11D(2)(b) (as added: see note 34 *supra*).

40 Ibid s 11D(2)(c) (as added: see note 34 *supra*).

41 *Ie* in accordance with *ibid* s 10(2): see PARA 454 *ante*.

42 Ibid s 11(5). An order under s 11(5) may make provision for the transfer of property, staff, rights and liabilities of the education action forum and for the preparation of a final statement of accounts: s 11(6). Such an order is not to be made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 *ante*. As to the meaning of 'liability' see PARA 1434 note 5 *post*; definition applied by virtue of s 142(8).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(3) MAINTAINED SCHOOLS/(xi) Education Action Zones/456. Functions of an education action forum.

#### **456. Functions of an education action forum.**

An education action forum<sup>1</sup> has as its main object the improvement of standards in the provision of education at each of the participating schools<sup>2</sup>. However, with the consent of the Secretary of State, an education action forum may also carry on any other activities which it considers will promote the provision of, or access to, education whether in a participating school or otherwise<sup>3</sup>.

An education action forum may, under arrangements made by the governing body<sup>4</sup> of a participating school in respect of any prescribed<sup>5</sup> function of that body relating to the conduct of the school, either:

- 893 (1) discharge that function on behalf of the governing body until such time as it may specify in a request to the education action forum to cease discharging the function on its behalf<sup>6</sup>; or
- 894 (2) assume full responsibility for the discharge of that function during the whole of the period for which the education action forum remains in existence<sup>7</sup>.

Regulations<sup>8</sup> may make provision:

- 895 (a) as to the circumstances in which the governing body of a participating school may make such arrangements<sup>9</sup>;
- 896 (b) for the procedure to be followed by such a governing body in connection with the making of any such arrangements<sup>10</sup>;
- 897 (c) for the procedure to be followed by an education action forum when discharging<sup>11</sup> any function by virtue of heads (1) and (2) above<sup>12</sup>;
- 898 (d) for statutory provisions relating to governing bodies of maintained schools<sup>13</sup> to apply, with any prescribed modifications, to an education action forum when discharging<sup>14</sup> any function by virtue of head (2) above<sup>15</sup>.

An education action forum does not have power to borrow money<sup>16</sup>, but otherwise may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions<sup>17</sup>.

1 As to the establishment of an education action forum see PARA 455 ante. Unless the Secretary of State by order otherwise provides, nothing in the School Standards and Framework Act 1998 Pt I Ch III (ss 10-13) (as amended) applies in relation to Wales: s 10(8). At the date at which this volume states the law, no such order had been made. As to the making of orders under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Ibid s 12(1). For the meaning of 'participating school' see PARA 454 note 4 ante.

3 Ibid s 12(1A) (added by the Education Act 2002 s 187, Sch 15 paras 1, 7).

4 As to the governing bodies of maintained schools see PARA 203 et seq ante. See also PARA 454 ante.

5 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 12.

6 Ibid s 12(2)(a).

7 Ibid s 12(2)(b). The Secretary of State may by a direction provide for any scheme under Pt II Ch IV (ss 45-53A) (as amended) which relates to a participating school to have effect with such modifications as he considers appropriate in a case where an education action forum is discharging any function in relation to the school by virtue of s 12(2)(b): s 12(5). Before giving a direction under s 12(5) the Secretary of State must consult the local education authority: s 12(6). As to local education authorities see PARA 20 ante.

8 Regulations may, in relation to the discharge by an education action forum of any function of a governing body under the Education Act 2002 s 35 (see PARA 93 ante), s 36 (see PARA 343 ante), s 37 (see PARA 385 ante) or Sch 2 (see PARAS 342, 352 ante), or under regulations made thereunder, make any such provision as may be made by an order under s 81 (application of employment law during financial delegation: see PARA 383 ante): School Standards and Framework Act 1998 s 12(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 90). The amendment made by the Education Act 2002 Sch 21 para 90 is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 September 2003: see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the references to the Education Act 2002 ss 35-37, Sch 2, or regulations made thereunder should be read as references to the School Standards and Framework Act 1998 s 54 (see PARA 366 ante), s 57(1)-(3) (see PARA 385 ante), Sch 16 (as amended) (see PARAS 355-365 ante) or Sch 17 para 27 (see PARA 377 ante). See note 1 supra.

9 Ibid s 12(3)(a).

10 Ibid s 12(3)(b).

11 Ie by virtue of ibid s 12(2) (see the text and notes 5-8 supra).

12 Ibid s 12(3)(c).

13 For the meaning of 'maintained school' see PARA 94 ante.

14 Ie by virtue of the School Standards and Framework Act 1998 s 12(2)(b) (see the text and note 8 supra).

15 Ibid s 12(3)(d).

16 Ibid s 11(4), Sch 1 para 1(2).

17 Ibid Sch 1 para 1(1).

## **UPDATE**

### **456 Functions of an education action forum**

NOTE 8--Day now appointed in relation to Wales: SI 2007/3611.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(4) PUPIL REFERRAL UNITS/457. Provision of education in pupil referral units.

## **(4) PUPIL REFERRAL UNITS**

### **457. Provision of education in pupil referral units.**

Each local education authority<sup>1</sup> is under a duty to make arrangements for the provision of suitable education<sup>2</sup> at school<sup>3</sup> or otherwise than at school for those children of compulsory school age<sup>4</sup> who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them<sup>5</sup>. Any school established<sup>6</sup> and maintained by a local education authority which is specially organised to provide education for such children, and is not a community school<sup>7</sup> or a special school<sup>8</sup>, is known as a 'pupil referral unit'<sup>9</sup>. A local education authority may secure the provision of boarding accommodation at any pupil referral unit<sup>10</sup>.

A local education authority has power to make arrangements for the provision of suitable education otherwise than at school for those young persons who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them<sup>11</sup>.

In determining what arrangements to make<sup>12</sup> in the case of any child or young person, a local education authority must have regard to any guidance given from time to time by the Secretary of State<sup>13</sup>.

Any child for whom education is provided otherwise than at school in pursuance of these provisions, and any young person for whom full-time education is so provided, is to be treated for the purposes of the Education Act 1996 as a pupil<sup>14</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the purposes of the Education Act 1996 s 19 (as amended), 'suitable education', in relation to a child or young person, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have: s 19(6). For the meaning of 'child' see PARA 16 note 2 ante; and for the meaning of 'young person' see PARA 38 note 4 ante. For the meaning of 'special educational needs' see PARA 984 post.

3 For the meaning of 'school' see PARA 81 ante.

4 As to the meaning of 'compulsory school age' see PARA 15 ante.

5 Education Act 1996 s 19(1) (amended by the Education Act 1997 ss 47(1), (2), 57(4), Sch 8). See *R v East Sussex County Council, ex p Tandy* [1998] AC 714, [1998] 2 All ER 769, HL (the question of what is suitable education is to be determined purely with reference to educational considerations; but, if there is more than one way of providing suitable education, the authority is entitled to have regard to its resources in choosing between the different ways of making such provision); *R (on the application of B) v Newham London Borough Council* [2001] EWHC Admin 646, [2001] All ER (D) 490 (Jul) (application for judicial review refused because it was not shown that the authority had acted in a manifestly unreasonable manner).

In assessing what is reasonably practicable under the Education Act 1996 s 19 (as amended), the unreasonable objections of parents to their child attending a particular school which it is reasonably practical for the child to attend must be disregarded: *R (on the application of G) v Westminster City Council* [2004] EWCA Civ 45, [2004] 4 All ER 572, [2004] 1 WLR 1113, [2004] ELR 135. If a school is unable to prevent a child being subjected to persistent bullying, it may be reasonable for the parents to withdraw that child from the school: *R (on the application of G) v Westminster City Council* supra at [49] per Lord Phillips MR (per curiam).

6 Ie whether before or after the commencement of the Education Act 1996 (ie 1 November 1996: see s 583(2)): see s 19(2). As to the meaning of 'establish' see PARA 132 note 2 ante.

7 Community schools were formerly known as county schools: see PARA 105 ante. As to community schools see PARA 102 et seq ante.

8 As to special schools see PARA 1027 et seq post.

9 Education Act 1996 s 19(2).

10 Ibid s 19(3).

11 Ibid s 19(4) (amended by the Education Act 1997 s 47(1), (3), Sch 8).

12 le under the Education Act 1996 s 19(1) (as amended) (see the text and notes 1-5 supra) or s 19(4) (as amended) (see the text and note 11 supra).

13 Ibid s 19(4A) (added by the Education Act 1997 s 47(1), (4)). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

14 Education Act 1996 s 19(5). For the meaning of 'pupil' see PARA 16 note 4 ante.

## UPDATE

### 457 Provision of education in pupil referral units

TEXT AND NOTES 1-5--In relation to England, the duty imposed by s 19(1) includes, except in prescribed cases, a duty to make arrangements for the provision of suitable full-time education at school or otherwise than at school for (1) children of compulsory school age who have been permanently excluded on disciplinary grounds from relevant schools or pupil referral units, and have not subsequently been admitted to schools other than pupil referral units, and (2) children of compulsory school age who are excluded for a fixed period on disciplinary grounds from any pupil referral unit maintained by the authority: 1996 Act s 19(3A) (s 19(3A), (3B) added by the Education and Inspections Act 2006 s 101(2)). The education must be provided from a day that, in relation to the pupil concerned, is determined in accordance with regulations: 1996 Act s 19(3B). 'Relevant school' means a maintained school, an academy, a city technology college or a city college for the technology of the arts: s 19(6) (substituted by the 2006 Act s 101(3)). As to the meanings of 'academy', 'city technology college' and 'city college for the technology of the arts' see PARA 496; definition applied by virtue of s 187(2), (3). See further the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, SI 2007/1870, regs 4, 5.

NOTE 5--See also *R (on the application of O) v Hackney LBC* [2006] EWHC 3405 (Admin), [2007] ELR 405; and PARA 26.

TEXT AND NOTES 6-9--The 1996 Act s 19(2) does not apply in relation to schools in England: s 19(2A) (s 19(2A), (2B) added by the Education Act 1996 (Amendment of Section 19) (England) Regulations 2007, SI 2007/1507). Any school established in England, whether before or after the commencement of the 1996 Act, and maintained by a local education authority which (1) is specially organised to provide education for such children; and (2) is not a community or foundation school, a community or foundation special school, or a maintained nursery school, is to be known as a 'pupil referral unit': s 19(2B) (as so added).

TEXT AND NOTE 8--In relation to schools in England, for 'special school' read 'foundation school, a community or foundation special school, or a maintained nursery school': 1996 Act s 19(2A), (2B) (added by the Education Act 1996 (Amendment of Section 19) (England) Regulations 2007, SI 2007/1507).

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#### **458. Adaptation and modification of enactments in relation to pupil referral units.**

References in any enactment to the proprietor or governing body of a school<sup>1</sup> must be read, in relation to a pupil referral unit<sup>2</sup>, as references to the local education authority<sup>3</sup>. Similarly, references in any enactment to the head teacher of a school must be read, in relation to a pupil referral unit, as references to the teacher in charge of the unit, whether known as the head teacher or not<sup>4</sup>.

The provisions of the Education Act 1996 relating to charges<sup>5</sup> apply in relation to pupil referral units as if the references to governing bodies<sup>6</sup> were omitted<sup>7</sup>.

Regulations<sup>8</sup> may provide for any enactments relating to schools maintained by local education authorities, or schools including such schools: (1) to apply in relation to pupil referral units<sup>9</sup>; (2) to apply in relation to such units with such modifications as may be prescribed<sup>10</sup>; or (3) not to apply in relation to such units<sup>11</sup>.

A pupil referral unit is an educational institution for the purposes of the provisions of the Environmental Protection Act 1990 relating to litter<sup>12</sup>.

The provisions of the Education Act 1996 applying to sex education<sup>13</sup>, political indoctrination<sup>14</sup> and the treatment of political issues<sup>15</sup> apply in relation to pupil referral units as they apply in relation to community schools<sup>16</sup>.

1 For the meaning of 'school' see PARA 81 ante.

2 For the meaning of 'pupil referral unit' see PARA 457 ante.

3 Education Act 1996 s 19(7), Sch 1 para 1. As to local education authorities see PARA 20 ante.

4 Ibid Sch 1 para 2.

5 Ie ibid Pt VI Ch III (ss 449-462) (as amended): see PARAS 443-452 ante.

6 As to governing bodies see PARA 203 et seq ante.

7 Education Act 1996 Sch 1 para 9(1). Section 458(2) (as amended) (charges for board and lodging: see PARA 450 ante) has effect in relation to a pupil provided with board and lodging at a pupil referral unit where the local education authority for his area is of the opinion that for the time being education suitable to his age, ability and aptitude and to any special educational needs he may have cannot otherwise be provided for him: see s 458(2)(b), Sch 1 para 9(2). For the meaning of 'pupil' see PARA 16 note 4 ante.

8 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the regulations that have been made under Sch 1 para 3 see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866 (amended by SI 1999/1440; SI 2001/3710; SI 2004/784; SI 2005/2913; and by virtue of the Learning and Skills Act 2000 s 73); the Education (School Information) (Wales) Regulations 1999, SI 1999/1812 (amended by SI 2001/1111; SI 2001/3710; SI 2002/1400; SI 2004/1736; SI 2004/2914; SI 2005/1396; and by virtue of the Learning and Skills Act 2000 s 73); the Education (Head Teachers' Qualifications) (England) Regulations 2003, SI 2003/3111 (amended by SI 2005/875; SI 2005/3322); the Education (Review of Staffing Structure) (England) Regulations 2005, SI 2005/1032; the Education (Review of Staffing Structure) (Wales) Regulations 2005, SI 2005/1910; and the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039.

- 9 Education Act 1996 Sch 1 para 3(a).
- 10 Ibid Sch 1 para 3(b). The modifications referred to in the text are such modifications as are prescribed by regulations: see s 579(1), Sch 1 para 3(b). As to the regulations made see note 8 *supra*.
- 11 Ibid Sch 1 para 3(c).
- 12 Ibid Sch 1 para 10. The provisions referred to in the text are those of the Environmental Protection Act 1990 Pt IV (ss 86-99) (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 721 et seq.
- 13 Ie the Education Act 1996 s 403 (as amended): see PARA 942 post.
- 14 Ie ibid s 406 (as amended): see PARA 945 post.
- 15 Ie ibid s 407 (as amended): see PARA 946 post.
- 16 Ibid Sch 1 para 8 (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 64).

## **UPDATE**

### **458 Adaptation and modification of enactments in relation to pupil referral units**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 8--SI 1998/1866 replaced: Education (School Inspections) (Wales) Regulations 2006, SI 2006/1714 (applied, with modifications, in relation to pupil referral units by the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 13). SI 1999/1812 further amended: see PARA 60 NOTE 9. SI 2005/1032 revoked: SI 2009/2680. SI 2005/2039 replaced: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979 (amended by SI 2008/3093). SI 2005/1910 further amended: SI 2009/994. See also the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069.

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#### **459. Registration.**

A person who is registered<sup>1</sup> as a pupil<sup>2</sup> at a school<sup>3</sup> other than a pupil referral unit<sup>4</sup> does not, by reason only of being registered also as a pupil at such a unit, cease for the purposes of the Education Acts<sup>5</sup> to be treated as a registered pupil<sup>6</sup> at that school<sup>7</sup>.

1 For these purposes, 'registered' means shown in the register kept under the Education Act 1996 s 434 (as amended) (see PARA 512 post): s 19(7), Sch 1 para 4(2).

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

3 For the meaning of 'school' see PARA 81 ante.

4 For the meaning of 'pupil referral unit' see PARA 457 ante.

5 For the meaning of 'the Education Acts' see PARA 1 note 14 ante.

6 For the meaning of 'registered pupil' see PARA 512 post.

7 Education Act 1996 Sch 1 para 4(1).



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#### **460. Curriculum.**

In relation to every pupil referral unit<sup>1</sup>, the local education authority<sup>2</sup>, the management committee<sup>3</sup> (where applicable) and the teacher in charge must exercise their functions<sup>4</sup> with a view to securing that the curriculum for the unit satisfies the requirements for securing a balanced and broadly based curriculum<sup>5</sup>. Regulations<sup>6</sup> may make provision for the determination and organisation of the curriculum in relation to every pupil referral unit, including provision as to making, and keeping up to date, a written statement of the policy in relation to that curriculum for the unit<sup>7</sup>. Such regulations may require the local education authority, the management committee (where applicable) or the teacher in charge to exercise<sup>8</sup>, or such of them as may be prescribed<sup>9</sup> to collaborate with each other in exercising<sup>10</sup>, such functions in relation to the curriculum as may be prescribed<sup>11</sup>.

Each local education authority must, with the approval of the Secretary of State, make arrangements for the consideration and disposal of any complaint to the effect that the authority, or the teacher in charge of any pupil referral unit: (1) has acted or is proposing to act unreasonably with respect to the exercise of any power conferred, or the performance of any duty imposed, on it or him by the provisions described above<sup>12</sup>; or (2) has failed to discharge any such duty<sup>13</sup>.

1 For the meaning of 'pupil referral unit' see PARA 457 ante.

2 As to local education authorities see PARA 20 ante.

3 As to management committees see PARA 464 post.

4 As to the meaning of 'functions' see PARA 14 note 5 ante.

5 Education Act 1996 s 19(7), Sch 1 para 6(1) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 184(a)(i); amended, in relation to England, by the Education Act 2002 (Modification of Provisions) (No 2) (England) Regulations 2002, SI 2002/2953, reg 2(1); and amended, in relation to Wales, by the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(6)). The requirements referred to in the text are those of the Education Act 2002 s 78(1) (general duties in respect of the curriculum for England: see PARA 913 post) and s 99(1) (general duties in respect of the curriculum for Wales: see PARA 926 post).

6 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under Sch 1 para 6(2) (as substituted).

7 Ibid Sch 1 para 6(2) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 184(a)(i)).

8 Education Act 1996 Sch 1 para 6(2)(a) (as substituted: see note 7 supra).

9 'Prescribed' means prescribed by regulations (see note 6 supra): ibid s 579(1). At the date at which this volume states the law, no such regulations had been made.

10 Ibid Sch 1 para 6(2)(b) (as substituted: see note 7 supra).

11 Ibid Sch 1 para 6(2) (as substituted: see note 7 supra).

12 Ibid Sch 1 para 6(3)(a) (amended by the School Standards and Framework Act 1998 Sch 30 para 184(a) (ii)). The provisions referred to in the text are those of the Education Act 1996 Sch 1 para 6(1) (as substituted) (see the text and notes 1-5 supra) or Sch 1 para 6(2) (as substituted) (see the text and notes 6-11 supra).

13 Ibid Sch 1 para 6(3)(b). The Secretary of State must not entertain under s 496 (as amended) (general power of the Secretary of State to prevent the unreasonable exercise of functions by a local education authority or governing body: see PARA 57 ante) or s 497 (as amended) (general power of the Secretary of State to declare a local education authority or governing body in default of its duty: see PARA 58 ante) any complaint in respect of any local education authority if it is a complaint:

- 92 (1) for which arrangements are required to be made under Sch 1 para 6(3) (Sch 1 para 6(4) (a)); or
- 93 (2) that a local education authority has failed to exercise its powers to secure compliance by the teacher in charge of a pupil referral unit with any such duty as is referred to in Sch 1 para 6(3) (Sch 1 para 6(4)(b)),

unless a complaint in respect of the local education authority or, as the case may be, the teacher in charge of the unit has been made in respect of the same matter and disposed of in accordance with arrangements under Sch 1 para 6(3): Sch 1 para 6(4).

## **UPDATE**

### **460 Curriculum**

TEXT AND NOTES 6-11--See the Education (Pupil Referral Units) (Management Committees etc) (England) Regulations 2007, SI 2007/2978 (amended by SI 2009/1924).

TEXT AND NOTES 12, 13--Education Act 1996 Sch 1 para 6(3), (4) repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 223(1)(c), Sch 16 Pt 7 (in force in part: see SI 2010/303, SI 2010/1151).

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**461. Discipline.**

The teacher in charge of a pupil referral unit<sup>1</sup> may exclude<sup>2</sup> a pupil<sup>3</sup> from the unit for a fixed period or permanently<sup>4</sup>.

1 For the meaning of 'pupil referral unit' see PARA 457 ante.

2 For the meaning of 'exclude' see PARA 562 note 3 post.

3 For the meaning of 'pupil' see PARA 16 note 4 ante.

4 Education Act 2002 s 52(2). As to discipline in schools, and the power to exclude pupils see PARAS 559-578 post.

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#### **462. Information.**

Each local education authority<sup>1</sup> must, on such occasions and in such form and manner as may be prescribed<sup>2</sup>, make available to registered<sup>3</sup> parents<sup>4</sup> of registered pupils<sup>5</sup> at any pupil referral unit<sup>6</sup> such information about the unit as may be prescribed<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under Sch 1 para 11.

3 For the meaning of 'registered' for these purposes see PARA 459 note 1 ante. See also PARA 512 post.

4 As to the meaning of 'parent' see PARA 510 note 1 post.

5 For the meaning of 'registered pupil' see PARA 512 post.

6 For the meaning of 'pupil referral unit' see PARA 457 ante.

7 Education Act 1996 s 19(7), Sch 1 para 11. See note 2 supra.

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#### **463. School attendance orders.**

Where a pupil referral unit<sup>1</sup> is named in a school attendance order<sup>2</sup>:

- 899 (1) the local education authority<sup>3</sup> must inform the teacher in charge of the unit<sup>4</sup>; and
- 900 (2) if another local education authority is responsible for determining the arrangements for the admission of pupils<sup>5</sup> to the unit, that authority must admit the child<sup>6</sup> to the unit<sup>7</sup>.

However, head (2) above does not affect any power to exclude from a unit a pupil who is already a registered pupil<sup>8</sup> there<sup>9</sup>. A local education authority must, before deciding to specify a particular pupil referral unit in a notice<sup>10</sup> where another local education authority is responsible for determining the arrangements for the admission of pupils to the unit, consult that authority<sup>11</sup>; and if it decides to specify the unit in the notice, must serve notice in writing of its decision on that authority<sup>12</sup>. The parent of a child in respect of whom a school attendance order is in force may not request<sup>13</sup> the local education authority to amend the order by substituting a pupil referral unit for the school<sup>14</sup> named in the order<sup>15</sup>.

1 For the meaning of 'pupil referral unit' see PARA 457 ante.

2 As to school attendance orders see PARA 514 et seq post. The Education Act 1996 s 438(4) (as amended) (see PARA 515 post) does not apply in relation to a pupil referral unit: s 19(7), Sch 1 para 14(2).

3 As to local education authorities see PARA 20 ante.

4 Education Act 1996 Sch 1 para 14(1)(a).

5 For the meaning of 'pupil' see PARA 16 note 4 ante.

6 For the meaning of 'child' see PARA 16 note 2 ante.

7 Education Act 1996 Sch 1 para 14(1)(b).

8 For the meaning of 'registered pupil' see PARA 512 post.

9 Education Act 1996 Sch 1 para 14(1).

10 Ie in a notice under *ibid* s 438(2): see PARA 515 post.

11 *Ibid* Sch 1 para 14(3)(a).

12 *Ibid* Sch 1 para 14(3)(b). The provisions of s 439(7), (8) (see PARA 516 post) apply where a notice is served on a local education authority under Sch 1 para 14(3) as they apply where notice is served under s 439(6) (as amended) (see PARA 516 post): Sch 1 para 14(4).

Any order, notice or other document required or authorised by the Education Act 1996 to be served on, or given to, any person may be served or given: (1) by delivering it to that person; (2) by leaving it at his usual or last known place of residence; or (3) by sending it in a prepaid letter addressed to him at that place: s 572(1) (amended by the Anti-social Behaviour Act 2003 s 23(2); and renumbered by virtue of the Education Act 1996 (Electronic Communications) Order 2004, SI 2004/2521, art 3). However, such a document may not be served or given in an electronic communication to a person as a parent unless: (a) the person consents in writing to the receipt of documents of the kind in question from the sender in an electronic communication sent to a specified number or address; and (b) the communication is sent to the number or address in question: Education Act

1996 s 572(2) (added by the Education Act 1996 (Electronic Communications) Order 2004, SI 2004/2521, art 3). For this purpose, 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Education Act 1996 s 572(3) (added by the Education Act 1996 (Electronic Communications) Order 2004, SI 2004/2521, art 3). As to the meaning of 'parent' see PARA 510 note 1 post.

13     le under the Education Act 1996 s 440 (as amended): see PARA 517 post.

14     For the meaning of 'school' see PARA 81 ante.

15     Education Act 1996 Sch 1 para 14(5). Where a child is a registered pupil at both a pupil referral unit and at a school other than a unit, the references in s 444 (as amended) (see PARA 521 post) to the school at which he is a registered pupil must be read as references to the unit: Sch 1 para 14(6).

## **UPDATE**

### **463 School attendance orders**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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#### **464. Management committees.**

Regulations<sup>1</sup> may make provision for requiring any local education authority<sup>2</sup> which maintains a pupil referral unit<sup>3</sup> to establish a committee to act as the management committee for the unit<sup>4</sup>, and for that committee to discharge on behalf of the authority such of its functions<sup>5</sup> in connection with the unit as are delegated by it to the committee in accordance with the regulations<sup>6</sup>. Such regulations may in particular make provision:

- 901 (1) for enabling a local education authority to establish a joint committee to act as the management committee for two or more pupil referral units maintained by the authority<sup>7</sup>;
- 902 (2) for requiring the approval of the Secretary of State to be obtained before any such joint committee is established<sup>8</sup>;
- 903 (3) as to the composition of a management committee established under the regulations, the appointment and removal of its members and their terms of office, and in particular for requiring such a committee to include persons representing schools<sup>9</sup> situated in the area from which the unit or units in question may be expected to draw pupils<sup>10</sup>;
- 904 (4) for requiring or, as the case may be, prohibiting the delegation<sup>11</sup> to a management committee of such functions in connection with pupil referral units as are specified in the regulations<sup>12</sup>;
- 905 (5) for authorising a management committee to establish sub-committees<sup>13</sup>;
- 906 (6) for enabling, subject to any provisions of the regulations, the determination<sup>14</sup> of a management committee's procedure and that of any sub-committee<sup>15</sup>;
- 907 (7) for limiting the personal liability of members of any such committee or sub-committee in respect of their acts or omissions as such members<sup>16</sup>;
- 908 (8) for applying to any such committee or sub-committee, with or without modification, any provision of the Education Acts<sup>17</sup>, or any provision made by or under any other enactment and relating to committees or (as the case may be) sub-committees of a local authority<sup>18</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under Sch 1 para 15 (as added and amended).

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'pupil referral unit' see PARA 457 ante.

4 Education Act 1996 s 19(7), Sch 1 para 15(1)(a) (Sch 1 para 15 added by the Education Act 1997 s 48).

5 As to the meaning of 'functions' see PARA 14 note 5 ante.

6 Education Act 1996 Sch 1 para 15(1)(b) (as added: see note 4 supra).

7 Ibid Sch 1 para 15(2)(a) (as added: see note 4 supra).

8 Ibid Sch 1 para 15(2)(b) (as added: see note 4 supra).

9 For the meaning of 'school' see PARA 81 ante.

10 Education Act 1996 Sch 1 para 15(2)(c) (as added (see note 4 supra); and amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 184(c), Sch 31). For the meaning of 'pupil' see PARA 16 note 4 ante.

11 The delegation by a local education authority or, in the case of a local education authority which is operating executive arrangements, by the executive of that authority or any person on behalf of that executive: Education Act 1996 Sch 1 para 15(2)(d) (Sch 1 para 15 as added (see note 4 supra); Sch 1 para 15(2)(d) substituted, in relation to England, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(r), 32(a)(i) and, in relation to Wales, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, arts 1(2), 2(q), 31(a)(i)). For the purposes of the Education Act 1996 Sch 1 para 15(2) (as added and amended), 'executive' and 'executive arrangements' have the same meanings as in the Local Government Act 2000 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 303, 327); Education Act 1996 Sch 1 para 15(3) (added, in relation to England, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(r), 32(b) and, in relation to Wales, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, arts 1(2), 2(q), 31(b)).

12 Education Act 1996 Sch 1 para 15(2)(d) (Sch 1 para 15 as added (see note 4 supra); and Sch 1 para 15(2)(d) as substituted (see note 11 supra)).

13 Ibid Sch 1 para 15(2)(e) (as added: see note 4 supra).

14 The by: (1) a local education authority; (2) in the case of a local education authority which is operating executive arrangements, the executive of that authority or any person acting on behalf of that executive; or (3) a management committee: ibid Sch 1 para 15(2)(f) (Sch 1 para 15 as added (see note 4 supra); and Sch 1 para 15(2)(f) amended, in relation to England, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(r), 32(a)(ii) and, in relation to Wales, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, arts 1(2), 2(q), 31(a)(ii)).

15 Education Act 1996 Sch 1 para 15(2)(f) (Sch 1 para 15 as added (see note 4 supra); and Sch 1 para 15(2)(f) as amended (see note 14 supra)).

16 Ibid Sch 1 para 15(2)(g) (as added: see note 4 supra).

17 Ibid Sch 1 para 15(2)(h)(i) (as added: see note 4 supra). For the meaning of 'the Education Acts' see PARA 1 note 14 ante.

18 Education Act 1996 Sch 1 para 15(2)(h)(ii) (as added: see note 4 supra).



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## **(5) INDEPENDENT SCHOOLS**

### **(i) In general**

#### **A. INTRODUCTION**

##### **465. Meaning of 'independent school'.**

'Independent school' means any school<sup>1</sup> at which full-time education is provided for:

- 909 (1) five or more pupils<sup>2</sup> of compulsory school age<sup>3</sup>; or
- 910 (2) at least one pupil of that age<sup>4</sup> for whom a statement of special educational needs is maintained<sup>5</sup>, or who is looked after by a local authority<sup>6</sup>,

and which is not a school maintained by a local education authority<sup>7</sup> or a special school<sup>8</sup> not so maintained<sup>9</sup>.

1 For the meaning of 'school' see PARA 81 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

Education Act 1996 s 463(1)(a) (s 463 substituted by the Education Act 2002 s 172).

For these purposes, it is immaterial if full-time education is also provided at the school for pupils under or over compulsory school age: Education Act 1996 s 463(2) (as so substituted). As to the meaning of 'compulsory school age' see PARA 15 ante.

4 See note 4 supra.

5 le under the Education Act 1996 s 324 (as amended) (see PARA 996 post).

6 Ibid s 463(1)(b) (as substituted: see note 3 supra).

The text refers to a local authority within the meaning of the Children Act 1989 s 22 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867).

7 As to local education authorities generally see PARA 20 ante; and as to schools maintained by local education authorities see PARA 94 ante.

8 As to special schools see PARA 1027 et seq post.

9 Education Act 1996 s 463(1) (as substituted: see note 3 supra).

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## ***B. GENERAL POWERS AND DUTIES***

### **466. Power to arrange provision of education at non-maintained schools.**

A local education authority<sup>1</sup> may make arrangements for the provision of primary<sup>2</sup> and secondary education<sup>3</sup> for pupils<sup>4</sup> at schools<sup>5</sup> not maintained by it or another local education authority<sup>6</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'primary education' see PARA 16 ante.

3 For the meaning of 'secondary education' see PARA 17 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 For the meaning of 'school' see PARA 81 ante.

6 Education Act 1996 s 18.

As from a day to be appointed, a local education authority will have power to give financial assistance to pupils educated at non-maintained schools, in addition to the power to make arrangements for the education of pupils at such schools: see s 18 (prospectively substituted); and PARA 31 ante. At the date at which this volume states the law, no such day had been appointed.

Any function of a local education authority in England which is conferred by or under s 18 (prospectively substituted) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (a). For the meaning of 'England' see PARA 52 note 11 ante.

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#### **467. Power of Secretary of State to require performance information.**

The general power of the Secretary of State<sup>1</sup> to make regulations<sup>2</sup> requiring the provision of information in relation to schools<sup>3</sup> includes power to require such information from the proprietors of independent schools<sup>4</sup>. Regulations may also require the proprietor<sup>5</sup> of a registered independent school<sup>6</sup> to provide the registration authority<sup>7</sup> with such particulars relating to the school as may be prescribed<sup>8</sup>, and provide that such a school may be removed from the register of independent schools if the proprietor fails to comply with such regulations<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante.

3 I.e. the power conferred by *ibid* s 537 (as amended): see PARA 60 ante.

4 See *ibid* s 537(1)(b) (as substituted); and PARA 60 ante. For the meaning of 'independent school' see PARA 465 ante.

5 For the meaning of 'proprietor' see PARA 60 note 7 ante.

6 As to the registration of independent schools see PARA 479 post.

7 For the meaning of 'the registration authority' see PARA 480 note 5 post.

8 See the Education Act 2002 s 168(1); and PARA 487 post.

9 See *ibid* 168(2); and PARA 487 post.

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#### **468. Other general powers of Secretary of State.**

The general powers of the Secretary of State<sup>1</sup> to prevent the unreasonable exercise of functions by certain bodies<sup>2</sup>, and to take steps where such a body has failed to discharge any duty<sup>3</sup>, may be extended by ballot regulations<sup>4</sup> to apply to the proprietors of independent schools<sup>5</sup> in respect of duties imposed by such regulations<sup>6</sup>. The Secretary of State may arrange for the payment of expenses incurred in complying with specified obligations imposed by ballot regulations<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Ie under the Education Act 1996 s 496 (as amended): see PARA 57 ante.

3 Ie under ibid s 497 (as amended): see PARA 58 ante.

4 Ie regulations made under the School Standards and Framework Act 1998 s 105: see PARA 439 ante.

5 For the meaning of 'independent school' see PARA 465 ante. For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 142(8).

6 See ibid s 105(7); the Education (Grammar School Ballots) Regulations 1998, SI 1998/2876, reg 21 (applying the Education Act 1996 s 497 (as amended) to the proprietors of independent schools in respect of certain duties); and PARA 439 note 6 ante.

7 See the School Standards and Framework Act 1998 s 105(9); and PARA 439 note 14 ante.

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#### **469. Provision of individual pupil information.**

Regulations<sup>1</sup> may make provision requiring the proprietor<sup>2</sup> of every independent school<sup>3</sup> to provide to the relevant person such individual pupil information<sup>3</sup> as may be prescribed<sup>5</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the regulations made under s 537A (as added and substituted) see PARA 61 notes 9, 11 ante.

2 For the meaning of 'proprietor' see PARA 60 note 7 ante.

3 For the meaning of 'independent school' see PARA 465 ante.

4 For the meaning of 'individual pupil information' see PARA 61 note 10 ante.

5 See the Education Act 1996 s 537A (as added and substituted); and PARA 61 ante.

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#### **470. Welfare of children accommodated in independent schools.**

The proprietor of an independent school which provides accommodation for any child is under a duty to safeguard and promote the child's welfare<sup>1</sup>. A local authority in whose area an independent school provides accommodation for a child must take such steps as are reasonably practicable to enable it to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated by the school<sup>2</sup>.

Provision is made for the inspection of premises, children and records as prescribed by regulations made by the Secretary of State for these purposes<sup>3</sup>.

1 See the Children Act 1989 s 87(1) (as substituted); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1197.

2 See *ibid* s 87(3) (as substituted); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1197.

3 See *ibid* s 87(5), (6) (as substituted). As to the regulations made see, in relation to England, the National Care Standards Commission (Inspection of Schools and Colleges) Regulations 2002, SI 2002/552, and the National Care Standards Commission (Fees and Frequency of Inspections) Regulations 2003, SI 2003/753; and, in relation to Wales, the Inspection of Boarding Schools and Colleges (Powers and Fees) (Wales) Regulations 2002, SI 2002/3161. See further CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1197.

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#### **471. Special educational needs in independent schools.**

The general duty to educate children with special educational needs<sup>1</sup> in mainstream schools<sup>2</sup> does not prevent a child from being educated in an independent school<sup>3</sup> which is not a mainstream school if the cost is met otherwise than by a local education authority<sup>4</sup>. However, no person may exercise functions<sup>5</sup> in relation to a child with special educational needs so that the child is educated in an independent school unless the school is for the time being approved by the Secretary of State<sup>6</sup> as suitable for the admission of children for whom statements of special educational needs are maintained<sup>7</sup>, or the Secretary of State is satisfied that there is a place available for the child at the school and consents to the child being educated there<sup>8</sup>.

In certain circumstances, a local education authority may fund special educational provision<sup>9</sup> in a school which is not a maintained school<sup>10</sup>.

The Secretary of State may approve, as special schools<sup>11</sup>, schools which are not community or foundation special schools<sup>12</sup>.

A local education authority is under a duty to make arrangements for the avoidance of disagreements between the parents of a child with special educational needs and the proprietor of an independent school named in the child's statement, about the special educational provision made for that child<sup>13</sup>.

The proprietor or head teacher of an independent school may request the local education authority to make an assessment of the educational needs<sup>14</sup> of a child registered at that school<sup>15</sup>.

1 For the meaning of 'special educational needs' see PARA 984 post.

2 I.e. under the Education Act 1996 s 316 (as substituted and amended): see PARA 1008 post. For the meaning of 'mainstream school' see PARA 1008 note 4 post. That definition specifically excludes an independent school which is not a city technology college, a city college for the technology of the arts, or an academy. As to the meanings of 'city technology college', 'city college for the technology of the arts' and 'academy' see PARA 496 post. As to special educational provision in such colleges and academies see PARAS 506, 1010 post.

3 For the meaning of 'independent school' see PARA 465 ante.

4 See the Education Act 1996 s 316A(1) (as added and amended); and PARA 1008 post.

5 I.e. functions under ibid Pt IV (ss 312-349) (as amended): see PARA 984 et seq post.

6 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 As to the approval of independent schools as suitable for the admission of children for whom statements of special educational need are maintained see the Education Act 1996 s 347 (as amended); the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651 (as amended); and PARAS 1030-1031 post.

8 See the Education Act 1996 s 347(5) (as amended); and PARA 1030 post. See also s 347(5A) (as added); and PARA 1030 post.

9 For the meaning of 'special educational provision' see PARA 984 post.

10 See the Education Act 1996 s 348 (as amended); and PARA 1009 post.

11 For the meaning of 'special school' see PARA 1027 post.

12 See the Education Act 1996 s 342 (as amended); the Education (Special Schools) Regulations 1994, SI 1994/652 (in relation to Wales); the Education (Non-Maintained Special Schools) (England) Regulations 1999, SI 1999/2257 (as amended); and PARA 1028 post. As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 et seq post.

13 See the Education Act 1996 s 332B (as added); and PARA 1022 post.

14 See an assessment under ibid s 323 (as amended): see PARA 988 post.

15 See ibid s 329A (as added); and PARA 995 post. This applies whether or not there is already a statement of special educational needs in respect of the child: see s 329A(1) (as added); and PARA 995 post.



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#### **472. Employment of staff.**

The Secretary of State<sup>1</sup>, in relation to England<sup>2</sup>, or the Secretary of State and the National Assembly for Wales<sup>3</sup> concurrently, in relation to Wales<sup>4</sup>, may direct that a person may not carry out work which involves providing education at an independent school<sup>5</sup> or taking part in the management of an independent school, or that a person may carry out such work only in specified circumstances or subject to specified conditions<sup>6</sup>. Such a direction may be given in respect of a person on any of the following grounds, namely, on the grounds that the person is included, otherwise than provisionally, in the list of individuals considered unsuitable to work with children<sup>7</sup>, or on the grounds that the person is unsuitable to work with children, or on grounds relating to the person's misconduct or his health, or on grounds relating to the person's professional incompetence<sup>8</sup>.

As an employer, a proprietor may be vicariously liable for unintentional assaults on pupils by staff and may also be liable for engaging unsuitable staff<sup>9</sup>.

The requirements as to qualifications of teachers employed in schools do not generally apply to independent schools<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 For the meaning of 'independent school' see PARA 465 ante.

6 See the Education Act 2002 s 142(1); and PARA 782 post. Section 142 also applies to work of a kind which brings a person regularly into contact with children, and is carried out at the request of or with the consent of the proprietor of a school (whether or not under a contract): see s 142(3), (9). For the meaning of 'proprietor' see PARA 60 note 7 ante. A registered school may be removed from the independent schools register where any person, in relation to the school, is carrying out work in contravention of a direction or when he is disqualified from working with children: see PARA 482 post.

7 I.e. the list kept under the Protection of Children Act 1999 s 1 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 648).

8 See the Education Act 2002 s 142(4); and PARA 782 post.

9 See *Lister v Hesley Hall Ltd* [2001] ELR 422, [2001] 2 FCR 97, HL (overruling *Trotman v North Yorkshire County Council* [1998] ELR 625, [1999] LGR 584, CA). As to vicarious liability see TORT vol 97 (2010) PARA 680 et seq.

10 See the Education Act 2002 s 133; and PARA 770 post. For these purposes, 'school' means: (1) a school maintained by a local education authority; or (2) a special school not so maintained: see s 133(6). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post.

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#### **473. Preferment to teachers in independent schools willing to give religious education.**

Preference may be given, in connection with the appointment, promotion or remuneration of teachers<sup>1</sup> at an independent school<sup>2</sup> which has a religious character<sup>3</sup>, to persons: (1) whose religious opinions are in accordance with the tenets of the religion or the religious denomination specified<sup>4</sup> in relation to the school<sup>5</sup>; or (2) who attend religious worship in accordance with those tenets<sup>6</sup>; or (3) who give, or are willing to give, religious education at the school in accordance with those tenets<sup>7</sup>.

Regard may be had, in connection with the termination of the employment or engagement of any teacher at the school, to any conduct on his part which is incompatible with the precepts, or with the upholding of the tenets, of the religion or religious denomination so specified<sup>8</sup>.

1 As to the appointment, promotion or remuneration of teachers generally see PARA 769 et seq post.

2 For the meaning of 'independent school' see PARA 465 ante.

3 School Standards and Framework Act 1998 s 124A(1), (2) (s 124A added by the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, SI 2003/2037, regs 2-3). The School Standards and Framework Act 1998 s 69(3), (5) (see PARA 951 post), which relates to the designation of foundation or voluntary schools as having a religious character, apply in relation to an independent school as they apply in relation to a foundation or voluntary school but as if: (1) in s 69(3), the reference to Pt II (ss 20-83) (as amended) were a reference to Pt 5A (ss 124A-124B) (as added); and (b) in s 69(5), the reference to s 69(4) (see PARA 951 post) were a reference to s 124A(2) (as added): s 124B(1) (s 124B added by the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, SI 2003/2037, regs 2-3). An order made under the School Standards and Framework Act 1998 s 69(3) by virtue of s 124A(1) (as added) must specify, in relation to each school designated by the order, the religion or religious denomination (or, as the case may be, each religion or religious denomination) in accordance with whose tenets education is provided at the school or the school is conducted: s 124B(2) (as so added). As to foundation and voluntary schools generally see PARA 104 et seq ante; and as to foundation and voluntary schools having a religious character see PARAS 953-954 post. As to the making of orders under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the orders made under s 69(3), (5) (as modified) and s 124B (as added) see the Independent Schools (Employment of Teachers in Schools with a Religious Character) Regulations 2003, SI 2003/2037; the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003, SI 2003/2314 (amended by SI 2004/2262); the Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2003, SI 2003/3108; the Independent Schools (Religious Character of Schools) (Designation Procedure) (Wales) Regulations 2003, SI 2003/3233; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2003, SI 2003/3284; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 3) Order 2003, SI 2003/3328; the Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2004, SI 2004/72; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2004, SI 2004/354; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 3) Order 2004, SI 2004/577; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 4) Order 2004, SI 2004/1378; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 5) Order 2004, SI 2004/2089; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 6) Order 2004, SI 2004/2986; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2005, SI 2005/2993; and the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 3) Order 2005, SI 2005/3388.

4 Ie specified under the School Standards and Framework Act 1998 s 124B(2) (as added): see note 3 supra.

5 Ibid s 124A(2)(a) (as added: see note 3 supra).

- 6 Ibid s 124A(2)(b) (as added: see note 3 supra).
- 7 Ibid s 124A(2)(c) (as added: see note 3 supra).
- 8 Ibid s 124A(3) (as added: see note 3 supra).

## **UPDATE**

### **473 Preferment to teachers in independent schools willing to give religious education**

NOTE 3--See also the Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2008, SI 2008/783; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2008, SI 2008/2340; the Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2009, SI 2009/510; the Designation of Schools Having a Religious Character (Independent Schools) (Wales) Order 2009, SI 2009/1218; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2009, SI 2009/2198.

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### **C. FEES**

#### **474. Contract between parent and proprietor.**

In independent schools<sup>1</sup> the relations between the parent and the proprietor of the school are governed by the terms (express or implied) of the contract for the education of the child<sup>2</sup>.

Where the contract between the parent and the school proprietor provides that a term's notice must be given of the child's removal from the school, the proprietor can recover a term's fees if the child is removed without due notice<sup>3</sup>, and it is no defence to a claim for fees in lieu of notice that the school is closing down<sup>4</sup>. If the pupil is absent for a term owing to illness the parent is not liable for the term's fees in the absence of an express provision in the contract<sup>5</sup>. Where fees are payable in advance and the pupil is absent for a term the proprietor can recover the full fees for the term without making any deduction in respect of board<sup>6</sup>. Where the pupil is excluded from the school as a result of the parent's breach of the contract, the proprietor is entitled to the whole term's fees<sup>7</sup>.

Unless the right is expressly or impliedly reserved in the contract, the proprietor may not be able to increase the fees<sup>8</sup>. Notice by the proprietor of an increase in fees may operate as a notice to determine the contract and allow of the parent removing his child without due notice<sup>9</sup>.

If, on obtaining a divorce, a mother is granted custody of a child and the father gives an undertaking to maintain and educate him, this undertaking is not sufficient of itself to entitle the mother to incur school fees for the child independently of the father's wishes<sup>10</sup>.

The proprietor cannot recover from the parent sums spent on the pupil's behalf without the sanction, express or implied, of the parent<sup>11</sup>.

An announcement that a scholarship examination is to be held does not constitute an offer which will result in a contract with the competitor who obtains the highest marks<sup>12</sup>.

1 For the meaning of 'independent school' see PARA 465 ante.

2 The terms of the contract are frequently those contained in a school prospectus of which the parent has notice: *Spry v Kent Education Committee* (1924) 40 TLR 559, DC. See also *D'Mello v Loughborough College of Technology* (1970) 114 Sol Jo 665 (college prospectus held to be part of the contract); *Price v Dennis* (1988) [1999] Ed CR 747, CA (broad terms of the prospectus, but not each detail in it, held to be incorporated into the contract; proprietor subject to an implied term of the contract that he would conduct the school in a fit, proper and responsible manner; and the proprietor also subject to a duty to take reasonable steps to retain the confidence of parents who themselves acted reasonably). As to contractual terms see CONTRACT vol 9(1) (Reissue) PARA 767 et seq.

3 *Mount v Oldham Corp'n* [1973] QB 309, [1973] 1 All ER 26, CA (overruling *Denman v Winstanley* (1887) 4 TLR 127, DC, where it had been held that the appropriate claim was for damages). The court takes judicial notice of the usage of the educational world that, in lieu of giving a term's notice of withdrawal, a term's fees must be paid: *Mount v Oldham Corp'n* supra.

4 *Tuyn v Creasy* (1956) Times, 7 November, CA. See also *Lenissen v Thornton* (1887) 3 TLR 657, DC; *Eardly v Price* (1806) 2 Bos & PNR 333. In the case of a contract to pay for a course of instruction by instalments, the instalments can be recovered although the student has given notice that he does not intend to continue the course: *International Correspondence Schools Ltd v Ayres* (1912) 106 LT 845.

5 *Simeon v Watson* (1877) 46 LJQB 679; *Boast v Firth* (1868) LR 4 CP 1; cf *Collins v Price* (1828) 5 Bing 132 (where illness after the beginning of the term was held not to excuse from payment of the term's fees).

6 *Jones v Turner* (1891) 7 TLR 421, DC.

7 *Price v Wilkins* (1888) 58 LT 680.

8 *Anon* (1946) 96 L Jo 602.

9 *Pott v Stevens* (1949) 99 L Jo 164.

10 *Roper v S* (1954) Times, 5 May, per Singleton LJ (it would not be right in ordinary justice to make the father pay fees for the son at a school at which he did not wish his son to remain; judgment given for the fees against the mother, but not against the father).

11 *Clements v Williams* (1837) 8 C & P 58 (no general authority to supply clothing to a pupil without the parent's sanction).

12 *Rooke v Dawson* [1895] 1 Ch 480.

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#### **475. Transitional arrangements relating to the assisted places scheme.**

With effect from the school year 1997-1998, the statutory duty of the Secretary of State<sup>1</sup> to operate the assisted places scheme<sup>2</sup> was repealed<sup>3</sup>, and any participation agreement<sup>4</sup> in force immediately before 1 September 1997<sup>5</sup> also ceased to have effect<sup>6</sup>. However, the scheme continues to operate in relation to pupils who were already assisted before the 1997-1998 school year.

A former participating school<sup>7</sup> may provide assisted places<sup>8</sup> at the school<sup>9</sup>, but may only do so for existing assisted pupils<sup>10</sup> at the school<sup>11</sup>. If a pupil is provided with an assisted place at a time when he is receiving primary education, he ceases to hold that place: (1) at the end of the school year in which he completes his primary education; or (2) if the Secretary of State, where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to that pupil, determines that he should continue to hold that place for a further period during which he receives secondary education, at the end of that period<sup>12</sup>. Where a school providing assisted places remits fees<sup>13</sup> that otherwise would be chargeable in respect of pupils holding such places at the school, and does so in accordance with regulations<sup>14</sup>, the Secretary of State must reimburse the school for the fees so remitted<sup>15</sup>.

The Secretary of State may by regulations make such provision as appears to him to be expedient in connection with the provisions described above<sup>16</sup>. Such regulations may, in particular:

- 911 (a) prescribe the conditions subject to which, the extent to which, and the arrangements in accordance with which, fees are to be remitted by schools providing assisted places<sup>17</sup>;
- 912 (b) prescribe arrangements enabling the Secretary of State to determine from time to time the maximum levels of fees which may be charged by such schools in respect of pupils holding such places, and conditions to be complied with by such schools with respect to such fees<sup>18</sup>;
- 913 (c) prescribe the time and manner in which such schools are to claim and receive reimbursements from the Secretary of State<sup>19</sup>;
- 914 (d) provide for the Secretary of State to discharge by means of lump sum payments to such schools any future liabilities of his to make such reimbursements<sup>20</sup>;
- 915 (e) prescribe conditions to be complied with by such schools with respect to the keeping and auditing of accounts and the provision of information to the Secretary of State<sup>21</sup>;
- 916 (f) provide for the Secretary of State, in a case where a former participating school merges with another school, closes (whether wholly or in part), or notifies the Secretary of State that it no longer wishes to provide assisted places, to authorise the new school or (as the case may be) any other former participating school to provide any assisted places which the first-mentioned school was authorised to provide<sup>22</sup>;
- 917 (g) provide for the Secretary of State, in a case where he is satisfied that it is reasonable to do so in view of any particular circumstances relating to a pupil who holds (or has at any time held) an assisted place provided by a school, to authorise another school which is either (i) a former participating school; or (ii) a new school

authorised to provide assisted places by virtue of head (f) above, to provide for the pupil the assisted place which the first-mentioned school was authorised to provide<sup>23</sup>.

Regulations may also require or enable schools providing assisted places to make grants in respect of incidental expenses<sup>24</sup>, and to remit such incidental charges as may be specified in the regulations<sup>25</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'The assisted places scheme' means the scheme operated by the Secretary of State under the Education Act 1996 s 479 (repealed): Education (Schools) Act 1997 s 4(1). The scheme was established under the Education Act 1980 s 17 (repealed), and continued in force under the Education Act 1996 s 479 (repealed). The scheme enables pupils who might not otherwise be able to do so to benefit from education at independent schools. Participating schools remit fees that would otherwise be chargeable in respect of pupils selected for assisted places under the scheme and the Secretary of State reimburses the schools for the fees that are remitted. The scheme applied initially only to secondary education, but was extended by the Education Act 1997 s 1 (repealed) to schools providing solely primary education. It has been held that the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 did not guarantee the right to an assisted place at an independent school, when public education was available: *R v Secretary of State for Education and Employment, ex p Begbie* [2000] 1 WLR 1115, [2000] ELR 445, CA.

3 See the Education (Schools) Act 1997 s 1(1), repealing the Education Act 1996 ss 479-481, Sch 35. This repeal did not affect the operation of any participation agreement (see note 4 infra), the assisted places scheme, or any regulations made under s 480 (repealed) or s 481 (repealed), in relation to the 1996-1997 school year or any previous year: Education (Schools) Act 1997 s 1(3).

4 'Participation agreement' means an agreement made by the Secretary of State with a school for the purposes of the assisted places scheme (including such an agreement as subsequently varied by the parties to it): *ibid* s 4(1).

5 *Ie* the date on which *ibid* s 1 came into force.

6 *Ibid* s 1(2).

7 'Former participating school' means a school in relation to which a participation agreement was in force immediately before 1 September 1997 (including such an agreement under which the school had not yet begun to provide any assisted places): *ibid* s 4(1). Except where the context otherwise requires, references in s 2 (as amended) and s 3 to a school include the proprietors of schools and persons acting with their authority: s 4(2).

8 'Assisted place', in relation to the 1997-1998 school year or any subsequent school year, means an assisted place provided under *ibid* s 2(1): s 4(1).

9 *Ie* for the 1997-1998 school year or a subsequent year: *ibid* s 2(1). Nothing in s 2(1) may be taken as prejudicing the operation of any regulations under s 3 (see the text and notes 16-25 *infra*) by virtue of which assisted places authorised to be provided under s 2(1) by a former participating school may instead be so provided by another such school or a new school created on the merger of such a school with another school: s 2(7) (added by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 224).

10 For this purpose, a pupil at a former participating school is an existing assisted pupil if he was selected (or provisionally selected) for an assisted place at the school at any time prior to the beginning of the 1997-1998 school year and either: (1) he continued as, or became, a registered pupil at the school at the beginning of the first term of that year; or (2) he became a registered pupil at the school after the beginning of that term but before the end of that year and the Secretary of State, where he was satisfied that it was reasonable to do so in view of any particular circumstances relating to the pupil, determined that the requirements of head (1) *supra* should not apply to him: Education (Schools) Act 1997 s 2(5). For these purposes, 'assisted place' means an assisted place provided for the purposes of the assisted places scheme; and the reference to a pupil who was provisionally selected for such a place does not include a pupil who was so selected but from whom the place was subsequently withdrawn by the school: s 2(6).

11 *Ibid* s 2(1)(a); and see note 9 *supra*. The power to provide assisted places is subject also to regulations under s 3: s 2(1)(b). As to such regulations see the text and notes 16-25 *infra*.

12 Ibid s 2(1)(b), (2); and see note 9 supra. In *R v Secretary of State for Education and Employment, ex p Begbie* [2000] 1 WLR 1115, [2000] ELR 445, CA, the court refused to hold the Secretary of State bound by statements made concerning the exercise of his discretion under the Education (Schools) Act 1997 s 2(2) to provide assistance under the scheme where a child continued his education into the secondary stage of education in an 'all through' school.

13 The fees in relation to which this applies are: (1) tuition and other fees the payment of which is a condition of attendance at the school, but excluding boarding fees and such other fees as may be excluded by or in accordance with regulations; and (2) entrance fees for public examinations paid by the school in respect of candidates from the school: Education (Schools) Act 1997 s 2(4). As to the regulations see the text and notes 16-25 infra.

14 Ie in accordance with regulations made under *ibid* s 3 (see the text and notes 16-25 infra).

15 Ibid s 2(3).

16 Ibid s 3(1). Regulations under s 3 may authorise the Secretary of State to make provision for any purpose specified in the regulations: s 3(5). Regulations under s 3 are made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 3(8). Any such regulations may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit: s 3(9). Before making regulations under s 3(1) or (2) (see the text and notes 17-23 infra), the Secretary of State must consult such bodies as appear to him to be appropriate and representative of schools that will be or are providing assisted places: s 3(7)(a).

As to the regulations made under s 3(1), (2) (as amended) see the Education (Assisted Places) Regulations 1997, SI 1997/1968 (amended by SI 1998/1726; SI 1998/1966; SI 1999/1504; SI 2000/1938; SI 2000/2111; SI 2001/2680; SI 2001/2744; SI 2003/1705; SI 2003/1854; SI 2004/1812; SI 2004/1965; SI 2005/2030; SI 2005/2838).

17 Education (Schools) Act 1997 s 3(2)(a); and see note 16 supra. Regulations made under s 3(2)(a) or (b) must be reviewed by the Secretary of State not later than two years after the date on which the first such regulations are made, and thereafter at intervals of not more than two years: s 3(6). When conducting any such review, the Secretary of State must consult such bodies as appear to him to be appropriate and representative of schools that will be or are providing assisted places: s 3(7)(b).

18 Ibid s 3(2)(b); and see notes 16-17 supra.

19 Ibid s 3(2)(c); and see note 16 supra.

20 Ibid s 3(2)(d); and see note 16 supra.

21 Ibid s 3(2)(e); and see note 16 supra.

22 Ibid s 3(2)(f); and see note 16 supra.

23 Ibid s 3(2)(g) (added by the School Standards and Framework Act 1998 s 130(1)); and see note 16 supra.

24 For this purpose, expenses or charges are 'incidental' if they are in respect of matters incidental to or arising out of the attendance at the schools of pupils holding assisted places provided under the Education (Schools) Act 1997 s 2(1) (see the text and notes 7-12 supra): s 3(3).

25 Ibid s 3(3); and see note 16 supra. Any regulations made under s 3(3) must require any amounts granted or remitted by a school in accordance with the regulations to be reimbursed to the school by the Secretary of State; and any such regulations may make, in connection with the making of any such grants or remissions, provision such as is authorised to be made in connection with the remission of fees by heads (a), (c) and (d) in the text: s 3(4). As to the regulations made under s 3(3) see the Education (Assisted Places) (Incidental Expenses) Regulations 1997, SI 1997/1969 (amended by SI 1998/1585; SI 1999/1505; SI 2001/2794; SI 2003/1707; SI 2003/1779; SI 2004/1807; SI 2004/1970; SI 2005/2037; SI 2005/2837).

## UPDATE

### 475 Transitional arrangements relating to the assisted places scheme

NOTE 16--SI 1997/1968 further amended: SI 2006/1812, SI 2007/2001, SI 2008/1593 (England), SI 2006/3097, SI 2008/509 (Wales), SI 2009/1561 (England).



NOTE 25--SI 1997/1969 further amended: SI 2006/1813, SI 2007/2002, SI 2008/1594 (England), SI 2006/3098, SI 2008/510 (Wales), SI 2008/1879, SI 2009/1560 (England).

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#### **476. Payment of school fees and expenses in Wales.**

Regulations<sup>1</sup> must make provision for the payment by the National Assembly for Wales, for the purpose of enabling pupils<sup>2</sup> to take advantage without hardship to themselves or their parents<sup>3</sup> of any educational facilities available to them, of the whole or any part of the fees and expenses payable in respect of children<sup>4</sup> attending schools<sup>5</sup> at which fees are payable<sup>6</sup>. Such regulations may provide for the making of payments under the regulations to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations<sup>7</sup>, and for requiring persons to whom payments have been made under the regulations to comply with such requirements as may be so determined<sup>8</sup>.

1 For these purposes, 'regulations' means regulations made by the National Assembly for Wales: Education Act 1996 s 579(1). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. At the date at which this volume states the law, no substantive regulations had been made or have effect as if made under s 491. The Education (Direct Grant Schools) (Revocation) Regulations 1998, SI 1998/86, revoked the Direct Grant Schools Regulations 1959, SI 1959/1832 (as amended) as from 16 February 1998.

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

3 As to the meaning of 'parent' see PARA 510 note 1 post.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 For the meaning of 'school' see PARA 81 ante.

6 Education Act 1996 s 491(1).

Section 491 is repealed by the Education Act 2002 ss 18(1)(h), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. In relation to England, see the Education Act 2002 Pt 2 (ss 14-18); and PARA 65 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

7 Education Act 1996 s 491(2)(a). See note 6 supra.

8 Ibid s 491(2)(b). See note 6 supra.

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#### ***D. LOCAL EDUCATION AUTHORITY ALLOWANCES***

##### **477. Travelling and subsistence allowances for governors representing local education authority.**

A local education authority<sup>1</sup> may pay such allowances as may be prescribed to any person appointed to represent the authority on the governing body of an independent school<sup>2</sup> or non-maintained special school<sup>3</sup>.

<sup>1</sup> As to local education authorities see PARA 20 ante.

<sup>2</sup> For the meaning of 'independent school' see PARA 465 ante.

<sup>3</sup> See the Education Act 1996 s 519(3) (as amended); the Education (Governors' Allowances) (England) Regulations 2003, SI 2003/523, reg 5; the Governor Allowances (Wales) Regulations 2005, SI 2005/2915, reg 5; and PARA 46 ante. For the meaning of 'special school' see PARA 1027 post.

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## **(ii) Regulation and Complaints**

### **A. REGULATION OF INDEPENDENT SCHOOLS**

#### **478. Independent school standards.**

For the purposes of the regulation of independent schools<sup>1</sup>, regulations<sup>2</sup> must prescribe<sup>3</sup> standards in relation to the following matters:

- 918 (1) the quality of education provided at independent schools<sup>4</sup>;
- 919 (2) the spiritual, moral, social and cultural development of pupils<sup>5</sup> at independent schools<sup>6</sup>;
- 920 (3) the welfare, health and safety of pupils at independent schools<sup>7</sup>;
- 921 (4) the suitability of proprietors<sup>8</sup> of and staff at independent schools<sup>9</sup>;
- 922 (5) the premises<sup>10</sup> of and accommodation at independent schools<sup>11</sup>;
- 923 (6) the provision of information by independent schools<sup>12</sup>;
- 924 (7) the manner in which independent schools handle complaints<sup>13</sup>.

For the purposes of the regulation of independent schools<sup>14</sup>, 'independent school standards' means the standards for the time being prescribed under the above provisions<sup>15</sup>.

1. For the purposes of the Education Act 2002 Pt 10 Ch 1 (ss 157-171) (as amended). For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

2. 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 157 see the Education (Independent School Standards) (England) Regulations 2003, SI 2003/1910 (amended by SI 2004/3374; SI 2004/3168); and the Independent School Standards (Wales) Regulations 2003, SI 2003/3234 (amended by SI 2005/2929).

3. 'Prescribe' means prescribe by regulations: see the Education Act 2002 s 212(1). See note 2 supra.

4. Ibid s 157(1)(a).

5. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

6. Ibid s 157(1)(b).

7. Ibid s 157(1)(c).

8. For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

9. Ibid s 157(1)(d).

10. As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

11. Ibid s 157(1)(e).

- 12 Ibid s 157(1)(f).
- 13 Ibid s 157(1)(g).
- 14 Ie for the purposes of ibid Pt 10 Ch 1 (as amended).
- 15 Ibid s 157(2).

## **UPDATE**

### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

### **478 Independent school standards**

TEXT AND NOTES--As from a day to be appointed references in the Education Act 2002 Pt 10 Ch 1 to an independent school are to an independent school in Wales: Education Act 2002 s 156A(1) (s 156A added by Education and Skills Act 2008 Sch 1 para 15). For provision regulating independent schools in England, see the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141): Education Act 2002 s 156A(2). See further PARA 487B.

2002 Act s 157(2) substituted, s 157(1A) added: Childcare Act 2006 s 47. As from a day to be appointed 2002 Act s 157(1A) repealed, s 157(2) repealed in part: Education and Skills Act 2008 Sch 1 para 16, Sch 2.

See also Provision of Services Regulations 2009, SI 2009/2999; and SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 385A.

NOTE 2--SI 2003/3234 further amended: SI 2007/947, SI 2009/2544. SI 2003/1910 further amended: SI 2007/1087, SI 2008/3253, SI 2009/1924.

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#### **479. Separate registration for England and Wales.**

There continues<sup>1</sup> to be a register of independent schools<sup>2</sup> in England<sup>3</sup> and a register of independent schools in Wales<sup>4</sup>. The register of independent schools in England is to be kept by the Secretary of State<sup>5</sup>. The register of independent schools in Wales is to be kept by the National Assembly for Wales<sup>6</sup>.

1 The Education Act 2002 Pt 10 Ch 1 (ss 157-171) (as amended) replaces the regulatory regime for independent schools contained in the Education Act 1996 Pt VII Ch II (ss 464-478) (repealed).

2 For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

3 Ibid s 158(1)(a). For the purposes of Pt 10 Ch 1 (as amended), 'the register' means, in relation to a school in England, the register of independent schools in England: s 171. For the meaning of 'England' see PARA 52 note 11 ante.

4 Ibid s 158(1)(b). For the purposes of Pt 10 Ch 1 (as amended), 'the register' means, in relation to a school in Wales, the register of independent schools in Wales: s 171. For the meaning of 'Wales' see PARA 52 note 13 ante.

5 Ibid s 158(2). As to the Secretary of State see PARA 52 ante.

6 Ibid s 158(3). As to the National Assembly for Wales see PARA 53 ante.

### **UPDATE**

#### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

#### **479 Separate registration for England and Wales**

TEXT AND NOTES--As from a day to be appointed Education Act 2002 s 158(1)(a), (2) repealed, s 158(3) and definition of 'the register' in s 171 amended: Education and Skills Act 2008 Sch 1 paras 17, 24(4), Sch 2.

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#### **480. Registration procedure.**

An application to enter an independent school<sup>1</sup> in the register of independent schools<sup>2</sup> must: (1) contain the prescribed<sup>3</sup> information<sup>4</sup>; and (2) be made to the registration authority<sup>5</sup> by the proprietor<sup>6</sup> of the school in the prescribed manner<sup>7</sup>. The information prescribed under head (1) above must include information as to the following matters relating to the school:

- 925 (a) the age range of pupils<sup>8</sup>;
- 926 (b) the maximum number of pupils<sup>9</sup>;
- 927 (c) whether the school is for male or female pupils or both<sup>10</sup>;
- 928 (d) whether the school provides accommodation for pupils<sup>11</sup>;
- 929 (e) whether the school admits pupils with special educational needs<sup>12</sup>.

Where the proprietor of an independent school makes an application to the registration authority under these provisions<sup>13</sup>, the registration authority must notify the Chief Inspector<sup>14</sup>. The Chief Inspector must then inspect the school and report to the registration authority on the extent to which the independent school standards<sup>15</sup> are met, and are likely to continue to be met, in relation to the school<sup>16</sup>.

Where a school has been so inspected<sup>17</sup>, the registration authority must, taking into account the report of the Chief Inspector<sup>18</sup> and any other evidence relating to the independent school standards, determine whether those standards are met, and are likely to continue to be met, in relation to the school<sup>19</sup>. The registration authority must notify the proprietor of a school of any determination made in relation to the school<sup>20</sup>. If the registration authority determines that the independent school standards are met, and are likely to continue to be met, in relation to a school, the registration authority must enter the school in the register<sup>21</sup>. An entry in the register for a school must include the name and address of the school<sup>22</sup>, the name of the proprietor of the school<sup>23</sup>, and the information supplied pursuant to heads (a) to (e) above<sup>24</sup>.

1 For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

2 For the meaning of 'the register' see PARA 479 notes 3-4 ante.

3 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 160 see the Education (Provision of Information by Independent Schools) (England) Regulations 2003, SI 2003/1934, reg 5, Schedule Pt 2 paras 2-3 (Schedule para 2 amended by SI 2004/3373); and the Independent Schools (Provision of Information) (Wales) Regulations 2003, SI 2003/3230, reg 3, Schedule Pt 2 paras 2-3.

4 Education Act 2002 s 160(1)(a).

5 For the purposes of *ibid* Pt 10 Ch 1 (as amended) (ss 157-171), 'registration authority' means: (1) in relation to a school in England, the Secretary of State; and (2) in relation to a school in Wales, the National Assembly for Wales: s 171.

6 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of *ibid* s 212(2), (3).

7 Ibid s 160(1)(b). As to the consequences of conducting an independent school which is not registered see PARA 481 post.

8 Ibid s 160(2)(a). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 212(2), (3).

9 Ibid s 160(2)(b).

10 Ibid s 160(2)(c).

11 Ibid s 160(2)(d).

12 Ibid s 160(2)(e). For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of s 212(2), (3).

13 Ie under ibid s 160.

14 Ibid s 160(3). For the purposes of Pt 10 Ch 1 (as amended), 'Chief Inspector' means: (1) in relation to a school in England, Her Majesty's Chief Inspector of Schools in England; and (2) in relation to a school in Wales, Her Majesty's Chief Inspector of Education and Training in Wales: s 171. As to Her Majesty's Chief Inspector of Schools in England see PARA 1167 et seq post; and as to Her Majesty's Chief Inspector of Education and Training in Wales see PARA 1187 et seq post.

15 For the purposes of ibid Pt 10 Ch 1 (as amended), 'independent school standards' has the meaning given by s 157 (see PARA 478 ante): s 171.

16 Ibid s 160(4).

17 Ie under ibid s 160: see the text to note 16 supra.

18 Ie the report of the Chief Inspector under ibid s 160: see the text to note 16 supra.

19 Ibid s 161(1).

20 Ibid s 161(2).

21 Ibid s 161(3).

22 Ibid s 161(4)(a).

23 Ibid s 161(4)(b).

24 Ibid s 161(4)(c).

## UPDATE

### 478-487 Regulation of Independent Schools

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

### 480 Registration procedure

NOTE 3--SI 2003/3230 reg 3, Schedule Pt 2 paras 2-3 amended: SI 2007/947.

NOTES 5, 14--As from a day to be appointed definitions of 'registration authority' and 'Chief Inspector' in the Education Act 2002 s 171 amended: Education and Skills Act 2008 Sch 1 para 24(2), (5), Sch 2.





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#### **481. Unregistered schools.**

A person who conducts an independent school<sup>1</sup> which is not a registered<sup>2</sup> school is guilty of an offence<sup>3</sup>. A person guilty of such an offence is liable on summary conviction to a penalty<sup>4</sup>. No proceedings may be instituted for such an offence except with the consent of the registration authority<sup>5</sup>. Where the Chief Inspector<sup>6</sup> has reasonable cause to believe that such an offence is being committed on any premises<sup>7</sup>, he may at any reasonable time enter and inspect the premises<sup>8</sup>, and inspect and take copies of any records or other documents which he has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence<sup>9</sup>.

1 For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

2 For the purposes of *ibid* Pt 10 Ch 1 (ss 157-171) (as amended), 'registered' means entered in the register: s 171. For the meaning of 'the register' see PARA 479 notes 3-4 ante. As to the registration procedure see PARA 480 ante.

3 *Ibid* s 159(1).

4 *Ibid* s 159(2). The penalty is a fine not exceeding level 5 on the standard scale, or imprisonment for a term not exceeding six months, or both: see s 159(2)(a), (b). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

5 Education Act 2002 s 159(3). For the meaning of 'the registration authority' see PARA 480 note 5 ante.

6 For the meaning of 'Chief Inspector' see PARA 480 note 14 ante.

7 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the Education Act 2002 s 212(2), (3).

8 *Ibid* s 159(4)(a). It is an offence wilfully to obstruct the Chief Inspector in the exercise of his functions under s 159(4): s 159(6). A person guilty of an offence under s 159(6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 159(7).

9 *Ibid* s 159(4)(b). See note 8 *supra*. In relation to the inspection of records or other documents under s 159(4)(b), the Education Act 2005 s 58 (computer records: see PARAS 1172, 1231 post) applies: Education Act 2002 s 159(5) (amended by the Education Act 2005 s 61, Sch 9 para 29).

The amendment made to the Education Act 2002 s 159(5) by the Education Act 2005 Sch 9 para 29 is brought into force from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). In relation to England the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed in relation to Wales, the reference to the Education Act 2005 s 58 is to be read as a reference to the School Inspections Act 1996 s 42 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (computer records: see PARA 1192 post). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

## **UPDATE**

### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

### **481 Unregistered schools**

TEXT AND NOTE 5--2002 Act s 159(3) repealed: Education and Inspections Act 2006 s 172(3), Sch 18 Pt 2. No proceedings for any offence under the 2002 Act Pt 10 Ch 1 (ss 157-171) may be instituted except by or with the consent of the registration authority: see PARA 487A.

NOTE 9--Day now appointed in relation to Wales: SI 2006/1338.

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#### **482. Enforcement of standards after registration.**

The registration authority<sup>1</sup> may remove a school<sup>2</sup> from the register of independent schools<sup>3</sup> if there is a material change<sup>4</sup> in relation to the school<sup>5</sup>, and the change has not been approved under the provisions governing the approval of a material change<sup>6</sup> or under the provisions governing the determination of appeals against a refusal to approve a material change<sup>7</sup>.

Applications for the approval of a material change must be made in writing and, in the case of approval of a change of proprietor, must be made by the proposed new proprietor<sup>8</sup>. Where such an application is made, the registration authority may require the Chief Inspector<sup>9</sup> to inspect the school<sup>10</sup> and report to the authority on the extent to which, if the change is made, any relevant standard<sup>11</sup> is likely to continue to be met in relation to the school<sup>12</sup>.

The registration authority must, where an application for approval is made under these provisions: (1) approve the change<sup>13</sup>, if the authority is satisfied that, taking into account any report of the Chief Inspector<sup>14</sup> and any other evidence relating to the independent school standards<sup>15</sup>, those standards will continue to be met in relation to the school<sup>16</sup>; and (2) in any other case, refuse to approve it<sup>17</sup>. The registration authority must serve on the proprietor of a registered school notice of any decision so made by the authority in relation to the school<sup>18</sup>.

The registration authority may remove a registered<sup>19</sup> school from the register where it is satisfied that any person, in relation to the school: (a) is carrying out work<sup>20</sup> in contravention of a direction<sup>21</sup> prohibiting him from so doing<sup>22</sup>; or (b) is carrying out work<sup>23</sup> and is disqualified by order<sup>24</sup> from working with children<sup>25</sup>.

1 For the meaning of 'registration authority' see PARA 480 note 5 ante.

2 I.e. an independent school. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

3 For the meaning of 'the register' see PARA 479 notes 3-4 ante. As to the registration procedure see PARA 480 ante.

4 For these purposes, 'material change', in relation to a school, means: (1) a change of proprietor; (2) a change of address; or (3) a change to the school in respect of any of the matters referred to in the Education Act 2002 s 160(2)(a)-(e) (see PARA 480 heads (a)-(e) ante): s 162(2). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 212(2), (3).

5 Ibid s 162(1)(a).

6 I.e. under ibid s 162.

7 Ibid s 162(1)(b). The determination of appeals against a refusal to approve a material change takes place under s 167 (see PARA 491 post).

8 Ibid s 162(3).

9 For the meaning of 'Chief Inspector' see PARA 480 note 14 ante.

10 Education Act 2002 s 162(4)(a).

11 In *ibid* s 162(4), 'relevant standard' means any of the independent schools standards specified by the authority for the purposes of s 162(4): s 162(5). For the meaning of 'independent school standards' see *PARA* 480 note 15 *ante*.

12 *Ibid* s 162(4)(b).

13 *Ibid* s 162(6)(a).

14 *Ibid* s 162(6)(a), (7)(a).

15 *Ibid* s 162(6)(a), (7)(b).

16 *Ibid* s 162(6)(a), (7). The report referred to in the text is any report under s 162(4): see the text and notes 9-12 *supra*.

17 *Ibid* s 162(6)(b).

18 *Ibid* s 170(1)(a). For the purposes of Pt 10 Ch 1 (ss 157-171) (as amended), any notice, order or other document required to be given to or served on the proprietor of a registered school may be given to or served on him by delivering it to the registered address of the school: s 170(2).

19 For the meaning of 'registered' see *PARA* 481 note 2 *ante*.

20 *Ie* any work to which the Education Act 2002 s 142 applies: see *PARAS* 472 *ante*, 782 *post*.

21 *Ie* a direction made under *ibid* s 142: see *PARAS* 472 *ante*, 782 *post*.

22 *Ibid* s 169(a).

23 See note 20 *supra*.

24 *Ie* an order under the Criminal Justice and Court Services Act 2000 s 28 (prospectively amended) (see *CHILDREN AND YOUNG PERSONS* vol 5(3) (2008 Reissue) *PARA* 663) or s 29 (prospectively amended) (see *CHILDREN AND YOUNG PERSONS* vol 5(3) (2008 Reissue) *PARA* 664).

25 Education Act 2002 s 169(b).

## UPDATE

### 478-487 Regulation of Independent Schools

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further *PARA* 487B.

### 482 Enforcement of standards after registration

TEXT AND NOTES 19-25--The registration authority may now remove a registered school from the register where it is satisfied that any person who, in relation to the school, carries out work of a prescribed kind is subject to a direction, order or decision of a prescribed description made under any prescribed enactment having effect in any part of the United Kingdom: Education Act 2002 s 169 (prospectively amended by Education and Inspections Act 2006 s 170(1)). The 2006 Act s 170 is in force in relation to Wales (see SI 2009/2545) and comes into force in relation to England on a day to be appointed (see Education and Inspections Act 2006 s 188(3)). In exercise of the power conferred on them by the 2002 Act s 169, the Welsh Ministers have made the Education (Independent Schools) (Unsuitable Persons) (Wales) Regulations 2009, SI 2009/2558.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(5) INDEPENDENT SCHOOLS/(ii) Regulation and Complaints/A. REGULATION OF INDEPENDENT SCHOOLS/483. Power to inspect registered schools in England.

#### **483. Power to inspect registered schools in England.**

The registration authority<sup>1</sup> may at any time require the Chief Inspector for England<sup>2</sup> to inspect any registered<sup>3</sup> school<sup>4</sup> in England<sup>5</sup> or arrange for the inspection of any registered school in England by a body approved by the registration authority for the purpose<sup>6</sup>. Such an inspection must relate to: (1) such of the independent school standards<sup>7</sup> as are, at the time of the inspection, specified by the registration authority for these purposes in relation to any category of school into which that school falls<sup>8</sup>; or (2) if the registration authority so determines, such of the independent school standards as the registration authority may specify in relation to that school<sup>9</sup>.

Where an inspection of the school is conducted by the Chief Inspector for England<sup>10</sup>, he has at all reasonable times a right of entry to the premises<sup>11</sup> of the school<sup>12</sup>, and a right to inspect and take copies of any records kept by the school and any other documents containing information relating to the school which are required for the purposes of the inspection<sup>13</sup>. It is an offence intentionally to obstruct a person in the exercise of his functions in relation to such an inspection<sup>14</sup>; and a person guilty of such an offence is liable on summary conviction to a penalty<sup>15</sup>. The proprietor<sup>16</sup> of the school must pay the Chief Inspector for England, in respect of such an inspection, a fee of such amount, and by such time, as may be specified in or determined under regulations<sup>17</sup>.

When conducting an inspection, the Chief Inspector for England must: (a) make a report to the registration authority on the extent to which the school meets the standard or standards to which the inspection relates<sup>18</sup>; and (b) if the registration authority so requires, arrange for the publication of the report in the prescribed manner<sup>19</sup>.

1 For the meaning of 'registration authority' see PARA 480 note 5 ante.

2 For these purposes, 'the Chief Inspector for England' means Her Majesty's Chief Inspector of Schools in England: Education Act 2002 s 162A(5) (s 162A added by the Education Act 2005 s 54, Sch 8 paras 1, 2). As to Her Majesty's Chief Inspector of Schools in England see PARA 1167 et seq post.

3 For the meaning of 'registered' see PARA 481 note 2 ante.

4 I.e independent school. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

5 Ibid s 162A(1)(a) (as added: see note 2 supra). For the meaning of 'England' see PARA 52 note 11 ante. As to the power to inspect registered schools in Wales see PARA 484 post. As to inspections generally see also PARA 1164 et seq post.

6 Ibid s 162A(1)(b) (as added: see note 2 supra).

7 For the meaning of 'independent school standards' see PARA 480 note 15 ante.

8 Education Act 2002 s 162A(2)(a) (as added: see note 2 supra).

9 Ibid s 162A(2)(b) (as added: see note 2 supra).

10 I.e under ibid s 162A(1)(a) (as added): see the text and notes 1-5 supra.

- 11 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of *ibid* s 212(2), (3).
- 12 *Ibid* s 162B(1), (2)(a) (s 162B added by the Education Act 2005 s 54, Sch 8 paras 1, 2).
- 13 Education Act 2002 s 162B(1), (2)(b) (as added: see note 12 *supra*). The Education Act 2005 s 58 (computer records: see PARAS 1172, 1231 post) applies in relation to the inspection of records or other documents under the Education Act 2002 s 162B(2)(b) (as added): s 162B(1), (3) (as so added).
- 14 *Ibid* s 162B(1), (4) (as added: see note 12 *supra*).
- 15 *Ibid* s 162B(1), (5) (as added: see note 12 *supra*). The penalty is fine not exceeding level 4 on the standard scale: see s 162B(1), (5) (as so added). As to the standard scale see PARA 481 note 4 ante.
- 16 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of *ibid* s 212(2), (3).
- 17 *Ibid* s 162B(1), (6) (as added: see note 12 *supra*). Where the proprietor fails to comply with s 162B(6) (as added), the registration authority may remove the school from the register: s 162B(1), (7) (as so added). For the meaning of 'the register' for these purposes see PARA 479 note 3 ante. The Chief Inspector for England must pay the amount of any fee received under s 162B(7) (as added) into the Consolidated Fund: s 162B(1), (8) (as so added). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.
- 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 162B (as added). However, see the Education (Independent School Inspection Fees and Publication) (England) Regulations 2003, SI 2003/1926, which were made under the Education Act 2002 s 163 (as substituted in relation to England; prospectively substituted in relation to Wales) (see PARA 484 post).
- 18 *Ibid* s 162A(3)(a) (as added: see note 2 *supra*).
- 19 *Ibid* s 162A(3)(b) (as added: see note 2 *supra*). A report published under s 162A(3) (as added) is privileged for the purposes of the law of defamation unless the publication is shown to be made with malice, but without prejudice to any privilege subsisting apart from s 162A(3) (as added): s 162A(4) (as so added). As to defamation generally see LIBEL AND SLANDER.

## UPDATE

### 478-487 Regulation of Independent Schools

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

### 483 Power to inspect registered schools in England

TEXT AND NOTES--Education Act 2002 ss 162A, 162B repealed: Education and Skills Act 2008 Sch 1 para 18, Sch 2 (repeal of Education Act 2002 s 162A not yet in force; repeal of s 162B partly in force (with savings): see SI 2009/1606).

NOTE 2--Now, 'the Chief Inspector' means Her Majesty's Chief Inspector of Education, Children's Services and Skills: 2002 Act s 162A(5) (amended by the Education and Inspections Act 2006 Sch 14 para 73(3)).

NOTES 14, 19--2002 Act s 162A(4) revoked: Education and Inspections Act 2006 Sch 14 para 73(2), Sch 18 Pt 5.

NOTE 17--2002 Act s 162B(8) revoked: Education and Inspections Act 2006 Sch 14 para 74, Sch 18 Pt 5. SI 2003/1926 replaced: Education (Independent School Inspection Fees and Publication) (England) Regulations 2008, SI 2008/1801 (amended by SI



2009/1607). See also the Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009, SI 2009/1607 (amended by SI 2010/1002).

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#### **484. Power to inspect registered schools in Wales.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The registration authority<sup>2</sup> may at any time: (1) require the Chief Inspector<sup>3</sup> to inspect any registered<sup>4</sup> school<sup>5</sup> or to secure its inspection by one or more registered inspectors<sup>6</sup>; or (2) arrange for the inspection of any registered school by a body approved by the registration authority for the purpose<sup>7</sup>. Such an inspection must relate to: (a) such of the independent school standards<sup>8</sup> as are, at the time of the inspection, specified by the authority for the purposes of these provisions in relation to any category of school into which that school falls<sup>9</sup>; or (b) if the authority so determines, such of the independent school standards as the authority may specify in relation to that school<sup>10</sup>. A person who conducts such an inspection must: (i) make a report to the registration authority on the extent to which the school meets the standard or standards to which the inspection relates<sup>11</sup>; and (ii) if the registration authority so requires, arrange for the publication of the report in the prescribed<sup>12</sup> manner<sup>13</sup>.

If an inspection conducted under head (1) above is conducted by a registered inspector, he may, by agreement with the Chief Inspector, be assisted by the Chief Inspector<sup>14</sup>, and he may be assisted by such one or more persons enrolled in the list of persons who may act as members of an inspection team<sup>15</sup> as he may determine<sup>16</sup>. If the Chief Inspector so requires, a registered inspector must be assisted by at least one person enrolled in the list of persons who may act as members of an inspection team: (A) who is without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor<sup>17</sup> or in any other voluntary capacity, and disregarding any experience which it is reasonable to regard as insignificant)<sup>18</sup>; and (B) whose primary function in the inspection is not that of providing financial or business expertise<sup>19</sup>. If the inspection is conducted by a registered inspector, it may be monitored by the Chief Inspector<sup>20</sup>.

The person conducting the inspection, any person assisting him<sup>21</sup> and any person monitoring the inspection have at all reasonable times a right of entry to the premises<sup>22</sup> of the school<sup>23</sup>, and a right to inspect and take copies of any records kept by the school and any other documents containing information relating to the school which are required for the purposes of the inspection<sup>24</sup>. It is an offence wilfully to obstruct a person in the exercise of his functions in relation to the inspection<sup>25</sup>.

The proprietor<sup>26</sup> of the school must pay the Chief Inspector, in respect of the inspection, a fee of such amount, and by such time, as may be specified in or determined under regulations<sup>27</sup>.

1 The Education Act 2002 ss 163-164 are substituted by the Education Act 2005 s 54, Sch 8 paras 1, 3 as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the day appointed is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As a result of this substitution, the Education Act 2002 ss 163-164 no longer apply in relation to England. As to the power to inspect registered schools in England see PARA 483 ante. As to the provisions as prospectively substituted in relation to Wales see PARA 485 post. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'registration authority' see PARA 480 note 5 ante.

3 For the meaning of 'Chief Inspector' see PARA 480 note 14 ante.

4 For the meaning of 'registered' see PARA 481 note 2 ante.

5 Ie an independent school. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

6 Ibid s 163(1)(a). See note 1 supra. For these purposes, 'registered inspector' means a person registered under the School Inspections Act 1996 s 7(1), (2) (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 1194 post): Education Act 2002 s 171. The definition of 'registered inspector' in s 171 is repealed by the Education Act 2005 s 123, Sch 8 para 5, Sch 19 Pt 1 as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to inspections generally see also PARA 1164 et seq post.

7 Education Act 2002 s 163(1)(b). See note 1 supra.

8 For the meaning of 'independent school standards' see PARA 480 note 15 ante.

9 Education Act 2002 s 163(2)(a). See note 1 supra.

10 Ibid s 163(2)(b). See note 1 supra.

11 Ibid s 163(3)(a). See note 1 supra.

12 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 163 see the Independent Schools (Publication of Inspection Reports) (Wales) Regulations, SI 2003/3232.

13 Education Act 2002 s 163(3)(b). A report published under s 163(3) is privileged for the purposes of the law of defamation unless the publication is shown to be made with malice, but without prejudice to any privilege subsisting apart from s 163(3): s 163(4). See note 1 supra. As to defamation generally see LIBEL AND SLANDER.

14 Ibid s 164(1), (2)(a). See note 1 supra.

15 Ie the list kept under the School Inspections Act 1996 s 10, Sch 3 para 3A (as added and amended; repealed in relation to England; prospectively repealed in relation to Wales): see PARA 1203 post.

16 Education Act 2002 s 164(1), (2)(b). This is expressed to be subject to the School Inspections Act 1996 Sch 3 para 3(5) (repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 1202 post) and the Education Act 2002 s 164(3) (see the text and notes 17-19 infra): s 164(2)(b). See note 1 supra.

17 As to the governance of maintained schools see PARA 203 et seq ante.

18 Education Act 2002 s 164(3)(a). See note 1 supra.

19 Ibid s 164(3)(b). See note 1 supra.

20 Ibid s 164(4). See note 1 supra.

21 Ie pursuant to ibid s 164(2) or (3): see the text and notes 8-13 supra.

22 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

23 Ibid s 164(5)(a). See note 1 supra.

24 Ibid s 164(5)(b). The School Inspections Act 1996 s 42 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (computer records: see PARA 1192 post) applies in relation to the inspection of records or other documents under the Education Act 2002 s 164(5)(b): s 164(6). See note 1 supra.

25 Ibid s 164(7). A person guilty of an offence under s 164(7) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 164(8). See note 1 supra. As to the standard scale see PARA 481 note 4 ante.

26 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

27 Ibid s 164(9). At the date at which this volume states the law, no regulations had been made under s 164(9) in relation to Wales. Where the proprietor fails to comply with s 164(9), the registration authority may remove the school from the register: s 164(10). For the meaning of 'the register' see PARA 479 note 4 ante. The Chief Inspector must pay the amount of any fee received under s 164(9) into the Consolidated Fund: s 164(11). See note 1 supra. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## **UPDATE**

### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

### **484 Power to inspect registered schools in Wales**

TEXT AND NOTE 6--As from a day to be appointed Education Act 2002 s 163(1)(a) amended: Education and Skills Act 2008 Sch 1 para 19(b), Sch 2.

TEXT AND NOTES 14-27--As from a day to be appointed Education Act 2002 s 164 amended: Education and Skills Act 2008 Sch 1 para 20, Sch 2.

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#### **485. New power to inspect registered schools in Wales.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The registration authority<sup>2</sup> may at any time: (1) require the Chief Inspector for Wales<sup>3</sup> to inspect any registered<sup>4</sup> school<sup>5</sup> in Wales or to secure its inspection by one or more registered inspectors<sup>6</sup>; or (2) arrange for the inspection of any registered school by a body approved by the registration authority for the purpose<sup>7</sup>. Such an inspection must relate to: (a) such of the independent school standards<sup>8</sup> as are, at the time of the inspection, specified by the registration authority for the purposes of these provisions in relation to any category of school into which that school falls<sup>9</sup>; or (b) if the registration authority so determines, such of the independent school standards as the authority may specify in relation to that school<sup>10</sup>. A person who conducts such an inspection must: (i) make a report to the registration authority on the extent to which the school meets the standard or standards to which the inspection relates<sup>11</sup>; and (ii) if the registration authority so requires, arrange for the publication of the report in the prescribed<sup>12</sup> manner<sup>13</sup>.

If an inspection conducted under head (1) above is conducted by a registered inspector, he may, by agreement with the Chief Inspector for Wales, be assisted by the Chief Inspector for Wales<sup>14</sup>, and he may be assisted by such one or more persons enrolled in the list of persons who may act as members of an inspection team<sup>15</sup> as he may determine<sup>16</sup>. If the Chief Inspector for Wales so requires, a registered inspector must be assisted by at least one person enrolled in the list of persons who may act as members of an inspection team: (A) who is without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor<sup>17</sup> or in any other voluntary capacity, and disregarding any experience which it is reasonable to regard as insignificant)<sup>18</sup>; and (B) whose primary function in the inspection is not that of providing financial or business expertise<sup>19</sup>. If the inspection is conducted by a registered inspector, it may be monitored by the Chief Inspector for Wales<sup>20</sup>.

The person conducting the inspection, any person assisting him<sup>21</sup> and any person monitoring the inspection have at all reasonable times a right of entry to the premises<sup>22</sup> of the school<sup>23</sup>, and a right to inspect and take copies of any records kept by the school and any other documents containing information relating to the school which are required for the purposes of the inspection<sup>24</sup>. It is an offence wilfully to obstruct a person in the exercise of his functions in relation to the inspection<sup>25</sup>.

The proprietor<sup>26</sup> of the school must pay the Chief Inspector for Wales, in respect of the inspection, a fee of such amount, and by such time, as may be specified in or determined under regulations<sup>27</sup>.

1 The Education Act 2002 ss 163-164 are substituted by the Education Act 2005 s 54, Sch 8 paras 1, 3 as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). In relation to England, the day appointed is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As a result of this substitution, the Education Act 2002 ss 163-164 no longer apply in relation to England. As to the power to inspect registered schools in England see PARA 483 ante. Until such a day is appointed, the Education Act 2002 ss 163-164 apply in relation to Wales as originally enacted: see PARA 484 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

- 2 For the meaning of 'registration authority' see PARA 480 note 5 ante.
- 3 For these purposes, 'Chief Inspector for Wales' means Her Majesty's Chief Inspector of Education and Training in Wales: Education Act 2002 s 163(5). See note 1 supra. As to Her Majesty's Chief Inspector of Education and Training in Wales see PARA 1188 et seq post.
- 4 For the meaning of 'registered' see PARA 481 note 2 ante.
- 5 Ie an independent school. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).
- 6 Ibid s 163(1)(a). For these purposes, 'registered inspector' means a person registered under the Education Act 2005 s 25 (not yet in force) (registration of inspectors in Wales: see PARA 1233 post): Education Act 2002 s 163(5). See note 1 supra. As to inspections generally see also PARA 1164 et seq post.
- 7 Education Act 2002 s 163(1)(b). See note 1 supra.
- 8 For the meaning of 'independent school standards' see PARA 480 note 15 ante.
- 9 Education Act 2002 s 163(2)(a). See note 1 supra.
- 10 Ibid s 163(2)(b). See note 1 supra.
- 11 Ibid s 163(3)(a). See note 1 supra.
- 12 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to regulations so made see the Independent Schools (Publication of Inspection Reports) (Wales) Regulations 2003, SI 2003/3232.
- 13 Education Act 2002 s 163(3)(b). A report published under s 163(3) (prospectively substituted) is privileged for the purposes of the law of defamation unless the publication is shown to be made with malice, but without prejudice to any privilege subsisting apart from s 163(3) (prospectively substituted): s 163(4). See note 1 supra. As to defamation generally see LIBEL AND SLANDER.
- 14 Ibid s 164(1), (2)(a). See note 1 supra.
- 15 Ie the list kept under the Education Act 2005 s 28(8), Sch 4 para 4: see PARA 1242 post.
- 16 Education Act 2002 s 164(1), (2)(b). This is expressed to be subject to the Education Act 2005 Sch 4 para 3(5) (see PARA 1241 post) and the Education Act 2002 s 164(3) (prospectively substituted) (see the text and notes 17-19 infra): s 164(2)(b). See note 1 supra.
- 17 As to the governance of maintained schools see PARA 203 et seq ante.
- 18 Education Act 2002 s 164(3)(a). See note 1 supra.
- 19 Ibid s 164(3)(b). See note 1 supra.
- 20 Ibid s 164(4). See note 1 supra.
- 21 Ie pursuant to ibid s 164(2) or (3) (prospectively substituted): see the text and notes 8-13 supra.
- 22 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).
- 23 Ibid s 164(5)(a). See note 1 supra.
- 24 Ibid s 164(5)(b). The Education Act 2005 s 58 (computer records: see PARAS 1172, 1231 post) applies in relation to the inspection of records or other documents under the Education Act 2002 s 164(5)(b) (prospectively substituted): s 164(6). See note 1 supra.
- 25 Ibid s 164(7). A person guilty of an offence under s 164(7) (prospectively substituted) is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 164(8). See note 1 supra. As to the standard scale see PARA 481 note 4 ante.
- 26 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

27 Ibid s 164(9). At the date at which this volume states the law, no such regulations had been made in relation to Wales. Where the proprietor fails to comply with s 164(9) (prospectively substituted), the registration authority may remove the school from the register: s 164(10). For the meaning of 'the register' see PARA 479 note 4 ante. The Chief Inspector for Wales must pay the amount of any fee received under s 164(9) into the Consolidated Fund: s 164(11). Section 164(11) (prospectively substituted) has effect subject to the Government of Wales Act 1998 Sch 6 para 4 (Treasury power to direct that requirement for payment into Consolidated Fund is not to apply in relation to specified sums received by the Chief Inspector for Wales): Education Act 2002 s 164(12). See note 1 supra. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## **UPDATE**

### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

### **485 New power to inspect registered schools in Wales**

NOTE 3--As from a day to be appointed definition of 'Chief Inspector for Wales' in Education Act 2002 s 163(5) repealed: Education and Skills Act 2008 Sch 1 para 19(c), Sch 2.

TEXT AND NOTES 14-27--As from a day to be appointed Education Act 2002 s 164 amended: Education and Skills Act 2008 Sch 1 para 20, Sch 2.

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#### **486. Failure to meet standards.**

Where the registration authority<sup>1</sup>, taking into account a report published pursuant to the inspection of a registered<sup>2</sup> school<sup>3</sup> or any other evidence in respect of a registered school<sup>4</sup>, is satisfied that any one or more of the independent school standards<sup>5</sup> is or are not being met in relation to the school, the following provisions apply<sup>6</sup>.

If the registration authority considers that there is a risk of serious harm to the welfare of pupils<sup>7</sup> at the school, the authority may determine that the school is to be removed from the register<sup>8</sup> on such date after the appeal period<sup>9</sup> as the authority may determine<sup>10</sup>.

However, where the registration authority does not make a determination, it must serve a notice on the proprietor of the school: (1) identifying the standard or standards in question<sup>11</sup>; and (2) requiring the proprietor to submit an action plan<sup>12</sup> to the authority before the date specified in the notice, or such later date as the authority may specify after service of the notice<sup>13</sup>. Where an action plan is so submitted, the registration authority may reject it, or approve it, with or without modifications<sup>14</sup>. Where an action plan is required under, but is not submitted in accordance with, head (2) above, or where it is so submitted but rejected, the registration authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine<sup>15</sup>, or make an order<sup>16</sup>. Where an action plan has been approved, but any step specified in the plan is not taken by the date specified in the plan, whether as originally approved or as varied under head (a) below, the registration authority may: (a) substitute a later date for the taking of that step<sup>17</sup>; (b) make an order<sup>18</sup>; or (c) determine that the school is to be removed from the register on such date after the appeal period as the authority may determine<sup>19</sup>.

Where the registration authority has made a determination under the above provisions to remove a school from the register on a particular date and no appeal is made against the determination<sup>20</sup>, the authority must remove the school from the register on that date<sup>21</sup>.

1 For the meaning of 'registration authority' see PARA 480 note 5 ante.

2 For the meaning of 'registered' see PARA 481 note 2 ante. As to transitional provisions in relation to the application of the Education Act 2002 s 165 (as amended) before 1 September 2005 to schools in England which were, on 31 August 2003, provisionally registered pursuant to the Education Act 1996 s 465(3) (repealed) see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 6, Schedule para 6. As to for transitional provisions in relation to the application of the Education Act 2002 s 165(3)-(11) (see the text and notes 11-19 infra) before 1 January 2006 to schools which were, on 31 December 2003, provisionally registered pursuant to the Education Act 1996 s 465(3) (repealed) see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (No 2) (Wales) Regulations 2003, SI 2003/2959, reg 8(1).

3 Education Act 2002 s 165(1)(a) (amended by the Education Act 2005 s 54, Sch 8 para 4). The amendment made by the Education Act 2005 Sch 8 para 4 is brought into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) and the reference to a report mentioned in the text is to a report under the Education Act 2002 s 162A (as added) (see PARA 483 ante). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, the reference to a report is to be read as a reference to a report under s 163 (prospectively substituted in relation to Wales) (see PARAS 484-485 ante). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. The reference in the text to a school is a reference to an independent school. For the meaning of 'independent



school' see PARA 465 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

4 Ibid s 165(1)(b).

5 For the meaning of 'independent school standards' see PARA 480 note 15 ante.

6 Education Act 2002 s 165(1).

7 As to the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

8 For the meaning of 'the register' see PARA 479 notes 3-4 ante.

9 For the purposes of the Education Act 2002 Pt 10 Ch 1 (ss 157-171) (as amended), the 'appeal period' in relation to a determination or order is the period within which an appeal against it may be made under s 166 (see PARA 488 post): ss 165(13), 171.

10 Ibid s 165(2). The registration authority must serve on the proprietor of a registered school notice of any determination made by the authority under s 165 in relation to the school: s 170(1). For the purposes of Pt 10 Ch 1 (as amended), any notice, order or other document required to be given to or served on the proprietor of a registered school may be given to or served on him by delivering it to the registered address of the school: s 170(2). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 212(2), (3).

11 Ibid s 165(3)(a).

12 For the purposes of ibid s 165, an action plan is a plan specifying: (1) the steps that will be taken to meet a standard or standards; and (2) the time by which each step will be taken: s 165(4).

13 Ibid s 165(3)(b).

14 Ibid s 165(5). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 122(2), (3).

15 Ibid s 165(6)(a). See note 10 supra.

16 Ibid s 165(6)(b). The order referred to in the text is an order under s 165(8). The power to make an order under s 165 (as amended) is not exercisable by statutory instrument: see s 210(2); and PARA 77 note 7 ante.

An order under s 165(8) is an order requiring the proprietor of the school to do one or more of the following no later than such date after the appeal period as may be specified in the order: (1) to cease using any part of the school premises for all purposes or purposes specified in the order; (2) to close any part of the school's operation; (3) to cease to admit any new pupils, or new pupils of a description specified in the order: s 165(8). If the proprietor of a school fails to comply with an order under s 165(8): (a) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both; and (b) the registration authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine: s 165(9). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 212(2), (3). As to the standard scale see PARA 481 note 4 ante. Where the proprietor of a school in respect of which an order is made under s 165(8) applies to the registration authority for the order to be varied or revoked, the authority must: (i) vary or revoke the order as requested in the application, if it is satisfied that it is appropriate to do so because of any change of circumstance; and (ii) in any other case, refuse to do so: s 165(10). The variation or revocation of an order under s 165(10) takes effect as from the date on which the proprietor of the school is notified of it: s 165(11). The registration authority must serve on the proprietor of a registered school notice of any order made by the authority under s 165, or of any decision made by the authority under s 165(10), in relation to the school: s 170(1). See note 10 supra.

17 Ibid s 165(7)(a).

18 Ibid s 165(7)(b). The order referred to in the text is an order under s 165(8) (see note 16 supra).

19 Ibid s 165(7)(c). See note 10 supra.

20 Ie under ibid s 166: see PARA 488 post.

21 Ibid s 165(12).

## UPDATE

## **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

## **486 Failure to meet standards**

TEXT AND NOTE 3--As from a day to be appointed Education Act 2002 s 165(1)(a) further amended and Education Act 2005 Sch 8 para 4 repealed: Education and Skills Act 2008 Sch 1 para 21, Sch 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(5) INDEPENDENT SCHOOLS/(ii) Regulation and Complaints/A. REGULATION OF INDEPENDENT SCHOOLS/487. Provision of information to the registration authority.

#### **487. Provision of information to the registration authority.**

Regulations<sup>1</sup> may make provision requiring the proprietor<sup>2</sup> of a registered<sup>3</sup> school<sup>4</sup> to provide the registration authority<sup>5</sup>, when the authority so requests, with such particulars relating to the school as may be prescribed<sup>6</sup>. Such regulations may in particular: (1) require the provision of such information as is required by the local authority<sup>7</sup> for the purposes of determining whether the school is<sup>8</sup> a children's home<sup>9</sup>; (2) provide for the registration authority to remove from the register<sup>10</sup> any school in respect of which any requirement imposed by or under the regulations is not complied with<sup>11</sup>; (3) provide that a person who fails to comply with any specified provision of the regulations is guilty of an offence and liable to a penalty<sup>12</sup>.

1 'Regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 168 see the Education (Provision of Information by Independent Schools) (England) Regulations 2003, SI 2003/1934 (amended by SI 2004/3373); and the Independent Schools (Provision of Information) (Wales) Regulations 2003, SI 2003/3230.

2 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 For the meaning of 'registered' see PARA 481 note 2 ante.

4 Ie an independent school. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

5 For the meaning of 'registration authority' see PARA 480 note 5 ante.

6 Education Act 2002 s 168(1). 'Prescribed' means prescribed by regulations (see note 2 supra): s 212(1). Annual returns must be made to the registration authority: see the Education (Provision of Information by Independent Schools) (England) Regulations 2003, SI 2003/1934, reg 7, Schedule Pt 4 paras 9-13A (amended by SI 2004/3373); and the Independent Schools (Provision of Information) (Wales) Regulations 2003, SI 2003/3230, reg 5, Schedule Pt 4 paras 9-13. Specific notification must be given where a person ceases to be employed at the school by reason of misconduct, health or suitability: see the Education (Provision of Information by Independent Schools) (England) Regulations 2003, SI 2003/1934, reg 8, Schedule Pt 5 paras 14-20 (reg 8 amended by SI 2004/3373); and the Independent Schools (Provision of Information) (Wales) Regulations 2003, SI 2003/3230, reg 6.

7 For the meaning of 'local authority' see PARA 50 note 1 ante.

8 Ie within the meaning of the Care Standards Act 2000 (see s 1; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 983).

9 Education Act 2002 s 168(2)(a).

10 For the meaning of 'the register' see PARA 479 notes 3-4 ante.

11 Education Act 2002 s 168(2)(b). See the Education (Provision of Information by Independent Schools) (England) Regulations 2003, SI 2003/1934, reg 9; and the Independent Schools (Provision of Information) (Wales) Regulations 2003, SI 2003/3230, reg 7.

12 Education Act 2002 s 168(2)(c). The penalty on summary conviction is a fine not exceeding level 5 on the standard scale: 168(2)(c). As to the standard scale see PARA 481 note 4 ante. See the Education (Provision of Information by Independent Schools) (England) Regulations 2003, SI 2003/1934, reg 10; and the Independent Schools (Provision of Information) (Wales) Regulations 2003, SI 2003/3230, reg 8.

**UPDATE****478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

**487 Provision of information to the registration authority**

TEXT AND NOTES--As to the prohibition of unsuitable persons from participation in the management of independent schools, see Education Act 2002 ss 167A-167D and PARA 487C.

NOTE 1--SI 2003/1934 further amended: SI 2009/37, SI 2009/1924. SI 2003/3230 amended: SI 2007/947, SI 2009/2544.

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#### **487A. Offences relating to independent schools.**

The following provisions apply in relation to an offence relating to the regulation of independent schools<sup>1</sup>.

No proceedings for an offence may be instituted except by or with the consent of the registration authority<sup>2</sup>.

Where an offence committed by a body corporate or an unincorporated body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer, member or partner<sup>3</sup>, as well as the body corporate, body or partnership, he is guilty of the offence and liable to be proceeded against and punished accordingly<sup>4</sup>. Proceedings for an alleged offence by an unincorporated body are to be brought in the name of that body, and not in that of any of its members<sup>5</sup>. For the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation<sup>6</sup>, and the statutory provisions dealing with the procedure on charges of offences against corporations<sup>7</sup> apply as they apply in relation to a body corporate<sup>8</sup>. A fine imposed on an unincorporated body on its conviction of an offence is to be paid out of the funds of that body<sup>9</sup>.

1     Ie an offence under the Education Act 2002 Pt 10 Ch 1 (ss 157-171). However, ss 168B and 168C do not have effect in relation to offences committed before the Education and Inspections Act 2006 s 172 came into force: s 172(4).

2     2002 Act s 168A (ss 168A-168C added by Education and Inspections Act 2006 s 172(2)). For the meaning of 'the registration authority' see PARA 480.

3     Ie, in relation to a body corporate, a director, manager, secretary or other similar officer, or any person who was purporting to act in any such capacity (2002 Act s 168B(1)) or, in relation to an incorporated body, any officer of the body or any member of its governing body (s 168C(4)) or, in relation to a partnership, a partner (s 168C(5)). Where the affairs of a body corporate are managed by its members, s 168B(1) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director of a body corporate: s 168B(2).

4     Ibid ss 168B(1), 168C(4), (5).

5     Ibid s 168C(1).

6     Ibid s 168C(1).

7     Ie the Criminal Justice Act 1925 s 33 and the Magistrates' Courts Act 1980 Sch 3 (procedure on charge of an offence against a corporation): see CRIMINAL EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1161; and MAGISTRATES vol 29(2) (Reissue) PARA 666.

8     2002 Act s 168C(3).

9     Ibid s 168C(2).

#### **UPDATE**

#### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(5) INDEPENDENT SCHOOLS/(ii) Regulation and Complaints/A. REGULATION OF INDEPENDENT SCHOOLS/487B. Independent educational institutions in England.

#### **487B. Independent educational institutions in England.**

The following provisions are partly in force: SI 2009/1513, SI 2009/1606. For transitional provision see Education and Skills Act 2008 ss 139-141 and SI 2009/1513, SI 2009/1606.

### **1. Independent educational institutions**

For the purposes of the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141), 'an independent educational institution' means (1) an independent school, or (2) an institution other than an independent school which provides part-time education for one or more persons of compulsory school age ('part-time students') whether or not it also provides full-time education for any person, and would be an independent school but for the fact that the education provided for the part-time student or students is part-time rather than full-time: Education and Skills Act 2008 s 92(1). References in Pt 4 Ch 1 to an independent educational institution are to an independent educational institution in England: Education and Skills Act 2008 s 93(1). For provision regulating independent schools in Wales, see the Education Act 2002 Pt 10 Ch 1 (ss 157-171) (PARAS 478-487): Education and Skills Act 2008 s 93(2). For the purposes of s 92, an institution provides 'part-time' education for a person if it provides education for the person (a) for at least 12.5 hours a week, for at least 28 weeks, during an academic year at the end of which the person is under the age of 12, or (b) for at least 15 hours a week, for at least 28 weeks, during an academic year at the end of which the person is aged 12 or over, which does not amount to full-time education: s 92(2). In s 92 'an academic year' means a period of 12 months ending with 31 August: s 92(4). Regulations may (i) provide that a specified institution or an institution of a specified description is not an independent educational institution by virtue of head (2); (ii) provide that time spent on a specified activity or on an activity of a specified description is or is not to be treated as time during which education is being provided for the purposes of s 92; (iii) amend head (a) or (b) so as to substitute a different number of weeks for the number of weeks for the time being mentioned there: s 92(3). In s 92 'specified' means specified in regulations under s 92: s 92(4).

### **2. Independent educational institution standards**

The Secretary of State must by regulations prescribe standards for the purposes of the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) about the following matters (1) the quality of education provided at independent educational institutions (see PARA 487B.1); (2) the spiritual, moral, social and cultural development of students at independent educational institutions; (3) the welfare, health and safety of students at independent educational institutions; (4) the suitability of proprietors of and staff at independent educational institutions; (5) the premises of and accommodation at independent educational institutions; (6) the provision of information by independent educational institutions; (7) the manner in which independent educational institutions handle complaints; (8) the quality of the leadership in and management of independent educational institutions: Education and Skills Act 2008 s 94(1). 'Proprietor', in relation to an institution, means the person or body of persons responsible for the management of the institution: Education and Skills Act 2008 s 138(1). A standard may be prescribed in relation to (a) all independent educational institutions, (b) specified independent educational institutions, or (c) independent educational institutions of a specified

description: s 94(2). In s 94(2) 'specified' means specified in regulations made under s 94: s 94(3). The standards do not apply to early years provision for children who have not attained the age of three (separate requirements as to such provision being imposed by or under the Childcare Act 2006 Pt 3): Education and Skills Act 2008 s 94(4). 'Early years provision' has the meaning given by the Childcare Act 2006 s 96(2): Education and Skills Act 2008 s 138(1).

In the Education and Skills Act 2008 Pt 4 Ch 1 'independent educational institution standards' means (i) the standards for the time being prescribed under s 94, and (ii) in relation to early years provision for children who have attained the age of three, the Early Years Foundation Stage (see Childcare Act 2006 s 39): Education and Skills Act 2008 s 94(5).

### **3. Requirements of registration and registration procedure**

The Secretary of State must keep a register of independent educational institutions (see PARA 487B.1): see Education and Skills Act 2008 s 95. A person must not conduct an independent educational institution unless it is registered; and a person who conducts an independent educational institution in contravention of s 96 is guilty of an offence: see Education and Skills Act 2008 s 96. Where the Chief Inspector has reasonable cause to believe that an offence under s 96 is being committed on any premises, the Chief Inspector may at any reasonable time (1) enter and inspect the premises, and (2) inspect and take copies of any records or other documents which the Chief Inspector has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence: see Education and Skills Act 2008 s 97.

The proprietor (see PARA 487B.2) of an independent educational institution may apply to the Secretary of State for the institution to be entered on the register; and an application to enter an institution in the register must (a) contain the prescribed information, and (b) be made in the prescribed manner: see Education and Skills Act 2008 s 98. See further Education and Skills Act 2008 s 138(2). Provision is made with respect to the determination of applications for registration: see Education and Skills Act 2008 s 99. If the Secretary of State has reasonable cause to believe that a registered institution has ceased to be an independent educational institution, and does not have reasonable cause to believe that the institution will become an independent educational institution again within the following 12 months, the Secretary of State may remove the institution from the register: see Education and Skills Act 2008 s 100.

### **4. Approval of material changes to registered details**

Where the proprietor (see PARA 487B.2) of a registered independent educational institution (see PARA 487B.1) is aware that a material change is to be made in relation to the institution, the proprietor must make an application to the Secretary of State for approval of the change: see Education and Skills Act 2008 s 102. For the meaning of 'material change' see Education and Skills Act 2008 s 101. Where an application for approval of a material change is made under s 102, the Secretary of State may direct the Chief Inspector to inspect the institution: see Education and Skills Act 2008 s 103. Where an application for approval of a material change is made under s 102, the Secretary of State must (1) approve the change, if satisfied that the independent educational institution standards are likely to continue to be met in relation to the institution if the change is made; (2) in any other case refuse to approve it: see Education and Skills Act 2008 s 104. The Secretary of State may remove an independent educational institution from the register (see PARA 487B.3) if (a) there has been a material change in relation to the institution, (b) the change has not been approved under the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141), and (c) either (i) no application has been made under s 102 for approval of the change, or (ii) such an application has been made but has been refused: see Education and Skills Act 2008 s 105.

### **5. Independent inspectorates**



The Secretary of State may approve inspectorates to undertake certain inspections of independent educational institutions (see PARA 487B.1) and may also withdraw approval from such a body: see Education and Skills Act 2008 s 106. The Chief Inspector must, at intervals of no more than a year, prepare and send to the Secretary of State a report about independent inspectorates; and in preparing such a report the Chief Inspector must have regard to such matters as the Secretary of State may direct: see Education and Skills Act 2008 s 107.

## **6. Inspections and reports**

The Chief Inspector is required to inspect independent educational institutions (see PARA 487B.1) at regular intervals, to be prescribed in regulations: see Education and Skills Act 2008 s 108. The Secretary of State may at any time direct the Chief Inspector to inspect a registered independent educational institution specified in the direction: see Education and Skills Act 2008 s 109. The Chief Inspector has at all reasonable times (1) a right of entry to the premises of the institution for the purposes of the inspection, and (2) a right to inspect and take copies of any records kept by the institution and any other documents containing information relating to the institution that are required for the purposes of the inspection: see Education and Skills Act 2008 s 110. Regulations may require the proprietor (see PARA 487B.2) of an institution to pay to the Chief Inspector a fee in respect of an inspection of the institution carried out by the Chief Inspector under the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141): see Education and Skills Act 2008 s 111. Where the proprietor of an institution fails to pay a fee in accordance with regulations under s 111, the Secretary of State may remove the institution from the register (see PARA 487B.3): see Education and Skills Act 2008 s 112. The Chief Inspector must comply with a direction given by the Secretary of State to publish the report of any inspection carried out by the Chief Inspector under the Education and Skills Act 2008 Pt 4 Ch 1: see Education and Skills Act 2008 s 113.

## **7. Failure to meet standards**

The Education and Skills Act 2008 s 114 applies to a registered independent educational institution (see PARA 487B.1) if the Secretary of State is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards (see PARA 487B.2) is or are not being met in relation to the institution: s 114(1). In s 114(1) 'relevant evidence' means (1) the report of an inspection carried out by the Chief Inspector or an independent inspectorate (see PARA 487B.5), or (2) any other evidence in respect of the institution: s 114(2). The Secretary of State may require the proprietor (see PARA 487B.2) of a registered independent educational institution to which s 114 applies to submit an action plan to the Secretary of State for approval: s 114(3). In the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) 'an action plan' means a plan specifying (a) the steps that will be taken to meet a standard or standards, and (b) the time by which each step will be taken: s 114(4). Any requirement imposed under s 114 to submit an action plan must be imposed by serving a notice on the proprietor of the institution in question (i) identifying the standard or standards that the Secretary of State is satisfied is or are not being met in relation to the institution, and (ii) specifying a date by which the action plan must be submitted: s 114(5). Where an action plan is submitted in pursuance of a requirement imposed under s 114 (whether or not by the date specified in the notice), the Secretary of State may approve it, with or without modifications, or reject it: s 114(6). Where the Secretary of State rejects an action plan, the Secretary of State may impose a further requirement under s 114 to submit an action plan: s 114(7). An action plan that has been approved may be varied at any time by the proprietor of the institution in question with the agreement of the Secretary of State: s 114(8).

Conditions are set out for taking action against an institution where the Secretary of State concludes on the basis of relevant evidence that the institution is failing to meet the relevant standards: see Education and Skills Act 2008 s 115. The enforcement action available to the Secretary of State is set out (see Education and Skills Act 2008 s 116); the Secretary of State may remove the institution from the register (see PARA 487B.3) or impose a relevant restriction (see Education and Skills Act 2008 s 117). Supplementary provision with respect to relevant restrictions imposed by the Secretary of State is made: see Education and Skills Act 2008 s 118.

## **8. Unsuitable persons and emergencies**

Unsuitable persons are prevented from working with children and action may be taken against those institutions that allow this to happen: see Education and Skills Act 2008 s 119; and the Education (Independent Educational Provision in England) (Unsuitable Persons) Regulations 2009, SI 2009/1633.

The Secretary of State may apply to a justice of the peace for an emergency order imposing an immediate restriction on, or deregistering, an independent educational institution (see PARA 487B.1), where a student at the institution is suffering or is at risk of suffering significant harm: see Education and Skills Act 2008 s 120. Supplementary provision is made (see Education and Skills Act 2008 s 121); and provision is made as to notification (see Education and Skills Act 2008 s 122).

## **9. Provision of information by proprietors**

Regulations may make provision for requiring the proprietor (see PARA 487B.2) of a registered independent educational institution (see PARA 487B.1) to provide the Secretary of State, on request, with such particulars relating to the institution as may be prescribed: see Education and Skills Act 2008 s 123.

## **10. Appeals**

The circumstances and timescales in which the proprietor (see PARA 487B.2) of an independent education institution (see PARA 487B.1) may appeal to the First-tier tribunal against decisions made by the Secretary of State to deregister an independent educational institution are set out: see Education and Skills Act 2008 s 124. A proprietor may also appeal against other decisions of the Secretary of State: see Education and Skills Act 2008 s 125. The proprietor may appeal to the First-tier tribunal against an emergency order made by a justice of the peace and the powers available to the Tribunal in determining such appeals are set out: see Education and Skills Act 2008 s 126. Supplementary provision is made: see Education and Skills Act 2008 s 127.

## **11. Prohibition on participation in management of independent educational institutions**

The appropriate authority (ie the Secretary of State or such other public authority as may be prescribed) may direct that a person (1) may not take part in the management of an independent educational institution (see PARA 487B.1); (2) may take part in the management of such an institution only in circumstances specified in the direction; (3) may take part in the management of such an institution only if conditions specified in the direction are satisfied: see Education and Skills Act 2008 s 128. Further provision is made with respect to directions under s 128: see Education and Skills Act 2008 s 129 (appeals), Education and Skills Act 2008 s 130 (information) and Education and Skills Act 2008 s 131 (notification).

## **12. Providers of independent education or training for 16 to 18 year olds**

Regulations may provide for any provision of the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) to apply in relation to an independent post-16 college as it applies in relation to an independent educational institution (see PARA 487B.1), subject to such modifications as may be prescribed: see Education and Skills Act 2008 s 132. Supplementary provision is made: see Education and Skills Act 2008 s 133.

## **13. Supplementary**

No proceedings for an offence under the Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) may be instituted except by or with the consent of the Secretary of State: Education and Skills Act 2008 s 134. Certain individuals may be prosecuted in limited circumstances where offences are committed by bodies corporate: see Education and Skills Act 2008 s 135. Where an offence has been committed by an unincorporated body, proceedings for offences are to be brought in the name of the body and not its members: see Education and Skills Act 2008 s 136. For the purposes of Pt 4 Ch 1, any notice, order or other document required to be given to or served on the proprietor (see PARA 487B.2) of a registered independent educational institution (see PARA 487B.1) may be given to or served on the proprietor by delivering it to the registered address of the institution: Education and Skills Act 2008 s 137.

### **UPDATE**

#### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(5) INDEPENDENT SCHOOLS/(ii) Regulation and Complaints/A. REGULATION OF INDEPENDENT SCHOOLS/487C. Prohibition on participation in management of independent schools.

#### **487C. Prohibition on participation in management of independent schools.**

The registration authority may direct that a person (1) may not take part in the management of an independent school; (2) may take part in the management of an independent school only in circumstances specified in the direction; or (3) may take part in the management of an independent school only if conditions specified in the direction are satisfied: Education Act 2002 s 167A(1), (6) (s 167A(6) prospectively amended with effect from a day to be appointed by Education and Skills Act 2008 s 169, Sch 1 paras 13, 22(a), (b), Sch 2). Education Act 2002 ss 167A-167D are prospectively added by Education and Inspections Act 2006 s 169, which is in force in relation to Wales (see SI 2009/2545) and comes into force in relation to England on a day to be appointed (see Education and Inspections Act 2006 s 188(3)). A direction may be given in respect of a person only on prescribed grounds connected with the suitability of persons to take part in the management of independent schools: Education Act 2002 s 167A(2). Regulations may prescribe the procedure for giving a direction and the grounds on which a person subject to a direction may seek to have it varied or revoked, and the registration authority may vary or revoke a direction in prescribed cases: see Education Act 2002 s 167A(3)-(5). The Secretary of State, the Welsh Ministers, and specified bodies have power to provide information in connection with directions: see Education Act 2002 s 167C (as amended). Provision is also made for specified persons to be notified when directions are made, varied or revoked: see Education Act 2002 s 167D (as amended). For transitional provisions, see Education and Inspections Act 2006 s 171 (as amended), which is in force in relation to Wales (see SI 2009/2545) and comes into force in relation to England on a day to be appointed (see Education and Inspections Act 2006 s 188(3)).

A person in respect of whom a direction has been given may appeal to the First-tier Tribunal against the decision to give the direction and against a decision not to vary or revoke the direction: Education Act 2002 s 167B(1) (amended by SI 2008/2833). Regulations may (a) provide that the Tribunal may not entertain an appeal in so far as the appellant's case is inconsistent with his having been convicted of an offence; (b) prescribe circumstances in which the Tribunal must allow an appeal; and (c) prescribe the powers available to the Tribunal on allowing an appeal: Education Act 2002 s 167B(2).

#### **UPDATE**

#### **478-487 Regulation of Independent Schools**

The framework for the registration and regulation of independent schools in Wales continues to be set out in the Education Act 2002 Pt 10 Ch 1 (ss 157-171). The Education and Skills Act 2008 Pt 4 Ch 1 (ss 92-141) makes provision for the registration, inspection and regulation of independent schools in England. See further PARA 487B.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(5) INDEPENDENT SCHOOLS/(ii) Regulation and Complaints/B. APPEALS/488. Appeals to the Care Standards Tribunal.

## **B. APPEALS**

### **488. Appeals to the Care Standards Tribunal.**

The proprietor<sup>1</sup> of a registered<sup>2</sup> school<sup>3</sup> may appeal to the Care Standards Tribunal ('the tribunal')<sup>4</sup> against:

- 930 (1) a refusal<sup>5</sup> to approve a material change<sup>6</sup> in relation to the school<sup>7</sup>;
- 931 (2) a determination<sup>8</sup> to remove the school from the register<sup>9</sup>;
- 932 (3) an order<sup>10</sup> requiring the taking of one or more of the actions as may be specified in the order<sup>11</sup>; or
- 933 (4) a refusal<sup>12</sup> to vary or revoke such an order<sup>13</sup>.

Such an appeal must be made within the period of 28 days beginning with the day on which notice of the refusal, determination or order is served on the proprietor<sup>14</sup>. Provision is made for the procedure that applies before the tribunal in the case of an appeal against a refusal, determination or order of the registration authority under the Education Act 2002<sup>15</sup>.

Where an appeal is made under head (2) above: (a) if the appeal is withdrawn or otherwise disposed of before it is determined by the tribunal<sup>16</sup>, the registration authority<sup>17</sup> may remove the school from the register on such date after the appeal period<sup>18</sup> as it may determine<sup>19</sup>; and (b) in any other case the registration authority may only remove the school pursuant to the determination to remove the school from the register<sup>20</sup>.

Where an appeal is made under head (3) above, the order does not have effect in relation to any time before the appeal is determined by the tribunal<sup>21</sup> or withdrawn or otherwise disposed of<sup>22</sup>.

In the case of an appeal against a determination to remove the school from the register on the ground of a risk of serious harm to the welfare of pupils<sup>23</sup> at the school<sup>24</sup>, if at any time the tribunal considers that there is a risk of serious harm occurring to the welfare of pupils before the determination of the appeal, it may by order provide that the school is to be regarded as not registered<sup>25</sup> until the tribunal determines the appeal<sup>26</sup>, or revokes the order before so determining the appeal<sup>27</sup>.

1 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 For the meaning of 'registered' see PARA 481 note 2 ante.

3 I.e. an independent school. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

4 I.e. the tribunal established under the Protection of Children Act 1999 s 9 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 708.

5 I.e. under the Education Act 2002 s 162: see PARA 482 ante.

6 For the meaning of 'material change' see PARA 482 note 4 ante.

- 7 Education Act 2002s 166(1)(a).
- 8 le under ibid s 165 (as amended): see PARA 486 ante.
- 9 Ibid s 166(1)(b). For the meaning of 'the register' see PARA 479 notes 3-4 ante.
- 10 le under ibid s 165(8): see PARA 486 note 16 ante.
- 11 Ibid s 166(1)(c).
- 12 le under ibid s 165(10): see PARA 486 note 16 ante.
- 13 Ibid s 166(1)(d).
- 14 Ibid s 166(2).
- 15 See the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 4(9), Sch 9 (Sch 9 added by SI 2003/2043; and amended by SI 2004/2073).
- 16 le under the Education Act 2002 s 167: see PARA 491 post.
- 17 For the meaning of 'registration authority' see PARA 480 note 5 ante.
- 18 For the meaning of 'appeal period' see PARA 486 note 9 ante.
- 19 Education Act 2002 s 166(3)(a).
- 20 Ibid s 166(3)(b).
- 21 le under ibid s 167: see PARA 491 post.
- 22 Ibid s 166(4).
- 23 As to the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).
- 24 le under ibid s 165(2): see PARA 486 ante.
- 25 le for the purposes of ibid s 159 (as amended in relation to England; prospectively amended in relation to Wales): see PARA 481 ante.
- 26 le under ibid s 167: see PARA 491 post.
- 27 Ibid s 166(5). As to the procedure for making an order under s 166(5) see PARA 490 post.

## **UPDATE**

### **488-492 Appeals to the Care Standards Tribunal ... Appeals to the High Court**

The functions of the former Care Standards Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). SI 2002/816 revoked: SI 2008/2683.

### **488 Appeals to the Care Standards Tribunal**

TEXT AND NOTES--Education Act 2002 s 166(1) amended: SI 2008/2833.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(5) INDEPENDENT SCHOOLS/(ii) Regulation and Complaints/B. APPEALS/489. Procedure.

#### **489. Procedure.**

Provision is made<sup>1</sup> for the procedure to be applied in the case of an appeal<sup>2</sup> to the Care Standards Tribunal ('the tribunal')<sup>3</sup> against: (1) a refusal to approve a material change<sup>4</sup> in relation to a registered school<sup>5</sup>; (2) a determination to remove the school from the register of independent schools<sup>6</sup>; (3) an order requiring the taking of one or more of the actions as may be specified in the order<sup>7</sup>; or (4) a refusal to vary or revoke such an order<sup>8</sup>.

A person who wishes to appeal<sup>9</sup> to the tribunal against a refusal, determination or order made by the registration authority<sup>10</sup> must do so by application in writing to the Secretary<sup>11</sup>. Such an application may be made on the application form available from the Secretary<sup>12</sup>, but such an application must:

- 934 (a) give the applicant's name and full postal address; if the applicant is an individual, his date of birth; and, if the applicant is a company, the address of its registered office<sup>13</sup>;
- 935 (b) give the name, address and profession of the person, if any, representing the applicant<sup>14</sup>;
- 936 (c) give the address within the United Kingdom<sup>15</sup> to which the Secretary should send documents concerning the appeal<sup>16</sup>;
- 937 (d) give, where these are available, the applicant's telephone number, fax number and e-mail address and those of the applicant's representative<sup>17</sup>;
- 938 (e) give particulars of whether the appeal is made under head (1), head (2), head (3) or head (4) above<sup>18</sup>.
- 939 (f) give a short statement of the grounds of the appeal<sup>19</sup>; and
- 940 (g) be signed and dated by the applicant<sup>20</sup>.

On receiving an application made within the period for bringing an appeal<sup>21</sup>, the Secretary must immediately send an acknowledgement of its receipt to the applicant<sup>22</sup>, and enter particulars of the appeal and the date of its receipt in the records<sup>23</sup> and send a copy of it, together with any documents<sup>24</sup> supplied by the applicant in support of it, to the respondent<sup>25</sup>. If, in the Secretary's opinion, there is an obvious error in the application: (i) he may correct it<sup>26</sup>; (ii) he must notify the applicant in writing that he has done so<sup>27</sup>; and (iii) unless within five working days<sup>28</sup> of receipt of notification under head (ii) above the applicant notifies him in writing that he objects to the correction, the application must be amended accordingly<sup>29</sup>.

The Secretary must send the information provided by the applicant under heads (a) to (g) above to the respondent together with a request that he respond to the application within 20 working days of receiving it<sup>30</sup>. The response must acknowledge that the respondent has received a copy of the application<sup>31</sup>, indicate whether or not the respondent opposes it (and if he does, give the reasons why he opposes the application)<sup>32</sup>, and provide the name, address and profession of the person, if any, representing the respondent (and whether the Secretary should send documents concerning the appeal to the representative rather than to the respondent)<sup>33</sup>, and a copy of the notice of the refusal, determination or order which is the subject of the appeal and the reasons for it<sup>34</sup>. The Secretary must without delay send the applicant a copy of the response and the information and documents provided with it<sup>35</sup>. If the

respondent fails to respond as directed, he is not entitled to take any further part in the proceedings<sup>36</sup>.

As soon as the respondent has provided the information required, the Secretary must write to each party requesting that he sends the Secretary, within 15 working days after the date on which he receives the Secretary's letter, the following information<sup>37</sup>:

- 941 (A) the name of any witness whose evidence the party wishes the tribunal to consider (and whether the party may wish the tribunal to consider additional witness evidence from a witness whose name is not yet known) and the nature of that evidence<sup>38</sup>;
- 942 (B) whether the party wishes the President<sup>39</sup> or the nominated chairman<sup>40</sup> to give any directions or exercise any of his case management powers<sup>41</sup>;
- 943 (C) whether the party wishes there to be a preliminary hearing with regard to directions<sup>42</sup>;
- 944 (D) a provisional estimate of the time the party considers will be required to present his case<sup>43</sup>;
- 945 (E) the earliest date by which the party considers he would be able to prepare his case for the hearing<sup>44</sup>; and
- 946 (F) in the case of the applicant, whether he wishes his appeal to be determined without a hearing<sup>45</sup>.

Once the Secretary has received the information referred to in heads (A) to (F) above from both parties, he must without delay send a copy of the information supplied by the applicant to the respondent and that supplied by the respondent to the applicant<sup>46</sup>. Either party, within five working days of receiving the further information in respect of the other party from the Secretary, may ask the Secretary in writing to amend or add to any of the information given in heads (A) to (F) above<sup>47</sup>. If the Secretary receives any such further information from either party he must, without delay, send a copy of it to the other party<sup>48</sup>.

1     Ie by the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 4(9), Sch 9 (reg 4(9), Sch 9 added by SI 2003/2043; and the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 amended by SI 2004/2073): see the text and notes 2-48 infra.

2     Ie an appeal under the Education Act 2002 s 166, including in relation to the making of an order under s 166(5) (see PARA 488 ante).

3     Ie the tribunal established under the Protection of Children Act 1999 s 9 (as amended). As to the establishment and constitution of the tribunal see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 708 et seq.

4     For the meaning of 'material change' see PARA 482 note 4 ante.

5     Ie under the Education Act 2002 s 166(1)(a) (see PARA 488 ante). The text refers to a refusal made under s 162 (see PARA 482 ante). For the meaning of 'registered' see PARA 481 note 2 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

6     Ie under ibid s 166(1)(b) (see PARA 488 ante). The text refers to a determination made under s 165 (as amended) (see PARA 486 ante). For the meaning of 'the register' see PARA 479 notes 3-4 ante. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of s 212(2), (3).

7     Ie under ibid s 166(1)(c) (see PARA 488 ante) The text refers to an order made under s 165(8) (see PARA 486 note 16 ante).

8     Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 4(9) (added by SI 2003/2043). The text refers to an appeal under the Education Act 2002 s 166(1)(d) (see PARA 488 ante) against a refusal made under s 165(10) (see PARA 486 note 16 ante).

9     Ie under ibid s 166 (see PARA 488 ante).



10 In relation to an appeal under *ibid* s 166, 'registration authority' means the Secretary of State for Education and Skills or the National Assembly for Wales: Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 1(2) (amended by SI 2003/2043). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante.

11 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 1(1) (as added: see note 1 supra). For these purposes, 'the Secretary' means the person for the time being acting as the Secretary to the tribunal: Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 1(2). As to the powers and functions of the tribunal exercisable by the Secretary see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 710.

12 *Ibid* Sch 9 para 1(2) (as added: see note 1 supra).

13 *Ibid* Sch 9 para 1(3)(a) (as added: see note 1 supra).

14 *Ibid* Sch 9 para 1(3)(b) (as added: see note 1 supra).

15 For the meaning of 'United Kingdom' see PARA 63 note 3 ante.

16 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 1(3)(c) (as added: see note 1 supra).

17 *Ibid* Sch 9 para 1(3)(d) (as added: see note 1 supra).

18 *Ibid* Sch 9 para 1(3)(e) (as added: see note 1 supra).

19 *Ibid* Sch 9 para 1(3)(f) (as added: see note 1 supra).

20 *Ibid* Sch 9 para 1(3)(g) (as added: see note 1 supra).

21 *Ie* within the period specified in the Education Act 2002 s 166(2) (see PARA 488 ante).

22 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 2(1)(a) (as added: see note 1 supra).

23 *Ie* the records of the tribunal: *ibid* reg 1(2).

24 For these purposes, 'document' means information recorded in writing or in any other form: *ibid* reg 1(2).

25 *Ibid* Sch 9 para 2(1)(b) (as added: see note 1 supra). For these purposes, 'the respondent' means the registration authority (see note 10 supra): reg 1(2) (definition amended by SI 2003/2043).

26 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 2(2)(a) (as added: see note 1 supra).

27 *Ibid* Sch 9 para 2(2)(b) (as added: see note 1 supra).

28 For this purpose, 'working day' means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321): Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 1(2)

29 *Ibid* Sch 9 para 2(2)(c) (as added: see note 1 supra).

30 *Ibid* Sch 9 para 3(1) (as added: see note 1 supra).

31 *Ibid* Sch 9 para 3(3)(a) (as added: see note 1 supra).

32 *Ibid* Sch 9 para 3(3)(b) (as added: see note 1 supra).

33 *Ibid* Sch 9 para 3(3)(c)(i) (as added: see note 1 supra).

34 *Ibid* Sch 9 para 3(3)(c)(ii) (as added: see note 1 supra).

35 *Ibid* Sch 9 para 3(4) (as added: see note 1 supra).

36 *Ibid* Sch 9 para 3(2) (as added: see note 1 supra).

37 Ibid Sch 9 para 5(1) (as added: see note 1 supra).

38 Ibid Sch 9 para 5(1)(a) (as added: see note 1 supra). As to the conduct of the hearing, including provisions relating to witnesses and evidence, see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 723 et seq.

39 As to the powers and functions of the tribunal exercisable by the President see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 710.

40 As to the powers and functions of the tribunal exercisable by a member of the chairmen's panel see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 710.

41 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 5(1)(b) (as added: see note 1 supra). The case management powers referred to in the text are those under Pt IV (regs 5-19) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 723 et seq).

42 Ibid Sch 9 para 5(1)(c) (as added: see note 1 supra). As to the conduct of the hearing see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 723 et seq.

43 Ibid Sch 9 para 5(1)(d) (as added: see note 1 supra).

44 Ibid Sch 9 para 5(1)(e) (as added: see note 1 supra).

45 Ibid Sch 9 para 5(1)(f) (as added: see note 1 supra). As to the determination of cases without a hearing see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 712, 718.

46 Ibid Sch 9 para 5(2) (as added: see note 1 supra).

47 Ibid Sch 9 para 6(1) (as added: see note 1 supra).

48 Ibid Sch 9 para 6(2) (as added: see note 1 supra).

## **UPDATE**

### **488-492 Appeals to the Care Standards Tribunal ... Appeals to the High Court**

The functions of the former Care Standards Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). SI 2002/816 revoked: SI 2008/2683.

### **489 Procedure**

NOTE 10--SI 2002/816 reg 1(2) definition amended: SI 2007/1684, SI 2007/3224.

NOTE 28--SI 2002/816 reg 1(2) amended: SI 2006/1930.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(5) INDEPENDENT SCHOOLS/(ii) Regulation and Complaints/B. APPEALS/490. Procedure for making an order where there is a risk of serious harm occurring to the welfare of pupils.

**490. Procedure for making an order where there is a risk of serious harm occurring to the welfare of pupils.**

Where the respondent to an appeal against a refusal, determination or order made in relation to an independent school<sup>1</sup> wishes the Care Standards Tribunal ('the tribunal')<sup>2</sup> to make an order<sup>3</sup> providing that the school<sup>4</sup> is to be regarded as not registered<sup>5</sup> pending the determination of the appeal, he must make an application in writing to the Secretary<sup>6</sup> and, at the same time, send a copy of that application to the applicant in the appeal<sup>7</sup>. The respondent may make an application for such an order at any time from the date he receives the copy of the application which initiates an appeal<sup>8</sup> until 20 working days<sup>9</sup> following that date<sup>10</sup>. An application for such an order must:

- 947 (1) set out the grounds for the application<sup>11</sup>;
- 948 (2) give the names of any witnesses that the respondent will be calling to support his application and provide a statement as to the nature of the evidence to be given by those witnesses<sup>12</sup>;
- 949 (3) specify any working days within the 28 working days following the making of the application when the respondent or any such witnesses will not be available to attend a hearing before the tribunal, and the reasons why the respondent or they (as the case may be), will not be so available<sup>13</sup>; and
- 950 (4) be signed and dated by or on behalf of the respondent<sup>14</sup>.

The respondent must, so far as it is practicable to do so, ensure that the application includes a copy of any documentary<sup>15</sup> evidence (including any statements from witnesses) that the respondent intends to rely upon in relation to the application<sup>16</sup>.

On receiving such an application, the Secretary must immediately send a copy of it together with any documents supplied by the respondent in support of the application, to the applicant<sup>17</sup>. The applicant must, within 10 working days of receipt of the application from the Secretary, send to the Secretary and the respondent a written response to the application which must<sup>18</sup>:

- 951 (a) acknowledge that he has received a copy of the application and any documentary evidence enclosed with it<sup>19</sup>;
- 952 (b) state whether he wishes the tribunal to determine the application without an oral hearing<sup>20</sup>, and if that is not the case, give the names of any witnesses that he will be calling or is likely to call to support his case and provide a statement as to the nature of the evidence to be given by those witnesses<sup>21</sup>;
- 953 (c) unless he wishes the tribunal to determine the application without an oral hearing, specify any working days within the 28 working days following the date of the application when he or any such witnesses will not be available to attend a hearing in respect of the application and the reasons why he or they (as the case may be) will not be so available<sup>22</sup>.

The applicant must, so far as it is practicable to do so, ensure that the response includes a copy of any documentary evidence, including any statements from witnesses, that he intends to rely

upon in opposing the application<sup>23</sup>. If the applicant fails to respond as required<sup>24</sup>, he is not entitled to take any further part in the proceedings<sup>25</sup>.

The date fixed for a hearing must be the earliest practicable date having regard to any directions which have been made by the President<sup>26</sup> or the nominated chairman<sup>27</sup> with regard to the preparation of evidence but must not be later than 10 working days after:

- 954 (i) the date on which the Secretary receives the written response from the applicant<sup>28</sup>; or
- 955 (ii) if the applicant fails to respond within 10 working days of receipt of the application from the Secretary<sup>29</sup>, the date of the expiry of that time limit<sup>30</sup>.

The Secretary must then inform the parties of the date of the hearing by no later than five working days before the date fixed for the hearing, or, where the President or the nominated chairman considers it necessary or expedient, by such later date as the President or the nominated chairman may direct<sup>31</sup>.

Where the respondent has not made an application under the above provisions<sup>32</sup>, but the tribunal is considering whether to make an order<sup>33</sup> providing that the school is to be regarded as not registered pending the determination of the appeal<sup>34</sup>, the President or the nominated chairman may give directions as to the dates by which any document, witness statement or any other material which the parties wish the tribunal to take into account must be sent to the Secretary<sup>35</sup>, and give any other direction in exercise of his case management powers<sup>36</sup>. In such a case, the President or the nominated chairman may not make an order<sup>37</sup> unless the applicant has been given an opportunity of appearing before the tribunal and being heard on the question of whether such an order should be made, in which case the date for the hearing must be the earliest practicable date having regard to any direction made<sup>38</sup>.

1    Ie the respondent in relation to an appeal under the Education Act 2002 s 166 (see PARA 488 ante). For the meaning of 'respondent' see PARA 489 note 25 ante. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of s 212(2), (3).

2    Ie the tribunal established under the Protection of Children Act 1999 s 9 (as amended). As to the establishment and constitution of the tribunal see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 708 et seq.

3    Ie an order under the Education Act 2002 s 166(5) (see PARA 488 ante).

4    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3).

5    For the meaning of 'registered' see PARA 481 note 2 ante.

6    For the meaning of 'the Secretary' see PARA 489 note 11 ante.

7    Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, reg 4(9), Sch 9 para 7(1) (reg 4(9), Sch 9 added by SI 2003/2043; and the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 amended by SI 2004/2073). Certain of the regulations governing procedure before the Care Standards Tribunal do not apply in relation to an application for an order under the Education Act 2002 s 166(5) (see PARA 488 ante) made pursuant to the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 7(1), namely: reg 6 (as amended) (directions); reg 6A (as added and amended) (directions: appeals under the suspension regulations); reg 7 (as amended) (fixing and notification of hearing); reg 25 (as amended) (review of the tribunal's decision); and reg 26 (as amended) (powers of tribunal on review). As to the conduct of hearings before the Care Standards Tribunal see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 723 et seq.

8    Ie the copy received under ibid Sch 9 para 3(1) (as added) (see PARA 489 ante).

9    For the meaning of 'working day' see PARA 489 note 28 ante.

- 10 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 7(2) (as added: see note 7 supra).
- 11 Ibid Sch 9 para 7(3)(a) (as added: see note 7 supra).
- 12 Ibid Sch 9 para 7(3)(b) (as added: see note 7 supra). As to the conduct of the hearing, including provisions relating to witnesses and evidence, see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 723 et seq.
- 13 Ibid Sch 9 para 7(3)(c) (as added: see note 7 supra).
- 14 Ibid Sch 9 para 7(3)(d) (as added: see note 7 supra).
- 15 For the meaning of 'document' see PARA 489 note 24 ante.
- 16 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 7(4) (as added: see note 7 supra).
- 17 Ibid Sch 9 para 7(5) (as added: see note 7 supra).
- 18 Ibid Sch 9 para 7(6) (as added: see note 7 supra).
- 19 Ibid Sch 9 para 7(6)(a) (as added: see note 7 supra).
- 20 An application must be determined by way of oral hearing unless the applicant in the appeal requests that it be determined without an oral hearing: ibid Sch 9 para 7(9) (as added: see note 7 supra).
- 21 Ibid Sch 9 para 7(6)(b) (as added: see note 7 supra).
- 22 Ibid Sch 9 para 7(6)(c) (as added: see note 7 supra).
- 23 Ibid Sch 9 para 7(7) (as added: see note 7 supra).
- 24 Ie as required by ibid Sch 9 para 7(6) (as added): see the text and notes 18-22 supra.
- 25 Ibid Sch 9 para 7(8) (as added: see note 7 supra).
- 26 As to the powers and functions of the tribunal exercisable by the President see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 710.
- 27 As to the powers and functions of the tribunal exercisable by a member of the chairmen's panel see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 710.
- 28 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 7(10)(a) (as added: see note 7 supra).
- 29 Ie within the time limit set out in ibid Sch 9 para 7(6) (as added): see the text and note 18 supra.
- 30 Ibid Sch 9 para 7(10)(b) (as added: see note 7 supra).
- 31 Ibid Sch 9 para 7(10) (as added: see note 7 supra).
- 32 Ie under ibid Sch 9 para 7(1) (as added): see the text and notes 1-7 supra.
- 33 Ie under the Education Act 2002 s 166(5) (see PARA 488 ante).
- 34 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 7(11) (as added: see note 7 supra).
- 35 Ibid Sch 9 para 7(12)(a) (as added: see note 7 supra).
- 36 Ibid Sch 9 para 7(12)(b) (as added: see note 7 supra). The case management powers referred to in the text are those under Pt IV (regs 5-19) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 723 et seq).
- 37 Ie under the Education Act 2002 s 166(5) (see PARA 488 ante).

38 Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002, SI 2002/816, Sch 9 para 7(13) (as added: see note 7 supra).

## **UPDATE**

### **488-492 Appeals to the Care Standards Tribunal ... Appeals to the High Court**

The functions of the former Care Standards Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). SI 2002/816 revoked: SI 2008/2683.

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#### **491. Determination of appeals.**

Where an appeal is made<sup>1</sup>, in relation to an independent school<sup>2</sup>, to the Care Standards Tribunal ('the tribunal')<sup>3</sup>, the following provisions apply<sup>4</sup>.

In the case of an appeal against a refusal<sup>5</sup> to approve a material change<sup>6</sup> in relation to the school, the tribunal may uphold the refusal to approve<sup>7</sup> or itself approve the change<sup>8</sup>.

In the case of an appeal against a determination<sup>9</sup> to remove the school from the register<sup>10</sup>, the tribunal may: (1) uphold the determination<sup>11</sup>; or (2) revoke the determination<sup>12</sup>. Where, under head (1) above, the tribunal upholds a determination, the registration authority<sup>13</sup> must remove the school from the register on such date as the tribunal may specify or, if it does not specify a date, on such date as the registration authority may determine<sup>14</sup>. Where, under head (2) above, the tribunal revokes a determination, it may order the proprietor<sup>15</sup> of the school to do one or more of the following by such time as may be specified in the order:

956 to cease using any part of the school premises<sup>16</sup> for all purposes or purposes specified in the order<sup>17</sup>;

957 to close any part of the school's operation<sup>18</sup>;

958 (c) to cease to admit any new pupils<sup>19</sup>, or new pupils of a description specified in the order<sup>20</sup>.

In the case of an appeal against an order<sup>21</sup> requiring the taking of one or more of the actions as may be specified in the order, the tribunal may uphold the order, vary the order, or strike down the order<sup>22</sup>. In the case of an appeal against a refusal<sup>23</sup> to vary or revoke such an order, the tribunal may uphold the refusal<sup>24</sup>, or, if in any case it is satisfied that it is appropriate to do so because of any change of circumstance after the making of the order, vary the order in such manner as it thinks fit, or revoke the order<sup>25</sup>.

1    Ie made under the Education Act 2002 s 166: see PARA 488 ante.

2    For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of *ibid* s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

3    Ie the tribunal established under the Protection of Children Act 1999 s 9 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 708.

4    Education Act 2002 s 167(1).

5    Ie under *ibid* s 162: see PARA 482 ante.

6    For the meaning of 'material change' see PARA 482 note 4 ante.

7    Education Act 2002 s 167(2)(a).

8    *Ibid* s 167(2)(b).

9    Ie under *ibid* s 165 (as amended): see PARA 486 ante.

10   For the meaning of 'the register' see PARA 479 notes 3-4 ante.

11 Education Act 2002 s 167(3)(a).

12 Ibid s 167(3)(b).

13 For the meaning of 'registration authority' see PARA 480 note 5 ante.

14 Education Act 2002 s 167(4).

15 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 212(2), (3). The tribunal may, on the application of the proprietor of a registered school, vary or revoke any order made by it under s 167(5) in relation to the school where it is satisfied that it is appropriate to do so because of any change of circumstance: s 167(8). For the meaning of 'registered' see PARA 481 note 2 ante. If the proprietor of a school fails to comply with an order of the tribunal under s 167(5): (1) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both; and (2) the tribunal may, on the application of the registration authority, authorise the registration authority to remove the school from the register on such date as the tribunal may determine: s 167(9). As to the standard scale see PARA 481 note 4 ante.

16 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 212(2), (3).

17 Ibid s 167(5)(a).

18 Ibid s 167(5)(b).

19 As to the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

20 Ibid s 167(5)(c).

21 Ie an order under ibid s 165(8): see PARA 486 note 16 ante.

22 Ibid s 167(6).

23 Ie under ibid s 165(10): see PARA 486 note 16 ante.

24 Ibid s 167(7)(a).

25 Ibid s 167(7)(b).

## **UPDATE**

### **488-492 Appeals to the Care Standards Tribunal ... Appeals to the High Court**

The functions of the former Care Standards Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). SI 2002/816 revoked: SI 2008/2683.

### **491 Determination of appeals**

TEXT AND NOTES--Education Act 2002 s 167(1) amended: SI 2008/2833.



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#### **492. Appeals to the High Court.**

An appeal lies to the High Court on a point of law from a decision of the Care Standards Tribunal<sup>1</sup>.

<sup>1</sup> Protection of Children Act 1999 s 9(6). The text refers to the tribunal constituted under s 9 (as amended): see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 708.

There is a time limit of 28 days to lodge an appeal, running from the date that the decision was sent to the appellant and respondent in the case: see *Guide to the Appeals Process and Procedures of the Care Standards Tribunal* (July 2004) p 12.

#### **UPDATE**

#### **488-492 Appeals to the Care Standards Tribunal ... Appeals to the High Court**

The functions of the former Care Standards Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). SI 2002/816 revoked: SI 2008/2683.

#### **492 Appeals to the High Court**

TEXT AND NOTE--Protection of Children Act 1999 s 9(6) repealed: SI 2008/2833.

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### **(iii) Discipline**

#### **493. No right to give corporal punishment.**

As in schools generally, the staff in independent schools have no right to administer corporal punishment<sup>1</sup>.

<sup>1</sup> See the Education Act 1996 s 548 (as substituted), which does not distinguish between independent and maintained schools; and PARA 577 post, noting also the case law there which deals with the issue of corporal punishment in schools in the context of a parent's philosophical or religious convictions.

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**494. Detention.**

A pupil who has not attained the age of 18 and is attending a city technology college<sup>1</sup>, a city college for the technology of the arts<sup>2</sup> or an academy<sup>3</sup> may be required on disciplinary grounds to spend a period of time in detention at his school after the end of any school session, notwithstanding the absence of parental consent, on the same conditions as apply in relation to maintained schools<sup>4</sup>.

1 As to the meaning of 'city technology college' see PARA 496 note 31 post.

2 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 post.

3 As to the meaning of 'academy' see PARA 496 note 29 post.

4 See the Education Act 1996 s 550B (as added and amended); and PARA 578 post.

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#### **495. Exclusion.**

A decision to exclude a pupil from an independent school<sup>1</sup> is not amenable to judicial review<sup>2</sup>; instead a complaint must be founded on contract by reference to the contract existing between the pupil's parents and the school<sup>4</sup>. In general, the courts will be reluctant in exclusion cases founded on contract to grant the remedy of specific performance to force one body of persons into daily contact with another against the will of the parties<sup>5</sup>.

<sup>1</sup> For the meaning of 'independent school' see PARA 465 ante.

<sup>2</sup> As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq. Judicial review may apply to an exclusion consequential to the termination of an assisted place: *R v Cobham Hall School, ex p S* [1998] ELR 389, [1998] Ed CR 79. However, the significance of this exception will decline as the assisted places scheme has been repealed and continues to operate only in relation to pupils who were already assisted before the 1997-1998 school year: see PARA 475 ante.

<sup>4</sup> *R v Fernhill Manor School, ex p A* [1993] 1 FLR 620, [1994] ELR 67. See also *Price v Wilkins* (1888) 58 LT 680; *Mount v Oldham Corpn* [1973] QB 309, [1973] 1 All ER 26, CA; *Price v Dennis* (1988) [1999] Ed CR 747, CA. See also, in relation to non-maintained schools, *R v Muntham House School, ex p R* [2000] ELR 287. It is possible that the pupil has his own right in contract against an independent school under the Contracts (Rights of Third Parties) Act 1999: see CONTRACT.

<sup>5</sup> *R v Incorporated Froebel Institute, ex p L* [1999] ELR 488. As to specific performance generally see SPECIFIC PERFORMANCE.

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#### **(iv) City Colleges and Academies**

### **A. ESTABLISHMENT AND ORGANISATION**

#### **(A) ESTABLISHMENT**

#### **496. Establishment and maintenance of academies.**

The Secretary of State<sup>1</sup> may enter into an agreement with any person<sup>2</sup> under which that person undertakes to establish and maintain, and to carry on or provide for the carrying on of, an independent school<sup>3</sup> in England<sup>4</sup> with the characteristics mentioned in heads (1) and (2) below, and such other characteristics as are specified in the agreement<sup>5</sup>, and the Secretary of State agrees to make payments to that person in consideration of those undertakings<sup>6</sup>.

The characteristics mentioned above are that the school:

- 959 (1) has a curriculum satisfying the general requirements regarding the curriculum in England<sup>7</sup>, but with an emphasis on a particular subject area, or particular subject areas, specified in the agreement<sup>8</sup>; and
- 960 (2) provides education for pupils<sup>9</sup> of different abilities who are wholly or mainly drawn from the area in which the school is situated<sup>10</sup>.

Before entering into such an agreement, the Secretary of State must consult the specified local education authorities<sup>11</sup> about the establishment of the school<sup>12</sup>.

The agreement must make any payments by the Secretary of State dependent on the fulfilment of certain conditions and requirements<sup>13</sup>, namely conditions and requirements imposed for the purpose of securing that no charge is made in respect of admission to (or attendance at) the school or, subject to such exceptions as may be specified in the agreement, in respect of education provided at the school<sup>14</sup>, and such other conditions and requirements in relation to the school as are specified in the agreement<sup>15</sup>. Payments under such an agreement may be in respect of capital or current expenditure<sup>16</sup>. In so far as such payments relate to current expenditure, the agreement must provide for their continuance<sup>17</sup> for a period of not less than seven years<sup>18</sup>, or for an indefinite period terminable by the Secretary of State by not less than seven years' written notice<sup>19</sup>. Where such payments relate to capital expenditure, the agreement may provide for the repayment to the Secretary of State, in the event of the school at any time discontinuing or ceasing to have the specified characteristics<sup>20</sup>, of sums determined by reference to<sup>21</sup>: (a) the value at that time of the school premises<sup>22</sup> and other assets held for the purposes of the school<sup>23</sup>; and (b) the extent to which expenditure incurred in providing those assets was met by payments under the agreement<sup>24</sup>.

Where a school was known immediately before 26 July 2002<sup>25</sup> as a city academy<sup>26</sup>, the agreement made in relation to that school<sup>27</sup>, as it had effect at the time the agreement was made, is regarded for all purposes as having been made under the above provisions<sup>28</sup> and, accordingly, the school is known as an 'academy'<sup>29</sup>. Where a school was known immediately before 26 July 2002<sup>30</sup> as a city technology college<sup>31</sup> or a city college for the technology of the arts<sup>32</sup>, then, if the proprietor<sup>33</sup> of the school and the Secretary of State so agree, the agreement

made in relation to the school<sup>34</sup>, as it had effect at the time the agreement was made, is regarded as having been made under the above provisions<sup>35</sup>, and, accordingly, the school becomes known as an 'academy'<sup>36</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Education Act 1996 s 482(1) (s 482 substituted by the Education Act 2002 s 65(1)).

3 For the meaning of 'independent school' see PARA 465 ante. For the meaning of 'school' see PARA 81 ante. See note 31 *infra*.

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 Education Act 1996 s 482(1)(a) (as substituted: see note 2 *supra*).

6 *Ibid* s 482(1)(b) (as substituted: see note 2 *supra*).

7 *Ie* the requirements of the Education Act 2002 s 78 (see PARA 913 *post*).

8 Education Act 1996 s 482(2)(a) (as substituted: see note 2 *supra*).

9 For the meaning of 'pupil' see PARA 16 note 4 ante.

10 Education Act 1996 s 482(2)(b) (as substituted: see note 2 *supra*).

11 *Ie* the local education authority in whose area the school is to be situated (*ibid* s 482(3)(a) (as substituted: see note 2 *supra*)) and, if the Secretary of State thinks a significant proportion of the pupils at the school is likely to be resident within the area of another local education authority, that authority (s 482(3)(b) (as substituted: see note 2 *supra*)). As to local education authorities and their areas see PARA 20 ante.

12 *Ibid* s 482(3) (as substituted: see note 2 *supra*).

13 *Ibid* s 482(4) (as substituted: see note 2 *supra*).

14 *Ibid* s 482(4)(a) (as substituted: see note 2 *supra*).

15 *Ibid* s 482(4)(b) (as substituted: see note 2 *supra*).

16 *Ibid* s 483(1).

17 *Ie* subject to the fulfilment of the conditions and requirements falling within *ibid* s 482(4) (as substituted): see the text and notes 13-15 *supra*.

18 *Ibid* s 483(2)(a).

19 *Ibid* s 483(2)(b).

20 *Ie* the characteristics specified in the agreement and in *ibid* s 482(2) (as substituted) (see the text and notes 7-10 *supra*).

21 *Ibid* s 483(3) (amended by the Education Act 2002 s 65(2)).

22 As to the meaning of 'premises' see PARA 1352 note 3 *post*. Provision is made generally with respect to land in relation to academies under the Education Act 1996 s 482(6) (as substituted), Sch 35A (as added): see PARAS 1359 *et seq*, 1406 *et seq post*.

23 *Ibid* s 483(3)(a).

24 *Ibid* s 483(3)(b). Without prejudice to s 483(1), an agreement under s 482 (as substituted) may provide for indemnifying a person, in the event of the agreement being terminated by the Secretary of State, for expenditure incurred by that person in carrying out the undertakings mentioned in s 482(1) (as substituted), or incurred by that person (otherwise than by virtue of s 483(3) (as amended)) in consequence of the termination of the agreement: s 483(4).

25 *Ie* when *ibid* s 482 (as substituted by the Education Act 2002 s 65(1)) came into force: see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 2.

26 A school to which an agreement under the Education Act 1996 s 482 (as originally enacted and amended) related was known as a city academy if the emphasis of its curriculum was on a specified subject area such as modern foreign languages, visual arts, performing arts or media arts, sport, etc: see s 482(3)(c) (as originally added in relation to England only).

27 *Ie* under *ibid* s 482 (as originally enacted and amended).

28 *Ie* under *ibid* s 482 (as substituted: see note 2 *supra*).

29 Education Act 2002 s 67. A school to which an agreement under the Education Act 1996 s 482 (as substituted) relates is known as an 'academy': s 482(5) (as substituted: see note 2 *supra*).

30 See note 25 *supra*.

31 A school to which an agreement under the Education Act 1996 s 482 (as originally enacted and amended) related was known as a 'city technology college' if the emphasis of its curriculum was on science and technology: see s 482(3)(a) (as originally enacted). Although categorised as independent schools, city technology colleges in general were bodies whose decisions were susceptible to judicial review: *R v Governors of Haberdashers' Aske's Hatcham College Trust, ex p T* [1995] ELR 350.

32 Education Act 2002 s 68(1). A school to which an agreement under the Education Act 1996 s 482 (as originally enacted and amended) related was known as a 'city college for the technology of the arts' if the emphasis of its curriculum was on technology in its application to the performing and creative arts: see s 482(3) (b) (as originally enacted).

33 For the meaning of 'proprietor' see PARA 60 note 7 *ante*.

34 See note 27 *supra*.

35 See note 28 *supra*.

36 Education Act 2002 s 68(2). Subject to s 68(2), the agreement made in relation to the school under the Education Act 1996 s 482 (as originally enacted and amended), as it had effect at the time the agreement was made, is not affected by anything in the Education Act 2002 s 65 (see notes 2, 21-22 *supra*): s 68(3).

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## (B) PROPOSALS FOR ADDITIONAL ACADEMIES UNDER THE

### **497. Proposals for additional academies.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

A local education authority<sup>2</sup> in England<sup>3</sup> may publish a notice<sup>4</sup> inviting proposals for the establishment<sup>5</sup> of an academy<sup>6</sup> as an additional secondary school<sup>7</sup>. Such a notice must: (1) identify a possible site for the school<sup>8</sup>; (2) specify a date, being a date after the prescribed<sup>9</sup> interval, by which proposals must be submitted<sup>10</sup>; (3) specify such other matters as may be prescribed<sup>11</sup>; and (4) be published in the prescribed manner<sup>12</sup>. Proposals made pursuant to such a notice must contain the prescribed information, and be submitted to the local education authority before the date specified in the notice<sup>13</sup>. After the date specified in a notice published by a local education authority, the authority must publish<sup>14</sup> any proposals submitted<sup>15</sup> pursuant to the notice<sup>16</sup>. Regulations may prescribe the manner in which proposals must be published<sup>17</sup>.

Regulations<sup>18</sup> must make provision for the submission of a proposal<sup>19</sup> for decision by the Secretary of State after being considered and commented on by the school organisation committee<sup>20</sup>. Such regulations may in particular make provision:

- 961 (a) for the making of objections or comments to a local education authority in relation to proposals published by it<sup>21</sup>;
- 962 (b) for the submission of proposals to the school organisation committee<sup>22</sup>;
- 963 (c) for consultation by the school organisation committee<sup>23</sup>;
- 964 (d) for consideration of proposals by the school organisation committee, which may include provision for the committee to have regard to guidance given from time to time by the Secretary of State<sup>24</sup>;
- 965 (e) for the submission of proposals to the Secretary of State<sup>25</sup>;
- 966 (f) for the withdrawal of proposals<sup>26</sup>;
- 967 (g) requiring any of the following to provide such information to such persons at such times as the regulations may prescribe<sup>27</sup>: (i) the promoters<sup>28</sup> or, if the proposal was made by a local education authority, that authority<sup>29</sup>; and (ii) the school organisation committee<sup>30</sup>.

Where the Secretary of State receives in this way a proposal to establish an academy, he must notify the interested parties<sup>31</sup> and the local education authority which published the proposal if he decides to commence negotiations with a view to entering an agreement<sup>32</sup> for the establishment of the academy<sup>33</sup>.

1 The Education Act 2002 s 70 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2 as from a day to be appointed under ss 125(4), 126(1), (3)(b), and re-enacted as s 66 (not yet in force) (see PARA 498 post). At the date at which this volume states the law, no such day had been appointed.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.



- 4 le under the Education Act 2002 s 70 (prospectively repealed: see note 1 supra).
- 5 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 212(2), (3).
- 6 For the meaning of 'academy' see PARA 496 note 29 ante; definition applied by virtue of ibid s 212(2), (3).
- 7 Ibid s 70(1), (2)(d). For these purposes, a school is 'additional' if it does not replace an academy which has been or is to be discontinued; and in determining for the purposes of s 70 (prospectively repealed) whether one school replaces another regard must be had to any guidance given from time to time by the Secretary of State: s 70(2)(d), (7). See note 1 supra. For the meaning of 'secondary school' see PARA 150 note 7 ante. As to the Secretary of State see PARA 52 ante. As to when a local education authority must exercise its power under s 70(1) (prospectively repealed) see PARA 157 ante.
- 8 Ibid s 70(3)(a). See note 1 supra.
- 9 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Education Act 2002: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 70 (prospectively repealed) see the Education (Additional Secondary School Proposals) Regulations 2003, SI 2003/1200 (amended by SI 2003/1421).
- 10 Education Act 2002 s 70(3)(b). See notes 1, 9 supra.
- 11 Ibid s 70(3)(c). See notes 1, 9 supra.
- 12 Ibid s 70(3)(d). See notes 1, 9 supra.
- 13 Ibid s 70(4). See note 1 supra.
- 14 le under ibid s 70 (prospectively repealed).
- 15 le in accordance with ibid s 70(4) (prospectively repealed): see the text and note 13 supra.
- 16 Ibid s 70(5)(a). See note 1 supra.
- 17 Ibid s 70(6)(a). See note 1 supra.
- 18 As to the regulations made under ibid s 70(9), Sch 8 para 2 (prospectively repealed) see the Education (Additional Secondary School Proposals) Regulations 2003, SI 2003/1200 (amended by SI 2003/1421).
- 19 le a proposal under the Education Act 2002 s 70 (prospectively repealed): see the text and notes 1-17 supra.
- 20 Ibid Sch 8 para 2(1). For the meaning of 'school organisation committees' see PARA 118 note 3 ante.  
Schedule 8 is repealed by the Education Act 2005 ss 66(14), 123, Sch 19 Pt 2, as from a day to be appointed under ss 125(4), 126(1), (3)(b), and re-enacted as s 66(12), Sch 10 (not yet in force) (see PARA 499 post). At the date at which this volume states the law, no such day had been appointed.
- 21 Education Act 2002 Sch 8 para 2(2)(a). See note 20 supra.
- 22 Ibid Sch 8 para 2(2)(b). See note 20 supra.
- 23 Ibid Sch 8 para 2(2)(c). See note 20 supra.
- 24 Ibid Sch 8 para 2(2)(d). See note 20 supra.
- 25 Ibid Sch 8 para 2(2)(e). See note 20 supra.
- 26 Ibid Sch 8 para 2(2)(f). See note 20 supra.
- 27 Ibid Sch 8 para 2(2)(g). See note 20 supra.
- 28 For the meaning of 'promoters' see PARA 151 note 12 ante.
- 29 Education Act 2002 Sch 8 para 2(2)(g)(i).
- 30 Ibid Sch 8 para 2(2)(g)(ii). See note 20 supra.
- 31 For the meaning of 'interested parties' see PARA 152 note 10 ante.

32     le under the Education Act 1996 s 482 (as substituted) (see PARA 496 ante).

33     Education Act 2002 Sch 8 para 4. Where a proposal to establish an academy published under s 70 (prospectively repealed) is implemented by the Secretary of State making an agreement under the Education Act 1996 s 482 (as substituted) (see PARA 496 ante), the provisions of s 482(3) (as substituted) (requirement to consult certain LEAs about the establishment of the school: see PARA 496 ante) do not apply: Education Act 2002 Sch 8 para 9(1). See note 20 supra.

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## (C) PROPOSALS FOR ADDITIONAL ACADEMIES UNDER THE

### **498. Proposals for additional academies.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

A local education authority<sup>2</sup> in England<sup>3</sup> may publish a notice<sup>4</sup> inviting proposals for the establishment<sup>5</sup> of an academy<sup>6</sup> as a secondary school<sup>7</sup>. Such a notice must: (1) identify a possible site for the school<sup>8</sup>; (2) specify a date, being a date after the prescribed interval, by which proposals must be submitted<sup>9</sup>; (3) specify such other matters as may be prescribed<sup>10</sup>; and (4) be published in the prescribed manner<sup>11</sup>. Before publishing such a notice, the local education authority must consult any prescribed persons, and such other persons as appear to the authority to be appropriate, about such of the relevant matters<sup>12</sup> as may be prescribed or, if none are prescribed, about such of the relevant matters as appear to the authority to be appropriate<sup>13</sup>. Regulations may prescribe requirements to be met by the local education authority in relation to such consultation<sup>14</sup>.

Proposals made pursuant to a notice inviting proposals for the establishment of an academy must contain the prescribed information<sup>15</sup>, and be submitted to the local education authority before the date specified in the notice<sup>16</sup>. After the date specified in a notice published by a local education authority, the authority must publish<sup>17</sup> any proposals submitted<sup>18</sup> pursuant to the notice<sup>19</sup>. Regulations may prescribe the time within which such proposals must be published<sup>20</sup> and the manner in which they must be published<sup>21</sup>. Regulations may require the local education authority to take prescribed steps for the purpose of promoting public awareness of any proposals published by it<sup>22</sup>.

1 The Education Act 2005 s 66 is to be brought into force by order made by the Secretary of State under ss 125(4), 126(1), (3)(b) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed. As to the Secretary of State see PARA 52 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 Ie under the Education Act 2005 s 66 (not yet in force).

5 As to the meaning of 'establish' see PARA 132 note 2 ante; definition applied by virtue of ibid s 122(2), (3).

6 As to the meaning of 'academy' see PARA 496 note 29 ante; definition applied by virtue of ibid s 122(2), (3).

7 Ibid s 66(1), (2)(c). See note 1 supra. For meaning of 'secondary school' see PARA 158 note 7 ante.

8 Ibid s 66(3)(a). See note 1 supra. Where any proposals published under s 66 (not yet in force) relate to a school which is proposed to be situated in an area other than that of the local education authority which published the notice under s 66 (not yet in force), the provisions of s 66(12), Sch 10 (not yet in force) (see PARA 499 post) have effect in relation to the proposals with such modifications as may be prescribed: s 66(13). For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 122(2), (3). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 122(2), (3). For the purposes of Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2: s 73. As to the making of regulations under the Education Act

2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no such regulations had been made.

9 Ibid s 66(3)(b). See note 1 supra.

10 Ibid s 66(3)(c). See note 1 supra.

11 Ibid s 66(3)(d). See note 1 supra.

12 For these purposes, 'the relevant matters' means the matters to be specified under ibid s 66(3)(a) (not yet in force) (see head (1) in the text) and s 66(3)(c) (not yet in force) (see head (3) in the text) in the notice: s 66(5). See note 1 supra.

13 Ibid s 66(4). See note 1 supra.

14 Ibid s 66(6). See note 1 supra.

15 Ibid s 66(7)(a). See note 1 supra.

16 Ibid s 66(7)(b). See note 1 supra.

17 Ie under ibid s 66 (not yet in force).

18 Ie in accordance with ibid s 66(7) (not yet in force): see the text and notes 15-16 supra.

19 Ibid s 66(8)(a). See note 1 supra.

20 Ibid s 66(9)(a). See note 1 supra.

21 Ibid s 66(9)(b). See note 1 supra.

22 Ibid s 66(10). See note 1 supra.

## **UPDATE**

### **498-499 Proposals for Additional Academies under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18. See now the 2006 Act Pt 2 (ss 7-32); and PARA 165A.

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#### **499. Consideration, approval and implementation of proposals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> must make provision for the submission of proposals<sup>3</sup> for the establishment<sup>4</sup> of academies<sup>5</sup> as secondary schools<sup>6</sup> in England<sup>7</sup> to the school organisation committee<sup>8</sup>. Such regulations may make provision: (1) for the making of objections or comments in relation to the proposals within a prescribed<sup>9</sup> period to the local education authority which published them<sup>10</sup>; and (2) for the sending by the local education authority to the school organisation committee within a prescribed period of copies of objections or comments received<sup>11</sup>.

Such proposals must be considered in the first instance by the school organisation committee<sup>12</sup>. The committee may<sup>13</sup> reject all the proposals<sup>14</sup>, approve any of the proposals without modification<sup>15</sup>, approve any of the proposals with such modifications as the committee thinks desirable after consulting such persons as may be prescribed<sup>16</sup>, or, if the committee think it appropriate to do so, and subject to regulations, refer to the adjudicator all the proposals with any comments on them made by the committee<sup>17</sup>. However, this does not prevent the promoters<sup>18</sup> or local education authority by whom any proposals have been made from withdrawing those proposals by notice<sup>19</sup> in writing to the school organisation committee (except in a case where the proposals have been referred to the adjudicator, when withdrawal is made by notice in writing to the adjudicator), at any time before the proposals are determined<sup>20</sup>. Any approval so given may be expressed to take effect only if an event specified in the approval occurs by a date so specified; and regulations may prescribe the events that may be so specified<sup>21</sup>. When deciding whether or not to give approval, the committee must have regard to any guidance given from time to time by the Secretary of State<sup>22</sup>. Approval<sup>23</sup> by the school organisation committee or the adjudicator of proposals to establish an academy does not oblige the Secretary of State to enter into, or seek to enter into, an agreement<sup>24</sup> to establish an academy<sup>25</sup>.

Regulations may make provision requiring the school organisation committee in prescribed cases to refer to the adjudicator all the proposals with any comments made on them by the committee<sup>26</sup>. The Secretary of State may at any time give a direction to a school organisation committee requiring it to refer to the adjudicator<sup>27</sup>: (a) any proposals which have been submitted to the committee<sup>28</sup> but which, at the time when the direction is given, have not been determined by the committee<sup>29</sup>; and (b) all subsequent proposals submitted to the committee<sup>30</sup> until the direction is revoked<sup>31</sup>, with any comments made on any of the proposals by the committee<sup>32</sup>. Regulations may also, in relation to any proposals<sup>33</sup>, require any of the following, namely: (i) the authority or promoters who published the proposals; (ii) the school organisation committee; and (iii) the adjudicator, to provide such information relating to the proposals to such persons, and at such times, as may be prescribed<sup>34</sup>.

1 The Education Act 2005 s 66(12), Sch 10 is to be brought into force as from a day to be appointed under ss 125(4), 126(1), (3)(b). At the date at which this volume states the law, no such day had been appointed.

2 For the purposes of *ibid* Pt 2 (ss 64-73) (not yet in force), 'regulations' means regulations made under Pt 2 (not yet in force) by the Secretary of State: s 73. As to the Secretary of State see PARA 52 *ante*. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 *ante*. At the date at which this volume states the law, no such regulations had been made.

- 3 The proposals published under *ibid* s 66 (not yet in force) (see *PARA* 498 ante): Sch 10 para 1. See note 1 *supra*.
- 4 As to the meaning of 'establish' see *PARA* 132 note 2 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 5 As to the meaning of 'academy' see *PARA* 496 note 29 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 6 For the meaning of 'secondary school' see *PARA* 158 note 7 ante.
- 7 For the meaning of 'England' see *PARA* 52 note 11 ante.
- 8 Education Act 2005 Sch 10 para 3(1). Regulations may provide that, where proposals submitted to the school organisation committee under Sch 10 para 3 (not yet in force) consist of or include proposals to establish an academy, the committee must within the prescribed period consult the Secretary of State in accordance with regulations, before taking any decision under Sch 10 para 4 (not yet in force) (see the text and notes 12-22 *infra*): Sch 10 para 7(1). See note 1 *supra*. For the meaning of 'school organising committees' see *PARA* 159 note 8 ante.
- 9 For the purposes of *ibid* Pt 2, 'prescribed' means prescribed by regulations: s 73. See note 1 *supra*.
- 10 *Ibid* Sch 10 para 3(2)(a). See note 1 *supra*.
- 11 *Ibid* Sch 10 para 3(2)(b). See note 1 *supra*.
- 12 *Ibid* Sch 10 para 4(1). Regulations may make provision modifying the application of Sch 10 para 4(1) (not yet in force) in relation to proposals which are related to other proposals of a prescribed description; and regulations may require the committee, in deciding for the purposes of the regulations whether any proposals are related, to have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 4(4). See note 1 *supra*. For the purposes of Pt 2 (ss 64-73) (not yet in force), 'prescribed' means prescribed by regulations; and 'regulations' means regulations made under Pt 2 (not yet in force) by the Secretary of State: s 73. As to the making of regulations under the Education Act 2005 generally see *PARA* 62 note 1 ante. At the date at which this volume states the law, no such regulations had been made. As to the meaning of 'modify' see *PARA* 43 note 7 ante; definition applied by virtue of s 122(2), (3).
- 13 The except in any case where *ibid* Sch 10 para 5 (not yet in force) (see notes 26-31 *infra*) requires the committee to refer the proposals to the adjudicator: Sch 10 para 4(3). For the meaning of 'adjudicator' see *PARA* 124 ante.
- 14 *Ibid* Sch 10 para 4(2)(a). See notes 1, 8 *supra*. Regulations may make provision modifying the application of Sch 10 para 4(2) (not yet in force) in relation to proposals which are related to other proposals of a prescribed description; and regulations may require the committee, in deciding for the purposes of the regulations whether any proposals are related, to have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 4(4).
- 15 *Ibid* Sch 10 para 4(2)(b). See note 1 *supra*. The school organisation committee may not approve under Sch 10 para 4 (not yet in force) proposals to establish an academy unless the Secretary of State, on being consulted under Sch 10 para 7(1) (not yet in force) (see note 8 *supra*), has indicated in accordance with regulations that, if the proposals were approved, he would be willing to commence negotiations with a view to entering into an agreement under the Education Act 1996 s 482 (as substituted) (see *PARA* 496 ante) for the establishment of an academy: Education Act 2005 Sch 10 para 7(2).
- 16 *Ibid* Sch 10 para 4(2)(c). See note 1 *supra*.
- 17 *Ibid* Sch 10 para 4(2)(d). Where any proposals are referred to the adjudicator under Sch 10 para 4(2)(d) (not yet in force), then: (1) he must consider the proposals afresh; and (2) the provisions of Sch 10 para 4(2), (4)-(6) (not yet in force) (see the text and notes 12-16 *supra*), other than Sch 10 para 4(2)(d) (not yet in force), apply to him in connection with his decision on the proposals as they apply to the committee: Sch 10 para 6(1). Schedule 10 para 7(2) (see note 15 *supra*) has effect in relation to a decision of an adjudicator under Sch 10 para 4 as it has effect in relation to a decision of the school organisation committee under Sch 10 para 7(2): Sch 10 para 7(4). See also note 1 *supra*.
- 18 For the meaning of 'promoters' see *PARA* 160 note 13 ante.
- 19 As to the service of notices see *PARA* 463 note 12 ante; applied by virtue of the Education Act 2005 s 122(2), (3).
- 20 *Ibid* Sch 10 para 4(7). See note 1 *supra*.

21 Ibid Sch 10 para 4(5). See note 1 supra.

22 Ibid Sch 10 para 4(6). See note 1 supra.

23 Ie under ibid Sch 10 para 4 (not yet in force): see the text and notes 12-22 supra.

24 Ie under the Education Act 1996 s 482 (as substituted) (see PARA 496 ante).

25 Education Act 2005 Sch 10 para 7(5). Where proposals to establish an academy published under s 66 (not yet in force) (see PARA 498 ante) are implemented by the Secretary of State making an agreement under the Education Act 1996 s 482 (as substituted) (see PARA 496 ante), the provisions of s 482(3) (as substituted) (requirement to consult certain LEAs about the establishment of the school: see PARA 496 ante) do not apply: Education Act 2005 Sch 10 para 15.

26 Ibid Sch 10 para 5(1). Where any proposals are referred to the adjudicator under Sch 10 para 5(1) (not yet in force), then: (1) he must consider the proposals afresh; and (2) the provisions of Sch 10 para 4(2), (4)-(6) (not yet in force) (see the text and notes 12-17, 21-22 supra), other than Sch 10 para 4(2)(d) (not yet in force) (see the text and note 17 supra), apply to him in connection with his decision on the proposals as they apply to the committee: Sch 10 para 6(1). Where a school organisation committee is required by regulations under Sch 10 para 5(1) (not yet in force) to refer any proposals ('the relevant proposals') to the adjudicator, the committee must also refer to the adjudicator any proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante) which relate to the area of the local education authority, if it is satisfied that the proposals are related to the relevant proposals: Education Act 2005 Sch 10 para 5(4). In deciding under Sch 10 para 5(4) (not yet in force) whether any proposals are related to other proposals the school organisation committee must have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 5(5). For the meaning of 'area of the local education authority' see PARA 20 note 3 ante; definition applied by virtue of s 122(2), (3). See also note 1 supra.

27 Ibid Sch 10 para 5(2). See note 1 supra. Where any proposals are referred to the adjudicator under Sch 10 para 5(2) (not yet in force), then: (1) he must consider the proposals afresh; and (2) the provisions of Sch 10 para 4(2), (4)-(6) (not yet in force) (see the text and notes 12-17, 21-22 supra), other than Sch 10 para 4(2)(d) (not yet in force) (see the text and note 17 supra), apply to him in connection with his decision on the proposals as they apply to the committee: Sch 10 para 6(1). Where a school organisation committee is required by a direction under Sch 10 para 5(2) (not yet in force) to refer any proposals ('the relevant proposals') to the adjudicator, the committee must also refer to the adjudicator any proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively further amended) (see PARA 132 ante), s 28A (prospectively added) (see PARA 133 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante) which relate to the area of the local education authority, if it is satisfied that the proposals are related to the relevant proposals: Education Act 2005 Sch 10 para 5(4). In deciding under Sch 10 para 5(4) (not yet in force) whether any proposals are related to other proposals the school organisation committee must have regard to any guidance given from time to time by the Secretary of State: Sch 10 para 5(5).

Where a direction under Sch 10 para 5(2) (not yet in force) is given to a school organisation committee at a time when the committee is considering proposals which consist of or include proposals to establish an academy, the committee must complete any consultation required by Sch 10 para 7 (not yet in force) (see notes 8, 15, 17, 25 supra) before referring the proposals to the adjudicator: Sch 10 para 5(3). If a direction under Sch 10 para 5(2) (not yet in force) is in force in relation to a school organisation committee and the case does not fall within Sch 10 para 5(3), the reference in Sch 10 para 7(1) (see note 8 supra) to the committee is to be read as a reference to the adjudicator: Sch 10 para 7(3).

28 Ie under ibid Sch 10 para 3 (not yet in force) (see PARA 159 ante).

29 Ibid Sch 10 para 5(2)(a). See note 1 supra.

30 See note 27 supra.

31 Education Act 2005 Sch 10 para 5(2)(b). The revocation of a direction under Sch 10 para 5(2) (not yet in force) does not affect the determination by the adjudicator of any proposals referred to him before the revocation: Sch 10 para 6(2). See note 1 supra.

32 Ibid Sch 10 para 5(2). See notes 1, 28-31 supra.

33 Ie proposals published under ibid s 66 (not yet in force): see PARA 498 ante.

34 Ibid Sch 10 para 8. See note 1 supra.

**UPDATE**

**498-499 Proposals for Additional Academies under the Education Act 2005**

Repealed: Education and Inspections Act 2006 Sch 3 paras 49, 53, Sch 18. See now the 2006 Act Pt 2 (ss 7-32); and PARA 165A.



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## ***B. DUTIES TO PROVIDE OR PUBLISH INFORMATION***

### **500. Distribution of performance information.**

In addition to the general requirement relating to independent schools generally<sup>1</sup>, the Secretary of State<sup>2</sup> may by regulations require the proprietor<sup>3</sup> of any city technology college<sup>4</sup>, city college for the technology of the arts<sup>5</sup> or academy<sup>6</sup> to provide specified information<sup>7</sup> concerning the performance of the college or academy<sup>8</sup>.

1 See PARA 467 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'proprietor' see PARA 60 note 7 ante.

4 As to the meaning of 'city technology college' see PARA 496 note 31 ante.

5 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 ante.

6 As to the meaning of 'academy' see PARA 496 note 29 ante.

7 The information prescribed for the purposes of the Education Act 1996 s 537 (as amended) (see PARA 60 ante).

8 See *ibid* s 537(6)-(8) (as amended); and PARA 60 ante.

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### **501. Provision of information to local learning and skills councils.**

The governing body of a city technology college<sup>1</sup>, a city college for the technology of the arts<sup>2</sup> or academy<sup>3</sup> must give to a local learning and skills council<sup>4</sup> such information as it requires for the performance of any of its functions under any enactment<sup>5</sup>.

1 As to the meaning of 'city technology college' see PARA 496 note 31 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46(b)).

2 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (as amended: see note 1 supra).

3 As to the meaning of 'academy' see PARA 496 note 29 ante; definition applied by virtue of ibid s 90(5) (as amended: see note 1 supra).

4 As to local learning and skills councils see PARAS 1110-1112 post.

5 See the Further and Higher Education Act 1992 s 54(1) (as amended); and PARA 631 post.

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## **502. Distribution of information.**

The Secretary of State<sup>1</sup> may by regulations require the proprietor<sup>2</sup> of any city technology college<sup>3</sup>, city college for the technology of the arts<sup>4</sup> or academy<sup>5</sup> to publish specified information as to the students and their attainments<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'proprietor' see PARA 60 note 7 ante.

3 As to the meaning of 'city technology college' see PARA 496 note 31 ante.

4 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 ante.

5 As to the meaning of 'academy' see PARA 496 note 29 ante.

6 See the Education Act 1996 s 541 (as amended); and PARA 249 ante.

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### **503. Information about, and access to, pupils and students.**

A city technology college<sup>1</sup>, city college for the technology of the arts<sup>2</sup> or academy<sup>3</sup> may be required to provide certain specified information concerning its pupils and students, or to permit access to its pupils and students on its premises at reasonable times, to any person who is involved in the provision of services designed to encourage, enable or assist effective participation by young persons in education or training<sup>4</sup>.

1 As to city technology colleges see PARA 496 ante.

2 As to city colleges for the technology of the arts see PARA 496 ante.

3 As to academies see PARA 496 ante.

4 See the Learning and Skills Act 2000 s 117 (as amended); and PARA 1152 post.

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### ***C. MISCELLANEOUS MATTERS AS TO THE PROVISION OF EDUCATION***

#### **504. Functions of admission forums in relation to academies.**

Regulations<sup>1</sup> may authorise or require an admission forum established<sup>2</sup> by a local education authority<sup>3</sup> to give advice to the governing body of any academy<sup>4</sup> in the authority's area<sup>5</sup> on any prescribed matter<sup>6</sup>.

The governing body of an academy must have regard, in conducting the academy, to any relevant advice given to it<sup>7</sup> by an admission forum<sup>8</sup>.

1 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under s 85B (as added) see the Education (Admission Forums) (England) Regulations 2002, SI 2002/2900, reg 11.

2 Ie established under the School Standards and Framework Act 1998 s 85A (as added) (see PARA 395 ante).

3 As to local education authorities see PARA 20 ante.

4 As to academies see PARA 496 ante.

5 As to the areas of local education authorities see PARA 20 ante.

6 School Standards and Framework Act 1998 s 85B(1) (s 85B added by the Education Act 2002 s 66). The text refers to any matter corresponding to a matter prescribed under the School Standards and Framework Act 1998 s 85A(1)(b) (as added) (see PARA 395 heads (2)(a), (b) ante). 'Prescribed' means prescribed by regulations: s 142(1). See note 1 supra.

Section 85B (as added) is brought into force by order made under the Education Act 2002 s 216(4) as from a day to be appointed. In relation to England, the appointed day is 20 January 2003 (see the Education Act 2002 (Commencement No 3 and Savings and Transitional Provisions) Order 2002, SI 2002/2952, art 2) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the application of the provisions regarding academies to Wales see PARA 496 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

7 Ie by virtue of the School Standards and Framework Act 1998 s 85B(1) (as added): see the text and notes 1-6 supra.

8 Ibid s 85B(2) (as added: see note 6 supra).

### **UPDATE**

#### **504 Functions of admission forums in relation to academies**

NOTE 1--SI 2002/2900 reg 11 replaced: School Admissions (Local Authority Reports and Admission Forums) (England) Regulations 2008, SI 2008/3091, reg 17.

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## **505. Careers education.**

Registered pupils at a city technology college<sup>1</sup>, a city college for the technology of the arts<sup>2</sup> or academy<sup>3</sup> must be provided with a programme of careers education<sup>4</sup>. The college or academy must co-operate with careers advisers<sup>5</sup>, and provide access to guidance and reference materials relating to careers education and career opportunities<sup>6</sup>.

1 As to the meaning of 'city technology college' see PARA 496 note 31 ante; definition applied by virtue of the Education Act 1997 s 56(2).

2 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 ante; definition applied by virtue of *ibid* s 56(2).

3 As to the meaning of 'academy' see PARA 496 note 29 ante; definition applied by virtue of *ibid* s 56(2).

4 See *ibid* s 43 (as amended); and PARA 1161 post. The powers of the Secretary of State to prevent the unreasonable exercise of functions, and to take steps where a body has failed to discharge any duty, apply in relation to the duty of colleges and academies to provide careers education: see s 43(4); and PARA 1161 post. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 See *ibid* s 44 (as amended); and PARA 1162 post.

6 See *ibid* s 45; and PARA 1163 post.

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### **506. Special educational needs.**

Where a child<sup>1</sup> for whom a statement of special educational needs<sup>2</sup> is maintained attends (or proposes to attend) a city technology college, a city college for the technology of the arts or academy<sup>3</sup> in England and either the school is approved by the Secretary of State<sup>4</sup>, or the Secretary of State consents to the child being educated there, the Secretary of State may by regulations<sup>5</sup> make provision for securing that arrangements are made for making the special educational provision<sup>6</sup>, and any non-educational provision, specified in the statement<sup>7</sup>.

A local education authority is under a duty to make arrangements for the avoidance of disagreements between the parents of a child with special educational needs and the proprietor of a city technology college, a city college for the technology of the arts or academy, about the special educational provision made for that child<sup>8</sup>.

1 For the meaning of 'child' see PARAS 16 note 2 ante, 984 note 1 post.

2 For the meaning of 'special educational needs' see PARA 984 post.

3 As to city technology colleges, city colleges for the technology of the arts and academies see PARA 496 ante.

4 I.e. approved under the Education Act 1996 s 347(1) as suitable for the admission of children for whom statements of special educational needs are maintained (see PARA 1030 post). As to the Secretary of State see PARA 52 ante.

5 As to the regulations made in exercise of this power see the Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071; and PARA 1010 post.

6 For the meaning of 'special educational provision' see PARA 984 post.

7 See the Education Act 1996 s 483A (as added); and PARA 1010 post.

8 See *ibid* s 332B (as added); and PARA 1022 post.

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### **507. Home-school agreements.**

The governing body of a city technology college<sup>1</sup>, a city college for the technology of the arts<sup>2</sup>, or academy<sup>3</sup>, has the same obligation as the governing body of a maintained school to adopt a home-school agreement<sup>4</sup>, together with a parental declaration<sup>5</sup> to be used in connection with the agreement<sup>6</sup>.

1 As to the meaning of 'city technology college' see PARA 496 note 31 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 ante; definition applied by virtue of *ibid* s 142(8).

3 As to the meaning of 'academy' see PARA 496 note 29 ante; definition applied by virtue of *ibid* s 142(8).

4 For the meaning of 'home-school agreement' see PARA 82 ante.

5 For the meaning of 'parental declaration' see PARA 82 note 13 ante.

6 See the School Standards and Framework Act 1998 s 110 (as amended), s 111; and PARA 82 ante.



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### **508. Inspection.**

The duty of the Chief Inspector of Schools in England<sup>1</sup> to secure that inspections of schools are carried out at such intervals as may be prescribed applies to the inspection of city technology colleges<sup>2</sup>, city colleges for the technology of the arts<sup>3</sup>, and academies<sup>4</sup>.

1 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 post.

2 As to the meaning of 'city technology college' see PARA 496 note 31 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

3 As to the meaning of 'city college for the technology of the arts' see PARA 496 note 32 ante; definition applied by virtue of ibid s 122(2), (3).

4 See ibid s 5; and PARA 1173 post. As to the meaning of 'academy' see PARA 496 note 29 ante; definition applied by virtue of s 122(2), (3).

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### **509. Public schools.**

The term 'public school' has no statutory, or generally accepted, definition<sup>1</sup>. The Public Schools Act 1868 applies only to seven ancient schools, namely Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby and Shrewsbury<sup>2</sup>. The provisions outlined here refer only to those schools.

The headmaster of each school to which the Public Schools Act 1868 applies is appointed by and holds his office at the pleasure of the governing body<sup>3</sup>. All other teachers are appointed by and hold their office at the pleasure of the headmaster<sup>4</sup>. No candidate for mastership is entitled to a preference by reason of his having been educated at the school<sup>5</sup>.

The chapel of each school to which the Public Schools Act 1868 applies is free from jurisdiction or control of the incumbent of the parish in which the chapel is situated, and is deemed to be a chapel dedicated and allowed by the ecclesiastical law of the realm for the performance of public worship and the administration of the sacraments according to the liturgy of the Church of England<sup>6</sup>.

The income of the schools to which the Public Schools Acts apply arises from endowments and from fees paid by pupils, although at each school there are boys on the foundation<sup>7</sup> entitled to education which is wholly or partly gratuitous. The schools are subject to the general law of corporations in respect of their landed property<sup>8</sup>. Eton and Winchester have statutory powers as to land and advowsons<sup>9</sup>, and, so far as they are charities, are exempt charities for the purpose of the Charities Act 1993<sup>10</sup>. Winchester has statutory power to make a scheme for the aggregation and administration of trusts<sup>11</sup>.

Various special provisions as to property, government and other matters are made by the Public Schools Acts in relation to each school to which those Acts apply<sup>12</sup>.

1 In their first report in 1968 the Public Schools Commission (chaired by Sir John Newsom) said: 'Everyone uses the term 'public school' and yet there is no generally accepted definition of these schools. Everybody would probably include the nine schools considered by the Clarendon Commission in their Report of 1864 -- Eton, Winchester, Westminster, Charterhouse, St. Paul's, Merchant Taylors', Harrow, Rugby and Shrewsbury. Most people would also include those famous schools which became prominent in the 19th century such as Marlborough, Wellington, Cheltenham, Clifton, Oundle, Uppingham and many other notable schools. Some use the term to mean any independent secondary school -- a school not receiving grant from public funds. Our terms of reference specifically drew our attention to those independent schools which were (or whose heads were) members of the Headmasters' Conference ('HMC'), the Association of Governing Bodies of Public Schools ('GBA') or the Association of Governing Bodies of Girls' Public Schools ('GBGSA'). There were 288 such schools when we were appointed, including 11 in Scotland'.

2 Eton (The College of the Blessed Mary of Eton) was founded by Henry VI in 1440; Winchester (The Saint Mary College of Winchester) by William of Wykeham in 1382; Westminster (St Peter's College) was founded before 1339 and re-founded by Queen Elizabeth I in 1561; Charterhouse was founded by Thomas Sutton in 1611; Harrow by John Lyon in 1571; Rugby by Lawrence Sheriff in 1567; and Shrewsbury by Edward VI in 1552.

3 Public Schools Act 1868 s 13. For the meaning of 'governing body' see s 3. The governing body is a body corporate: see s 4A(1) (added by the Statute Law (Repeals) Act 1998 s 1(2), Sch 2 para 4). If a governing body, in dismissing a head, acts fairly and honestly, the High Court will not interfere: *Hayman v Governors of Rugby School* (1874) LR 18 Eq 28, 43 LJ Ch 834.

4 See the Public Schools Act 1868 s 13. No Roman Catholic may hold office at Eton, Westminster or Winchester: see the Roman Catholic Relief Act 1829 s 16 (as amended); and ECCLESIASTICAL LAW vol 14 para 1392.

5 Public Schools Act 1868 s 13.

6 Ibid s 31 (amended by the Statute Law Revision Act 1893). This is unaffected by the Extra-Parochial Ministry Measure 1967 s 2(1) (as amended), under which the bishop of the diocese in which any university or school is situated may license a clergyman to perform specified offices and services there: s 2(5) (amended by the Education Act 1973 s 1(4), Sch 2 Pt II). See ECCLESIASTICAL LAW vol 14 para 731.

7 For the meaning of 'boys on the foundation' in relation to each school see the Public Schools Act 1868 s 4. As to qualifications for admission of scholars to Rugby see *Re Rugby School* (1839) 1 Beav 457.

8 See generally CORPORATIONS.

9 See PARA 1379 post.

10 See the Charities Act 1993 s 3(5)(a), Sch 2 para (b); and CHARITIES vol 8 (2010) PARA 315. For the meaning of 'charity' see s 96(1), (2) (s 96(2) as amended) (definition applied by the Education Reform Act 1988 s 125A(3) (as so added)); and CHARITIES vol 8 (2010) PARA 1.

11 See PARA 665 post.

12 See eg the Public Schools Act 1868 s 20 (as amended) (miscellaneous provisions as to Westminster School), s 26 (as amended) (power to remove Shrewsbury School to another site), s 29 (change of corporate name of governors of Charterhouse), and s 32 (power to remove Westminster School to another site).

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## **(6) REGISTRATION AND SCHOOL ATTENDANCE**

### **(i) Duty of Parent to Secure Child's Education**

#### **510. Duty of parents to secure education of children of compulsory school age.**

The parent<sup>1</sup> of every child<sup>2</sup> of compulsory school age<sup>3</sup> must cause him to receive efficient full-time education<sup>4</sup> suitable to his age, ability and aptitude<sup>5</sup>, and to any special educational needs<sup>6</sup> he may have<sup>7</sup>, either by regular attendance<sup>8</sup> at school<sup>9</sup> or otherwise<sup>10</sup>. This duty may be enforced against the parents of a child who has failed to attend regularly at school<sup>11</sup> but, since the duty is to ensure that the child receives efficient full-time education and not that the child attends school, parents may comply with it by providing education at home<sup>12</sup>.

A parent is not under a duty to cause a child to receive full-time education during any time during which<sup>13</sup> it is not practicable for the parent to arrange for him to be admitted as a pupil at a school<sup>14</sup>.

1 Unless the context otherwise requires, 'parent', in relation to a child or young person, includes any person who is not a parent of his but who has parental responsibility for him, or who has care of him, except that in the Education Act 1996 s 499(8) (as added) (see PARA 50 ante) it only includes such a person if he is an individual: s 576(1). For these purposes, 'parental responsibility' has the same meaning as in the Children Act 1989 (see s 3; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134): Education Act 1996 s 576(3). In determining for the purposes of s 576(1) whether an individual has care of a child or young person, any absence of the child or young person at a hospital or boarding school and any other temporary absence is to be disregarded: s 576(4).

2 For the meaning of 'child' see PARA 16 note 2 ante.

3 As to the meaning of 'compulsory school age' see PARA 15 ante.

4 'Efficient' and 'full-time' are not defined for these purposes. In *Baker v Earl* [1960] Crim LR 363, QBD, a lack of structured lessons or prescribed course of study had failed to satisfy the requirements for efficient full-time education. In *Bevan v Shears* [1911] 2 KB 936 at 939, 75 JP 478 at 479 per Lord Alverstone CJ it was held (in the context of previous legislation) that 'in the absence of anything in the bylaws providing that a child of a given age shall receive instruction in given subjects, in my view it cannot be said that as to a particular child there is a standard of education by which the child must be taught . . . Therefore, the justices have to decide whether in their opinion the child is being taught efficiently so far as that particular child is concerned'. Justices have jurisdiction to decide that the education which a child was receiving was efficient, without deciding that it was as efficient as he would have received at a public elementary school: see *Bevan v Shears* supra. See also *R v Walton Justices, ex p Dutton* (1911) 75 JP 558, 9 LGR 1231 (admissibility of evidence as to the state of a child's education); *R v West Riding of Yorkshire Justices, ex p Broadbent* [1910] 2 KB 192, sub nom *R v Morris, ex p Broadbent* (1910) 74 JP 271, 8 LGR 777 (decided under previous legislation; efficiency of alternative education). The question of what constitutes efficient education is for the local education authority to decide and is a matter of opinion and degree: *R v East Sussex County Council, ex p Tandy* [1998] AC 714, [1998] 2 All ER 769, HL (decided under previous legislation).

5 Education Act 1996 s 7(a).

6 For the meaning of 'special educational needs' see PARA 984 post.

7 Education Act 1996 s 7(b).

8 'Regular' attendance is not defined for these purposes. See *Hinchley v Rankin* [1961] 1 All ER 692, [1961] 1 WLR 421 (decided under previous legislation; absence at the time when the attendance register closed was a failure in regular attendance); *Spiers v Warrington Corpn* [1954] 1 QB 61, [1953] 2 All ER 1052, DC (decided under previous legislation; a parent failed in his duty to secure the regular attendance at school of his daughter because she was wearing trousers and the parent knew that the head teacher would not admit her). As to the offence of failing to secure the regular attendance at school of a registered pupil see PARA 521 post.

9 For the meaning of 'school' see PARA 81 ante.

10 Education Act 1996 s 7. As to the provisions with regard to the duration of the school day and school year and the granting of leave of absence from school see PARA 533 post. A local education authority may be entitled to inspect the home of a child who receives education otherwise than by regular attendance at school: *R v Surrey Quarter Sessions Appeals Committee, ex p Tweedie* (1963) 61 LGR 464, [1963] Crim LR 639 (decided under previous legislation).

<sup>11</sup> See eg (in England) the Education Act 1996 s 444 (as amended) (failure to secure regular attendance at school of registered pupil); and PARA 521 post. See also the Anti-social Behaviour Act 2003 s 19 (as amended) (parenting contracts where a child has failed to attend regularly at school); and PARA 521 post.

12 The powers of local education authorities in relation to school attendance orders apply where a local education authority determines that a child of compulsory school age is not receiving suitable education either by regular attendance at school or otherwise, and therefore these powers apply in relation to children receiving home education: see the Education Act 1996 s 437 (as amended); and PARA 514 et seq post. In *Osborne v Martin* (1927) 25 LGR 532, (1927) 91 JP 197, DC, Salter J (at 535, 198) held that a parent is not obliged to avail himself of the free education provided by the state but that if he does so while preferring to provide privately for his child's education, he must take it as a whole. Parents educating children at home are under no obligation to provide local education authorities with information about the child's teaching, even where the local education authorities have asked for it: *Phillips v Brown* (20 June 1980) Lexis. There are, however, instances when local education authorities may inspect education being provided at home (*R v Surrey Quarter Sessions Appeals Committee, ex p Tweedie* (1963) 61 LGR 464, [1963] Crim LR 639), and interview and test the child (*R v Gwent County Council, ex p Perry* (1985) 129 Sol Jo 737, [1985] LS Gaz R 3356, CA). It has been held by the European Court of Human Rights that parents may be required to co-operate in the assessment of the child: see *H v United Kingdom* 38 DR 105 (1984), EComHR. See also *R v East Sussex County Council, ex p Tandy* [1998] AC 714, [1998] 2 All ER 769, HL.

13 Ie having regard to it not having been reasonably practicable for the parent to arrange for him to be admitted as a pupil at the beginning of the school term by reason of him being ill or by other reason beyond his parents control, or by his parents having been resident at a place from which the school was not accessible with reasonable facility: see the Education Act 1996 s 433(1), (2); and PARA 392 ante.

14 Ibid s 433(5).

## UPDATE

**510 Duty of parents to secure education of children of compulsory school age**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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### **511. Persons not covered by the Education Act 1996.**

No power or duty conferred or imposed by the Education Act 1996 on parents<sup>1</sup> is to be construed as relating to any person who is employed by or under the Crown in any service or capacity with respect to which the Secretary of State<sup>2</sup> certifies that, by reason of the arrangements made for the education of children<sup>3</sup> and young persons<sup>4</sup> so employed, the exercise and performance of those powers and duties with respect to such children and young persons is unnecessary<sup>5</sup>.

No power or duty conferred or imposed by or under the Education Act 1996 on parents is to be construed as relating to any person who is detained in pursuance of an order made by a court or of an order of recall made by the Secretary of State, but a local education authority<sup>6</sup> may make arrangements for a person who is detained in pursuance of such an order to receive the benefit of educational facilities provided by the authority<sup>7</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'child' see PARA 16 note 2 ante.

4 For the meaning of 'young person' see PARA 38 note 4 ante.

5 Education Act 1996 s 561.

6 As to local education authorities see PARA 20 ante.

7 Education Act 1996 s 562(1). A child or young person who is being educated as a boarder at a school is not to be regarded for these purposes as detained in pursuance of an order made by a court by reason of the fact that he is required to be at the school: (1) by virtue of an order made by a court under the Children and Young Persons Act 1933 or by virtue of anything done under such an order; or (2) by virtue of a requirement of a community order under the Criminal Justice Act 2003 s 177 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 163) or by virtue of anything done under such a requirement: Education Act 1996 s 562(2) (amended by the Criminal Justice Act 2003 s 304, Sch 32 Pt 1 para 73). As to the meaning of 'boarder' see PARA 26 note 16 ante. For the meaning of 'school' see PARA 81 ante.

### **UPDATE**

### **511 Persons not covered by the Education Act 1996**

NOTE 7--Education Act 1996 s 562(2) further amended: Criminal Justice and Immigration Act 2008 Sch 4 para 47.

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## **(ii) Registration of Pupils**

### **512. Registration of pupils.**

The proprietor<sup>1</sup> of a school<sup>2</sup> must cause to be kept, in accordance with regulations<sup>3</sup>, a register containing the prescribed<sup>4</sup> particulars in respect of all persons who are pupils<sup>5</sup> at the school<sup>6</sup>. The prescribed particulars must include details of the name and address of every person known to the proprietor to be a parent<sup>7</sup> of a pupil at the school<sup>8</sup>. 'Registered pupil', in relation to a school, means a person registered as a pupil at the school in such a register, and 'registered', in relation to the parents of pupils at a school or in relation to the names or addresses of such parents or pupils, means shown in that register<sup>9</sup>.

The regulations must prescribe the grounds on which names are to be deleted from such a register<sup>10</sup>, and the name of a person entered in such a register as a pupil at a school must, when any of the prescribed grounds is applicable, be deleted from the register on that ground<sup>11</sup>, and must not be deleted from the register otherwise than on any such ground<sup>12</sup>. The regulations may make provision for:

- 968 (1) enabling such registers to be inspected<sup>13</sup>;
- 969 (2) enabling extracts from such registers to be taken, for the purposes of the Education Act 1996, by persons authorised to do so under the regulations<sup>14</sup>; and
- 970 (3) requiring the person by whom any such register is required to be kept to make to the Secretary of State and local education authorities<sup>15</sup> such periodical or other returns as to the contents of the register as may be prescribed<sup>16</sup>.

A person who contravenes or fails to comply with any requirement imposed on him by such regulations is guilty of an offence and liable on summary conviction to a penalty<sup>17</sup>.

1 For the meaning of 'proprietor' see PARA 60 note 7 ante.

2 For the meaning of 'school' see PARA 81 ante.

3 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the regulations made under s 434 see, by virtue of s 582(3), Sch 39 para 1, the Education (Pupil Registration) Regulations 1995, SI 1995/2089 (amended by SI 1997/2624; SI 2001/1109; SI 2001/2802; SI 2002/3178; SI 2003/3227; SI 2005/2913).

4 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1). See note 3 supra.

5 For the meaning of 'pupil' see PARA 16 note 4 ante.

6 Education Act 1996 s 434(1). As to the contents of admission registers see, by virtue of s 582(3), Sch 39 para 1, the Education (Pupil Registration) Regulations 1995, SI 1995/2089, regs 5-6, 10 (reg 10 amended by SI 1997/2624). As to the method of making entries, the preservation of such registers and the use of computers in relation to them see the Education (Pupil Registration) Regulations 1995, SI 1995/2089, regs 14-16 (reg 16 amended by SI 2001/1109; SI 2001/2802).

7 As to the meaning of 'parent' see PARA 510 note 1 ante.

8 Education Act 1996 s 434(2).

9 Ibid s 434(5).

10 See the Education (Pupil Registration) Regulations 1995, SI 1995/2089, reg 9 (amended by SI 1997/2624; SI 2001/1109; SI 2001/2802; SI 2002/3178; SI 2003/3227). The decision to remove a child from the register does not engage the right to a fair hearing under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 134-148) since removal, if well-founded, only precludes a child from being educated at a particular school, rather than denying the right to an education generally: *R (on the application of M-P) v Barking and Dagenham London Borough Council* [2002] EWHC 2483 (Admin), [2003] ELR 144. See also *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382 at [62], [2004] QB 1231 at [62], [2004] 4 All ER 628 at [62] per Sedley LJ (the removal of a pupil's name from the school roll is not an act with legal consequences; it is the administrative consequence of other acts).

11 Education Act 1996 s 434(3)(a). As to the application of the Education (Pupil Registration) Regulations 1995, SI 1995/2089, reg 9 (as amended) see *R v Governing Body of Gateway Primary School, ex p X* [2001] ELR 321.

12 Education Act 1996 s 434(3)(b).

13 Ibid s 434(4)(a). As to such inspections see the Education (Pupil Registration) Regulations 1995, SI 1995/2089, reg 11.

14 Education Act 1996 s 434(4)(b). As to such extracts see the Education (Pupil Registration) Regulations 1995, SI 1995/2089, reg 12.

15 As to local education authorities see PARA 20 ante.

16 Education Act 1996 s 434(4)(c) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 111, Sch 31). As to such returns see the Education (Pupil Registration) Regulations 1995, SI 1995/2089, reg 13.

17 Education Act 1996 s 434(6). The penalty is a fine not exceeding level 1 on the standard scale: s 434(6). As to the standard scale see PARA 481 note 4 ante.

## UPDATE

### 512 Registration of pupils

TEXT AND NOTES--SI 1995/2089 (as amended) replaced in relation to England: Education (Pupil Registration) (England) Regulations 2006, SI 2006/1751 (amended by SI 2007/603).

NOTE 10--*Lord Grey School*, cited, reversed *Ali v Head Teacher and Governors of Lord Grey School* [2006] UKHL 14, [2006] 2 All ER 457.



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### **513. Withdrawal of pupils from a primary school for secondary education.**

A local education authority<sup>1</sup> may make arrangements in respect of a primary school<sup>2</sup> maintained by it, other than one that is for the time being organised for the provision of both primary<sup>3</sup> and secondary education<sup>4</sup>, under which any registered pupils<sup>5</sup> who are under the age of 12 but have attained the age of 10 years and 6 months may be required to be withdrawn from the school for the purpose of receiving secondary education<sup>6</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'primary school' see PARA 81 ante.

3 For the meaning of 'primary education' see PARA 16 ante.

4 For the meaning of 'secondary education' see PARA 17 ante.

5 For the meaning of 'registered pupil' see PARA 512 ante.

6 Education Act 1996 s 435.

Any function of a local education authority in England which is conferred by or under s 435 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (dd). For the meaning of 'England' see PARA 52 note 11 ante.

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### **(iii) School Attendance**

#### **514. School attendance orders.**

If it appears to a local education authority<sup>1</sup> that a child<sup>2</sup> of compulsory school age<sup>3</sup> in its area is not receiving suitable education<sup>4</sup>, either by regular attendance at school<sup>5</sup> or otherwise, it must serve a notice in writing on the parent<sup>6</sup> requiring him to satisfy it within the period specified in the notice that the child is receiving such education<sup>7</sup>. That period must not be less than 15 days beginning with the day on which the notice is served<sup>8</sup>. If:

971 (1) a parent on whom such a notice has been served fails to satisfy the local education authority, within the period specified in the notice, that the child is receiving suitable education<sup>9</sup>; and

972 (2) in the opinion of the authority it is expedient that the child should attend school<sup>10</sup>,

the authority must serve on the parent an order (called a 'school attendance order') in such form as may be prescribed<sup>11</sup>, requiring him to cause the child to become a registered pupil<sup>12</sup> at a school named in the order<sup>13</sup>. A school attendance order, subject to any amendment made by the local education authority, continues in force for so long as the child is of compulsory school age, unless it is revoked by the authority<sup>14</sup>, or a direction<sup>15</sup> is made in respect of it<sup>16</sup>. Where a maintained school<sup>17</sup> is named in a school attendance order, the local education authority must inform the governing body<sup>18</sup> and the head teacher<sup>19</sup>. Where a maintained school is named in a school attendance order, the governing body and the local education authority must admit the child to the school<sup>20</sup>, but this does not affect any power to exclude from a school a pupil<sup>21</sup> who is already a registered pupil there<sup>22</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'child' see PARA 16 note 2 ante.

3 As to the meaning of 'compulsory school age' see PARA 15 ante.

4 For the purposes of the Education Act 1996 Pt VI Ch II (ss 437-447) (as amended), 'suitable education', in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have: s 437(8). See also *R v East Sussex County Council, ex p Tandy* [1998] AC 714, [1998] 2 All ER 769, HL. For the meaning of 'special educational needs' see PARA 984 post.

5 For the meaning of 'school' see PARA 81 ante.

6 As to the meaning of 'parent' see PARA 510 note 1 ante.

7 Education Act 1996 s 437(1). Where an education supervision order is in force in relation to a child, the provisions of s 437 (as amended) do not apply to the child: see the Children Act 1989 s 36(10), Sch 3 para 13(2) (b) (as amended); and PARA 527 post. As to the provisions with regard to the duration of the school day and school year and the granting of leave of absence from school see PARA 533 post.

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 437 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions)

(England) Order 2002, SI 2002/928, art 3, Sch 1 para (ee). For the meaning of 'England' see PARA 52 note 11 ante.

8 Education Act 1996 s 437(2).

9 Ibid s 437(3)(a).

10 Ibid s 437(3)(b).

11 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: *ibid* s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the prescribed form of a school attendance order see the Education (School Attendance Order) Regulations 1995, SI 1995/2090, reg 3, Schedule, which have effect, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, as if made under s 437(3).

12 For the meaning of 'registered pupil' see PARA 512 ante.

13 Education Act 1996 s 437(3).

14 Ibid s 437(4)(a).

15 *Ie* under *ibid* s 443(2) (see PARA 520 post) or s 447(5) (see PARA 526 post). See *Enfield London Borough Council v Forsyth* (1986) 151 JP 113, sub nom *Enfield London Borough Council v F* (1986) 85 LGR 526 (where the parent had previously been prosecuted for failure to comply with a school attendance order (see PARA 520 post), a second prosecution could not be brought under the same order; service of a new school attendance order was required).

16 Education Act 1996 s 437(4)(b).

17 For the purposes of *ibid* Pt VI Ch II (as amended), 'maintained school' means any community, foundation or voluntary school or any community or foundation special school not established in a hospital: s 437(8) (definition substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 113(b)). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

18 As to the governing bodies of maintained schools see PARA 203 et seq ante.

19 Education Act 1996 s 437(5) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 113(a), Sch 31). As to the meaning of 'head teacher' see PARA 93 note 13 ante.

20 Education Act 1996 s 437(6) (amended by the School Standards and Framework Act 1998 Sch 30 para 113(a), Sch 31).

21 For the meaning of 'pupil' see PARA 16 note 4 ante.

22 Education Act 1996 s 437(7). As to the power of the head teacher to exclude a pupil see PARA 526 post.

## UPDATE

### 514 School attendance orders

TEXT AND NOTES--A local education authority must make arrangements to enable it to establish, so far as it is possible to do so, the identities of children in its area who are of compulsory school age but are not registered pupils at a school, and are not receiving suitable education otherwise than at a school: Education Act 1996 s 436A(1) (s 436A added by Education and Inspections Act 2006 s 4(1)). In exercising its functions under the Education Act 1996 s 436A a local education authority must have regard to any guidance given from time to time by the Secretary of State or the National Assembly for Wales: s 436A(2); Education and Inspections Act 2006 s 180.

NOTE 4--'Suitable education' is now defined, in the same terms, in the Education Act 1996 s 436A(3): s 437(8) (amended by Education and Inspections Act 2006 Sch 18 Pt 6).

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### **515. Choice of school for child without a statement of special educational needs.**

Where a local education authority<sup>1</sup> is required<sup>2</sup> to serve a school attendance order<sup>3</sup> in respect of a child<sup>4</sup> (other than a child for whom it maintains a statement<sup>5</sup> of special educational needs<sup>6</sup>), before serving the order the authority must serve on the parent<sup>7</sup> a notice in writing informing him of its intention to serve the order<sup>8</sup>, specifying the school<sup>9</sup> which the authority intends to name in the order and, if it thinks fit, one or more other schools which it regards as suitable alternatives<sup>10</sup>, and stating the effect of the provisions<sup>11</sup> described below<sup>12</sup>.

If the notice specifies one or more alternative schools and the parent selects one of them within the period of 15 days beginning with the day on which the notice is served, the school selected by him must be named in the order<sup>13</sup>. If within that period the parent applies for the child to be admitted to a school maintained by a local education authority<sup>14</sup> and, where that authority is not the authority by whom the notice was served, notifies the latter authority of the application<sup>15</sup>, and the child is offered a place at the school as a result of the application<sup>16</sup>, that school must be named in the order<sup>17</sup>. If:

- 973 (1) within that period, the parent applies to the local education authority by whom the notice was served for education to be provided at a school which is not a school maintained by a local education authority<sup>18</sup>; and
- 974 (2) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid<sup>19</sup> by it<sup>20</sup>,

that school must be named in the order<sup>21</sup>. If, within that period:

- 975 (a) the parent applies for the child to be admitted to a school which is not maintained by a local education authority, and in respect of which no application is made under head (1) or head (2) above<sup>22</sup>, and notifies the local education authority by whom the notice was served of the application<sup>23</sup>;
- 976 (b) the child is offered a place at the school as a result of the application<sup>24</sup>; and
- 977 (c) the school is suitable<sup>25</sup> to his age, ability and aptitude and to any special educational needs he may have<sup>26</sup>,

that school must be named in the order<sup>27</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie by virtue of the Education Act 1996 s 437(3): see PARA 514 ante.

3 As to the meaning of 'school attendance order' see PARA 514 ante.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 Ie a statement of special educational needs under the Education Act 1996 s 324 (as amended): see PARA 996 post.

6 Ibid s 438(1). For the meaning of 'special educational needs' see PARA 984 post.

Any function of a local education authority in England which is conferred by or under s 438 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (ff). For the meaning of 'England' see PARA 52 note 11 ante.

7 As to the meaning of 'parent' see PARA 510 note 1 ante.

8 Education Act 1996 s 438(2)(a).

9 For the meaning of 'school' see PARA 81 ante.

10 Education Act 1996 s 438(2)(b).

11 *Ibid* s 438(3)-(6) (as amended): see the text to notes 13-27 *infra*.

12 *Ibid* s 438(2)(c).

13 *Ibid* s 438(3).

14 For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante.

15 Education Act 1996 s 438(4)(a) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 114(a)).

16 Education Act 1996 s 438(4)(b).

17 *Ibid* s 438(4).

18 *Ibid* s 438(5)(a) (substituted by the School Standards and Framework Act 1998 Sch 30 para 114(b)).

19 *Ie* under the Education Act 1996 s 517 (as amended; prospectively repealed): see PARA 1009 note 12 post.

20 *Ibid* s 438(5)(b). As from a day to be appointed, s 438(5)(b) will provide that if the child is offered a place at the school and the local education authority is required by virtue of regulations under s 18(3) (prospectively added) (see PARA 31 note 11 ante) to pay the fees payable in respect of the education provided for him at the school that school must be named in the order: s 438(5)(b) (prospectively substituted by the School Standards and Framework Act 1998 Sch 30 para 114(b)). At the date at which this volume states the law, no such day had been appointed.

21 Education Act 1996 s 438(5) (substituted by the School Standards and Framework Act 1998 Sch 30 para 114(b)).

22 Education Act 1996 s 438(6)(a)(i) (amended by the School Standards and Framework Act 1998 s 140(3), Sch 30 para 114(c), Sch 31).

23 Education Act 1996 s 438(6)(a)(ii).

24 *Ibid* s 438(6)(b).

25 The question of suitability of education is for the local education authority to decide: *R v East Sussex County Council, ex p Tandy* [1998] AC 714, [1998] 2 All ER 769, HL (decided under previous legislation).

26 Education Act 1996 s 438(6)(c).

27 *Ibid* s 438(6).

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### **516. Specification of schools in school attendance notices.**

A local education authority<sup>1</sup> must not, if it appears to it in relation to any school<sup>2</sup> that<sup>3</sup> if the child<sup>4</sup> concerned were admitted to the school in accordance with a school attendance order<sup>5</sup> resulting from a school attendance notice<sup>6</sup>, the number of pupils<sup>7</sup> at the school in the child's age group would exceed the number determined<sup>8</sup> as the number of pupils in that age group which it is intended to admit to the school in the school year<sup>9</sup> in which he would be admitted<sup>10</sup>, specify the school in such a notice unless it is responsible for determining the arrangements for the admission of pupils to the school<sup>11</sup>. This does not prevent a local education authority specifying in such a notice any maintained school<sup>12</sup> if<sup>13</sup>:

- 978 (1) there is no maintained school in its area which the authority is not<sup>14</sup> so prevented from specifying, and which is, in the opinion of the authority, a reasonable distance from the home of the child concerned<sup>15</sup>; and
- 979 (2) in the opinion of the authority, the school in question is a reasonable distance from the home of the child concerned<sup>16</sup>.

In addition, a local education authority must not specify in a such a notice a school from which the child concerned is permanently excluded<sup>17</sup>. Nor may the local education authority specify a school in such a notice if the admission of the child concerned would prejudice<sup>18</sup> the provision of efficient education or the efficient use of resources by reason of measures required to be taken<sup>19</sup> in order to ensure compliance with the duty of local education authorities and governing bodies to comply with the limit on infant class sizes<sup>20</sup>.

Before deciding to specify a particular maintained school in a school attendance notice<sup>21</sup> a local education authority must consult<sup>22</sup> the governing body<sup>23</sup>, and if another local education authority is responsible for determining the arrangements for the admission of pupils to the school, that authority<sup>24</sup>. Where a local education authority decides to specify a particular maintained school in such a notice it must, before serving the notice, serve notice in writing of its decision on<sup>25</sup> the governing body and head teacher<sup>26</sup> of the school<sup>27</sup>, and if another local education authority is responsible for determining the arrangements for the admission of pupils to the school, that authority<sup>28</sup>. A governing body or local education authority on whom such notice is served may, within the period of 15 days beginning with the day on which the notice was received, apply to the Secretary of State<sup>29</sup> for a direction and, if it does so, must inform the local education authority which served the notice<sup>30</sup>. Where the Secretary of State gives such a direction, the school or schools to be specified in the notice must be determined in accordance with the direction<sup>31</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'school' see PARA 81 ante.

3 Education Act 1996 s 439(1).

Any function of a local education authority in England which is conferred by or under s 439 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (gg). For the meaning of 'England' see PARA 52 note 11 ante.

As to the application of the Education Act 1996 s 439 (as amended) to new schools see the New School (Admissions) (England) Regulations 2003, SI 2003/1041, reg 9, Schedule paras 1(a), (c), 2-5.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 As to the meaning of 'school attendance order' see PARA 514 ante.

6 Ie a notice under the Education Act 1996 s 438(2): see PARA 515 ante.

7 For the meaning of 'pupil' see PARA 16 note 4 ante.

8 Ie determined, in relation to England, in accordance with the School Standards and Framework Act 1998 s 89 (as amended in relation to England; prospectively amended in relation to Wales) (determination of admission numbers: see PARA 408 ante): Education Act 1996 s 439(2) (amended by the Education Act 2002 s 51, Sch 4 para 14). The amendment made by Sch 4 para 14 is brought into force by order made under s 216(4) as from a day to be appointed. In relation to England, the appointed day is 1 October 2002 (except in relation to any school attendance order made during any school year earlier than the 2004-2005 school year: see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, arts 3-4, Schedule Pt 2 para 5(1)(b)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day to be appointed in relation to Wales, this provision must be read as referring to a number fixed in accordance with the School Standards and Framework Act 1998 s 93 (repealed in relation to England; prospectively repealed in relation to Wales) (fixing of admission numbers: see PARA 408 ante): Education Act 1996 s 439(2) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 115(2), Sch 31).

9 For the meaning of 'school year' see PARA 15 note 9 ante.

10 Education Act 1996 s 439(2) (as amended: see note 8 supra).

11 Ibid s 439(1).

12 For the meaning of 'maintained school' see PARA 514 note 17 ante.

13 Education Act 1996 s 439(3) (s 439(3), (5)-(6) amended by the School Standards and Framework Act 1998 Sch 30 para 115(1), (3), Sch 31).

14 Ie apart from the Education Act 1996 s 439(3) (as amended).

15 Ibid s 439(3)(a) (as amended: see note 13 supra).

16 Ibid s 439(3)(b).

17 Ibid s 439(4).

18 Ie prejudice of the kind referred to in the School Standards and Framework Act 1998 s 86(3)(a) (as amended) (parental preferences: see PARA 396 ante).

19 Ie measures as mentioned in ibid s 86(4): see PARA 396 ante.

20 Education Act 1996 s 439(4A) (added by the School Standards and Framework Act 1998 Sch 30 para 115(4)).

21 Ie a notice under the Education Act 1996 438(2): see PARA 515 ante.

22 Ibid s 439(5) (as amended: see note 13 supra).

23 Ibid s 439(5)(a). As to the governing bodies of maintained schools see PARA 203 et seq ante.

24 Ibid s 439(5)(b).

25 Ibid s 439(6) (as amended: see note 13 supra).

26 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

27 Education Act 1996 s 439(6)(a).

28 Ibid s 439(6)(b).



29 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

30 Education Act 1996 s 439(7).

31 Ibid s 439(8).

## **UPDATE**

### **516 Specification of schools in school attendance notices**

NOTE 8--Day now appointed in relation to Wales: SI 2006/172.

Education Act 1996 s 439(2) further amended: Education and Skills Act 2008 Sch 1 para 49 (not yet in force).

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**517. Amendment of order at request of parent: child without statement of special educational needs.**

Where a school attendance order<sup>1</sup> is in force in respect of a child<sup>2</sup> (other than a child for whom the local education authority<sup>3</sup> maintains a statement<sup>4</sup> of special educational needs<sup>5</sup>) and at any time:

- 980 (1) the parent<sup>6</sup> applies for the child to be admitted to a school<sup>7</sup> maintained by a local education authority<sup>8</sup> which is different from the school named in the order<sup>9</sup>;
- 981 (2) the child is offered a place at the school as a result of the application<sup>10</sup>; and
- 982 (3) the parent requests the local education authority by whom the order was served to amend it by substituting that school for the one currently named<sup>11</sup>,

the authority must comply with the request<sup>12</sup>. If at any time:

- 983 (a) the parent applies to the authority for education to be provided for the child at a school which is not a school maintained by a local education authority and which is different from the school named in the order<sup>13</sup>;
- 984 (b) the child is offered a place at the school under arrangements made by the authority under which the fees payable in respect of the education provided at the school are to be paid<sup>14</sup> by it<sup>15</sup>; and
- 985 (c) the parent requests the authority to amend the order by substituting that school for the one currently named<sup>16</sup>,

the authority must comply with the request<sup>17</sup>. If at any time:

- 986 (i) the parent applies for the child to be admitted to a school which is not maintained by a local education authority, which is different from the school named in the order and in respect of which no application is made under heads (a) to (c) above<sup>18</sup>;
- 987 (ii) as a result of the application, the child is offered a place at the school, being a school which is suitable to his age, ability and aptitude and to any special educational needs he may have<sup>19</sup>; and
- 988 (iii) the parent requests the authority to amend the order by substituting that school for the one currently named<sup>20</sup>,

the authority must comply with the request<sup>21</sup>.

1 As to the meaning of 'school attendance order' see PARA 514 ante.

2 For the meaning of 'child' see PARA 16 note 2 ante.

3 As to local education authorities see PARA 20 ante.

4 ie under the Education Act 1996 s 324 (as amended): see PARA 996 post.

5 Ibid s 440(1). For the meaning of 'special educational needs' see PARA 984 post.

Any function of a local education authority in England which is conferred by or under s 440 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (hh). For the meaning of 'England' see PARA 52 note 11 ante.

6 As to the meaning of 'parent' see PARA 510 note 1 ante.

7 For the meaning of 'school' see PARA 81 ante.

8 For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante.

9 Education Act 1996 s 440(2)(a) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 116(a), Sch 31).

10 Education Act 1996 s 440(2)(b).

11 Ibid s 440(2)(c).

12 Ibid s 440(2).

13 Ibid s 440(3)(a) (substituted by the School Standards and Framework Act 1998 Sch 30 para 116(b)).

14 Ie under the Education Act 1996 s 517 (as amended; prospectively repealed): see PARA 1009 note 12 post.

15 Ibid s 440(3)(b). As from a day to be appointed, s 440(3)(b) will provide that if at any time the child is offered a place at the school and the local education authority is required by virtue of regulations under s 18(3) (prospectively added) (see PARA 31 note 11 ante) to pay the fees payable in respect of the education provided for him at the school the authority must comply with the request: s 440(3)(b) (prospectively substituted by the School Standards and Framework Act 1998 Sch 30 para 116(b)). At the date at which this volume states the law, no such day had been appointed.

16 Education Act 1996 s 440(3)(c).

17 Ibid s 440(3).

18 Ibid s 440(4)(a) (amended by the School Standards and Framework Act 1998 Sch 30 para 116(c), Sch 31).

19 Education Act 1996 s 440(4)(b).

20 Ibid s 440(4)(c).

21 Ibid s 440(4).

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Choice of school: child with statement of special educational needs.

### **518. Choice of school: child with statement of special educational needs.**

Where a local education authority<sup>1</sup> is required<sup>2</sup> to serve a school attendance order<sup>3</sup> in respect of a child<sup>4</sup> for whom it maintains a statement<sup>5</sup> of special educational needs<sup>6</sup> and the statement specifies the name of a school<sup>7</sup>, that school must be named in the order<sup>8</sup>. Where the statement does not specify the name of a school, the authority must amend the statement so that it specifies the name of a school<sup>9</sup>, and that school must then be named in the order<sup>10</sup>. Where a school attendance order is in force in respect of a child for whom the local education authority maintains a statement<sup>11</sup> of special educational needs<sup>12</sup>, and the name of the school specified in the statement is changed<sup>13</sup>, the local education authority must amend the order accordingly<sup>14</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie by virtue of the Education Act 1996 s 437(3): see PARA 514 ante.

3 As to the meaning of 'school attendance order' see PARA 514 ante.

4 For the meaning of 'child' see PARA 16 note 2 ante.

5 Ie under the Education Act 1996 s 324 (as amended): see PARA 996 post.

6 Ibid s 441(1). For the meaning of 'special educational needs' see PARA 984 post.

Any function of a local education authority in England which is conferred by or under s 441 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (ii). For the meaning of 'England' see PARA 52 note 11 ante.

7 For the meaning of 'school' see PARA 81 ante.

8 Education Act 1996 s 441(2).

9 Ibid s 441(3)(a) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), (6), Sch 8 paras 1, 15(1), (2), Sch 9). An amendment to a statement required to be made under the Education Act 1996 s 441(3)(a) (as amended) must be treated for the purposes of Sch 27 (as amended) (see PARAS 994, 996 et seq post) as if it were an amendment proposed following a periodic review: s 441(3A) (added by the Special Educational Needs and Disability Act 2001 Sch 8 paras 1, 15(1), (3)).

10 Education Act 1996 s 441(3)(b).

11 Ie under ibid s 324 (as amended): see PARA 996 post.

12 Ibid s 441(4)(a).

13 Ibid s 441(4)(b).

14 Ibid s 441(4).

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### **519. Revocation of order at request of parent.**

Where a school attendance order<sup>1</sup> is in force in respect of a child<sup>2</sup>, and at any time the parent<sup>3</sup> applies to the local education authority<sup>4</sup> requesting that the order be revoked on the ground that arrangements have been made for the child to receive suitable education<sup>5</sup> otherwise than at school<sup>6</sup>, the authority must comply with the request, unless it is of the opinion that no satisfactory arrangements have been made for the education of the child otherwise than at school<sup>7</sup>. If a parent is aggrieved by a refusal of the local education authority to comply with such a request, he may refer the question to the Secretary of State<sup>8</sup>. Where a question is so referred to the Secretary of State, he must give such direction determining the question as he thinks fit<sup>9</sup>.

1 As to the meaning of 'school attendance order' see PARA 514 ante.

2 Education Act 1996 s 442(1). For the meaning of 'child' see PARA 16 note 2 ante.

3 As to the meaning of 'parent' see PARA 510 note 1 ante.

4 As to local education authorities see PARA 20 ante.

5 For the meaning of 'suitable education' see PARA 514 note 4 ante.

6 For the meaning of 'school' see PARA 81 ante.

7 Education Act 1996 s 442(2).

Any function of a local education authority in England which is conferred by or under s 442 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (jj). For the meaning of 'England' see PARA 52 note 11 ante.

8 Education Act 1996 s 442(3). As to the power of the Secretary of State to require a medical examination where a question is referred to him under s 442(3) see PARA 553 post. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 Ibid s 442(4). Where the child in question is one for whom the authority maintains a statement of special educational needs under s 324 (as amended) (see PARA 996 post) the provisions of s 442(2)-(4) (see the text and notes 3-8 supra) do not apply if the name of a school or other institution is specified in the statement, and in any other case a direction under s 442(4) may require the authority to make such amendments in the statement as the Secretary of State considers necessary or expedient in consequence of his determination: s 442(5).

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## **520. Offence of failing to comply with school attendance order.**

If a parent<sup>1</sup> on whom a school attendance order<sup>2</sup> is served fails to comply with the requirements of the order, he is guilty of an offence, unless he proves that he is causing the child<sup>3</sup> to receive suitable education<sup>4</sup> otherwise than at school<sup>5</sup>. If, in proceedings for such an offence, the parent is acquitted, the court may direct that the school attendance order is to cease to be in force<sup>6</sup>. Such a direction does not affect the duty of the local education authority<sup>7</sup> to take further action<sup>8</sup> if at any time the authority is of the opinion that, having regard to any change of circumstances, it is expedient to do so<sup>9</sup>. A person guilty of such an offence is liable on summary conviction to a penalty<sup>10</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante.

2 As to the meaning of 'school attendance order' see PARA 514 ante.

3 For the meaning of 'child' see PARA 16 note 2 ante.

4 For the meaning of 'suitable education' see PARA 514 note 4 ante.

5 Education Act 1996 s 443(1). For the meaning of 'school' see PARA 81 ante. See *Enfield London Borough Council v Forsyth* (1986) 151 JP 113, sub nom *Enfield London Borough Council v F* (1986) 85 LGR 526; *Re B (Infants)* [1962] Ch 201, sub nom *Re Baker (Infants)* [1961] 3 All ER 276, CA; *R v Gwent County Council, ex p Perry* (1985) 129 Sol Jo 737, CA; *Philips v Brown* (20 June 1980) Lexis, CA; *Re S (A Minor)* [1978] QB 120, sub nom *Re DJMS (A Minor)* [1977] 3 All ER 582, CA.

6 Education Act 1996 s 443(2).

7 As to local education authorities see PARA 20 ante.

8 le under the Education Act 1996 s 437 (as amended): see PARA 514 ante.

9 Ibid s 443(3).

10 Ibid s 443(4). The penalty is a fine not exceeding level 3 on the standard scale: s 443(4). As to the standard scale see PARA 481 note 4 ante.

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**521. Offence of parent failing to secure regular attendance at school of registered pupil.**

If a child<sup>1</sup> of compulsory school age<sup>2</sup> who is a registered pupil<sup>3</sup> at a school<sup>4</sup> fails to attend regularly at the school, his parent<sup>5</sup> is guilty of an offence<sup>6</sup>. A person guilty of such an offence<sup>7</sup> is liable on summary conviction to a penalty<sup>8</sup>. If, in such circumstances, the parent knows that his child is failing to attend regularly at school and fails without reasonable justification to cause him to do so, he is guilty of a separate offence<sup>9</sup>. A person guilty of the latter offence<sup>10</sup> is liable on summary conviction to a penalty<sup>11</sup>. A child who is not a boarder<sup>12</sup> at the school at which he is a registered pupil<sup>13</sup> must not be taken to have failed to attend regularly at the school by reason of his absence from the school with leave<sup>14</sup>, at any time when he was prevented from attending by reason of sickness or any unavoidable cause<sup>15</sup>, or on any day exclusively set apart for religious observance by the religious body to which his parent belongs<sup>16</sup>. In addition, a child who is not a boarder at the school at which he is a registered pupil must not be taken to have failed to attend regularly at the school if his parent proves:

- 989 (1) that the school at which the child is a registered pupil is not within walking distance<sup>17</sup> of the child's home<sup>18</sup>; and
- 990 (2) that no suitable arrangements have been made by the local education authority<sup>19</sup> for<sup>20</sup>: (a) his transport to and from the school<sup>21</sup>; (b) boarding accommodation for him at or near the school<sup>22</sup>; or (c) enabling him to become a registered pupil at a school nearer to his home<sup>23</sup>.

If it is proved that the child has no fixed abode, head (1) and head (2) above do not apply, but the parent must be acquitted if he proves:

- 991 (i) that he is engaged in a trade or business of such a nature as to require him to travel from place to place<sup>24</sup>;
- 992 (ii) that the child has attended at a school as a registered pupil as regularly as the nature of that trade or business permits<sup>25</sup>; and
- 993 (iii) if the child has attained the age of six, that he has made at least 200 attendances during the period of 12 months ending with the date on which the proceedings were instituted<sup>26</sup>.

The reasons described above are the only lawful excuses for non-attendance at school<sup>27</sup>.

In proceedings for such offences in respect of a child who is a boarder at the school at which he is a registered pupil, the child must be taken to have failed to attend regularly at the school if he is absent from it without leave during any part of the school term at a time when he was not prevented from being present by reason of sickness or any unavoidable cause<sup>28</sup>.

1 For the meaning of 'child' see PARA 16 note 2 ante.

2 As to the meaning of 'compulsory school age' see PARA 15 ante.

3 For the meaning of 'registered pupil' see PARA 512 ante.

4 For the meaning of 'school' see PARA 81 ante.

5 As to the meaning of 'parent' see PARA 510 note 1 ante.

6 Education Act 1996 s 444(1). This is an absolute offence and it is unnecessary that the parents have knowledge of the child's absence or are neglectful in ensuring that the child attends regularly: *Crump v Gilmore* (1969) 68 LGR 56, 113 Sol Jo 998, DC (decided under previous legislation). The strict liability offence imposed by the Education Act 1996 s 444(1) is not in breach of the right to a fair trial guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 134-148), which does not restrict the power of Parliament to create strict liability offences: *Barnfather v Islington London Borough Council* [2003] EWHC 418 (Admin), [2003] 1 WLR 2318, [2003] ELR 263, DC.

As to penalty notices for parents in respect of a failure to secure the regular attendance of a registered pupil at school see the Education Act 1996 s 444A (as added); and PARA 523 post. See also the Anti-social Behaviour Act 2003 s 19 (as amended) (parenting contracts where a child has failed to attend regularly at school); and PARA 522 post.

7 Is an offence under the Education Act 1996 s 444(1): see the text to notes 1-6 supra.

8 Ibid s 444(8) (amended by the Criminal Justice and Court Services Act 2000 s 72(1), (2)(b)). The penalty is a fine not exceeding level 3 on the standard scale: Education Act 1996 s 444(8). As to the standard scale see PARA 481 note 4 ante.

9 Ibid s 444(1A) (added by the Criminal Justice and Court Services Act 2000 s 72(1)(a), (2)). It is not necessarily an abuse of process for an education authority to prosecute a parent under the Education Act 1996 s 444(1A) (as added) after it has obtained an education supervision order under the Children Act 1989 s 36(10), Sch 3 (Sch 3 as amended) (see PARA 527 post). However, in such circumstances, a parent would be entitled to say that the duty under the Education Act 1996 s 444 (as amended) no longer applied and that the process under the Children Act 1989 Sch 3 para 18 (persistent failure of parent to comply with a direction given under the order: see PARA 529 post) should have been used instead: *R (on the application of Graves) v London Borough of Islington* [2003] EWHC 2817 (Admin), [2004] ELR 1, [2003] All ER (D) 119 (Nov).

10 Is an offence under the Education Act 1996 s 444(1A) (as added): see the text to note 9 supra.

11 Ibid s 444(8A)(a) (s 444(8A), (8B) added by the Criminal Justice and Court Services Act 2000 s 72(1)(c), (2)). The penalty is a fine not exceeding level 4 on the standard scale (Education Act 1996 s 444(8A)(a) (as so added)), or imprisonment for a term not exceeding three months (Education Act 1996 s 444(8A)(b) (as so added)), or both (s 444(8A) (as so added)). As to the standard scale see PARA 481 note 4 ante. See note 9 supra. If, on the trial of an offence under the Education Act 1996 s 444(1A) (as added) (see the text to note 9 supra), the court finds the defendant not guilty of that offence but is satisfied that he is guilty of an offence under s 444(1) (see the text to notes 1-6 supra), the court may find him guilty of that offence: s 444(8B) (as so added). In *Sutton London Borough Council v S* (2004) Times, 1 November, DC, a local education authority's appeal against an acquittal under the Education Act 1996 s 444(1A) (as added) was dismissed with emphasis being given to the fact that the authority had discretion to appeal and that it should have taken into account the likely distress caused to the particular parents in this instance.

As from a day to be appointed, s 444(8A)(b) (as added) is amended so as to refer to 51 weeks instead of three months: see s 444(8A)(b) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 49(1), (2)). At the date at which this volume states the law, no such day had been appointed.

12 As to the meaning of 'boarder' see PARA 26 note 16 ante.

13 Education Act 1996 s 444(2). Where a child is a registered pupil at both a pupil referral unit and at a school other than a unit, the references in s 444 (as amended) to the school at which he is a registered pupil are to be read as references to the unit: Sch 1 para 14(6).

14 Ibid s 444(3)(a). For these purposes, 'leave', in relation to a school, means leave granted by any person authorised to do so by the governing body or proprietor of the school: s 444(9). For the meaning of 'proprietor' see PARA 60 note 7 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. Separate provision is made by regulations with regard to the granting of leave of absence from school: see the Education (Pupil Registration) Regulations 1995, SI 1995/2089, reg 8 (as amended); and PARA 533 post.

15 Education Act 1996 s 444(3)(b). The unavoidable cause must affect the child, not the parent: *Jenkins v Howells* [1949] 2 KB 218, [1949] 1 All ER 942, DC (decided under previous legislation; family responsibilities do not constitute an excuse for a child not attending school); *Bath and North East Somerset District Council v Warman* [1999] ELR 81 (a 15-year-old child leaving the family home and failing to inform her mother of her whereabouts did not give rise to an unavoidable cause for the child's absence from school for the purposes of the Education Act 1996 s 444(3)(b)).



16 Education Act 1996 s 444(3)(c). 'Exclusively' does not mean that during the whole of the 24 hours, or even during the whole of the school hours, there must be some religious observance going on which is inconsistent with the child being at school: *Marshall v Graham*, *Bell v Graham* [1907] 2 KB 112, 71 JP 270, DC (decided under previous legislation; Ascension Day is a day exclusively set apart for religious observance by the Church of England).

17 For these purposes, 'walking distance' in relation to a child who is under the age of eight means 3.218688 kilometres (two miles), and in relation to a child who has attained the age of eight means 4.828032 kilometres (three miles), in each case measured by the nearest available route: Education Act 1996 s 444(5). For a route to be available it must be one along which a child accompanied as necessary can walk, and walk with reasonable safety, to school: *Essex County Council v Rogers* [1987] AC 66, sub nom *Rogers v Essex County Council* [1986] 3 All ER 321, HL (decided under previous legislation). The parent should, if reasonably practicable, accompany the child along the route where it would be unsafe for the child to go unaccompanied: *Devon County Council v George* [1989] AC 573, sub nom *George v Devon County Council* [1988] 3 All ER 1002, HL (decided under previous legislation).

18 Education Act 1996 s 444(4)(a).

19 As to local education authorities see PARA 20 ante.

20 Education Act 1996 s 444(4)(b) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 117, Sch 31).

21 Education Act 1996 s 444(4)(b)(i). Although there is no absolute duty on the local education authority to provide transport, the local education authority has a duty to make such provision as it considers necessary: see s 509 (as amended) (see PARA 534 post); and *Surrey County Council v Ministry of Education* [1953] 1 All ER 705, [1953] 1 WLR 516 (decided under previous legislation). See also *R v Carmarthenshire County Council, ex p White* [2001] ELR 172. The discretion granted to the local education authority by the Education Act 1996 s 509 (as amended) (see PARA 534 post) must be exercised consistently with s 444(4) (as amended) as the absence of transport may be a defence to a charge of failing to attend school: see *Devon County Council v George* [1989] AC 573, sub nom *George v Devon County Council* [1988] 3 All ER 1002, HL (decided under previous legislation); *R v East Sussex County Council, ex p D* [1991] COD 374 (decided under previous legislation); *R v Rochdale Metropolitan Borough Council, ex p Schemet* [1994] ELR 89, [1993] 1 FCR 306 (decided under previous legislation); *R v Essex County Council, ex p C* [1994] 1 FCR 773, sub nom *Re C (A Minor)* [1994] ELR 273, CA (decided under previous legislation); *R v Dyfed County Council, ex p S* [1995] 1 FCR 113, sub nom *Re S (Minors)* [1995] ELR 98, CA (decided under previous legislation); *R v Kent County Council, ex p C* [1998] ELR 108 (decided under previous legislation); *R (on the application of Jones) v Ceredigion County Council* [2004] EWHC 1376 (Admin), [2004] LGR 881 (where parents have a possible defence under the Education Act 1996 s 444(4), the authority might feel bound to provide transport under s 509 (as amended)). See also *R (on the application of H) v Brent London Borough Council* [2002] EWHC 1105 (Admin), [2002] ELR 509, [2002] All ER (D) 348 (May); and PARA 534 note 22 post.

22 Education Act 1996 s 444(4)(b)(ii).

23 Ibid s 444(4)(b)(iii). It is not possible, on a proper construction of the Education Act 1996 s 444(4)(b)(iii), for a local education authority to have made suitable arrangements for a child to become a registered pupil at a school if that school would not be educationally suitable for the child concerned: *R (on the application of Jones) v Ceredigion County Council* [2004] EWHC 1376 (Admin), [2004] LGR 881 (alternative school clearly unsuitable as it was not a Welsh medium school).

24 Education Act 1996 s 444(6)(a).

25 Ibid s 444(6)(b).

26 Ibid s 444(6)(c).

27 *Spiers v Warrington Corpn* [1954] 1 QB 61, [1953] 2 All ER 1052, DC. See also *Happe v Lay* (1977) 76 LGR 313, 8 Fam Law 54; *Jarman v Mid-Glamorgan Education Authority* [1985] LS Gaz R 1249, (1985) Times, 11 February, DC (all decided under previous legislation).

28 Education Act 1996 s 444(7). In this provision, 'unavoidable cause' is capable of including want of transport: *R v Havering London Borough Council, ex p K* [1998] ELR 402, [1998] 1 FCR 641 (mother's inability to provide transport was not an unavoidable cause as it affected the child only secondarily).

## UPDATE

## **521 Offence of parent failing to secure regular attendance at school of registered pupil**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 9--Omit words 'without reasonable justification': 1996 Act s 444(1A) (amended by the Education and Inspections Act 2006 s 109(1), Sch 18 Pt 1). It is a defence for a person charged with an offence under the 1996 Act s 109(1A) to prove that he had a reasonable justification for his failure to cause the child to attend regularly at the school: s 444(1B) (added by the 2006 Act s 109(2)).

NOTE 9--The 1996 Act s 444(1A) gives rise to an evidential, rather than a legal, burden of proof on a defendant: *R (on the application of P) v Liverpool City Magistrates* [2006] EWHC 887 (Admin), [2006] ELR 386.

TEXT AND NOTES 12-16--In addition, a child who is not a boarder at the school at which he is a registered pupil must not be taken to have failed to attend regularly at the school by reason of his absence from the school at any time if the parent proves that at that time the child was prevented from attending by reason of sickness or any unavoidable cause: 1996 Act s 444(2A) (added by the Education and Inspections Act 2006 s 109(4)).

NOTE 14--See *Bromley LBC v C* [2006] ELR 358, DC.

TEXT AND NOTE 15--Words 'at any time ... any unavoidable cause' omitted: 1996 Act s 444(3) (s 444(3)(b) repealed by the Education and Inspections Act 2006 s 109(5), Sch 18 Pt 1).

TEXT AND NOTES 17-23--1996 Act s 444(4) applies where the child's home is in Wales: s 444(3F) (s 444(3A)-(3F) added by Education and Inspections Act 2006 s 82(2); 1996 Act s 444(5) amended by Education and Inspections Act 2006 s 82(3), Learner Travel (Wales) Measure 2008 s 20(3), Sch 2. A child is not to be taken to have failed to attend regularly at the school if the parent proves that the local authority has failed to discharge (1) a duty to make transport arrangements in relation to the child under Learner Travel (Wales) Measure 2008 s 3; or (2) a duty to make travel arrangements in relation to the child under Learner Travel (Wales) Measure 2008 s 4: 1996 Act s 444(4) (substituted by Learner Travel (Wales) Measure 2008 s 20(2)).

Where the child's home is in England, he is not to be taken to have failed to attend regularly at the school if the parent proves that the local education authority has a duty to make travel arrangements in relation to him under the 1996 Act s 508B(1) (see PARA 534A.2), or by virtue of s 508E(2)(c) (see PARA 534A.3), for the purpose of facilitating his attendance at the school and has failed to discharge that duty: see s 444(3A)-(3C). Where the child's home is in England and the school is an independent school which is not a qualifying school, the child is not to be taken to have failed to attend regularly at the school if the parent proves that the school is not within walking distance of the child's home, that no suitable arrangements have been made by the local education authority for boarding accommodation for him at or near the school, and that no suitable arrangements have been made by the local education authority for enabling him to become a registered pupil at a qualifying school nearer to his home: see s 444(3A), (3D), (3E), (5).

TEXT AND NOTES 24-26--1996 Act s 444(6) also applies to s 444(3B), (3D): s 444(6) (amended by the Education and Inspections Act 2006 s 82(4)).

TEXT AND NOTE 24--For 'the parent must be acquitted if he proves' read 'it is a defence for the parent to prove': 1996 Act s 444(6) (amended by the Education and Inspections Act 2006 s 109(6)).

TEXT AND NOTE 28--For 'at a time when he was not' read 'unless the parent proves that at that time the child was': 1996 Act s 444(7) (amended by the Education and Inspections Act 2006 s 109(7)).

Where a child of compulsory school age has been excluded for a fixed period on disciplinary grounds from a school in England which is (1) maintained school, a pupil referral unit, an academy, a city technology college, or a city college for the technology of the arts; (2) remains for the time being a registered pupil at the school; (3) the appropriate authority makes arrangements for the provision of full-time education for him at the school during the period of exclusion; and (4) notice in writing of the arrangements has been given to the child's parent, the exclusion does not affect the application of the 1996 Act s 444(1)-(7) to the child's attendance at the school on any day to which the arrangements relate: s 444(7A) (s 444(7A), (7B) added by the Education and Inspections Act 2006 s 109(8)). As to the meanings of 'academy', 'city technology college' and 'city college for the technology of the arts' see PARA 496. 'The appropriate authority' means, in relation to a maintained school, the governing body of the school, in relation to a pupil referral unit, the local education authority, and in relation to an academy, a city technology college, or a city college for the technology of the arts, the proprietor of the school 1996 Act s 109(7B).

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## **522. Offence of parent failing to secure regular attendance in relation to alternative educational provision.**

Where, in the case of a child<sup>1</sup> of compulsory school age<sup>2</sup> who is not a registered pupil<sup>3</sup> at any school<sup>4</sup> in England<sup>5</sup>, a local education authority<sup>6</sup> has made arrangements<sup>7</sup> for the provision of education for him otherwise than at a school or at his home<sup>8</sup>, and notice in writing of the arrangements has been given to the child's parent<sup>9</sup>, the provisions governing the offence of a parent failing to secure the regular attendance of a registered pupil at school<sup>10</sup> have effect as if the place at which the education is provided were a school and the child were a registered pupil at that school<sup>11</sup>. In proceedings for an offence under these provisions<sup>12</sup>, the parent is to be acquitted if he proves that the child is receiving suitable education otherwise than by regular attendance at a school or at the place<sup>13</sup> at which the education is provided<sup>14</sup>.

Where: (1) a child of compulsory school age has been excluded<sup>15</sup> from a relevant school<sup>16</sup>; (2) he remains for the time being a registered pupil at the school<sup>17</sup>; (3) he is required<sup>18</sup> by the appropriate authority for the school to attend at a place outside the school premises<sup>19</sup> for the purpose of receiving any instruction or training<sup>20</sup>; and (4) notice in writing of the requirement has been given to the child's parent<sup>21</sup>, the provisions governing the offence of a parent failing to secure the regular attendance of a registered pupil at school<sup>22</sup> have effect as if the place at which the child is required to attend were a school and the child were a registered pupil at that school, and not at the school mentioned in head (2) above<sup>23</sup>.

1 For the meaning of 'child' see PARA 16 note 2 ante.

2 As to the meaning of 'compulsory school age' see PARA 15 ante.

3 For the meaning of 'registered pupil' see PARA 512 ante.

4 For the meaning of 'school' see PARA 81 ante.

5 For the meaning of 'England' see PARA 52 note 11 ante.

6 As to local education authorities see PARA 20 ante.

7 <sup>1</sup>le under the Education Act 1996 s 19 (as amended) (exceptional provision of education in pupil referral units or elsewhere: see PARA 457 ante).

8 <sup>1</sup>bid s 444ZA(1)(a) (s 444ZA added by the Education Act 2005 s 116). The Education Act 1996 s 444ZA (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4) (b). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

9 Education Act 1996 s 444ZA(1)(b) (as added: see note 8 supra). Section 572, which provides for the methods by which notices may be served under the Education Act 1996 (see PARA 463 ante), does not preclude the notice mentioned in s 444ZA(1)(b) (as added) from being given to a child's parent by any other effective method: s 444ZA(5) (as so added). A child is not to be taken to have failed to attend regularly, in a case falling within s 444ZA(1) (as added), at the place at which education is provided for him, unless he has failed to attend regularly since the giving of the notice mentioned in s 444ZA(1)(b) (as added): s 444ZA(4)(a) (as so added). As to the meaning of 'parent' see PARA 510 note 1 ante.

10 le ibid s 444(1)-(7) (as amended): see PARA 521 ante. In s 444 (as amended), 'leave', in relation to a place at which education is provided as mentioned in s 444ZA(1) (as added), means leave granted by any person authorised to do so by the local education authority: s 444ZA(7)(a) (as added: see note 8 supra).

11 Ibid s 444ZA(1) (as added: see note 8 supra).

12 le an offence under ibid s 444 (as amended) (see PARA 521 ante) in a case falling within s 444ZA(1) (as added) (see the text and notes 1-11 supra).

13 le the place mentioned in ibid s 444ZA(1) (as added) (see the text and notes 1-11 supra).

14 Ibid s 444ZA(6) (as added: see note 8 supra).

15 In relation to a maintained school or a pupil referral unit, the reference in ibid s 444ZA(2)(a) (as added) to exclusion is a reference to exclusion under the Education Act 2002 s 52 (see PARA 562 post): Education Act 1996 s 444ZA(3)(a) (as added: see note 8 supra). For the meaning of 'maintained school' see PARA 514 note 17 ante; and for the meaning of 'pupil referral unit' see PARA 457 ante.

16 Ibid s 444ZA(2)(a) (as added: see note 8 supra). In s 444ZA (as added), 'relevant school' means: (1) a maintained school; (2) a pupil referral unit; (3) an academy; (4) a city technology college; or (5) a city college for the technology of the arts: s 444ZA(8)(a) (as so added). As to the meanings of 'academy', 'city technology college' and 'city college for the technology of the arts' see PARA 496 ante.

17 Ibid s 444ZA(2)(b) (as added: see note 8 supra).

18 In relation to a maintained school or a pupil referral unit, the requirement referred to in ibid s 444ZA(2)(c) (as added) is a requirement imposed under the Education Act 2002 s 29(3) (as amended) (see PARA 228 ante): Education Act 1996 s 444ZA(3)(b) (as added: see note 8 supra). In s 444 (as amended), 'leave', in relation to a place at which education is provided as mentioned in s 444ZA(2)(c) (as added), means leave granted by any person authorised to do so by the appropriate authority for the school: s 444ZA(7)(b) (as so added). In s 444ZA (as added), 'appropriate authority' means: (1) in relation to a maintained school, the governing body; (2) in relation to a pupil referral unit, the local education authority; and (3) in relation to a school falling within s 444ZA(8)(a)(iii)-(v) (as added) (see note 16 heads (3)-(5) supra), the proprietor of the school: s 444ZA(8)(b) (as so added). For the meaning of 'proprietor' see PARA 60 note 7 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

19 As to the meaning of 'premises' see PARA 1352 note 3 post.

20 Education Act 1996 s 444ZA(2)(c) (as added: see note 8 supra).

21 Ibid s 444ZA(2)(d) (as added: see note 8 supra). Section 572, which provides for the methods by which notices may be served under the Education Act 1996 (see PARA 463 ante), does not preclude the notice mentioned in s 444ZA(2)(d) (as added) from being given to a child's parent by any other effective method: s 444ZA(5) (as so added). A child is not to be taken to have failed to attend regularly, in a case falling within s 444ZA(2) (as added), at the place at which he is required to attend, unless he has failed to attend regularly since the giving of the notice mentioned in s 444ZA(2)(d) (as added): s 444ZA(4)(b) (as so added).

22 le ibid s 444(1)-(7) (as amended): see PARA 521 ante.

23 Ibid s 444ZA(2) (as added: see note 8 supra).

## UPDATE

### **522 Offence of parent failing to secure regular attendance in relation to alternative educational provision**

TEXT AND NOTES--As from a day to be appointed the Education Act 1996 s 444ZA is further amended so as to extend the circumstances in which a parent or carer can be prosecuted for failing to ensure that a child for whom he or she is responsible regularly attends the alternative provision that has been made for the child: Education and Skills Act 2008 s 155.

NOTE 8--Day now appointed in relation to Wales: SI 2006/1338.

TEXT AND NOTE 13--For 'the parent is to be acquitted if he proves' read 'it is a defence for the parent to prove': 1996 Act s 444ZA(6) (amended by Education and Inspections Act 2006 s 109(9)).

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### **523. Penalty notice in respect of failure to secure regular attendance.**

Where an authorised officer<sup>1</sup> has reason to believe: (1) that a person has committed an offence<sup>2</sup> of failure to secure regular attendance at school of a registered pupil<sup>3</sup>; and (2) that the offence relates to a relevant school in England<sup>4</sup>, or<sup>5</sup> to a place at which education is provided by a local education authority in England<sup>6</sup>, or<sup>7</sup> to a place at which a child is required to attend by the appropriate authority<sup>8</sup> for a relevant school in England<sup>9</sup>, he may give the person a penalty notice in respect of the offence<sup>10</sup>. A 'penalty notice' is a notice offering a person the opportunity of discharging any liability to conviction for the offence<sup>11</sup> to which the notice relates by payment of a penalty<sup>12</sup> in accordance with the notice<sup>13</sup>. Where a person is given a penalty notice, proceedings for the offence to which the notice relates (or an offence<sup>14</sup> arising out of the same circumstances) may not be instituted before the end of such period as may be prescribed<sup>15</sup>. Where a person is given a penalty notice, he cannot be convicted of the offence to which the notice relates (or an offence<sup>16</sup> arising out of the same circumstances) if he pays a penalty in accordance with the notice<sup>17</sup>. Penalties are payable to local education authorities in England<sup>18</sup>. Sums received by a local education authority in this way may be used by the authority for the purposes of any of its functions which may be specified in regulations<sup>19</sup>.

Regulations<sup>20</sup> may make:

- 994 (a) provision as to the form and content of penalty notices<sup>21</sup>;
- 995 (b) provision as to the monetary amount of any penalty and the time by which it is to be paid<sup>22</sup>;
- 996 (c) provision for determining the local education authority to which a penalty is payable<sup>23</sup>;
- 997 (d) provision as to the methods by which penalties may be paid<sup>24</sup>;
- 998 (e) provision as to the records which are to be kept in relation to penalty notices<sup>25</sup>;
- 999 (f) provision as to the persons who may be authorised by a local education authority or a head teacher to give penalty notices<sup>26</sup>;
- 1000 (g) provision limiting the circumstances in which authorised officers of a prescribed description may give penalty notices<sup>27</sup>;
- 1001 (h) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates (and any offence<sup>28</sup> arising out of the same circumstances)<sup>29</sup>;
- 1002 (i) provision for a certificate purporting to be signed by or on behalf of a prescribed person, and stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate, to be received in evidence of the matters so stated<sup>30</sup>;
- 1003 (j) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice<sup>31</sup>;
- 1004 (k) provision for or in connection with the preparation of codes of conduct in relation to the giving of penalty notices<sup>32</sup>;
- 1005 (l) such other provision in relation to penalties or penalty notices as the Secretary of State thinks necessary or expedient<sup>33</sup>.

Local education authorities, head teachers and authorised officers must, in carrying out their functions in relation to penalty notices, have regard to any guidance which is published by the Secretary of State from time to time in relation to penalty notices<sup>34</sup>.

1 For the purposes of the Education Act 1996 ss 444A-444B (as added and amended), 'authorised officer' means: (1) a constable; (2) an officer of a local education authority in England who is authorised by the authority to give penalty notices; or (3) an authorised staff member: s 444B(4) (s 444B added by the Anti-social Behaviour Act 2003 s 23(1)). For the purposes of the Education Act 1996 ss 444A-444B (as added and amended), 'penalty notice' has the meaning given by s 444A(2) (as added) (see the text and notes 11-13 infra); and 'authorised staff member' means a head teacher of a relevant school in England, or a member of the staff of a relevant school in England who is authorised by the head teacher of the school to give penalty notices: s 444B(4) (as so added). 'Relevant school' means: (a) a maintained school; (b) a pupil referral unit; (c) an academy; (d) a city technology college; or (e) a city college for the technology of the arts: s 444B(4) (as so added). For the meaning of 'England' see PARA 52 note 11 ante. For the meaning of 'school' see PARA 81 ante; for the meaning of 'maintained school' see PARA 514 note 17 ante; and for the meaning of 'pupil referral unit' see PARA 457 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante. As to the meanings of 'academy', 'city technology college' and 'city college for the technology of the arts' see PARA 496 ante. As to local education authorities see PARA 20 ante. As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARAS 101-105.

2 le under ibid s 444(1) (see PARA 521 ante).

3 Ibid s 444A(1)(a) (s 444A added by the Anti-social Behaviour Act 2003 s 23(1)). For the meaning of 'registered pupil' see PARA 512 ante.

4 Education Act 1996 s 444A(1)(b)(i) (s 444A as added (see note 3 supra); s 444A(1)(b) substituted by the Education Act 2005 s 117, Sch 18 para 3). The National Assembly for Wales may by order amend the Education Act 1996 ss 444A-444B (as added and amended) by removing the words 'in England' in each place where they occur (see the Anti-social Behaviour Act 2003 s 23(9)); and where such an order is made certain functions of the Secretary of State, so far as they become exercisable in relation to Wales, are to be treated as transferred to the National Assembly for Wales by an Order in Council under the Government of Wales Act 1998 s 22 (transfer of ministerial functions: see PARA 53 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS) (Anti-social Behaviour Act 2003 s 23(10)). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 le in a case falling within the Education Act 1996 s 444ZA(1) (as added) (see PARA 522 ante).

6 Ibid s 444A(1)(b)(ii) (as added and substituted: see note 4 supra).

7 le in a case falling within ibid s 444ZA(2) (as added) (see PARA 522 ante).

8 For the meaning of 'appropriate authority' see PARA 522 note 18 ante.

9 Education Act 1996 s 444A(1)(b)(iii) (as added and substituted: see note 4 supra).

10 Ibid s 444A(1) (as added: see note 3 supra).

11 le under ibid s 444(1) (see PARA 521 ante).

12 For these purposes, 'penalty' means a penalty under a penalty notice: ibid s 444B(4) (as added: see note 1 supra).

13 Ibid s 444A(2) (as added: see note 3 supra).

14 le under ibid s 444(1A) (as added) (see PARA 521 ante).

15 Ibid s 444A(3) (as added: see note 3 supra). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the regulations made under ss 444A-444B (as added and amended) see the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181 (amended by SI 2004/920; SI 2005/2029). The period currently prescribed for the purposes of the Education Act 1996 s 444A(3) (as added) is 42 days: see the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 5.



- 16 le under the Education Act 1996 s 444(1A) (as added) (see PARA 521 ante).
- 17 Ibid s 444A(4) (as added: see note 3 supra).
- 18 Ibid s 444A(5) (as added: see note 3 supra).
- 19 Ibid s 444A(6) (as added: see note 3 supra). Any sums received by local education authorities by way of penalties must be applied in meeting the costs of issuing and enforcing notices, or the cost of prosecuting recipients who do not pay: see the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 21.
- 20 See note 15 supra.
- 21 Education Act 1996 s 444B(1)(a) (as added: see note 1 supra). As to the form and content of penalty notices see the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 2.
- 22 Education Act 1996 s 444B(1)(b) (as added: see note 1 supra). Without prejudice to the generality of s 444B(1) (as added) or s 569(4) (see PARA 40 note 5 ante), regulations under s 444B(1)(b) (as added) may make provision for penalties of different amounts to be payable in different cases or circumstances (including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid): s 444B(2) (as so added). As to the amount and payment of the penalty see the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 3.
- 23 Education Act 1996 s 444B(1)(c) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 4.
- 24 Education Act 1996 s 444B(1)(d) (as added: see note 1 supra).
- 25 Ibid s 444B(1)(e) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 18.
- 26 Education Act 1996 s 444B(1)(f) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 8.
- 27 Education Act 1996 s 444B(1)(g) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, regs 9-10 (reg 10 substituted by SI 2005/2029).
- 28 le under the Education Act 1996 s 444(1A) (as added) (see PARA 521 ante).
- 29 Ibid s 444B(1)(h) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 7.
- 30 Education Act 1996 s 444B(1)(i) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 4.
- 31 Education Act 1996 s 444B(1)(j) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 6.
- 32 Education Act 1996 s 444B(1)(k) (as added: see note 1 supra). See the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, regs 12-16.
- 33 Education Act 1996 s 444B(1)(l) (as added: see note 1 supra). Where there is more than one person liable for the offence a separate notice may be issued to each person: see the Education (Penalty Notices) (England) Regulations 2004, SI 2004/181, reg 11. As to the provision of information see regs 17, 19; and as to the service of notices see reg 20.
- 34 Education Act 1996 s 444B(3) (as added: see note 1 supra).

## UPDATE

### 523 Penalty notice in respect of failure to secure regular attendance

TEXT AND NOTES--SI 2004/181 replaced: Education (Penalty Notices) (England) Regulations 2007, SI 2007/1867.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 9--Education Act 1996 s 444A(1)(b)(iii) further substituted, s 444A(1)(b)(iv) added: Education and Skills Act 2008 Sch 1 para 50 (not yet in force).

TEXT AND NOTE 19--After 'specified in regulations' read 'but, to the extent that they are not so used, must be paid in accordance with regulations to the Secretary of State': 1996 Act s 444A(6) (substituted by the Education and Inspections Act 2006 s 110).

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#### **524. Presumption of age; institution of proceedings.**

In relation to any proceedings for an offence of failing to comply with a school attendance order<sup>1</sup> or of failing to secure the regular attendance at school<sup>2</sup> of a registered pupil<sup>3</sup>, in so far as it is material, the child<sup>4</sup> in question is to be presumed to have been of compulsory school age<sup>5</sup> at any time unless the parent<sup>6</sup> proves the contrary<sup>7</sup>.

Proceedings for such offences<sup>8</sup> must not be instituted except by a local education authority<sup>9</sup>.

1    Ie an offence under the Education Act 1996 s 443 (see PARA 520 ante). As to the meaning of 'school attendance order' see PARA 514 ante.

2    For the meaning of 'school' see PARA 81 ante.

3    Education Act 1996 s 445(1). The text refers to an offence under s 444 (as amended) (see PARA 521 ante). For the meaning of 'registered pupil' see PARA 512 ante.

4    For the meaning of 'child' see PARA 16 note 2 ante.

5    As to the meaning of 'compulsory school age' see PARA 15 ante.

6    As to the meaning of 'parent' see PARA 510 note 1 ante.

7    Education Act 1996 s 445(2). Where a court is obliged by virtue of s 445(2) to presume a child to have been of compulsory school age, the provisions of s 565(1) (provisions as to evidence: see PARA 15 note 7 ante) do not apply: s 445(3).

8    Ie proceedings for an offence under *ibid* s 443 (see PARA 520 ante) or s 444 (as amended) (see PARA 521 ante).

9    *Ibid* s 446. As to local education authorities see PARA 20 ante.

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## **525. Documentary evidence.**

In any legal proceedings, a document purporting to be a certificate giving particulars of the attendance of a child<sup>1</sup> or young person<sup>2</sup> at a school, and to be signed by the head teacher<sup>3</sup> of the school, is to be received in evidence and treated, without further proof, as the document which it purports to be and as having been signed by the person by whom it purports to have been signed, unless the contrary is proved<sup>4</sup>.

1 For the meaning of 'child' see PARA 16 note 2 ante. As to attendance at maintained schools see PARA 514 et seq ante.

2 For the meaning of 'young person' see PARA 38 note 4 ante.

3 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

4 Education Act 1996 s 566(1)(c). In any legal proceedings, any such certificate as is mentioned in s 566(1)(c) is evidence of the matters stated in it: s 566(2). As to rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

Where a child of compulsory school age is required to attend at: (1) any place at which education is provided for him in the circumstances mentioned in s 444ZA(1) (added in relation to England; prospectively added in relation to Wales) (see PARA 522 ante); or (2) any place in the circumstances mentioned in s 444ZA(2) (added in relation to England; prospectively added in relation to Wales) (see PARA 522 ante), s 566(1)(c) has effect as if the place in question were a school and the person in charge of the provision of education or training at that place were its head teacher (and s 566(2) has effect accordingly): s 566(3) (added by the Education Act 2005 s 117, Sch 18 para 6). The Education Act 1996 s 566(3) (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

## **UPDATE**

### **525 Documentary evidence**

NOTE 4--Education Act 1996 s 566(3) amended: Education and Skills Act 2008 Sch 1 para 51 (not yet in force).

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#### **(iv) Education Supervision Orders**

##### **526. Education supervision orders.**

Before instituting proceedings for an offence of failing to comply with a school attendance order<sup>1</sup> or for an offence of failing to secure the regular attendance at school<sup>2</sup> of a registered pupil<sup>3</sup>, a local education authority<sup>4</sup> must consider whether it would be appropriate (instead of or as well as instituting the proceedings) to apply for an education supervision order<sup>5</sup> with respect to the child<sup>6</sup>. The court:

- 1006 (1) by which a person is convicted of an offence<sup>7</sup> of failing to comply with a school attendance order<sup>8</sup>; or
- 1007 (2) before which a person is charged with an offence<sup>9</sup> of failing to secure regular attendance at school of a registered pupil<sup>10</sup>,

may direct the local education authority instituting the proceedings to apply for an education supervision order with respect to the child unless the authority, having consulted the appropriate local authority<sup>11</sup>, decides that the child's welfare will be satisfactorily safeguarded even though no education supervision order is made<sup>12</sup>. Where, following such a direction, a local education authority decides not to apply for an education supervision order, it must inform the court of the reasons for its decision<sup>13</sup>. Unless the court has directed otherwise, the information so required must be given to the court before the end of the period of eight weeks beginning with the date on which the direction was given<sup>14</sup>. Where a local education authority applies for an education supervision order with respect to a child who is the subject of a school attendance order<sup>15</sup>, and the court decides that the limitation upon its power to make such an order<sup>16</sup> prevents it from making the order<sup>17</sup>, the court may direct that the school attendance order is to cease to be in force<sup>18</sup>.

1    Ie an offence under the Education Act 1996 s 443 (see PARA 520 ante). As to the meaning of 'school attendance order' see PARA 514 ante.

2    For the meaning of 'school' see PARA 81 ante.

3    Ie an offence under the Education Act 1996 s 444 (as amended) (see PARA 521 ante). For the meaning of 'registered pupil' see PARA 512 ante.

4    As to local education authorities see PARA 20 ante.

5    For these purposes, 'education supervision order' means an education supervision order under the Children Act 1989 s 36 (as amended) (see PARA 527 post): Education Act 1996 s 447(6).

6    Ibid s 447(1).

7    Ie an offence under ibid s 443: see PARA 520 ante.

8    Ibid s 447(2)(a).

9    Ie an offence under ibid s 444 (as amended): see PARA 521 ante.

10   Ibid s 447(2)(b).

11 For the meaning of 'the appropriate local authority' see PARA 527 note 9 post; definition applied by virtue of *ibid* s 447(6).

12 *Ibid* s 447(2).

13 *Ibid* s 447(3).

14 *Ibid* s 447(4).

15 *Ibid* s 447(5)(a).

16 *Ie* the Children Act 1989 s 36(3), which provides that a court may only make an education supervision order if it is satisfied that the child concerned is of compulsory school age and is not being properly educated: see PARA 527 post.

17 Education Act 1996 s 447(5)(b).

18 *Ibid* s 447(5).

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### **527. Duration and effect of education supervision orders.**

On the application of any local education authority<sup>1</sup> the court may make an education supervision order, that is to say an order putting the child<sup>2</sup> with respect to whom the application is made under the supervision of a designated<sup>3</sup> local education authority<sup>4</sup>. A court may only make an education supervision order if it is satisfied that the child concerned is of compulsory school age<sup>5</sup> and is not being properly educated<sup>6</sup>. For these purposes, a child is being properly educated only if he is receiving efficient full-time education suitable to his age, ability and aptitude and any special educational needs<sup>7</sup> he may have<sup>8</sup>.

Where a local education authority proposes to make an application for an education supervision order the local education authority must, before making the application, consult the appropriate local authority<sup>9</sup>.

An education supervision order may not be made with respect to a child who is in the care of a local authority<sup>10</sup>.

An education supervision order has effect for a period of one year beginning with the date on which it is made<sup>11</sup>. It may be discharged on the application of the child concerned, his parent<sup>12</sup> or the local education authority concerned<sup>13</sup>. An education supervision order will not expire if, before it would otherwise have expired, the court, on the application of the authority in whose favour the order was made, has extended the period during which it is in force<sup>14</sup>. In any event, an order ceases to have effect on the child's ceasing to be of compulsory school age, or on the making of a care order with respect to the child<sup>15</sup>.

Where an education supervision order is in force with respect to a child, it supersedes or precludes the operation of certain statutory provisions regarding that child<sup>16</sup>.

1 As to local education authorities see PARA 20 ante.

2 For these purposes, 'child' means a person under the age of 18: see the Children Act 1989 s 105(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 3.

3 The local education authority designated in an education supervision order must be: (1) the authority within whose area the child concerned is living or will live; or (2) where the child is a registered pupil at a school, and the authority mentioned in head (1) supra and the authority within whose area the school is situated agree, the latter authority: *ibid* s 36(7). For the meaning of 'registered pupil' see PARA 512 ante; definition applied by s 105(1) (amended by the Education Act 1996 s 582(1), Sch 37 para 91). For the meaning of 'school' see PARA 81 ante; definition applied by the Children Act 1989 s 105(1).

4 *Ibid* ss 36(1), (2), 105(1). See further CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 296. An application for an education supervision order is usually the appropriate procedure to secure a child's attendance at school, but in a proper case application for a care order may be founded on playing truant: *Re O (A Minor) (Care Proceedings: Education)* [1992] 4 All ER 905, [1992] 1 WLR 912. Such an application is not within the definition of 'specified proceedings' in the Children Act 1989 s 41(6) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 311), and there is no power for a children's guardian to be appointed in a family proceedings court on such an application: *Essex County Council v B* [1993] 1 FCR 145, [1993] 1 FLR 866. The general power of a magistrates' court under the Magistrates' Courts Act 1980 s 63(2) (see MAGISTRATES vol 29(2) (Reissue) PARA 827) to suspend or rescind orders does not apply in relation to orders under the Children Act 1989: s 92(5). As to children's guardians (formerly known as guardians ad litem see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 230, 319-321.

The provisions of the Children Act 1989 s 36 (as amended) replace the Children and Young Persons Act 1969 s 1(2)(e) (repealed), under which the court had power to make a care order if satisfied that a child of compulsory

school age was not receiving efficient full-time education; the Children Act 1989 contains no provision empowering the court to make a care order on educational grounds as such.

The Secretary of State may by regulations make provision modifying, or displacing, the provisions of any enactment about education in relation to any child with respect to whom an education supervision order is in force to such extent as appears to the Secretary of State to be necessary or expedient in consequence of the provision made by the Children Act 1989 with respect to such orders: s 36(10), Sch 3 para 20. At the date at which this volume states the law, no such regulations had been made. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

As to supervision orders generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 281 et seq.

5 As to the meaning of 'compulsory school age' see PARA 15 ante.

6 Children Act 1989 s 36(3).

7 For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of ibid s 105(1) (amended by the Education Act 1996 Sch 37 para 91).

8 Children Act 1989 s 36(4). Where a child: (1) is the subject of a school attendance order which is in force under the Education Act 1996 s 437 (as amended) (see PARA 514 ante) and which has not been complied with; or (2) he is not attending regularly within the meaning of s 444 (as amended) (see PARA 521 ante): (a) a school at which he is a registered pupil; or (b) any place at which education is provided for him in the circumstances mentioned in s 444ZA(1) (as added) (see PARA 522 ante); or (c) any place which he is required to attend in the circumstances mentioned in s 444ZA(2) (as added) (see PARA 522 ante), then, unless it is proved that he is being properly educated, it is assumed that he is not: Children Act 1989 s 36(5) (amended by the Education Act 1996 Sch 37 para 85; and the Education Act 2005 s 117, Sch 18 para 1). The amendment made by the Education Act 2005 Sch 18 para 1 is brought into force as from a day to be appointed under ss 125(4), 126(1), (4)(b). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day has been appointed in relation to Wales, heads (2)(a)-(2)(c) supra should be read as a reference to a registered pupil at a school which he is not attending regularly within the meaning of the Education Act 1996 s 444 (as amended) (see PARA 521 ante).

9 Children Act 1989 s 36(8) (amended by the Education Act 1993 s 307(1), (3), Sch 19 para 149, Sch 21 Pt II). As to the procedure for such consultation see the Family Proceedings Rules 1991, SI 1991/1247, r 4.27 (amended by SI 1997/1893); and the Family Proceedings Courts (Children Act 1989) Rules 1991, SI 1991/1395, r 31 (amended by SI 1997/1895). The appropriate local authority in the case of a child who is being provided with accommodation by, or on behalf of, a local authority, is that authority; and in any other case is the local authority within whose area the child concerned lives, or will live: Children Act 1989 s 36(9).

10 Ibid s 36(6). Note that a child who is not being properly educated may be suffering or be likely to suffer 'significant harm' for the purposes of s 31 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 274) such as might justify the making of a care order under the Children Act 1989: *Re O (A Minor) (Care Proceedings: Education)* [1992] 4 All ER 905, [1992] 1 WLR 912.

11 Children Act 1989 Sch 3 para 15(1).

12 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid Sch 3 para 21 (amended by the Education Act 1996 Sch 37 para 93(1), (3)).

13 Children Act 1989 Sch 3 para 17(1). On discharging an education supervision order the court may direct the local authority within whose area the child lives, or will live, to investigate the child's circumstances: Sch 3 para 17(2).

14 Ibid Sch 3 para 15(2). The period may be extended on more than one occasion, but no one extension may be for more than three years: Sch 3 para 15(4), (5). An application for extension may not be made earlier than three months before the date on which the order would otherwise expire: Sch 3 para 15(3).

15 See ibid Sch 3 para 15(6). As to care orders see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 270 et seq.

16 See ibid Sch 3 para 13 (as amended). Where an education supervision order is in force with respect to a child, the duties of the child's parents under the Education Act 1996 s 7 (see PARA 510 ante), s 444 (as amended) (duties to secure education of children and to secure regular attendance of registered pupils: see PARA 521 ante) are superseded by their duty to comply with any directions in force under the education



supervision order: Children Act 1989 Sch 3 para 13(1) (amended by the Education Act 1996 s 582(1), Sch 37 para 93(1), (2)(a)). Where an education supervision order is made with respect to a child:

- 29 (1) any school attendance order made under the Education Act 1996 s 437 (as amended) (see PARA 514 ante) with respect to the child, and in force immediately before the making of the education supervision order, ceases to have effect (Children Act 1989 Sch 3 para 13(2)(a) (amended by the Education Act 1996 Sch 37 para 93(1), (2)(b))); and
- 30 (2) while the education supervision order remains in force, the following provisions do not apply with respect to the child: (a) the Education Act 1996 s 437 (as amended) (school attendance orders: see PARA 514 ante); (b) s 9 (as amended) (pupils to be educated in accordance with wishes of their parents: see PARA 13 ante); (c) ss 411, 423 (both repealed) (parental preference and appeals against admission decisions) (Children Act 1989 Sch 3 para 13(2)(b) (amended by the Education Act 1996 s 582(1), Sch 37 para 93(1), (2)(b)));
- 31 (3) a supervision order made with respect to the child in criminal proceedings, while the education supervision order is in force, may not include an education requirement of the kind which could otherwise be included under the Powers of Criminal Courts (Sentencing) Act 2000 s 63 (as amended), Sch 6 para 7 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1351) (Children Act 1989 Sch 3 para 13(2)(c) (amended by Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 131(1), (2)));
- 32 (4) any education requirement of a kind mentioned in head (3) supra, which was in force with respect to the child immediately before the making of the education supervision order, ceases to have effect (Children Act 1989 Sch 3 para 13(2)(d)).

## UPDATE

### 527 Duration and effect of education supervision orders

NOTE 8--Children Act 1989 s 36(5) further amended: Education and Skills Act 2008 Sch 1 para 43 (not yet in force).

NOTE 16--Head (3). Children Act 1989 Sch 3 para 13(2)(c) substituted: Criminal Justice and Immigration Act 2008 Sch 4 para 37(2).

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## **528. Duties of the supervisor.**

It is the duty of a supervisor<sup>1</sup> to advise, assist and befriend, and give directions to, the supervised child and his parents<sup>2</sup> in such a way as will, in the opinion of the supervisor, secure that he is properly educated<sup>3</sup>. It is also the supervisor's duty, where any such directions given to the supervised child or a parent have not been complied with, to consider what further steps to take in the exercise of the supervisor's powers under the Children Act 1989<sup>4</sup>. Before giving any such directions the supervisor, so far as is reasonably practicable, must ascertain the wishes and feelings of the child and his parents, including in particular their wishes as to the place at which the child should be educated<sup>5</sup>. When settling the terms of any such directions, the supervisor must give due consideration, having regard to the child's age and understanding, to such wishes and feelings of his as the supervisor has been able to ascertain, and to such wishes and feelings of the child's parents as he has been able to ascertain<sup>6</sup>.

1 For these purposes, 'supervised child' and 'supervisor', in relation to a supervision order or an education supervision order, mean respectively the child who is, or is to be, under supervision and the person under whose supervision he is, or is to be, by virtue of the order: Children Act 1989 s 105(1). A 'supervision order' is an order, on the application of any local authority or authorised person, putting a child under the supervision of a designated local authority: s 31(1)(b), (11) (s 31(1)(b) amended by the Criminal Justice and Court Services Act 2000 ss 74, 75, Sch 7 paras 87, 90, Sch 8). 'Authorised person' means the National Society for the Prevention of Cruelty to Children and any of its officers, and any person authorised by order of the Secretary of State to bring proceedings under the Children Act 1989 s 31 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 271 et seq) and any officer of a body which is so authorised: s 31(9). As to supervision orders generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 281 et seq. As to education supervision orders see further PARA 526 ante.

2 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of *ibid* s 36(10), Sch 3 para 21 (amended by the Education Act 1996 Sch 37 para 93(1), (3)).

3 Children Act 1989 Sch 3 para 12(1)(a). Directions may be given under Sch 3 para 12 at any time while the education supervision order is in force: Sch 3 para 12(4).

4 *Ibid* Sch 3 para 12(1)(b). An education supervision order may require the child to keep the supervisor informed of any change in his address, and to allow the supervisor to visit him at the place where he is living: Sch 3 para 16(1). Moreover, a person who is the parent of a child with respect to whom an education supervision order has been made must, if asked by the supervisor, inform him of the child's address (if it is known to him); and, if he is living with the child, he must allow the supervisor reasonable contact with the child: Sch 3 para 16(2).

5 *Ibid* Sch 3 para 12(2).

6 *Ibid* Sch 3 para 12(3).

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### **529. Failure to comply with direction under an education supervision order.**

If a parent<sup>1</sup> of a child<sup>2</sup> with respect to whom an education supervision order<sup>3</sup> is in force persistently fails to comply with a direction given under the order, he is guilty of an offence<sup>4</sup>. It is a defence for any person charged with such an offence to prove: (1) that he took all reasonable steps to ensure that the direction was complied with<sup>5</sup>; (2) that the direction was unreasonable<sup>6</sup>; or (3) that he had complied with a requirement included in a supervision order<sup>7</sup> made with respect to the child, or with directions given under such a requirement, and it was not reasonably practicable to comply both with the direction under the education supervision order and with the requirement or directions under the supervision order<sup>8</sup>.

Where a child with respect to whom an education supervision order is in force persistently fails to comply with any direction given under the order, the local education authority<sup>9</sup> concerned must notify the appropriate local authority<sup>10</sup>, which must investigate the circumstances of the child<sup>11</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by the Children Act 1989 s 36(10), Sch 3 para 21 (amended by the Education Act 1996 Sch 37 para 93(1), (3)).

2 For the meaning of 'child' see the Children Act 1989 s 105(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 3.

3 For the meaning of 'education supervision order' see PARA 527 ante. As to supervision orders generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 281 et seq.

4 Children Act 1989 Sch 3 para 18(1). The offence is punishable on summary conviction by a fine not exceeding level 3 on the standard scale: Sch 3 para 18(3). As to the standard scale see PARA 481 note 4 ante.

5 Ibid Sch 3 para 18(2)(a).

6 Ibid Sch 3 para 18(2)(b).

7 For the meaning of 'supervision order' see PARA 528 note 1 ante.

8 Children Act 1989 Sch 3 para 18(2)(c). Where an education supervision order and a supervision order or an order under the Powers of Criminal Courts (Sentencing) Act 2000 s 63(1) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1340) are in force at the same time with respect to the same child, any failure to comply with a direction given by the supervisor under the education supervision order is disregarded if it would not have been reasonably practicable to comply with it without failing to comply with a direction given under the other order: Children Act 1989 Sch 3 para 14 (amended by the Powers of Criminal Courts (Sentencing) Act 2000 s 165(1), Sch 9 para 131(1), (3)).

9 As to local education authorities see PARA 20 ante.

10 Children Act 1989 Sch 3 para 19(1).

11 Ibid Sch 3 para 19(2). For the meaning of 'appropriate local authority' see PARA 527 note 9 ante; definition applied by Sch 3 para 19(3).

### **UPDATE**

### **529 Failure to comply with direction under an education supervision order**

NOTE 8--Children Act 1989 Sch 3 para 14 further amended and Powers of Criminal Courts (Sentencing) Act 2000 Sch 9 para 131 repealed: Criminal Justice and Immigration Act 2008 Sch 4 para 37(3), Sch 28 Pt 1.

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### **530. Removal of truants to designated premises or school.**

Where a local authority<sup>1</sup> designates premises in a police area<sup>2</sup> as premises to which children<sup>3</sup> and young persons<sup>4</sup> of compulsory school age<sup>5</sup> may be removed<sup>6</sup>, and notifies the chief officer of police<sup>7</sup> for that area of the designation<sup>8</sup>, a police officer of or above the rank of superintendent may direct that the powers conferred on a constable<sup>9</sup> to remove a child to designated premises or to the school<sup>10</sup> from which he is absent<sup>11</sup> are exercisable as respects any area falling within the police area and specified in the direction<sup>12</sup>, and are so exercisable during a period so specified<sup>13</sup>. If a constable has reasonable cause to believe that a child or young person found by him in a public place<sup>14</sup> in a specified area<sup>15</sup> during a specified period is of compulsory school age<sup>16</sup>, and that he is absent from a school without lawful authority<sup>17</sup>, the constable may remove the child or young person to designated premises, or to the school from which he is so absent<sup>18</sup>.

1 For these purposes, 'local authority' means: (1) in relation to England, a county council, a district council whose district does not form part of an area that has a county council, a London borough council or the Common Council of the City of London; and (2) in relation to Wales, a county council or a county borough council: Crime and Disorder Act 1998 s 16(5). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

2 For these purposes, 'police area' has the same meaning as in the Police Act 1996 s 1(2) (see POLICE vol 36(1) (2007 Reissue) PARA 136): Crime and Disorder Act 1998 s 18(1).

3 For these purposes, 'child' means a person under the age of 14: *ibid* s 117(1). For the purposes of the Crime and Disorder Act 1998, the age of a person is deemed to be that which it appears to the court to be after considering any available evidence: s 117(3).

4 For these purposes, 'young person' means a person who has attained the age of 14 and is under the age of 18: *ibid* s 117(1).

5 As to the meaning of 'compulsory school age' see PARA 15 ante.

6 Crime and Disorder Act 1998 s 16(1)(a).

7 For these purposes, 'chief officer of police' has the same meaning as in the Police Act 1996 s 101(1) (see POLICE vol 36(1) (2007 Reissue) PARA 105): Crime and Disorder Act 1998 s 18(1).

8 *Ibid* s 16(1)(b).

9 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARAS 101-105.

10 For the meaning of 'school' see PARA 81 ante; definition applied by the Crime and Disorder Act 1998 s 16(5).

11 *Ie* the powers conferred by *ibid* s 16(3): see the text and notes 16-18 *infra*.

12 *Ibid* s 16(2)(a). Section 16(2) has effect in relation to the British Transport Police Force; and for that purpose the reference to any area falling within the police area must be treated as a reference to any area in a place specified in the Railways and Transport Safety Act 2003 s 31(1)(a)-(f): Crime and Disorder Act 1998 s 16(3A) (added by the Police Reform Act 2002 s 75(1); and substituted by the British Transport Police (Transitional and Consequential Provisions) Order 2004, SI 2004/1573, art 12(5)(c)). For these purposes, 'British Transport Police' means the force of constables appointed under the British Transport Commission Act 1949 s

53 (now repealed) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 281 et seq): Crime and Disorder Act 1998 s 16(5) (definition added by the Police Reform Act 2002 s 75(2)(a)).

13 Crime and Disorder Act 1998 s 16(2)(b).

14 For these purposes, 'public place' has the same meaning as in the Public Order Act 1986 Pt II (ss 11-16) (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 578): Crime and Disorder Act 1998 ss 14(8), 16(5).

15 References in *ibid* s 16(3) (see the text to notes 16-18 *infra*) to specified areas and specified periods are references to areas and periods specified in an order under s 16(2) (see the text to notes 9-13 *supra*): s 16(2).

16 *Ibid* s 16(3)(a).

17 *Ibid* s 16(3)(b). A child's or young person's absence from a school is taken to be without lawful authority unless it falls within the Education Act 1996 s 444(3) (leave, sickness, unavoidable cause or day set apart for religious observance: see PARA 521 *ante*): Crime and Disorder Act 1998 s 16(4).

18 *Ibid* s 16(3).

## UPDATE

### 530 Removal of truants [and excluded pupils] to designated premises or school

NOTES 11, 15--After 's 16(3)' read 'and s 16(3A)': 1988 Act s 16(2) (amended by Education and Inspections Act 2006 s 108(2) (in force in England: SI 2007/1801)).

TEXT AND NOTES 14-18--If a constable has reasonable cause to believe that a child or young person found by him in a public place in a specified area during a specified period and during school hours is of compulsory school age, has been excluded on disciplinary grounds from a relevant school for a fixed period or permanently, remains excluded from that school, has not subsequently been admitted as a pupil to any other school, and has no reasonable justification for being in the public place, the constable may remove the child or young person to designated premises: 1988 Act s 16(3ZA) (added by Education and Inspections Act 2006 s 108(3) (in force in England: SI 2007/1801)). In the 1988 Act s 16(3ZA), 'school hours' means any time during a school session of that school or during a break between sessions of that school on the same day: s 16(3B) (added by the 2006 Act s 108(4) (in force in England: SI 2007/1801)). 'Relevant school' has the meaning given by the 2006 Act s 111 (see PARA 566A): 1998 Act s 16(5) (amended by the 2006 Act s 108(5) (in force in England: SI 2007/1801)).

NOTE 17--Now, a child's or young person's absence from a school is taken to be without lawful authority unless the child or young person is prevented from attending by sickness or other unavoidable cause or the absence falls within the Education Act 1996 s 444(3) (leave or day set apart for religious observance): 1988 Act s 16(4) (amended by the Education and Inspections Act 2006 s 109(10)).

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### **531. School attendance targets.**

Regulations<sup>1</sup> may make provision for and in connection with requiring, or enabling the Secretary of State to require, governing bodies<sup>2</sup> of maintained schools<sup>3</sup> to secure that annual targets are set for reducing the level of absences on the part of relevant day pupils<sup>4</sup> at their schools<sup>5</sup>. Such regulations may, in particular, make provision:

- 1008 (1) for the Secretary of State to impose such a requirement on the governing body of a maintained school where the specified condition<sup>6</sup> is for the time being satisfied in relation to the school<sup>7</sup>, and he considers it appropriate to impose the requirement<sup>8</sup>;
- 1009 (2) for such a requirement to be imposed by the Secretary of State in such manner, and for such period, as may be specified in or determined in accordance with the regulations<sup>9</sup>;
- 1010 (3) for the Secretary of State, where he considers it appropriate to do so, to exempt the governing body of a maintained school, in relation to any school year, from a requirement so imposed<sup>10</sup>.

1 'Regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations made under s 63 (as amended) see the Education (School Performance and Unauthorised Absence Targets) (Wales) Regulations 1999, SI 1999/1811 (amended by SI 2004/2914; SI 2005/1396); and the Education (School Attendance Targets) (England) Regulations 2005, SI 2005/58. See also note 5 infra.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 For the meaning of 'maintained school' see PARA 94 ante.

4 For these purposes, 'relevant day pupil' means a pupil registered at a maintained school who is of compulsory school age and is not a boarder: School Standards and Framework Act 1998 s 63(4). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8). For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of s 142(8). As to the meaning of 'compulsory school age' see PARA 15 ante. As to the meaning of 'boarder' see PARA 26 note 16 ante; definition applied by virtue of s 142(8).

5 Ibid s 63(1) (amended by the Education Act 2002 ss 53(1), (2), 215, Sch 22 Pt 3). Provision made by regulations under the School Standards and Framework Act 1998 s 63 (as amended) may relate to absences which are authorised pursuant to regulations under the Education Act 1996 s 434 (as amended) (see PARA 512 ante), or absences which are not so authorised, or both: School Standards and Framework Act 1998 s 63(3A) (added by the Education Act 2002 s 53(1), (3)).

As to the setting of annual targets mentioned in the text see the Education (School Attendance Targets) (England) Regulations 2005, SI 2005/58, regs 3-4; and the Education (School Performance and Unauthorised Absence Targets) (Wales) Regulations 1999, SI 1999/1811, regs 7-9 (reg 9 amended by SI 2004/2914; SI 2005/1396).

6 For the purposes of the School Standards and Framework Act 1998 s 63(2)(a)(i) (see the text to note 7 infra), the specified condition is for the time being satisfied in relation to a maintained school if in the previous school year the level of absences on the part of relevant day pupils at the school (as determined in accordance with the regulations) exceeded such level as may for that year be specified in or determined in accordance with the regulations: s 63(3) (amended by the Education Act 2002 ss 53(1), (4), Sch 22 Pt 3). For the meaning of

'school year' see PARA 15 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7 Ibid s 63(2)(a)(i).

8 Ibid s 63(2)(a)(ii).

9 Ibid s 63(2)(b).

10 Ibid s 63(2)(c).

## **UPDATE**

### **531 School attendance targets**

NOTE 1--SI 1999/1811 further amended: SI 2006/125. SI 2005/58 replaced: Education (School Attendance Targets) (England) Regulations 2007, SI 2007/2261. See also Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 28.

NOTE 5--SI 1999/1811 regs 7, 8 substituted, reg 9 further amended: SI 2006/125. SI 2005/58 regs 3, 4 now SI 2007/2261 regs 3, 4.



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## **(v) Terms, Holidays and Times of Session**

### **532. Responsibility for fixing dates of terms and holidays and times of sessions.**

In the case of a community, voluntary controlled or community special school<sup>1</sup> or a maintained nursery school<sup>2</sup>, the local education authority<sup>3</sup> must determine the dates when the school terms and holidays are to begin and end<sup>4</sup>, and the governing body<sup>5</sup> must determine the times of the school sessions<sup>6</sup>. In the case of a foundation, voluntary aided or foundation special school<sup>7</sup> it is the governing body who must determine the dates and times when the school terms and holidays are to begin and end<sup>8</sup>, and the times of the school sessions<sup>9</sup>. Regulations<sup>10</sup> may make provision:

- 1011 (1) as to the procedure to be followed where the governing body of a community, voluntary controlled or community special school or a maintained nursery school<sup>11</sup> proposes to make any change in the times of the school sessions<sup>12</sup>;
- 1012 (2) as to the implementation of any such proposal<sup>13</sup>;
- 1013 (3) for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent<sup>14</sup> of a registered<sup>15</sup> pupil<sup>16</sup> at the school<sup>17</sup>.

1 As to community, voluntary and community special schools see PARA 102 notes 5, 7, 9 ante. As to special schools see PARA 1027 post. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 For the meaning of 'maintained nursery school' see PARA 98 note 3 ante.

3 As to local education authorities see PARA 20 ante.

4 Education Act 2002 s 32(1)(a).

5 As to the governing bodies of maintained schools see PARA 203 et seq ante.

6 Education Act 2002 s 32(1)(b). For these purposes, 'the times of the school sessions' means the times at which each of the school sessions (or, if there is only one, the school session) is to begin and end on any day: s 32(4).

Section 32 applies in relation to pupil referral units as it applies in relation to community, voluntary controlled or community special schools or maintained nursery schools with the modification that in s 32(1)(b), in the case of a unit having a management committee, the local education authority together with the management committee must determine the times of the school sessions: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 9. For the meaning of 'pupil referral unit' see PARA 457 ante. As to management committees of pupil referral units see PARA 464 ante.

7 As to foundation and foundation special schools see PARA 102 notes 6-7, 10 ante.

8 Education Act 2002 s 32(2)(a).

9 Ibid s 32(2)(b).

10 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations

under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 32 but see, by virtue of the Interpretation Act 1978 s 17(2)(b), the Changing of School Session Times (England) Regulations 1999, SI 1999/2733; and the Changing of School Session Times (Wales) Regulations 2000, SI 2000/2030 (amended by SI 2005/2913), which were made under the School Standards and Framework Act 1998 s 41(3) (repealed).

- 11 le a school within the Education Act 2002 s 32(1): see the text to notes 1-6 supra.
- 12 Ibid s 32(3)(a).
- 13 Ibid s 32(3)(b).
- 14 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 212(2), (3).
- 15 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of ibid s 212(2), (3).
- 16 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).
- 17 Ibid s 32(3)(c).

## UPDATE

### 532 Responsibility for fixing dates of terms and holidays and times of sessions

TEXT AND NOTES 5-9--2002 Act s 32(1)(b), (2)(b) are subject to s 32(5)-(9): Education Act 2002 s 32(1)(b), (2)(b) (amended by Learner Travel (Wales) Measure 2008 s 21(2)(a), (b)). 2002 Act s 32(1)(b), (2)(b) do not apply in relation to a school in Wales in specified circumstances: Education Act 2002 s 32(5) (s 32(5)-(10) added by Learner Travel (Wales) Measure 2008 s 21(2)(c). The circumstances are (1) that the local education authority in whose area the school is situated has given notice in writing to the governing body of the school that the times of the school sessions are to be determined in accordance with s 32(8); and (2) that the notice has not been withdrawn by the local education authority: Education Act 2002 s 32(6). A local education authority must not issue a notice of the kind mentioned in head (1) unless it considers a change in the times of the sessions of that school to be necessary or expedient in order to (a) promote the use of sustainable modes of travel within the meaning of Learner Travel (Wales) Measure 2008 s 11; or (b) improve the effectiveness or efficiency of travel arrangements made, or to be made, by the authority under the 2008 Measure: Education Act 2002 s 32(7). In relation to a school subject to a notice of the kind mentioned in head (1), (i) where there are two school sessions on the relevant school day (A) the local education authority must determine the time each day at which the first school session starts and the second school session ends, and (B) the governing body must determine the time each day at which the first school session ends and the second school session starts; or (ii) where there is one school session on the relevant school day, the local education authority must determine the time each day at which the school session starts and ends: Education Act 2002 s 32(8). The Welsh Ministers may make provision by regulations as to the procedure to be followed where the local education authority propose to issue a notice of the kind mentioned in head (1), the matters to be included in such a notice, the implementation of a determination under s 32(8), and for enabling the local education authority to determine, for any purposes of the regulations, whether any person is to be treated as a parent of a registered pupil at the school: Education Act 2002 s 32(9). In giving such notice and in discharging any function conferred by s 32(7) or s 32(8) or by regulations under s 32(9), a local education authority must have regard to guidance given by the Welsh Ministers: Education Act 2002 s 32(10).

NOTE 6--2002 Act s 32 also applies, with modifications, in relation to pupil referral units in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales)

Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 9). SI 2005/2039 regs 1, 3, Sch 1 para 9 replaced by Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 17. SI 2000/2030 replaced: Changing of School Session Times (Wales) Regulations 2009, SI 2009/572.

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### **533. Regulations as to duration of school day etc.**

Regulations<sup>1</sup> may make provision with respect to the duration of the school day<sup>2</sup> and school year<sup>3</sup> at, and the granting of leave of absence from<sup>4</sup>, any school<sup>5</sup> maintained by a local education authority<sup>6</sup>, and any special school<sup>7</sup> not maintained by a local education authority<sup>8</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. The Education (Pupil Registration) Regulations 1995, SI 1995/2089 (amended by SI 1997/2624; SI 2001/1109; SI 2001/2802; SI 2002/3178; SI 2003/3227; SI 2005/2913); the Education (School Day and School Year) (England) Regulations 1999, SI 1999/3181 (amended by SI 2001/1429); and the Education (School Day and School Year) (Wales) Regulations 2003, SI 2003/3231, have been made or, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, have effect as if made under s 551.

The Education (School Day and School Year) (England) Regulations 1999, SI 1999/3181 (as amended) do not apply in relation to pupil referral units: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 4, Sch 2 para 2. For the meaning of 'pupil referral unit' see PARA 457 post.

2 'School day', in relation to a school, means any day on which at that school there is a school session: Education Act 1996 s 579(1).

3 For the meaning of 'school year' see PARA 15 note 9 ante. The reference to the duration of the school year at any school to which *ibid* s 551(1) applies (see s 551(2); and the text to notes 5-8 *infra*) is a reference to the number of school sessions that must be held during any such year: s 551(1A) (added by the Education Act 1997 s 57(1), Sch 7 para 39).

4 Education Act 1996 s 551(1). As to holidays taken for more than 10 days see *R v Governing Body of Gateway Primary School, ex p X* [2001] ELR 321.

5 For the meaning of 'school' see PARA 81 ante.

6 Education Act 1996 s 551(2)(a). As to local education authorities see PARA 20 ante.

7 For the meaning of 'special school' see PARA 1027 post. For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante.

8 Education Act 1996 s 551(2)(c).

## **UPDATE**

### **533 Regulations as to duration of school day etc**

NOTE 1--SI 1999/3181 further amended: SI 2007/3071, SI 2010/604. SI 2003/3231 amended: SI 2006/1262, SI 2008/1739. SI 1995/2089 (as amended) replaced in relation to England: Education (Pupil Registration) (England) Regulations 2006, SI 2006/1751 (amended by SI 2007/603). SI 2005/2039 regs 1, 4, Sch 2 para 2 now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 4, Sch 2 para 2.

SI 2003/3231 do not apply in relation to pupil referral units: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 4, Sch 2 para 2.

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## **(vi) Transport Arrangements to Facilitate Attendance**

### **534. Provision of transport etc.**

A local education authority<sup>1</sup> must make such arrangements for the provision of transport and otherwise as it considers necessary<sup>2</sup>, or as the Secretary of State<sup>3</sup> may direct, for the purpose of facilitating the attendance of persons not of sixth form age<sup>4</sup>:

- 1014 (1) receiving education at schools<sup>5</sup>;
- 1015 (2) receiving education at any institution maintained or assisted<sup>6</sup> by the authority which provides further education<sup>7</sup> or higher education<sup>8</sup>, or both<sup>9</sup>;
- 1016 (3) receiving education at any institution within the further education sector<sup>10</sup>;
- 1017 (4) receiving education or training at an institution outside both the further education and higher education sectors<sup>11</sup>.

Such arrangements made by a local education authority must<sup>12</sup>:

- 1018 (a) make provision for persons receiving full-time education at any institution within the further education sector which is no less favourable than the provision made in pursuance of the arrangements for pupils<sup>13</sup> of the same age at schools maintained by a local education authority<sup>14</sup>; and
- 1019 (b) make provision for persons receiving full-time education or training at institutions mentioned in head (4) above which is no less favourable than the provision made in pursuance of the arrangements for persons of the same age with learning difficulties<sup>15</sup> for whom the authority secures the provision of education at any other institution<sup>16</sup>.

Any transport provided in pursuance of such arrangements must be provided free of charge<sup>17</sup>.

A local education authority may pay the whole or any part, as it thinks fit, of the reasonable travelling expenses of any person not of sixth form age receiving education or training at a school, or at any such institution as is mentioned in heads (1) to (4) above, for whose transport no arrangements are made<sup>18</sup>. In considering whether or not it is required to make such arrangements in relation to a particular person, a local education authority must have regard, amongst other things<sup>19</sup> to: (i) the age of the person and the nature of the route, or alternative routes, which he could reasonably be expected to take<sup>20</sup>; and (ii) any wish of his parent<sup>21</sup> for him to be provided with education or training at a school or institution in which the religious education provided is that of the religion or denomination to which his parent adheres<sup>22</sup>.

1 As to local education authorities see PARA 20 ante.

2 'Necessary' means 'really needed': *Re an inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] AC 660 at 704, [1988] 1 All ER 203 at 208-209, HL, per Lord Griffiths; applied to the context of the provision of transport for pupils in *Devon County Council v George* [1989] AC 573 at 604, sub nom *George v Devon County Council* [1988] 3 All ER 1002 at 1006, HL, per Lord Keith of Kinkel. See also *R v Carmarthenshire County Council, ex p White* [2001] ELR 172 at 186, per Tomlinson J.

3 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 Education Act 1996 s 509(1) (amended by the Education Act 2002 s 199, Sch 19 paras 1, 2(a)). References in the Education Act 1996 s 509 (as amended) to persons not of sixth form age must be construed in accordance with s 509AC(1) (as added) (see PARA 535 post): s 509(7) (added by the Education Act 2002 Sch 19 paras 1, 2(d)).

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 509 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (oo). For the meaning of 'England' see PARA 52 note 11 ante.

5 Education Act 1996 s 509(1)(a). For the meaning of 'school' see PARA 81 ante.

6 For the meaning of 'assisted' see PARA 45 ante.

7 For the meaning of 'further education' see PARA 18 ante.

8 For the meaning of 'higher education' see PARA 19 ante.

9 Education Act 1996 s 509(1)(b) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 59(1), (2)(a)).

10 Education Act 1996 s 509(1)(c) (amended by the Learning and Skills Act 2000 s 153, Sch 9 paras 1, 59(1), (2)(b), Sch 11). As to references to institutions within the further education sector see PARA 579 post.

11 Education Act 1996 s 509(1A) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 59(1), (3); and amended by the Education Act 2002 s 199, Sch 19 paras 1, 2(a)). As to references to institutions outside the higher education sector see PARA 579 post. Arrangements under the Education Act 1996 s 509(1A) (as added) may be made in relation to a person only if the Learning and Skills Council for England or the National Council for Education and Training for Wales has secured for him the provision of education or training at the institution, and the provision of boarding accommodation under the Learning and Skills Act 2000 s 13 (see PARA 1091 post) or s 41 (see PARA 1131 post): Education Act 1996 s 509(1B) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 59(1), (3)). As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post.

12 Education Act 1996 s 509(5) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 59(1), (7)(a)).

13 For the meaning of 'pupil' see PARA 16 note 4 ante.

14 Education Act 1996 s 509(5)(b). For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante.

15 For the meaning of 'learning difficulties' see PARA 1091 note 6 post; definition applied by virtue of the Education Act 1996 s 509(5)(c).

16 Ibid s 509(5)(c) (substituted by the Education Act 2002 Sch 19 paras 1, 2(c)).

17 Education Act 1996 s 509(2) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 59(1), (4)). As to the grant of a permit in relation to the use of buses by educational bodies and the effect of such a permit see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1182 et seq; and as to fare-paying passengers on school buses see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1176.

18 Education Act 1996 s 509(3) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 59(5); and the Education Act 2002 Sch 19 paras 1, 2(b)). See *R v Vale of Glamorgan County Council, ex p J* [2001] ELR 223 (judicial review of decision not to refund travel costs); affd sub nom *R (on the application of J) v Vale of Glamorgan County Council* [2001] EWCA Civ 593, [2001] ELR 758.

19 Education Act 1996 s 509(4) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 59(6)(a)).

20 Education Act 1996 s 509(4)(a). See *Essex County Council v Rogers* [1987] AC 66, sub nom *Rogers v Essex County Council* [1986] 3 All ER 321, HL; and PARA 521 note 17 ante.

21 As to the meaning of 'parent' see PARA 510 note 1 ante.

22 Education Act 1996 s 509(4)(b) (amended by the Education Act 2002 s 215(1), Sch 21 para 51). This does not impose a compulsory requirement on a local education authority to comply with a parent's wishes: *R(T) v*

*Leeds City Council* [2002] ELR 91 (no requirement to provide transport where parents moved pupils further away from Orthodox Jewish school they wished their children to continue to attend). As to the relationship between the Education Act 1996 s 509 (as amended) and s 444(4) (as amended) (no offence of failure to secure regular school attendance of child if local education authority has failed to make suitable arrangements for transport) see PARA 521 ante. See also *Devon County Council v George* [1989] AC 573, sub nom *George v Devon County Council* [1988] 3 All ER 1002, HL; *R v East Sussex County Council, ex p D* [1991] COD 374; *R v Rochdale Metropolitan Borough Council, ex p Schemet* [1994] ELR 89, sub nom *R v Rochdale Metropolitan Borough Council, ex p S* [1993] 1 FCR 306; *R v Essex County Council, ex p C* [1994] 1 FCR 773, sub nom *Re C (A Minor)* [1994] ELR 273, CA; *R v Dyfed County Council, ex p S* [1995] 1 FCR 113, sub nom *Re S (Minors)* [1995] ELR 98, CA; *R v Kent County Council, ex p C* [1998] ELR 108 (all decided under previous legislation).

## UPDATE

### 534 Provision of transport etc

TEXT AND NOTES--Education Act 1996 s 509, which as amended applied to Wales only, repealed: Learner Travel (Wales) Measure 2008 Sch 2, Apprenticeships, Skills, Children and Learning Act 2009 s 57(4), Sch 16 Pt 1. For similar provision in relation to England see 1996 Act ss 508A-508E, 509AD, Sch 35C; and PARA 534A. For similar provision in relation to Wales see Learner Travel (Wales) Measure 2008; and PARA 534B. For provision of transport for adult learners see 1996 Act ss 508F-508I; and PARA 534A.



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### **534A. Provision of transport etc in England.**

#### **1. Duty of local education authorities to promote sustainable modes of travel**

A local education authority<sup>1</sup> in England must (1) prepare for each academic year<sup>2</sup> a document containing its strategy to promote the use of sustainable modes of travel<sup>3</sup> to meet the school travel needs<sup>4</sup> of its area ('a sustainable modes of travel strategy')<sup>5</sup>; (2) publish the strategy in such manner and by such time as may be prescribed<sup>6</sup>; and (3) promote the use of sustainable modes of travel to meet the school travel needs of its area<sup>7</sup>. Before preparing a sustainable modes of travel strategy, an authority must in particular assess the school travel needs of its area<sup>8</sup>, and assess the facilities and services for sustainable modes of travel to, from and within its area<sup>9</sup>.

The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority of its duties<sup>10</sup>, and in discharging these duties, an authority must consult such persons as it considers appropriate, and have regard to any such guidance in discharging these duties<sup>11</sup>.

1 As to local education authorities see PARA 20.

2 For the meaning of 'academic year' see PARA 535; definition applied by virtue of the Education Act 1996 s 508A(11) (s 508A added by the Education and Inspections Act 2006 s 76).

3 'Sustainable modes of travel' are modes of travel which the authority consider may improve either or both of the following: (1) the physical well-being of those who use them; (2) the environmental well-being of the whole or a part of its area: 1996 Act s 508A(3).

4 The 'school travel needs' of an authority's area are: (1) the needs of children and persons of sixth form age in the authority's area as regards their needs as regards travel to and from schools or further education institutions at which they receive or are to receive education or training, or any other places where they receive or are to receive education by virtue of arrangements made in pursuance of *ibid* s 19(1) (see PARA 457); and (2) the needs of other children and persons of sixth form age as regards their needs as regards travel to and from schools or further education institutions at which they receive or are to receive education or training, or any other places where they receive or are to receive education by virtue of arrangements made in pursuance of s 19(1), in so far as that travel relates to travel within the authority's area: s 508A(4)-(6). References to persons of sixth form age are to be construed in accordance with s 509AC(1) (see PARA 535): s 508A(10).

5 *Ibid* s 508A(1)(a).

6 *Ibid* s 508A(1)(b).

7 *Ibid* s 508A(1)(c).

8 *Ibid* s 508A(2)(a).

9 *Ibid* s 508A(2)(b).

10 *Ibid* s 508A(7), referring to the authority's functions under s 508A. Before issuing or revising such guidance, the Secretary of State must consult such persons as he considers appropriate: s 508A(8).

11 *Ibid* s 508A(9).

#### **2. Travel arrangements for children**

Except where a travel scheme<sup>1</sup> is in force, a local education authority<sup>2</sup> in England must make the following travel arrangements for children<sup>3</sup>.

In specified circumstances, a local education authority in England must make, in the case of an eligible child<sup>4</sup> in the authority's area, such travel arrangements as it considers necessary in order to secure that suitable home to school travel arrangements<sup>5</sup>, for the purpose of facilitating the child's attendance at the relevant educational establishment<sup>6</sup> in relation to him, are made and provided free of charge in relation to the child<sup>7</sup>. The specified circumstances are that either no travel arrangements relating to travel in either direction between eligible child's home and the relevant educational establishment, or in both directions, are provided free of charge in relation to him by any person who is not the authority<sup>8</sup>, or that such travel arrangements are so provided free of charge<sup>9</sup> but those arrangements, taken together with any other such travel arrangements which are so provided, do not provide suitable home to school travel arrangements for the purpose of facilitating his attendance at the relevant educational establishment<sup>10</sup>.

In relation to a child who is not an eligible child<sup>11</sup>, a local education authority in England may make such school travel arrangements<sup>12</sup> as it considers necessary, in relation to any child in its area, for the purpose of facilitating the child's attendance at any relevant educational establishment<sup>13</sup> in relation to the child<sup>14</sup>. A local education authority in England may pay, in the case of a child in the authority's area who is not an eligible child and in relation to whom no such arrangements are made by the authority, the whole or any part, as it think fit, of a person's reasonable travelling expenses in relation to that child's travel in either direction between his home and any relevant educational establishment in relation to the child, or in both directions<sup>15</sup>.

The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority of its functions<sup>16</sup>, and an authority must have regard to any such guidance in discharging these functions<sup>17</sup>.

1 As to travel schemes see PARA 534A.3.

2 As to local education authorities see PARA 20.

3 See the Education Act 1996 s 508E(3) (s 508E added by the Education and Inspections Act 2006 s 78(1)), which provides that the authority by which the scheme is made does not have any functions under the 1996 Act s 508B or 508C in relation to children in its area.

4 'Eligible child' means a child who falls within any of the provisions of *ibid* Sch 35B paras 2-7 or 9-13: Sch 35B para 1 (Sch 35B added by the 2006 Act s 77(2), Sch 8; and prospectively amended by Education and Skills Act 2008 Sch 1 para 52). Those provisions concern situations either where the local education authority has not made suitable arrangements to enable a child to become a pupil at a school nearer his home, or where the child is receiving education at a place other than a school by virtue of arrangements made in pursuance of the 1996 Act s 19(1) (see PARA 457), and where the child (1) is of compulsory school age and lives within walking distance of his school or other place of education, but cannot reasonably be expected to walk to that school or place having regard to his special educational needs, disability or mobility problems (see Sch 35B paras 2, 3 and *A v North Somerset Council* [2009] EWHC 3060 (Admin), [2010] ELR 139, [2009] All ER (D) 323 (Nov)); (2) is of compulsory school age and lives within walking distance of his school or other place of education, but cannot reasonably be expected to walk to that school or place having regard to the nature of the routes which he could reasonably be expected to take (see Education Act 1996 Sch 35B paras 4, 5); (3) is of compulsory school age and does not live within walking distance of his school or other place of education (see Sch 35B paras 6-8); (4) either qualifies for free school lunches and milk or has a parent (with whom he is ordinarily resident) who is awarded working tax credit at the maximum rate, and where the child either (a) has attained the age of 8 but not the age of 11, and does not live within two miles of his school or other place of education (see Sch 35B paras 9, 10, 14), (b) has attained the age of 11, and lives between two and six miles of his school or other place of education (see Sch 35B paras 11, 13, 14), or (c) has attained the age of 11, lives between two and fifteen miles of his school or other place of education, and has a parent who has expressed a wish, based on the parent's religion or belief, for him to be provided with education at that school (see Sch 35B paras 12, 14).

5 'Home to school travel arrangements', in relation to an eligible child, are travel arrangements relating to travel in both directions between the child's home and the relevant educational establishment in question: *ibid* s 508B(3) (ss 508B-508D added by the 2006 Act s 77(1)). 'Travel arrangements', in relation to an eligible child,

are travel arrangements of any description and include (1) arrangements for the provision of transport; and (2) any of the following arrangements only if they are made with the consent of a parent of the child: (a) arrangements for the provision of one or more persons to escort the child (whether alone or together with other children) when travelling to or from the relevant educational establishment in relation to the child; (b) arrangements for the payment of the whole or any part of a person's reasonable travelling expenses; (c) arrangements for the payment of allowances in respect of the use of particular modes of travel: 1996 Act s 508B(4). In relation to an eligible child, 'travel arrangements' include travel arrangements of any description made by any parent of the child only if those arrangements are made by the parent voluntarily; and do not comprise or include travel arrangements which give rise to additional costs and do not include appropriate protection against those costs: see s 508B(5)-(7).

6 As to the meaning of 'relevant educational establishment' in relation to an eligible child, see *ibid* s 508B(10).

7 *Ibid* s 508B(1).

8 *Ibid* s 508B(2)(a).

9 Travel arrangements are provided free of charge if there is no charge for anything provided in pursuance of the arrangements: *ibid* s 508B(8).

10 *Ibid* s 508B(2)(b). Regulations may modify s 508B(1) and (2) to provide for their application in cases where there is more than one relevant educational establishment in relation to a child: s 508B(11). As to such regulations, see the School Travel (Pupils with Dual Registration) (England) Regulations 2007, SI 2007/1367.

11 1996 Act s 508C(2).

12 'School travel arrangements', in relation to such a child, are travel arrangements relating to travel in either direction between his home and any relevant educational establishment in relation to the child, or in both directions: *ibid* s 508C(3). 'Travel arrangements', in relation to such a child, are travel arrangements of any description and include (1) arrangements for the provision of transport; and (2) any of the following arrangements only if they are made with the consent of a parent of the child: (a) arrangements for the provision of one or more persons to escort the child (whether alone or together with other children) when travelling to or from any relevant educational establishment in relation to the child; (b) arrangements for the payment of the whole or any part of a person's reasonable travelling expenses; (c) arrangements for the payment of allowances in respect of the use of particular modes of travel: s 508C(4).

13 As to the meaning of 'relevant educational establishment' in relation to a child who is not an eligible child, see *ibid* s 508C(6).

14 *Ibid* s 508C(1).

15 *Ibid* s 508C(5).

16 *Ibid* s 508D(1), referring to the authority's functions under s 508B and 508C. Before issuing or revising such guidance, the Secretary of State must consult such persons as he considers appropriate: s 508D(2). Regulations may require a local education authority to publish, at such times and in such manner as may be prescribed, such information as may be prescribed with respect to the authority's policy and arrangements relating to the discharge of its functions under s 508B or 508C: s 508D(4).

17 *Ibid* s 508D(3).

### 3. School travel schemes

A local education authority<sup>1</sup> in England may make a school travel scheme for its area<sup>2</sup>, and the authority making a school travel scheme ('the scheme authority') may amend or revoke the scheme<sup>3</sup>. Where a school travel scheme is in force the scheme authority must give effect to it<sup>4</sup>, and that authority does not have any functions concerning travel arrangements in relation to children in its area<sup>5</sup>. A school travel scheme must set out, in general terms, what arrangements the local education making the scheme ('the scheme authority') considers it appropriate to be made in relation to travel to and from schools, further education institutions or other places of education<sup>6</sup>. A school travel scheme must secure suitable travel arrangements for eligible children<sup>7</sup>, and must set out a charging policy, which must include provision to the effect that anything provided in pursuance of the scheme for a protected child is provided free of charge<sup>8</sup>.

The scheme authority must make such reports and returns to the Secretary of State and compile and give to him such information as he may require for the purposes of monitoring the operation or effect of a school travel scheme or preparing or publishing an evaluation<sup>9</sup>.

The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local education authority any of its duties or functions<sup>10</sup>, and an authority must have regard to any such guidance in discharging these duties or exercising these functions<sup>11</sup>. Before issuing or revising such guidance, the Secretary of State must consult such persons as he considers appropriate<sup>12</sup>.

The school travel scheme provisions<sup>13</sup> are to be piloted in accordance with regulations<sup>14</sup> made by the Secretary of State<sup>15</sup>. The Secretary of State must prepare and publish an evaluation of the operation and effect of school travel schemes<sup>16</sup>, and may by order provide for the school travel scheme provisions to cease to have effect in relation to local education authorities with effect from such date as may be specified in the order<sup>17</sup>.

1 As to local education authorities see PARA 20.

2 Education Act 1996 Sch 35C para 1(1) (Sch 35C added by the Education and Inspections Act 2006 s 78(2), Sch 9). Effect is given to the 1996 Act Sch 35C by s 508E(1) (s 508E added by the 2007 Act s 78(1)). Before making a school travel scheme, a local education authority must consult such persons as the authority considers appropriate: 1996 Act Sch 35C para 1(2). A school travel scheme comes into force only if approved by the Secretary of State and in accordance with directions given by him, and the earliest date on which a school travel scheme may come into force is 31 August 2007: Sch 35C para 10. The Secretary of State must issue (and may revise) guidance as to the matters which he will take into account in exercising his power to give such approval: see Sch 35C para 13.

3 Ibid Sch 35C paras 11(1), 14 (Sch 35C as added: see NOTE 2). Before amending a school travel scheme, the scheme authority must consult such persons as it considers appropriate, and its power of amendment is exercisable only with the consent of the Secretary of State: see Sch 35C para 11(2)-(6). The Secretary of State must issue (and may revise) guidance as to the matters which he will take into account in exercising his power to give such consent: see Sch 35C para 13.

4 See *ibid* s 508E(2).

5 Ibid s 508E(3), referring to functions under s 508B or 508C (see PARA 534A.2).

6 Ibid Sch 35C para 2(1) (Sch 35C as added: see NOTE 2). The reference to other places of education refers to any place by virtue of arrangements made in pursuance of s 19(1) (see PARA 457): Sch 35C para 2(1). Those arrangements may be arrangements made by the authority or arrangements made by any other persons or both: Sch 35C para 2(2). See further s 508E(2)(b), Sch 35C para 2(3)-(5).

7 See *ibid* Sch 35C paras 3, 4 (Sch 35C as added: see NOTE 2). For these purposes, an 'eligible child' is a child who falls within any of Sch 35B paras 2-7 or 9-13 (see PARA 534A.2 NOTE 4): Sch 35C para 4(1). Sch 35C para 3 modified: SI 2007/1367.

8 See *ibid* Sch 35C paras 5-9 (Sch 35C as added: see NOTE 2).

9 Ibid Sch 35C paras 12 (Sch 35C as added: see NOTE 2). The reference to an evaluation is an evaluation under the Education and Inspections Act 2006 s 80.

10 1996 Act s 508E(4), referring to the authority's duties under s 508E(2) and its functions under Sch 35C.

11 Ibid s 508E(6).

12 Ibid s 508E(5).

13 *Ie* *ibid* s 508E, Sch 35C: Education and Inspections Act 2006 ss 79(3), 80(6).

14 Such regulations may, in particular, provide for there to be a limit on the number of school travel schemes which may be in force while the school travel scheme provisions are being piloted: *ibid* s 79(2). See the School Travel (Piloting of Schemes) (England) Regulations 2007, SI 2007/1366.

15 2006 Act s 79(1).

16 Ibid s 80(1). An evaluation must be prepared and published before 1 January 2012: s 80(1).

17 Ibid s 80(2). The earliest date which may be so specified is 1 August 2012 and the latest date which may be so specified 1 August 2015: s 80(3), (4). Power to make an order under s 80 includes power to make consequential amendments and repeals in any enactment, including the 2006 Act and enactments passed or made after the passing of the 2006 Act: s 80(5).

#### **4. Transport for adult learners**

A local education authority in England must make such transport or other arrangements as it considers necessary, or as the Secretary of State directs, for the purpose of facilitating the attendance of specified adults receiving education or training at certain institutions<sup>1</sup>. The authority must also make available in a transport policy statement information about the travel provision it has put in place for young adults in respect of whom a learning difficulty assessment has been carried out or is required to be carried out<sup>2</sup>. In making such arrangements and preparing such statements, the authority must have regard to any guidance issued by the Secretary of State<sup>3</sup>.

1 See Education Act 1996 s 508F (ss 508F-508I added by Apprenticeships, Skills, Children and Learning Act 2009 s 57(2)).

2 See Education Act 1996 s 508G. Provision is made for the authority to revise transport arrangements so made following a complaint by the young adult or his parents: see Education Act 1996 s 508I.

3 Education Act 1996 s 508H.

#### **5. Duty to have regard to religion or belief**

A local education authority<sup>1</sup> in England must have regard, amongst other things, in exercising any of its travel functions<sup>2</sup> in relation to or in connection with the travel of a person or persons to or from a school, institution or other place, (1) to any wish of a parent of such a person for him to be provided with education or training at a particular school, institution or other place where that wish is based on the parent's religion<sup>3</sup> or belief<sup>4</sup>, and (2) in a case where the person in question (or any of the persons in question) is of sixth form age<sup>5</sup>, to any wish of that person to be provided with education or training at a particular school, institution or other place where that wish is based on the person's religion or belief<sup>6</sup>.

1 As to local education authorities see PARA 20.

2 The 'travel functions' of a local education authority are its functions under any of the following provisions of the Education Act 1996: s 508A (duty to promote sustainable modes of travel etc: see PARA 534A.1), s 508B (travel arrangements for eligible children: see PARA 534A.2); s 508C (travel arrangements etc for other children: see PARA 534A.2); s 508E and Sch 35C (school travel schemes: see PARA 534A.3); s 508F (provision of transport for adult learners: see PARA 534A.4); s 509AA (transport etc for persons of sixth form age: see PARA 535); s 509AD(2) (s 509AD added by the Education and Inspections Act 2006 s 84, and amended by the Education and Skills Act 2008 s 84, Apprenticeships, Skills, Children and Learning Act 2009 s 57(3)).

3 'Religion' means any religion, and includes a reference to lack of religion: 1996 Act s 509AD(3)(a), (c).

4 'Belief' means any religious or philosophical belief, and includes a reference to lack of belief: ibid s 509AD(3)(b), (d).

5 Within the meaning given in ibid s 509AC(1).

6 Ibid s 509AD(1).

#### **6. Complaints about transport arrangements for persons of sixth form age**

A local education authority may revise a transport policy statement<sup>1</sup> to change the arrangements specified<sup>2</sup> if, as a result of a sixth form transport complaint<sup>3</sup>, it has come to consider the change necessary for the purpose of those arrangements or the Secretary of State has directed it to do so<sup>4</sup>. An authority that revises a statement must publish the revised statement and a description of the revision as soon as practicable<sup>5</sup>. The Secretary of State need not consider whether to exercise specified powers in relation to local education authorities in response to a matter that is, or could have been, the subject of a sixth form transport complaint made to him unless satisfied that (1) the matter has been brought to the notice of the authority concerned; and (2) the authority have had a reasonable opportunity to investigate the matter and respond<sup>6</sup>. For certain purposes, the revision of a statement under the above provisions is to be treated as the preparation of a statement<sup>7</sup>.

1    le a statement prepared under Education Act 1996 s 509AA (see PARA 535).

2    le specified under Education Act 1996 s 509AA(2) or (3).

3    'Sixth form transport complaint' means a complaint that is (1) about a local education authority's exercise of, or failure to exercise, a function under Education Act 1996 ss 509AA-509AD in relation to persons of sixth form age; and (2) made by a person who is, or will be, a person of sixth form age when the matter complained of has effect, or by a parent of such a person; and 'sixth form age' is to be construed in accordance with s 509AC(1) (see PARA 535): Education Act 1996 s 509AE(5).

4    Education Act 1996 s 509AE(1), (2) (s 509AE added by Apprenticeships, Skills, Children and Learning Act 2009 s 56(2)).

5    Education Act 1996 s 509AE(3). Where an authority has published in a single document a statement prepared under Education Act 1996 508G (transport policy statements for young adults subject to learning difficulty assessment) and a statement prepared under s 509AA, the requirement to publish a revised statement is to be treated as a requirement to publish a version of the document that includes the revised statement: Education Act 1996 s 509AE(7).

6    See Education Act 1996 s 509AE(4).

7    See Education Act 1996 s 509AE(6).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(6) REGISTRATION AND SCHOOL ATTENDANCE/(vi) Transport Arrangements to Facilitate Attendance/534B. Provision of transport etc in Wales.

## **534B. Provision of transport etc in Wales.**

### **1. Duty to assess learner travel needs**

A local authority<sup>1</sup> must, in each academic year<sup>2</sup>, assess the learner travel needs<sup>3</sup> of its area for the following academic year in relation to (1) learners who have not attained the age of 19; (2) learners who have attained the age of 19 who have begun a course of education or training before attaining that age and continue to attend that course; and (3) such other learners as may be prescribed<sup>4</sup>. In making such an assessment a local authority must have regard in particular to (a) the needs of learners who are disabled persons<sup>5</sup>; (b) the needs of learners with learning difficulties; (c) the needs of learners who are children looked after, or formerly looked after, by a local authority<sup>6</sup>; (d) the age of learners; and (e) the nature of the routes which learners could reasonably be expected to take to the relevant places where they receive education or training<sup>7</sup>. An assessment is not required for (i) learners to travel during the day between relevant places or between different sites of the same institution; or (ii) for any purpose other than attendance at a relevant place to receive education or training<sup>8</sup>.

1 'Local authority' means a local education authority in Wales; however in any reference to a child looked after by a local authority it means a council of a county or county borough in Wales exercising social services functions within the meaning of Local Authority Social Services Act 1970 (SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1006): Learner Travel (Wales) Measure 2008 s 24(1).

2 'Academic year' means any period from 1 August to 31 July: Learner Travel (Wales) Measure 2008 s 24(1).

3 The 'learner travel needs' of a local authority's area are the needs of learners who are ordinarily resident in its area for suitable travel arrangements each day to and from the relevant places where they receive education or training: Learner Travel (Wales) Measure 2008 s 2(3). 'Learners' means persons who receive education or training: Learner Travel (Wales) Measure 2008 s 1(3). 'Travel arrangements' are travel arrangements of any description and include the provision of transport, the provision of one or more persons to escort a child when travelling, the payment of the whole or any part of a person's reasonable travelling expenses, and the payment of allowances in respect of the use of particular modes of travel: Learner Travel (Wales) Measure 2008 s 1(2). The following are 'relevant places': (1) maintained schools; (2) institutions in the further education sector; (3) independent schools named in statements maintained under Education Act 1996 s 324 (PARA 996); (4) non-maintained special schools; (5) pupil referral units; (6) places other than pupil referral units where education is arranged under Education Act 1996 s 19(1) (PARA 457); (7) places where education or training funded by the Welsh Ministers under Learning and Skills Act 2000 s 34(1) (PARA 1132) is provided; (8) institutions where education and training and boarding accommodation have been secured by the Welsh Ministers under Learning and Skills Act 2000 s 41 (PARA 1131); (9) places where nursery education is provided (a) by a local authority, or (b) by any other person who is in receipt of financial assistance given by a local authority under arrangements made by it in pursuance of the duty imposed by School Standards and Framework Act 1998 s 118 (PARA 86); and (10) places where work experience is undertaken: Learner Travel (Wales) Measure 2008 s 1(4)(a)-(j). Head (10) is in force for the purposes of 2008 Measure s 12 (PARA 534B.4) only: SI 2009/2819. 'Maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school; 'non-maintained special school' means a school approved under Education Act 1996 s 342 (PARA 1028); 'nursery education' means education suitable for children who have not attained compulsory school age; and 'work experience' means work experience arranged for (i) a registered pupil of a maintained school or a pupil referral unit; or (ii) a student enrolled at an institution within the further education sector by, or on behalf of, the governing body of the relevant educational institution: Learner Travel (Wales) Measure 2008 s 24(1). 'Education' does not include higher education: Learner Travel (Wales) Measure 2008 s 24(1).

4 Learner Travel (Wales) Measure 2008 s 2(1), (2). 'Prescribed' means prescribed in regulations; and 'regulations' means regulations made by the Welsh Ministers: Learner Travel (Wales) Measure 2008 s 24(1). As to the making of orders and regulations see Learner Travel (Wales) Measure 2008 s 27.

5 'Disabled person' has the same meaning as in Disability Discrimination Act 1995 s 1 (DISCRIMINATION vol 13 (2007 Reissue) PARA 511): Learner Travel (Wales) Measure 2008 s 24(1).

6 References to a child who is 'looked after by a local authority' have the same meaning as they have in Children Act 1989 s 22(1) (CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 867): Learner Travel (Wales) Measure 2008 s 24(2).

7 Learner Travel (Wales) Measure 2008 s 2(4).

8 Learner Travel (Wales) Measure 2008 ss 2(2), 5(a), (b).

## 2. Duty to make transport arrangements

In specified circumstances<sup>1</sup> and if specified conditions<sup>2</sup> are met, a local authority<sup>3</sup> must, in relation to a child of compulsory school age ordinarily resident in its area, make suitable<sup>4</sup> transport arrangements to facilitate his attendance each day at the relevant places<sup>5</sup> where he receives education<sup>6</sup> or training<sup>7</sup>. The local authority must not charge a child or a parent who is an individual for any transport arrangements so made<sup>8</sup>. Transport arrangements may include the provision of transport and the payment of the whole, but not part, of a child's transport expenses<sup>9</sup>. The making of transport arrangements is not required for (1) learners<sup>10</sup> to travel during the day between relevant places or between different sites of the same institution; or (2) for any purpose other than attendance at a relevant place to receive education or training<sup>11</sup>.

1 Ie the circumstances set out in Learner Travel (Wales) Measure 2008 s 3(1) Table column 1.

2 Ie the conditions set out in the corresponding entry in Learner Travel (Wales) Measure 2008 s 3(1), (6)-(8) Table column 2.

3 For the meaning of 'local authority' see PARA 534B.1.

4 Transport arrangements are not suitable if they cause unreasonable levels of stress for the child, take an unreasonable amount of time, or are unsafe: Learner Travel (Wales) Measure 2008 s 3(5).

5 For the meaning of 'relevant place' see PARA 534B.1.

6 For the meaning of 'education' see PARA 534B.1.

7 Learner Travel (Wales) Measure 2008 s 3(1), (2). Regulations may prescribe circumstances and conditions for these purposes and amend Learner Travel (Wales) Measure 2008 s 3(1), (6)-(8) Table: Learner Travel (Wales) Measure 2008 s 3(9). For the meaning of 'regulations' see PARA 534B.1.

8 Learner Travel (Wales) Measure 2008 s 3(3).

9 Learner Travel (Wales) Measure 2008 s 3(4).

10 For the meaning of 'learners' see PARA 534B.1.

11 Learner Travel (Wales) Measure 2008 ss 3(2), 5(a), (b).

## 3. Duty to make other travel arrangements

A local authority<sup>1</sup> must, in relation to a child of compulsory school age if (1) the child is receiving education<sup>2</sup> or training at a relevant place<sup>3</sup>; (2) the child is ordinarily resident in its area; and (3) it considers that travel arrangements<sup>4</sup> are necessary<sup>5</sup> to facilitate the attendance of the child each day at the relevant place where the child receives education or training, make suitable<sup>6</sup> travel arrangements to facilitate the attendance of the child each day at the relevant places where the child receives education or training<sup>7</sup>. The local authority must not charge a child or a parent who is an individual for any travel arrangements so made<sup>8</sup>. Travel arrangements may include the payment of the whole, but not part, of a child's travel



expenses<sup>9</sup>. The making of travel arrangements is not required for (a) learners<sup>10</sup> to travel during the day between relevant places or between different sites of the same institution; or (b) for any purpose other than attendance at a relevant place to receive education or training<sup>11</sup>.

A local authority may, in relation to a learner if (i) the learner is ordinarily resident in its area; or (ii) he receives education or training in its area, make travel arrangements to facilitate his attendance at a place where he receives education or training<sup>12</sup>. A local authority may charge<sup>13</sup> for travel arrangements so made for registered pupils of compulsory school age<sup>14</sup>. A local authority may also charge for travel arrangements so made for other learners<sup>15</sup>.

The Welsh Ministers may also make regulations about travel arrangements for (A) post-16 learners who live in Wales and are either in receipt of education or training in Wales or in receipt of education or training which is funded by the Welsh Ministers outside Wales; and (B) children who are in nursery education<sup>16</sup>.

1 For the meaning of 'local authority' see PARA 534B.1.

2 For the meaning of 'education' see PARA 534B.1.

3 For the meaning of 'relevant place' see PARA 534B.1.

4 For the meaning of 'travel arrangements' see PARA 534B.1.

5 In considering whether travel arrangements are necessary a local authority must have regard in particular to the matters specified in Learner Travel (Wales) Measure 2008 s 4(5) and may, if the child is not looked after by a local authority and arrangements have been made by the local authority for enabling the child to attend a suitable relevant place nearer to his place of ordinary residence, have regard in particular to whether or not the child is attending the nearest suitable relevant place to his place of ordinary residence: Learner Travel (Wales) Measure 2008 s 4(7), (8). For the meaning of 'looked after by a local authority' see PARA 534B.1. A relevant place is suitable for a child if the education or training provided there is suitable, having regard to the age, ability and aptitudes of the child and any learning difficulties he may have: Learner Travel (Wales) Measure 2008 s 4(9).

6 In considering whether travel arrangements are suitable, a local authority must have regard in particular to (1) the assessment it carries out in accordance with Learner Travel (Wales) Measure 2008 s 2(2) (PARA 534B.1); (2) the transport arrangements it is under a duty to make for the child under Learner Travel (Wales) Measure 2008 s 3 (PARA 534B.2); (3) the age of the child; (4) any disability or learning difficulty of the child; and (5) the nature of the routes which the child could reasonably be expected to take: Learner Travel (Wales) Measure 2008 s 4(5). 'Disability' has the same meaning as in Disability Discrimination Act 1995 s 1 (DISCRIMINATION vol 13 (2007 Reissue) PARA 511); and 'learning difficulty' in respect of a person means a significantly greater difficulty in learning than the majority of persons of the same age or a disability which either prevents or hinders that person from using facilities of a kind provided at relevant places, but a person is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is taught or will be taught is different from a language (or form of a language) which has at any time been spoken in his home: Learner Travel (Wales) Measure 2008 s 24(1). Travel arrangements are not suitable if they cause unreasonable levels of stress for the child, take an unreasonable amount of time, or are unsafe: Learner Travel (Wales) Measure 2008 s 4(6).

7 Learner Travel (Wales) Measure 2008 s 4(1), (2).

8 Learner Travel (Wales) Measure 2008 s 4(3).

9 Learner Travel (Wales) Measure 2008 s 4(4).

10 For the meaning of 'learners' see PARA 534B.1.

11 Learner Travel (Wales) Measure 2008 ss 4(2), 5(a), (b).

12 Learner Travel (Wales) Measure 2008 s 6(1), (2).

13 Ie in accordance with Education Act 1996 ss 455, 456 (PARAS 447, 448).

14 Learner Travel (Wales) Measure 2008 s 6(3).

15 Learner Travel (Wales) Measure 2008 s 6(4).

16 See Learner Travel (Wales) Measure 2008 ss 7, 8. For the meaning of 'regulations' and 'nursery education' see PARA 534B.1.

#### 4. Travel behaviour code

The Welsh Ministers must make a travel behaviour code<sup>1</sup>. A travel behaviour code is a code setting out the standards of behaviour required of (1) learners<sup>2</sup> who have not attained the age of 19; (2) learners who have attained the age of 19 who have begun a course of education<sup>3</sup> or training before attaining that age and continue to attend that course; and (3) such other learners as may be prescribed<sup>4</sup>, while they are travelling to and from the relevant places<sup>5</sup> where they receive education or training (whether or not they take advantage of travel arrangements<sup>6</sup> made by a local authority)<sup>7</sup>. The Welsh Ministers must review the code from time to time<sup>8</sup> and must publish it<sup>9</sup>.

A local authority may withdraw travel arrangements made for a learner<sup>10</sup> if it is satisfied that the learner has failed to comply with the travel behaviour code and the following conditions applicable to the learner are satisfied<sup>11</sup>. The conditions are: (a) before any decision is taken to withdraw travel arrangements (i) the learner and the parent of the learner must be given the opportunity to make representations; and (ii) those representations must be considered by the local authority<sup>12</sup>; (b) the head teacher of the relevant school at which the learner is a registered pupil (i) must be consulted about the decision to withdraw travel arrangements; and (ii) must be given notice of the decision at least 24 hours before the withdrawal takes effect<sup>13</sup>; (c) the decision to withdraw travel arrangements must be reasonable in the circumstances<sup>14</sup>; (d) the local authority must give notice of the withdrawal of travel arrangements to the learner's parent at least 24 hours before the withdrawal takes effect<sup>15</sup>; (e) the period of withdrawal must not exceed 10 consecutive school days<sup>16</sup>; and (f) the period of withdrawal must not result in the learner having travel arrangements withdrawn for more than 30 school days in the school year in which the withdrawal takes effect<sup>17</sup>. Regulations may make further provision regarding the withdrawal of travel arrangements<sup>18</sup>.

1 Learner Travel (Wales) Measure 2008 s 12(1). Before making or revising a code the Welsh Ministers must consult such persons as they consider appropriate: Learner Travel (Wales) Measure 2008 s 12(6).

2 For the meaning of 'learners' see PARA 534B.1.

3 For the meaning of 'education' see PARA 534B.1.

4 For the meaning of 'prescribed' see PARA 534B.1.

5 For the meaning of 'relevant place' see PARA 534B.1.

6 For the meaning of 'travel arrangements' see PARA 534B.1.

7 Learner Travel (Wales) Measure 2008 s 12(2), (3). For the meaning of 'local authority' see PARA 534B.1.

8 Learner Travel (Wales) Measure 2008 s 12(4).

9 Learner Travel (Wales) Measure 2008 s 12(5).

10 I.e travel arrangements made under Learner Travel (Wales) Measure 2008 s 3 or s 4.

11 Learner Travel (Wales) Measure 2008 s 14(1), (2). Conditions (a)-(f) in the text apply to any learner who is a registered pupil at a relevant school: Learner Travel (Wales) Measure 2008 s 14(3). Conditions (a), (c) and (d) apply to any learner who is not a registered pupil at a relevant school: Learner Travel (Wales) Measure 2008 s 14(4). 'Relevant school' means a maintained school, a pupil referral unit, or a non-maintained special school: Learner Travel (Wales) Measure 2008 s 14(13). For the meaning of 'maintained school' and 'non-maintained special school' see PARA 534B.1.

12 Learner Travel (Wales) Measure 2008 s 14(5).

13 Learner Travel (Wales) Measure 2008 s 14(6).

14 Learner Travel (Wales) Measure 2008 s 14(7). In determining whether a decision to withdraw travel arrangements is reasonable, the following matters in particular must be taken into account: (1) whether the period of withdrawal is proportionate in the circumstances of the case; (2) any special circumstances relevant to the withdrawal of travel arrangements which are known to the local authority (or of which the authority ought to be aware) including in particular (a) the learner's age; (b) any special educational needs he may have; (c) any disability he may have; (d) whether he would lose an opportunity to take a public examination; and (e) whether suitable alternative travel arrangements can reasonably be made by his parent: Learner Travel (Wales) Measure 2008 s 14(11). For the meaning of 'disability' see PARA 534B.3.

15 Learner Travel (Wales) Measure 2008 s 14(8). A notice under s 14(6) or (8) must be in writing and specify the period for which travel arrangements are to be withdrawn and the authority's reasons for withdrawal of the arrangements: Learner Travel (Wales) Measure 2008 s 14(12).

16 Learner Travel (Wales) Measure 2008 s 14(9).

17 Learner Travel (Wales) Measure 2008 s 14(10).

18 See Learner Travel (Wales) Measure 2008 s 14(14), (15). For the meaning of 'regulations' see PARA 534B.1.

## **5. Prohibition of discrimination between learners; promotion of access to education through medium of Welsh language; promotion of sustainable modes of travel etc**

Learner travel arrangements<sup>1</sup> must not favour certain types of education<sup>2</sup> and training<sup>3</sup>. Local authorities<sup>4</sup> and the Welsh Ministers must promote access to education and training through the medium of the Welsh language when exercising functions<sup>5</sup> in relation to learner travel<sup>6</sup>. Local authorities and the Welsh Ministers must also promote the use of sustainable modes of travel when exercising such functions<sup>7</sup>. Local authorities and governing bodies of maintained schools and further education institutions must have regard to guidance and directions given from time to time by the Welsh Ministers when exercising such functions<sup>8</sup>.

Regulations<sup>9</sup> may require a local authority to publish information about assessments of learner travel needs for its area<sup>10</sup>, about the arrangements made for learner travel, and about the travel behaviour code<sup>11</sup>. Provision is also made for (1) co-operation between local authorities, governing bodies and head teachers in the exercise of local authorities' learner travel functions<sup>12</sup>; (2) the reimbursement of a local authority's costs of making travel arrangements for children looked after by another local authority<sup>13</sup>; and (3) the determination of a person's ordinary residence in particular circumstances<sup>14</sup>.

1    le arrangements made under Learner Travel (Wales) Measure 2008 ss 3, 4 or 6 (PARAS 534B.2, 534B.3).

2    For the meaning of 'education' see PARA 534B.1.

3    See Learner Travel (Wales) Measure 2008 s 9.

4    For the meaning of 'local authority' see PARA 534B.1.

5    le functions under Learner Travel (Wales) Measure 2008.

6    Learner Travel (Wales) Measure 2008 s 10.

7    Learner Travel (Wales) Measure 2008 s 11(1). 'Sustainable modes of travel' are modes of travel which the local authority or the Welsh Ministers consider may improve either or both of the following: (1) the physical well-being of those who use them; and (2) the environmental well-being of (a) the whole or part of the local authority's area, in the case of an authority; or (b) the whole or part of Wales, in the case of the Welsh Ministers: Learner Travel (Wales) Measure 2008 s 11(2).

8    See Learner Travel (Wales) Measure 2008 s 15.

9 For the meaning of 'regulations' see PARA 534B.1.

10 As to assessments of learner travel needs see PARA 534B.1.

11 See Learner Travel (Wales) Measure 2008 s 16. As to the travel behaviour code see PARA 534B.4. In exercise of the powers so conferred, the Welsh Ministers have made Learner Travel Information (Wales) Regulations 2009, SI 2009/569 (amended by SI 2010/192).

12 See Learner Travel (Wales) Measure 2008 s 17.

13 See Learner Travel (Wales) Measure 2008 s 18. For the meaning of 'looked after by a local authority' see PARA 534B.1.

14 See Learner Travel (Wales) Measure 2008 s 19.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(6) REGISTRATION AND SCHOOL ATTENDANCE/(vi) Transport Arrangements to Facilitate Attendance/535. Provision of transport etc for persons of sixth form age.

### **535. Provision of transport etc for persons of sixth form age.**

A local education authority<sup>1</sup> must prepare for each academic year<sup>2</sup> a transport policy statement complying with the statutory requirements of the provisions below<sup>3</sup>.

The statement must specify the arrangements for the provision of transport or otherwise that the authority considers it necessary to make for facilitating the attendance of persons of sixth form age<sup>4</sup> receiving education or training: (1) at schools<sup>5</sup>; (2) at any institution maintained or assisted by the authority which provides further education<sup>6</sup> or higher education<sup>7</sup>, or both<sup>8</sup>; (3) at any institution within the further education sector<sup>9</sup>; or (4) at any establishment not falling within head (2) or head (3) above which is supported by the Learning and Skills Council for England<sup>10</sup> or the National Council for Education and Training for Wales<sup>11</sup>. The statement must specify the arrangements that the authority considers it necessary to make for the provision of financial assistance in respect of the reasonable travelling expenses of persons of sixth form age receiving education or training at any such establishment as is mentioned in heads (1) to (4) above<sup>12</sup>. The statement must specify the arrangements proposed to be made by the governing bodies<sup>13</sup> of:

- 1020 (a) schools maintained by the authority at which education suitable to the requirements of persons over compulsory school age is provided<sup>14</sup>; and
- 1021 (b) institutions within the further education sector in the authority's area<sup>15</sup>,

for the provision of transport for facilitating the attendance of persons of sixth form age receiving education or training at the schools and institutions and for the provision of financial assistance in respect of the travelling expenses of such persons<sup>16</sup>. Those governing bodies must co-operate in giving the local education authority any information and other assistance that is reasonably required by the authority for the performance of its functions<sup>17</sup>. The statement must specify any travel concessions<sup>18</sup> which are to be provided under any scheme<sup>19</sup> to persons of sixth form age receiving education at any establishment in the authority's area as is mentioned in heads (1) to (4) above<sup>20</sup>.

The authority must publish the statement, in a manner which it considers appropriate, on or before 31 May in the year in which the academic year in question begins<sup>21</sup>; and it must make, and secure that effect is given to, any arrangements specified<sup>22</sup>. Nothing in these provisions<sup>23</sup> prevents a local education authority from making, at any time in an academic year, arrangements which are not specified in the transport policy statement published by the authority for that year<sup>24</sup>, but which it has come to consider necessary for the purposes mentioned above<sup>25</sup>. The Secretary of State may, if he considers it expedient to do so, direct a local education authority to make for any academic year:

- 1022 (i) arrangements for the provision of transport or otherwise for facilitating the attendance of persons of sixth form age receiving education or training at establishments as are mentioned in heads (1) to (4) above<sup>26</sup>; or
- 1023 (ii) arrangements for providing financial assistance in respect of the reasonable travelling expenses of such persons<sup>27</sup>,

which have not been specified in the transport policy statement published by the authority for that academic year<sup>28</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the purposes of the Education Act 1996 ss 509AA-509AB (as added), 'academic year' means any period commencing with 1 August and ending with the next 31 July: s 509AC(5) (s 509AC added by the Education Act 2002 s 199, Sch 19 paras 1, 5). The Secretary of State may by order amend the definition of 'academic year' in the Education Act 1996 s 509AC(5) (as added): s 509AC(6) (as so added). At the date at which this volume states the law, no such order had been made. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Ibid s 509AA(1) (s 509AA added by the Education Act 2002 Sch 19 paras 1, 3). The statutory requirements referred to in the text are those contained in the Education Act 1996 s 509AA (as added) (see the text and notes 4-28 infra).

4 For the purposes of ibid ss 509AA-509AB (as added), a person receiving education or training at an establishment is of 'sixth form age' if he is over compulsory school age but: (1) is under the age of 19; or (2) has begun a particular course of education or training at the establishment before attaining the age of 19 and continues to attend that course: s 509AC(1) (as added: see note 2 supra). 'Establishment' means an establishment of any kind, including a school or institution: s 509AC(5) (as so added). For the meaning of 'school' see PARA 81 ante. As to the meaning of 'compulsory school age' see PARA 15 ante.

5 Ibid s 509AA(2)(a) (as added: see note 3 supra).

6 For the meaning of 'further education' see PARA 18 ante.

7 For the meaning of 'higher education' see PARA 19 ante.

8 Education Act 1996 s 509AA(2)(b) (as added: see note 3 supra).

9 Ibid s 509AA(2)(c) (as added: see note 3 supra). As to references to institutions within the further education sector see PARA 579 post.

10 References in ibid s 509AA (as added) to an establishment supported by the Learning and Skills Council for England are references to any establishment at which education or training is provided by a person to whom that Council secures the provision of financial resources in any of the ways mentioned in the Learning and Skills Act 2000 s 5(2) (see PARA 1092 post): Education Act 1996 s 509AC(2) (as added: see note 2 supra). As to the Learning and Skills Council for England see PARA 1072 et seq.

11 Ibid s 509AA(2)(d) (as added: see note 3 supra). References in s 509AA (as added) to an establishment supported by the National Council for Education and Training for Wales are references to any establishment at which education or training is provided by a person to whom that Council secures the provision of financial resources in any of the ways mentioned in the Learning and Skills Act 2000 s 34(2) (see PARA 1132 post): Education Act 1996 s 509AC(3) (as added: see note 2 supra). As to the National Council for Education and Training for Wales see PARA 1113 et seq.

12 Ibid s 509AA(3) (as added: see note 3 supra).

13 For the meaning of 'governing body', in relation to an institution within the further education sector, see PARA 584 note 5 post; definition applied by ibid s 509AC(5) (as added: see note 2 supra).

14 Ibid s 509AA(4)(a) (as added: see note 3 supra).

15 Ibid s 509AA(4)(b) (as added: see note 3 supra).

16 Ibid s 509AA(4) (as added: see note 3 supra).

17 Ibid s 509AA(5) (as added: see note 3 supra). The functions referred to in the text are those of the authority under ss 509AA-509AB (as added) (see PARA 536 post).

18 Ie within the meaning of the Transport Act 1985 Pt V (ss 88-112) (as amended): see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARAS 1277-1288.

19 Ie established under ibid s 93 (as amended): see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1280.

20 Education Act 1996 s 509AA(6) (as added: see note 3 supra).

21 Ibid s 509AA(7)(a) (as added: see note 3 supra). The Secretary of State may by order amend s 509AA(7) (a) (as added) by substituting a different date for 31 May: s 509AA(10) (as so added).

22 Ibid s 509AA(7)(b) (as added: see note 3 supra). The text refers to any arrangements specified under s 509AA(2) (as added) (see the text and notes 4-11 supra) and s 509AA(3) (as added) (see the text and note 12 supra).

23 Ie ibid s 509AA (as added).

24 Ibid s 509AA(8)(a) (as added: see note 3 supra).

25 Ibid s 509AA(8)(b) (as added: see note 3 supra). The purposes referred to in the text are those mentioned in s 509AA(2) (as added) (see the text and notes 4-11 supra) and s 509AA(3) (as added) (see the text and note 12 supra).

26 Ibid s 509AA(9)(a) (as added: see note 3 supra).

27 Ibid s 509AA(9)(b) (as added: see note 3 supra).

28 Ibid s 509AA(9) (as added: see note 3 supra).

## UPDATE

### 535 Provision of transport etc for persons of sixth form age

TEXT AND NOTES--These provisions now apply to local education authorities in England only: Education Act 1996 s 509AA(1) (amended by Learner Travel (Wales) Measure 2008 Sch 1 para 4(4)(b)).

NOTE 2--Education Act 1996 Act s 509AC(6) amended: Learner Travel (Wales) Measure 2008 Sch 1 para 4(2)(c), Sch 2.

TEXT AND NOTE 11--References to the National Council for Education and Training for Wales omitted: Education Act 1996 s 509AA(2)(d) (amended by Learner Travel (Wales) Measure 2008 Sch 1 para 4(2)(b), Sch 2). Education Act 1996 s 509AC(3) repealed: Learner Travel (Wales) Measure 2008 Sch 1 para 4(4)(a), Sch 2.

NOTE 21--Education Act 1996 s 509AA(10) amended: Learner Travel (Wales) Measure 2008 Sch 1 para 4(2)(e), Sch 2; Apprenticeships, Skills, Children and Learning Act 2009 s 55(2).

TEXT AND NOTES 26-28--Education Act 1996 s 509AA(9) amended: Learner Travel (Wales) Measure 2008 Sch 1 para 4(2)(c). Section 509AA(9) is subject to Education Act 1996 s 509AE (see PARA 534A.6): Education Act 1996 s 509AA(11) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 56(3)).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(6) REGISTRATION AND SCHOOL ATTENDANCE/(vi) Transport Arrangements to Facilitate Attendance/536. Provision of transport etc for disabled persons and persons with learning difficulties of sixth form age.

**536. Provision of transport etc for disabled persons and persons with learning difficulties of sixth form age.**

A statement prepared by a local education authority<sup>1</sup> which specifies arrangements for the provision of transport for persons of sixth form age<sup>2</sup> must state to what extent those arrangements<sup>3</sup> include arrangements for facilitating the attendance at the specified establishments<sup>4</sup> of disabled persons<sup>5</sup> and persons with learning difficulties<sup>6</sup>. Such a statement<sup>7</sup> must: (1) specify arrangements for persons receiving full-time education or training at establishments other than schools<sup>8</sup> maintained by the local education authority<sup>9</sup> which are no less favourable than the arrangements specified for pupils of the same age attending such schools<sup>10</sup>; and (2) specify arrangements for persons with learning difficulties receiving education or training at establishments other than schools maintained by the authority which are no less favourable than the arrangements specified for pupils of the same age with learning difficulties attending such schools<sup>11</sup>. In considering what arrangements it is necessary to make<sup>12</sup> the local education authority must have regard, amongst other things, to: (a) the needs of those for whom it would not be reasonably practicable to attend a particular establishment to receive education or training if no arrangements were made<sup>13</sup>; (b) the need to secure that persons in its area<sup>14</sup> have reasonable opportunities to choose between different establishments at which education or training is provided<sup>15</sup>; (c) the distance from the homes of persons of sixth form age<sup>16</sup> in its area of specified establishments<sup>17</sup> at which education or training suitable to their needs is provided<sup>18</sup>; and (d) the cost of transport to the establishments in question and of any alternative means of facilitating the attendance of persons receiving education or training there<sup>19</sup>. In considering whether or not it is necessary to make arrangements for those purposes in relation to a particular person, a local education authority must have regard, amongst other things, to: (i) the nature of the route, or alternative routes, which he could reasonably be expected to take<sup>20</sup>; and (ii) any wish of his parent for him to be provided with education or training at a school, institution or other establishment in which the religious education provided is that of the religion or denomination to which his parent adheres<sup>21</sup>.

In preparing a statement which specifies arrangements for the provision of transport for persons of sixth form age<sup>22</sup>, a local education authority must have regard to any guidance issued<sup>23</sup>. In preparing such a statement, a local education authority must also consult: (A) any other local education authority that it considers it appropriate to consult<sup>24</sup>; (B) the governing bodies<sup>25</sup>; (C) the Learning and Skills Council for England<sup>26</sup> in the case of a local education authority in England, or the National Council for Education and Training for Wales<sup>27</sup> in the case of a local education authority in Wales<sup>28</sup>; and (D) any other person specified for the purposes of these provisions<sup>29</sup>. In preparing such a statement, a local education authority must also consult where it is the local education authority for a district in a metropolitan county<sup>30</sup>, the passenger transport authority<sup>31</sup> for that county<sup>32</sup>, and where it is the local education authority for a London borough<sup>33</sup> or the City of London<sup>34</sup>, Transport for London<sup>35</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie a statement prepared under the Education Act 1996 s 509AA (as added) (see PARA 535 ante).

3 Ie arrangements specified in accordance with ibid s 509AA(2) (as added) (see PARA 535 ante).



- 4   le such establishments as are mentioned in *ibid* s 509AA(2) (as added) (see *PARA 535 ante*).
- 5   For the purposes of *ibid* s 509AB (as added), 'disabled person' has the same meaning as in the Disability Discrimination Act 1995 (see *DISCRIMINATION vol 13 (2007 Reissue) PARA 511*): Education Act 1996 s 509AC(5) (s 509AC added by the Education Act 2002 s 199, Sch 19 paras 1, 5).
- 6   Education Act 1996 s 509AB(1) (s 509AB added by the Education Act 2002 Sch 19 paras 1, 4). References in the Education Act 1996 s 509AB (as added) to persons with learning difficulties are to be construed in accordance with the Learning and Skills Act 2000 s 13(5), (6) (see *PARA 1091 post*): Education Act 1996 s 509AC(4) (as added: see note 5 *supra*).
- 7   le a statement prepared under *ibid* s 509AA (as added) (see *PARA 535 ante*).
- 8   For the meaning of 'school' see *PARA 81 ante*.
- 9   For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see *PARA 94 ante*.
- 10   Education Act 1996 s 509AB(2)(a) (as added: see note 6 *supra*).
- 11   *Ibid* s 509AB(2)(b) (as added: see note 6 *supra*).
- 12   le for the purposes mentioned in *ibid* s 509AA(2) (as added) and s 509AA(3) (as added) (see *PARA 535 ante*).
- 13   *Ibid* s 509AB(3)(a) (as added: see note 6 *supra*).
- 14   As to areas of local education authorities see *PARA 20 ante*.
- 15   Education Act 1996 s 509AB(3)(b) (as added: see note 6 *supra*).
- 16   For the meaning of 'sixth form age' see *PARA 535 note 4 ante*.
- 17   le such establishments as are mentioned in the Education Act 1996 s 509AA(2) (as added) (see *PARA 535 ante*).
- 18   *Ibid* s 509AB(3)(c) (as added: see note 6 *supra*).
- 19   *Ibid* s 509AB(3)(d) (as added: see note 6 *supra*).
- 20   *Ibid* s 509AB(4)(a) (as added: see note 6 *supra*).
- 21   *Ibid* s 509AB(4)(b) (as added: see note 6 *supra*). See *PARA 535 note 22 ante*.
- 22   le under *ibid* s 509AA (as added) (see *PARA 535 ante*).
- 23   *Ibid* s 509AB(5) (as added: see note 6 *supra*). The guidance referred to in the text is ministerial guidance issued under s 509AB (as added).
- 24   *Ibid* s 509AB(6)(a) (as added: see note 6 *supra*).
- 25   *Ibid* s 509AB(6)(b) (as added: see note 6 *supra*). The text refers to the governing bodies mentioned in s 509AA(4) (as added) (see *PARA 535 ante*).
- 26   As to the Learning and Skills Council for England see *PARA 1072 et seq post*.
- 27   As to the National Council for Education and Training for Wales see *PARA 1113 et seq post*.
- 28   Education Act 1996 s 509AB(6)(c) (as added: see note 6 *supra*).
- 29   *Ibid* s 509AB(6)(d) (as added: see note 6 *supra*).
- 30   As to metropolitan counties see *LOCAL GOVERNMENT vol 69 (2009) PARA 24*.
- 31   As to passenger transport authorities see *ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 247 et seq*.
- 32   Education Act 1996 s 509AB(7)(a) (as added: see note 6 *supra*).

33 As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq.

34 As to the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31.

35 Education Act 1996 s 509AB(7)(b) (as added: see note 6 supra). As to Transport for London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 269 et seq.

## UPDATE

### **536 Provision of transport etc for disabled persons and persons with learning difficulties of sixth form age**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 12-19--In considering what arrangements it is necessary to make, the local education authority must also have regard to what they are required to do in respect of education and training for persons over compulsory school age in England under the 1996 Act s 15ZA(1) (see PARA 27) in relation to persons of sixth form age: Education Act 1996 s 509AB(3)(ba) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 53).

TEXT AND NOTE 18--Education Act 1996 s 509AB(3)(c) amended: Education and Skills Act 2008 s 83.

TEXT AND NOTE 19--In considering whether or not it is necessary to make arrangements for the purposes mentioned in the 1996 Act s 509AA(2) and (3) in relation to a particular person, a local education authority in England must have regard, amongst other things, to the nature of the route, or alternative routes, which he could reasonably be expected to take: s 509AB(3A) (added by the Education and Inspections Act 2006 Sch 10 para 5(a)).

TEXT AND NOTES 20, 21--Education Act 1996 s 509AB(4) repealed: Learner Travel (Wales) Measure 2008 Sch 1 para 4(3)(a), Sch 2.

TEXT AND NOTE 23--The guidance referred to is guidance issued under the 1996 Act s 509AB by the Learning and Skills Council for England: s 509AB(5) (amended by Learner Travel (Wales) Measure 2008 Sch 1 para 4(3)(b)). Any such guidance issued by the Learning and Skills Council for England must be published in such manner as the Council thinks fits: 1996 Act s 509AB(8) (added by the Education and Inspections Act 2006 s 83(2)(c)).

TEXT AND NOTES 24-29--In preparing a statement, the local education authority must also consult persons in the local education authority's area who will be of sixth form age when the statement has effect and their parents: Education Act 1996 s 509AB(6)(ca) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 54).

TEXT AND NOTES 27, 28--Reference to the National Council for Education and Training for Wales and a local education authority in Wales omitted: 1996 Act s 509AB(6)(c) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238; Learner Travel (Wales) Measure 2008 Sch 1 para 4(3)(c)(i), Sch 2).

TEXT AND NOTE 29--1996 Act s 509AB(6)(d) amended: Education and Inspections Act 2006 s 83(2)(b); Learner Travel (Wales) Measure 2008 Sch 1 para 4(3)(c)(ii), Sch 2.

TEXT AND NOTES 30-35--Reference to a passenger transport authority is now to an Integrated Transport Authority: Education Act 1996 s 509AB(7) (amended by the Local

Transport Act 2008 Sch 4 para 60). In preparing and publishing such a statement, a local education authority must have regard (among other things) to the need to include in the statement sufficient information about the matters that the statement must specify, and publish the statement in time to enable persons who will be of sixth form age when the statement has effect and their parents to take reasonable account of those matters when choosing between different establishments at which education or training is provided: Education Act 1996 s 509AB(7A) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 55(1)).

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### **537. Travel arrangements for children receiving nursery education otherwise than at school.**

A local education authority<sup>1</sup> may provide a child<sup>2</sup> with assistance as to travel arrangements if it is satisfied that, without such assistance, he would be prevented from attending at any premises<sup>3</sup> which are not a school<sup>4</sup> or part of a school, but at which relevant nursery education<sup>5</sup> is provided, for the purpose of receiving such education there<sup>6</sup>. The assistance which may so be provided for a child consists of either making arrangements, whether for the provision of transport or otherwise, for the purpose of facilitating the child's attendance at the premises concerned<sup>7</sup>, or paying the whole or any part of his reasonable travel expenses<sup>8</sup>. When considering whether to provide a child with such assistance in connection with his attendance at any premises, a local education authority may have regard, among other things, to whether it would be reasonable to expect alternative arrangements to be made for him to receive relevant nursery education at any other premises, whether nearer to his home or otherwise<sup>9</sup>. Where the assistance to be provided for a child consists of making arrangements for the provision of transport, the authority may, if it considers it appropriate to do so, determine that the assistance must not be so provided unless the child's parent<sup>10</sup>, or the person providing the relevant nursery education concerned, agrees to make to the authority such payments in respect of the provision of the transport, not exceeding the cost to the authority of its provision, as it may determine<sup>11</sup>.

Regulations<sup>12</sup> may require a local education authority to publish, at such times and in such manner as may be prescribed<sup>13</sup>, such information as may be prescribed with respect to the authority's policy and arrangements relating to the making of travel arrangements for children receiving nursery education otherwise than at school<sup>14</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'child' see PARA 16 note 2 ante.

3 As to the meaning of 'premises' see PARA 1352 note 3 post.

4 For the meaning of 'school' see PARA 81 ante.

5 For these purposes, 'relevant nursery education' means nursery education which is provided by: (1) a local education authority; or (2) by any other person: (a) who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of the School Standards and Framework Act 1998 s 120(2)(a) (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 88 ante); or (b) who is in receipt of grants under the Nursery Education and Grant-Maintained Schools Act 1996 s 1 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 91 ante): Education Act 1996 s 509A(5) (s 509A added by the School Standards and Framework Act 1998 s 124). Head (2)(b) supra is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

6 Education Act 1996 s 509A(1) (as added: see note 5 supra).

Any function of a local education authority in England which is conferred by or under s 509A (as added and amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the

local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (pp). For the meaning of 'England' see PARA 52 note 11 ante.

7 Education Act 1996 s 509A(2)(a) (as added: see note 5 supra).

8 Ibid s 509A(2)(b) (as added: see note 5 supra).

9 Ibid s 509A(3) (as added: see note 5 supra).

10 As to the meaning of 'parent' see PARA 510 note 1 ante.

11 Education Act 1996 s 509A(4) (as added: see note 5 supra).

12 'Regulations' means regulations made by the Secretary of State: *ibid* s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under s 509A (as added).

13 'Prescribed' means prescribed by regulations: *ibid* s 579(1). See note 12 supra.

14 Ibid s 509A(4A) (s 509A as added (see note 5 supra); s 509A(4A) added by the Education Act 2002 s 199, Sch 19 paras 1, 6)).

## UPDATE

### **537 Travel arrangements for children receiving nursery education otherwise than at school**

TEXT AND NOTES--1996 Act s 509A further amended: Childcare Act 2006 Sch 2 para 23 (in force in relation to England: SI 2008/2261); Learner Travel (Wales) Measure 2008 Sch 1 para 4(5), Sch 2 (applying s 509A to England only).

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## **(7) WELFARE OF PUPILS**

### **(i) Clothing and Financial Support for Participation in Education at School**

#### **538. Provision of clothing.**

A local education authority<sup>1</sup> may provide clothing<sup>2</sup> for any pupil<sup>3</sup> who is a boarder<sup>4</sup> at an educational institution maintained by the authority<sup>5</sup>, any pupil at a nursery school<sup>6</sup> maintained by the authority<sup>7</sup>, and any pupil in a nursery class at a school maintained by the authority<sup>8</sup>. It may also provide clothing for any pupil for whom it is providing board and lodging elsewhere than at an educational institution maintained by it<sup>9</sup>, and for whom special educational provision<sup>10</sup> is made in pursuance of arrangements made by it<sup>11</sup>. In addition, where it appears to a local education authority that a pupil at a school maintained by it, or at a special school<sup>12</sup> whether maintained by it or not, is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education provided at the school<sup>13</sup>, the authority may provide him with such clothing as in its opinion is necessary for the purpose of ensuring that he is sufficiently and suitably clad while he remains a pupil at the school<sup>14</sup>.

A local education authority may provide:

- 1024 (1) for pupils at a school maintained by it, or at an institution maintained by it which provides further education<sup>15</sup> or higher education<sup>16</sup>, or both<sup>17</sup>;
- 1025 (2) for persons who have not attained the age of 19 and who are receiving education at an institution within the further education sector<sup>18</sup>; and
- 1026 (3) for persons who make use of facilities for physical training made available<sup>19</sup> for them by the authority<sup>20</sup>,

such articles of clothing as the authority may determine suitable for the physical training provided at that school or institution or under those facilities<sup>21</sup>.

A local education authority may with the consent of the proprietor<sup>22</sup> of a school not maintained by the authority, other than a special school<sup>23</sup>, and on such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor<sup>24</sup>, make arrangements, in the case of any pupil at the school who is unable by reason of the inadequacy or unsuitability of his clothing to take full advantage of the education provided at the school, for securing for the pupil the provision of such clothing as is necessary for the purpose of ensuring that he is sufficiently and suitably clad while he remains a pupil at the school<sup>25</sup>. Any such arrangements must be such as to secure, so far as is practicable, that the expense incurred by the authority in connection with the provision of any article under the arrangements does not exceed that which would have been incurred by it in the provision of that article if the pupil had been a pupil at a school maintained by it<sup>26</sup>.

Provision of clothing<sup>27</sup> may be made in such a way as to confer either a right of property in the clothing or a right of user only (at the option of the providing authority), except in any circumstances for which the adoption of one or other of those ways of making provision is

prescribed<sup>28</sup>. Where a local education authority has so provided a person with clothing, then, in such circumstances as may be prescribed:

- 1027 (a) the authority must require his parent<sup>29</sup> to pay to it in respect of its provision such sum, if any, as in its opinion he is able to pay without financial hardship, not exceeding the cost to the authority of its provision<sup>30</sup>;
- 1028 (b) the authority may require his parent to pay to it in respect of its provision such sum as is mentioned in head (a) above or any lesser sum<sup>31</sup>; or
- 1029 (c) his parent is not to be required to pay any sum in respect of its provision<sup>32</sup>.

Any sum which a parent is duly required to pay by virtue of head (a) or head (b) above may be recovered summarily as a civil debt<sup>33</sup>.

1 As to local education authorities see PARA 20 ante.

2 For these purposes, 'clothing' includes footwear: Education Act 1996 s 579(1).

3 For the meaning of 'pupil' see PARA 16 note 4 ante.

4 As to the meaning of 'boarder' see PARA 26 note 16 ante.

5 Education Act 1996 s 510(1)(a) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 134(a), Sch 31).

6 As to the meaning of 'nursery school' see PARA 81 ante.

7 Education Act 1996 s 510(1)(b).

8 Ibid s 510(1)(c) (amended by the School Standards and Framework Act 1998 Sch 30 para 134(a), Sch 31). For the meaning of 'school maintained by the authority' under the School Standards and Framework Act 1998 see PARA 94 ante.

Any function of a local education authority in England which is conferred by or under the Education Act 1996 ss 510-511 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 paras (qq), (rr). For the meaning of 'England' see PARA 52 note 11 ante.

9 Education Act 1996 s 510(2)(a).

10 For the meaning of 'special educational provision' see PARA 984 post.

11 Education Act 1996 s 510(2)(b).

12 For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante. As to special schools see PARA 1027 post.

13 For the meaning of 'school' see PARA 81 ante.

14 Education Act 1996 s 510(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 134(b), Sch 31).

15 For the meaning of 'further education' see PARA 18 ante.

16 For the meaning of 'higher education' see PARA 19 ante.

17 Education Act 1996 s 510(4)(a) (amended by the School Standards and Framework Act 1998 Sch 30 para 134(c), Sch 31).

18 Education Act 1996 s 510(4)(b). As to references to institutions within the further education sector see PARA 579 post.

19 Ie under ibid s 508(2) (as amended): see PARA 556 post.

- 20 Ibid s 510(4)(c).
- 21 Ibid s 510(4).
- 22 For the meaning of 'proprietor' see PARA 60 note 7 ante.
- 23 Education Act 1996 s 510(5)(a) (amended by the School Standards and Framework Act 1998 Sch 30 para 134(d), Sch 31).
- 24 Education Act 1996 s 510(5)(b).
- 25 Ibid s 510(5).
- 26 Ibid s 510(6).
- 27 Ie under ibid s 510 (as amended): see the text and notes 1-26 supra.
- 28 Ibid s 511(1). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under s 511, but, by virtue of s 582(3), Sch 39 para 1, the Education (Provision of Clothing) Regulations 1980, SI 1980/545, have effect as if so made.
- 29 As to the meaning of 'parent' see PARA 510 note 1 ante. Where a person who has attained the age of 18 (other than a registered pupil at a school) is provided with clothing under the Education Act 1996 s 510 (as amended), any reference in s 511(2) or (3) (see the text and notes 30-33 infra) to his parent must be read as a reference to him: s 511(4). For the meaning of 'registered pupil' see PARA 512 ante.
- 30 Ibid s 511(2)(a). See note 28 supra.
- 31 Ibid s 511(2)(b).
- 32 Ibid s 511(2)(c).
- 33 Ibid s 511(3).

## **UPDATE**

### **538 Provision of clothing**

NOTES 19, 20--In relation to England, facilities for physical training are made available under the 1996 Act s 507A or 507B (see PARA 556B): s 510(4)(c) (amended by the Education and Inspections Act 2006 Sch 1 para 5).



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### **539. Payment of school expenses and the grant of scholarships.**

A local education authority<sup>1</sup>, for the purpose of enabling persons to take advantage of any educational facilities available to them, may in such circumstances as may be specified in or determined in accordance with regulations<sup>2</sup>: (1) pay such expenses of children<sup>3</sup> attending community, foundation, voluntary or special schools<sup>4</sup> as may be necessary to enable them to take part in any school activities<sup>5</sup>; and (2) grant scholarships, exhibitions, bursaries and other allowances in respect of persons over compulsory school age<sup>6</sup>. Regulations may make provision:

- 1030 (a) for requiring a local education authority to make, in relation to each financial year<sup>7</sup>, a determination relating to the extent to which it proposes to exercise its power under head (2) above in that year<sup>8</sup>; and
- 1031 (b) for authorising an authority to determine not to exercise that power in a financial year generally<sup>9</sup>, in such cases as may be prescribed<sup>10</sup>, or in such cases as may be determined by the authority<sup>11</sup>.

1 As to local education authorities see PARA 20 ante.

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 518 (as substituted) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (ww). For the meaning of 'England' see PARA 52 note 11 ante.

2 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. See further note 5 infra.

3 For the meaning of 'child' see PARA 16 note 2 ante.

4 As to community, foundation and voluntary schools see PARA 102 et seq ante. For the meaning of 'special school' see PARA 1027 post.

5 Education Act 1996 s 518(1)(a) (s 518 substituted by the School Standards and Framework Act 1998 s 129). See *R (on the application of CES (A Minor)) v Oxfordshire County Council* [2004] EWHC 133 (Admin), [2004] ELR 489. As to the circumstances in which a local education authority may pay expenses to enable a child to take part in any school activities see the Local Education Authority (Payment of School Expenses) Regulations 1999, SI 1999/1727, reg 2. Regulation 2 applies in relation to a pupil attending a pupil referral unit in England as it applies in relation to a child attending a community, foundation, voluntary or special school in England: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 12. For the meaning of 'pupil referral unit' see PARA 457 ante. See also the Scholarships and Other Benefits Regulations 1977, SI 1977/1443 (amended by SI 1979/260; SI 1979/542; SI 1989/1278; SI 1998/86; SI 1999/120; SI 1999/229; SI 1999/1727), which have effect, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1, as if made under s 518 (as substituted).

6 Ibid s 518(1)(b) (as substituted: see note 5 supra). As to the meaning of 'compulsory school age' see PARA 15 ante. As to local education authority's power to make a post compulsory education award see the Local Education Authority (Post-Compulsory Education Awards) Regulations 1999, SI 1999/229 (amended by SI 2000/2057); and the Local Education Authority (Post-Compulsory Education Awards) (Wales) Regulations 2002, SI 2002/1856.

7 For the meaning of 'financial year' see PARA 68 note 9 ante.

8 Education Act 1996 s 518(2)(a) (as substituted: see note 5 supra).

9 Ibid s 518(2)(b)(i) (as substituted: see note 5 supra).

10 Ibid s 518(2)(b)(ii) (as substituted: see note 5 supra). 'Prescribed' means prescribed by regulations: s 579(1). See the Local Education Authority (Post-Compulsory Education Awards) Regulations 1999, SI 1999/229 (amended by SI 2000/2057).

11 Education Act 1996 s 518(2)(b)(iii) (as substituted: see note 5 supra).

## **UPDATE**

### **539 Payment of school expenses and the grant of scholarships**

NOTE 5--SI 1999/1727 reg 2 also applies in relation to a pupil attending a pupil referral unit in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 12. SI 2005/2039 regs 1, 3, Sch 1 para 12 now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 24.

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#### **540. Allowances in respect of education or training.**

Regulations<sup>1</sup> may make provision authorising or requiring the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales) to pay an allowance to or in respect of any eligible person who is over compulsory school age<sup>2</sup>, in connection with his undertaking education or training of a prescribed<sup>3</sup> description<sup>4</sup>. The relevant education or training must not be higher education<sup>5</sup>. Regulations may, in particular, make provision:

- 1032 (1) for determining whether a person is an eligible person in relation to any allowance<sup>6</sup>;
- 1033 (2) prescribing information that must be supplied by or on behalf of any person before any allowance can be paid or continue to be paid to or in respect of him<sup>7</sup>;
- 1034 (3) prescribing the period by reference to which any allowance of a periodic nature is to be paid<sup>8</sup>;
- 1035 (4) prescribing the maximum allowance payable to or in respect of any person in respect of any period<sup>9</sup>;
- 1036 (5) prescribing the maximum period during which an allowance may be payable to or in respect of any person<sup>10</sup>;
- 1037 (6) where the amount of an allowance may vary to any extent according to a person's circumstances, for determining, or providing for the determination by the Secretary of State or the Assembly of, the amount required or authorised to be paid to or in respect of him<sup>11</sup>;
- 1038 (7) specifying whether any allowance in respect of any person is to be paid to him, to a parent<sup>12</sup> of his or to any other person<sup>13</sup>;
- 1039 (8) for any allowance in respect of education or training<sup>14</sup> to be made available on such terms and conditions as may be prescribed, or determined under the regulations by the Secretary of State or the Assembly, including terms and conditions requiring repayments to be made in circumstances so prescribed or determined<sup>15</sup>;
- 1040 (9) requiring the payment of an allowance to be suspended or terminated in any such circumstances<sup>16</sup>;
- 1041 (10) for appeals with respect to matters arising under the regulations, including provision for determining, or enabling the determination of, the procedure to be followed in connection with appeals<sup>17</sup>;
- 1042 (11) imposing obligations on the governing body<sup>18</sup> of any maintained school<sup>19</sup> or institution within the further education sector in relation to cases where the school or institution is providing the education or training of a prescribed description referred to above<sup>20</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 181.

2 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of *ibid* s 212(2), (3).

3 'Prescribed' means prescribed by regulations: *ibid* s 212(1). See note 1 *supra*.

4 *Ibid* s 181(1).

5 *Ibid* s 181(2). For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of s 212(2), (3).

6 *Ibid* s 181(3)(a).

7 *Ibid* s 181(3)(b).

8 *Ibid* s 181(3)(c).

9 *Ibid* s 181(3)(d).

10 *Ibid* s 181(3)(e).

11 *Ibid* s 181(3)(f).

12 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of *ibid* s 212(2), (3).

13 *Ibid* s 181(3)(g).

14 ie any allowance under *ibid* s 181.

15 *Ibid* s 181(3)(h). As to exceptions where a learning agreement has been issued see PARA 83 ante.

16 *Ibid* s 181(3)(i).

17 *Ibid* s 181(3)(j).

18 For these purposes, 'governing body': (1) means, in relation to a pupil referral unit, the local education authority who maintains the unit; and (2) in relation to an institution within the further education sector, has the meaning given by the Further and Higher Education Act 1992 s 90 (see PARA 584 note 5 post): Education Act 2002 s 181(4). As to pupil referral units see PARA 457 et seq ante. As to local education authorities see PARA 20 ante. As to further education see PARA 579 et seq post.

19 For these purposes, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a pupil referral unit: *ibid* s 181(4). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 ante.

20 *Ibid* s 181(3)(k). The text refers to the education or training of a prescribed description referred to in s 181(1): see the text and notes 1-4 *supra*.

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#### **541. Transfer or delegation of functions in respect of education or training allowances.**

If the Secretary of State<sup>1</sup> so determines, any function exercisable by him in relation to allowances paid in respect of education or training<sup>2</sup> is exercisable instead, to such extent as is specified in his determination, by the Learning and Skills Council for England<sup>3</sup> or a local education authority<sup>4</sup>. If the National Assembly for Wales<sup>5</sup> so determines, any function exercisable by the Assembly<sup>6</sup> is exercisable instead, to such extent as is specified in the Assembly's determination, by the National Council for Education and Training for Wales<sup>7</sup>, or a local education authority<sup>8</sup>. A body by whom any function is for the time being exercisable by virtue of the above provisions<sup>9</sup> must comply with any directions given by the Secretary of State, or (as the case may be) the Assembly, as to the exercise of that function<sup>10</sup>. The Secretary of State or the Assembly may make arrangements for any person or body specified in the arrangements to exercise on his or its behalf, to such extent as is so specified, any function exercisable by him or the Assembly in relation to allowances paid in respect of education or training<sup>11</sup>, including any such function in relation to appeals<sup>12</sup>.

The Secretary of State or the Assembly may make provision for enabling appeals: (1) to be made with respect to such matters arising out of the exercise<sup>13</sup> by any person or body of any delegated function of the Secretary of State or the Assembly as he or it may determine<sup>14</sup>; and (2) to be so made to a person or body appointed for the purpose by the Secretary of State or the Assembly<sup>15</sup>. The Secretary of State or the Assembly may pay to any body or person by whom any function of his, or as the case may be of the Assembly, is exercisable<sup>16</sup>: (a) such amounts as the Secretary of State or the Assembly considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that body or person in paying allowances in respect of education or training<sup>17</sup>, or by way of administrative expenses<sup>18</sup>, in, or in connection with, the exercise of that function<sup>19</sup>; (b) in a case where the function is exercisable on the Secretary of State's or the Assembly's behalf, to such extent as is specified<sup>20</sup>, such remuneration as he or it may determine<sup>21</sup>. Any payment under head (a) above may be made subject to such terms and conditions as the Secretary of State or the Assembly may determine<sup>22</sup>. Any such conditions may in particular require the provision of returns or other information before any such payment is made<sup>23</sup> and relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid<sup>24</sup>. The Secretary of State or the Assembly may pay to any person or body appointed by him or it<sup>25</sup> such remuneration or administrative expenses (or both) as he or it may determine<sup>26</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Ie by virtue of regulations made under the Education Act 2002 s 181: see PARA 540 ante.

3 As to the Learning and Skills Council for England see PARA 1072 et seq post.

4 Education Act 2002 s 183(1). As to local education authorities see PARA 20 ante.

Where any function is so exercisable by a local education authority, the function must be taken to be a function of that authority: (1) for the purposes of the Deregulation and Contracting Out Act 1994 s 70 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 407); (2) for the purposes of the Local Government Act 2000 Pt II (ss 10-48) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 303 et seq); and (3) subject to the provisions of the Local Government Act 2000 s 13 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 324-326), for the purposes of the

Local Government Act 1972 s 101 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370): Education Act 2002 s 183(4), (5).

5 As to the National Assembly for Wales see PARA 53 ante.

6 le by virtue of regulations made under the Education Act 2002 s 181: see PARA 540 ante.

7 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

8 Education Act 2002 s 183(2). See further note 4 supra.

9 le by virtue of ibid s 183(1) or (2): see the text and notes 1-7 supra.

10 Ibid s 183(3).

11 le by virtue of regulations made under ibid s 181: see PARA 540 ante.

12 Ibid s 184(1). Any arrangements made under s 184(1) do not prevent the Secretary of State, or as the case may be the National Assembly for Wales, from exercising the function in question himself or itself: s 184(2).

13 le by virtue of ibid s 183(1) or (2) (see the text and notes 1-7 supra) or s 184(1) (see the text and notes 10-11 supra). In relation to any function which, by virtue of s 183(1) or (2) or s 184(1) is exercisable to a specified extent, references in s 183(3) (see the text and notes 8-9 supra), s 183(4) (see note 4 supra) and s 185 to the exercise of that function are accordingly to its exercise to that extent: s 185(5).

14 Ibid s 185(1)(a).

15 Ibid s 185(1)(b).

16 le by virtue of ibid s 183(1) or (2) (see the text and notes 1-7 supra) or s 184(1) (see the text and notes 10-11 supra).

17 Ibid s 185(2)(a)(i). The text refers to the paying of allowances under s 181 (see PARA 540 ante).

18 Ibid s 185(2)(a)(ii).

19 Ibid s 185(2)(a).

20 le by virtue of ibid s 184(1) (see PARA 540 ante).

21 Ibid s 185(2).

22 Ibid s 185(3).

23 Ibid s 185(3)(a).

24 Ibid s 185(3)(b).

25 le under ibid s 185(1): see the text and notes 12-14 supra.

26 Ibid s 185(4).

## UPDATE

### **541 Transfer or delegation of functions in respect of education or training allowances**

TEXT AND NOTE 7--Reference to National Council for Education and Training for Wales omitted: 2002 Act s 183(2) (amended by SI 2005/3238).

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## (ii) School Meals

### 542. Provision of meals etc at schools maintained by local education authorities.

A local education authority<sup>1</sup> may provide registered pupils<sup>2</sup> at any school<sup>3</sup> maintained by it<sup>4</sup>, and other persons who receive education at such a school<sup>5</sup>, with milk, meals and other refreshments<sup>6</sup>, either on the school premises<sup>7</sup> or at any place other than the school premises where education is being provided<sup>8</sup>. A local education authority must exercise this power<sup>9</sup> in order to provide school lunches<sup>10</sup> for registered pupils at any school maintained by the authority<sup>11</sup> if: (1) any prescribed<sup>12</sup> requirements are met<sup>13</sup>; (2) a request for the provision of school lunches has been made by or on behalf of that person to the authority<sup>14</sup>; and (3) either that person is eligible<sup>15</sup> for free lunches<sup>16</sup> or it would not be unreasonable for the authority to provide the lunches<sup>17</sup>. Subject to the duty that lunches provided by a local education authority must meet nutritional standards<sup>18</sup>, any school lunches so provided by an authority<sup>19</sup> may take such form as the authority thinks fit<sup>20</sup>.

A local education authority must<sup>21</sup> charge for anything so provided<sup>22</sup> by it<sup>23</sup>, and charge every pupil the same price for the same quantity of the same item<sup>24</sup>. However, in relation to a person:

1043 (a) whose parent<sup>25</sup> is in receipt of income support<sup>26</sup>, an income-based jobseeker's allowance (payable under the Jobseekers Act 1995)<sup>27</sup>, or support provided under Part VI of the Immigration and Asylum Act 1999<sup>28</sup>, or any other benefit or allowance, or is entitled to any tax credit under the Tax Credits Act 2002<sup>29</sup> or element of such a tax credit, prescribed<sup>30</sup> for the purpose, in such circumstances as may be so prescribed<sup>31</sup>; or

1044 (b) who is himself in receipt of income support<sup>32</sup> or an income-based jobseeker's allowance<sup>33</sup> or any other benefit or allowance, or entitled to any tax credit under the Tax Credits Act 2002 or element of such a tax credit, prescribed for the purpose, in such circumstances as may be so prescribed<sup>34</sup>,

and where a request that the school lunches<sup>35</sup> or the milk (as the case may be) be provided free of charge has been made by him or on his behalf to the authority<sup>36</sup>, the authority must provide the lunch<sup>37</sup> or the milk<sup>38</sup> (as the case may be) for the person, and provide it free of charge<sup>39</sup>.

A local education authority must provide at any school maintained by it such facilities as it considers appropriate for the consumption of any meals or other refreshment brought to the school by registered pupils<sup>40</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'registered pupil' see PARA 512 ante.

3 For the meaning of 'school' see PARA 81 ante.

4 Education Act 1996 s 512(1)(a) (s 512 substituted by the Education Act 2002 s 201(1)). References, in relation to a local education authority, to a school maintained by the authority are references to a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school or a pupil referral unit maintained by the authority: Education Act 1996 s 512(6) (as so substituted). As to community, foundation or voluntary schools and community or foundation special schools see PARA 102 et seq

ante. For the meaning of 'maintained nursery school' under the School Standards and Framework Act 1998 see PARA 94 note 4 ante; and for the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante. For the meaning of 'pupil referral unit' see PARA 457 ante.

5 Education Act 1996 s 512(1)(b) (as substituted: see note 4 supra).

6 Ibid s 512(1) (as substituted: see note 4 supra). As from a day to be appointed under the Education Act 2002 s 216(4), a local education authority may also provide milk, meals and other refreshments to children who receive relevant funded nursery education: see the Education Act 1996 s 512(1)(c) (as so substituted). At the date at which this volume states the law, no such day had been appointed. 'Relevant funded nursery education', in relation to a local education authority, means education provided by a person other than the governing body of a maintained school (within the meaning of the School Standards and Framework Act 1998 s 20(7): see PARA 94 ante) or a maintained nursery school: (1) under arrangements made with that person by the authority in pursuance of the duty imposed on the authority by s 118 (duty of local education authority to secure sufficient nursery education: see PARA 86 ante); and (2) in consideration of financial assistance provided by the authority under those arrangements: see the Education Act 1996 s 512(6) (as substituted: see note 4 supra). This definition came into force, in relation to Wales, on 31 March 2003 (see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 5, Schedule Pt II) but, at the date at which this volume states the law, no day had been appointed for its commencement in relation to England. As to the governing bodies of maintained schools see PARA 203 et seq ante.

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 512 (as substituted) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (ss). For the meaning of 'England' see PARA 52 note 11 ante.

7 As to the meaning of 'premises' see PARA 1352 note 3 post.

8 Education Act 1996 s 512(2)(a) (as substituted: see note 4 supra). As from a day to be appointed under the Education Act 2002 s 216(4), where a local education authority provides milk, meals and other refreshments in a case within the Education Act 1996 s 512(1)(c) (not yet in force) (ie to children who receive relevant funded nursery education: see note 6 supra), they must be provided at any place where education is being provided: see s 512(2)(b) (as so substituted). In relation to Wales, the appointed day is 31 March 2003 (see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 5, Schedule Pt II) but, at the date at which this volume states the law, no such day had been appointed in relation to England.

9 Ie its power under the Education Act 1996 s 512(1) (as substituted): see the text and notes 1-6 supra.

10 For these purposes, 'school lunch' means:

- 33 (1) in relation to a pupil, food made available for consumption by the pupil as his midday meal on a school day; and
- 34 (2) in relation to a child receiving relevant funded nursery education (see note 6 supra) at an establishment other than a school, means food made available for consumption by the child as his midday meal on a day on which he receives that education,

whether involving a set meal or the selection of items by him or otherwise: ibid s 512(6) (as substituted: see note 4 supra).

11 Ie for any person within ibid s 512(1)(a) (as substituted): see the text and notes 1-4 supra. For the meaning of 'school maintained by the authority' under the School Standards and Framework Act 1998 see PARA 94 ante.

12 For this purpose, 'prescribed' means prescribed by order: ibid s 512(6) (as substituted: see note 4 supra). As to the making of orders generally under the Education Act 1996 see PARA 15 note 6 ante. As to the orders made under s 512(3) (as substituted) see the Education (School Lunches) (Prescribed Requirements) (England) Order 2003, SI 2003/383; and the School Lunches (Prescribed Requirement) (Wales) Order 2005, SI 2005/1208.

13 Education Act 1996 s 512(3)(a) (as substituted: see note 4 supra).

14 Ibid s 512(3)(b) (as substituted: see note 4 supra).

15 Ie eligible for free lunches within the meaning of ibid s 512ZB(2) (as added): see the text and notes 25-36 infra.

16 Ibid s 512(3)(c)(i) (as substituted: see note 4 supra).



- 17 Ibid s 512(3)(c)(ii) (as substituted: see note 4 supra).
- 18 Ie subject to the School Standards and Framework Act 1998 s 114(2) (as amended): see PARA 547 post.
- 19 Ie pursuant to the Education Act 1996 s 512(3) (as added): see the text and notes 9-17 supra.
- 20 Ibid s 512(4) (as substituted: see note 4 supra).
- 21 Ie subject to ibid s 512ZB (as added) (see the text and notes 25-39 infra): s 512ZA(3) (s 512ZA added by the Education Act 2002 s 201(1)). The Education Act 1996 s 512ZA (as added) is brought into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to Wales, the appointed day is 31 March 2003 (see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 5, Schedule Pt II) but, at the date at which this volume states the law, no such day had been appointed in relation to England.
- 22 Ie provided under the Education Act 1996 s 512(1) (as substituted) (see the text and notes 1-6 supra) or s 512(3) (as substituted) (see the text and notes 9-17 supra).
- 23 Ibid s 512ZA(1) (as added: see note 21 supra)
- 24 Ibid s 512ZA(2) (as added: see note 21 supra).
- 25 As to the meaning of 'parent' see PARA 510 note 1 ante.
- 26 Education Act 1996 s 512ZB(2)(a), (3)(a), (4)(a)(i) (s 512ZB added by the Education Act 2002 s 201(1)). As to income support see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 176 et seq.
- 27 Education Act 1996 s 512ZB(2)(a), (3)(a), (4)(a)(ii) (as added: see note 26 supra). As to income-based jobseeker's allowance see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 271-274.
- 28 Ibid s 512ZB(2)(a), (3)(a), (4)(a)(iii) (as added: see note 26 supra). The text refers to the Immigration and Asylum Act 1999 Pt VI (ss 94-127) (as amended) (support for asylum seekers: see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 246 et seq).
- 29 As to tax credits see INCOME TAXATION vol 23(1) (Reissue) PARA 934 et seq.
- 30 For the meaning of 'prescribed' see note 12 supra; definition applied by the Education Act 1996 s 512ZB(5) (as added: see note 26 supra). As to the orders made under s 512ZB(4)(a)(iv) (as added) see the Education (Free School Lunches) (Prescribed Tax Credits) (England) Order 2003, SI 2003/383; the Education (Free School Lunches) (Prescribed Tax Credits) (Wales) Order 2003, SI 2003/879; the Education (Free School Lunches) (State Pension Credit) Order 2005, SI 2005/885; and the Education (Free School Lunches) (State Pension Credit) (Wales) Order 2005, SI 2005/3110.
- 31 Education Act 1996 s 512ZB(2)(a), (3)(a), (4)(a)(iv) (as added: see note 26 supra).
- 32 Ibid s 512ZB(2)(a), (3)(a), (4)(b)(i) (as added: see note 26 supra).
- 33 Ibid s 512ZB(2)(a), (3)(a), (4)(b)(ii) (as added: see note 26 supra).
- 34 Ibid s 512ZB(2)(a), (3)(a), (4)(b)(iii) (as added: see note 26 supra). At the date at which this volume states the law, no regulations had been made under s 512ZB(4)(b)(iii) (as added).
- 35 For the meaning of 'school lunch' see note 10 supra; definition applied by ibid s 512ZB(5)
- 36 Ibid s 512ZB(2)(b), (3)(b) (as added: see note 26 supra).
- 37 Ie in accordance with ibid s 512(3) (as substituted) (see the text and notes 9-17 supra).
- 38 Ie in exercise of the authority's power under ibid s 512(1) (as substituted) (see the text and notes 1-6 supra) to provide milk to registered pupils at any school maintained by the authority.
- 39 Ibid s 512ZB(1), (3) (as added: see note 26 supra).
- 40 Ibid s 512(5) (as substituted: see note 4 supra).

## UPDATE

**542 Provision of meals etc at schools maintained by local education authorities**

NOTES 6-8--See School Milk (Wales) Regulations 2008, SI 2008/2141 (amended by SI 2009/108).

NOTE 6--Education Act 1996 s 512(1)(c) amended, definition of 'relevant funded nursery education' substituted: Childcare Act 2006 Sch 2 para 24 (in force in relation to England: SI 2008/2261).

NOTE 18--Reference to School Standards and Framework Act 1998 s 114(2) now to s 114A(4): Education Act 1996 s 512(4) (amended by Education and Inspections Act 2006 s 86(2)).

TEXT AND NOTE 21--For 'must' read 'may': 1996 Act s 512ZA(1) (amended by Education and Inspections Act 2006 s 87(1)).

TEXT AND NOTES 26-34--1996 Act s 512ZB(4) amended: Welfare Reform Act 2007 Sch 3 para 16(3).

NOTE 30--See also Education (Free School Lunches) (Working Tax Credit) (England) Order 2009, SI 2009/830; Education (Free School Lunches) (Working Tax Credit) (Wales) Order 2009, SI 2009/1673.

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### **543. Transfer of functions in respect of provision of meals to governing bodies.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make provision for imposing on the governing body<sup>3</sup> of any school<sup>4</sup> to which the order applies a duty or duties corresponding to one or more of the following duties of the local education authority<sup>5</sup>: (1) the duty to provide school lunches<sup>6</sup>; (2) the duty to provide school lunches free of charge<sup>7</sup>; and (3) the duty to provide milk free of charge<sup>8</sup>. Such an order may apply to all maintained schools<sup>9</sup>, any specified<sup>10</sup> class of such schools<sup>11</sup> or all such schools, or to any specified class of such schools maintained by specified local education authorities<sup>12</sup>. Where any duty falls to be performed by the governing body of a school by virtue of such an order: (a) the corresponding duty mentioned in heads (1) to (3) above<sup>13</sup> no longer falls to be performed by the local education authority in relation to the school<sup>14</sup>; and (b) if the duty corresponds to the one mentioned in head (2) or head (3) above, the order may provide that, notwithstanding the other provisions of the order, the function of determining whether pupils at the school are eligible for the provision of free school lunches or milk<sup>15</sup> is to be exercisable by the local education authority<sup>16</sup>, and the provision requiring the governing body to charge<sup>17</sup> does not apply to any school lunches or milk so provided by it<sup>18</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders generally under the Education Act 1996 see PARA 15 note 6 ante.

3 As to the governing bodies of maintained schools see PARA 203 et seq ante.

4 For the meaning of 'school' see PARA 81 ante.

5 Education Act 1996 s 512A(1) (s 512A added by the School Standards and Framework Act 1998 s 116). For the meaning of 'pupil' see PARA 16 note 4 ante. As to local education authorities see PARA 20 ante. As to the duties of local education authorities and orders made under the Education Act 1996 s 512A (as added) see also PARA 544 post. As to the duties imposed on governing bodies by order under s 512A (as added) see the Education (Transfer of Functions Concerning School Lunches) (Wales) Order 1999, SI 1999/610 (amended by SI 2003/1717); the Education (Transfer of Functions Concerning School Lunches) (Wales) (No 2) Order 1999, SI 1999/1779 (amended by SI 2003/1717); and the Education (Transfer of Functions Concerning School Lunches) (England) (No 2) Order 1999, SI 1999/2164 (amended by SI 2003/689).

6 Education Act 1996 s 512A(2)(a) (as added (see note 5 supra); and amended by the Education Act 2002 s 201(2)(a)(i)). The text refers to the duty to provide school lunches in accordance with the Education Act 1996 s 512(3), (4) (as substituted): see PARA 542 ante. For the meaning of 'school lunch' see PARA 542 note 10 ante; definition applied by s 512A(7) (as so added).

7 Ibid s 512A(2)(b) (as added (see note 5 supra); and amended by the Education Act 2002 s 201(2)(a)(ii)). The text refers to the duty to provide school lunches free of charge in accordance with the Education Act 1996 s 512ZB(1) (as added): see PARA 542 ante.

8 Ibid s 512A(2)(c) (as added (see note 5 supra); and amended by the Education Act 2002 s 201(2)(a)(iii)). The text refers to the duty to provide milk free of charge in accordance with the Education Act 1996 s 512ZB(3) (as added): see PARA 542 ante.

9 Ibid s 512A(3)(a) (as added: see note 5 supra). For these purposes, 'maintained school' means a maintained school as defined by the School Standards and Framework Act 1998 s 20(7) (see PARA 94 ante) or a maintained nursery school: Education Act 1996 s 512A(7) (definition substituted by the Education Act 2002 s 215(1), Sch 21 para 52). For the meaning of 'maintained nursery school' under the School Standards and Framework Act 1998 see PARA 94 note 4 ante.

10 'Specified' means specified in the order: *ibid* s 512A(7) (as added: see note 5 *supra*).

11 *Ibid* s 512A(3)(b) (as added: see note 5 *supra*).

12 *Ibid* s 512A(3)(c) (as added: see note 5 *supra*). However, an order under s 512A (as added) does not operate to impose any duty on the governing body of a school or relieve a local education authority of any duty in relation to school, at any time when a school does not have a delegated budget; and such an order may provide for s 512ZA(2) (as added) (duty to charge pupils the same price per amount etc: see *PARA 542 ante*) to have effect, in relation to any provision made at any such time by the local education authority for pupils at the school, with such modification as may be specified: s 512A(6) (as so added; and amended by the Education Act 2002 s 201(2)(b)). For the meaning of 'delegated budget' see *PARA 320 ante*; definition applied by the Education Act 1996 s 512A(7) (as so added; definition substituted by the Education Act 2002 Sch 21 para 52).

13 *Ie* the corresponding duty mentioned in the Education Act 1996 s 512A(2) (as added).

14 *Ibid* s 512A(4)(a) (as added: see note 5 *supra*).

15 *Ie* whether the pupils fall within *ibid* s 512ZB(4) (as added) (see *PARA 542 ante*).

16 *Ibid* s 512A(4)(b)(i) (s 512A as added (see note 5 *supra*); and s 512A(4)(b) substituted by the Education Act 2002 s 112).

17 *Ie* the Education Act 1996 s 533(3) (as amended): see *PARA 545 post*.

18 *Ibid* s 512A(4)(b)(ii) (s 512A as added (see note 5 *supra*); and s 512A(4)(b) as substituted (see note 16 *supra*)).

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#### **544. Provision of meals etc at schools not maintained by local education authorities.**

A local education authority<sup>1</sup> may, with the consent of the proprietor<sup>2</sup> of a school<sup>3</sup> in its area which is not maintained by it<sup>4</sup>, make arrangements for securing the provision of milk, meals and other refreshment for pupils<sup>5</sup> in attendance at the school<sup>6</sup>. Any such arrangements must be on such financial and other terms, if any, as may be determined by agreement between the authority and the proprietor of the school<sup>7</sup>, and must be such as to secure, so far as is practicable, that the expense incurred by the authority in connection with the provision of any service or item under the arrangements does not exceed the expense which would have been incurred by it in providing the service or item if the pupil had been a pupil at a school maintained by it<sup>8</sup>. The Secretary of State<sup>9</sup> may by order<sup>10</sup> provide that the power of the local education authority described above is not to apply to local education authorities generally or to any specified local education authority, either in relation to all pupils for whom provision is so made by the authority<sup>11</sup> or in relation to all such pupils who are of such ages as may be specified<sup>12</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'proprietor' see PARA 60 note 7 ante.

3 For the meaning of 'school' see PARA 81 ante.

4 For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante.

5 For the meaning of 'pupil' see PARA 16 note 4 ante.

6 Education Act 1996 s 513(1).

Any function of a local education authority in England which is conferred by or under s 513 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (tt). For the meaning of 'England' see PARA 52 note 11 ante.

7 Education Act 1996 s 513(2)(a).

8 Ibid s 513(2)(b).

9 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

10 As to the making of orders generally under the Education Act 1996 see PARA 15 note 6 ante. At the date at which this volume states the law, no order had been made under s 512A(5) (as added).

11 Ie for whom provision is made under ibid s 513: see the text to notes 1-8 supra.

12 Ibid s 512A(5) (s 512A added by the School Standards and Framework Act 1998 s 116). 'Specified' means specified in the order: Education Act 1996s 512A(7) (as so added).

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#### **545. Duties of governing bodies of maintained schools with respect to provision of school meals.**

The governing body<sup>1</sup> of any school<sup>2</sup> maintained by a local education authority<sup>3</sup> must afford the authority such facilities as it requires to enable it to perform its functions<sup>4</sup> as to the provision of milk, meals and refreshments<sup>5</sup>, and allow the authority to make such use of the premises<sup>6</sup> and equipment of the school, and such alterations to the school buildings<sup>7</sup>, as the authority considers necessary for that purpose<sup>8</sup>. This does not require the governing body of any such school to incur any expenditure<sup>9</sup>.

Where the governing body of a school which has a delegated budget<sup>10</sup> provides pupils or other persons who receive education at the school with milk, meals or other refreshment, it must charge for everything so provided<sup>11</sup>, and charge every person the same price for the same quantity of the same item<sup>12</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 For the meaning of 'school' see PARA 81 ante.

3 As to local education authorities see PARA 20 ante.

4 As to its functions under the Education Act 1996 s 512 (as substituted): see PARA 542 ante. As to the meaning of 'functions' see PARA 14 note 5 ante.

5 Ibid s 533(1)(a).

6 As to the meaning of 'premises' see PARA 1352 note 3 post.

7 For the meaning of 'school building' see PARA 1353 note 18 post.

8 Education Act 1996 s 533(1)(b).

9 Ibid s 533(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 148(a)).

10 For the meanings of 'delegated budget' and 'school having a delegated budget' see PARA 320 ante; definitions applied by the Education Act 1996 s 533(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 148(b)).

11 Education Act 1996 s 533(3)(a).

12 Ibid s 533(3)(b) (substituted by the Education Act 2002 s 215(1), Sch 21 para 54).

#### **UPDATE**

#### **545 Duties of governing bodies of maintained schools with respect to provision of school meals**

TEXT AND NOTE 11--For 'must' read 'may': 1996 Act s 533(3) (amended by the Education and Inspections Act 2006 s 87(2)(a)).

NOTE 12--1996 Act s 533(3)(b) now s 533(4) (added by the Education and Inspections Act 2006 s 87(2)(b)).



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#### **546. Supply of information regarding free school lunches etc.**

Information which is held:

1045 (1) for the purposes of functions relating to tax credits<sup>1</sup> by the Commissioners for Her Majesty's Revenue and Customs<sup>2</sup>, or by a person providing services to the Commissioners, in connection with the provision of those services<sup>3</sup>; or

1046 (2) for the purposes of functions relating to social security<sup>4</sup> by the Secretary of State<sup>5</sup>, or by a person providing services to the Secretary of State, in connection with the provision of those services<sup>6</sup>,

may be supplied to the Secretary of State, or to any person providing services to him<sup>7</sup>, or to the National Assembly for Wales<sup>8</sup>, or to any person providing services to the Assembly<sup>9</sup>, for use for the purpose of determining eligibility for free school lunches<sup>10</sup> and milk<sup>11</sup>. Information to which head (2) above applies may be supplied to a local education authority<sup>12</sup> for that purpose<sup>13</sup>; and information received under these provisions by the Secretary of State or the Assembly or a person providing services to him or it<sup>14</sup> may be supplied to another person to whom it could have been supplied<sup>15</sup>, or to a local education authority<sup>16</sup>, for use for that purpose<sup>17</sup>.

These provisions do not limit the circumstances in which information may be supplied otherwise<sup>18</sup>.

A person who discloses information which he has received by virtue of these provisions<sup>19</sup> and which relates to a particular person commits an offence unless the information is disclosed<sup>20</sup>:

1047 (a) in the case of information received by the Secretary of State or the Assembly or a person providing services to him or it<sup>21</sup>, to another person to whom it could have been supplied or to a local education authority in accordance with the above provisions<sup>22</sup>;

1048 (b) in the course of any duty that the person who discloses information has in connection with the exercise of functions relating to eligibility for free school lunches and milk<sup>23</sup>;

1049 (c) in accordance with an enactment or an order of a court<sup>24</sup>; or

1050 (d) with consent given by or on behalf of the person to whom the information relates<sup>25</sup>.

A person guilty of such an offence is liable on conviction to a penalty<sup>26</sup>. It is a defence for a person charged with such an offence to prove that he reasonably believed that his disclosure was lawful<sup>27</sup>.

1 As to tax credits see INCOME TAXATION vol 23(1) (Reissue) PARA 934 et seq.

2 Education Act 2005 s 110(1)(a). As to the Commissioners for Her Majesty's Revenue and Customs see PARA 66 note 2 ante.

3 Ibid s 110(1)(b).

4 See SOCIAL SECURITY AND PENSIONS.



- 5 Education Act 2005 s 110(2)(a). As to the Secretary of State see PARA 52 ante.
- 6 Ibid s 110(2)(b).
- 7 Ibid s 110(3)(a).
- 8 As to the National Assembly for Wales see PARA 53 ante.
- 9 Education Act 2005 ss 110(3)(b), 122(1).
- 10 For the meaning of 'school lunch' see PARA 542 note 10 ante; definition applied by ibid s 110(8).
- 11 Ibid s 110(3). For these purposes, a person is eligible for free school lunches and milk if school lunches and milk are required to be provided for him, on request, free of charge: (1) in accordance with the Education Act 1996 s 512ZB(2), (3) (as added) (see PARA 542 ante); (2) in accordance with regulations under s 342 (as substituted) (non-maintained special schools: see PARA 1028 post); or (3) in accordance with an agreement under s 482 (as substituted) (academies etc: see PARA 496 ante); Education Act 2005 s 110(7).
- 12 For this purpose, the reference to a local education authority includes references to any person exercising on behalf of such an authority functions relating to eligibility for free school lunches and milk: ibid s 110(6).
- 13 Ibid s 110(4).
- 14 Ie by virtue of ibid s 110(3) (see the text and notes 10-11 supra).
- 15 Ie under ibid s 110(3) (see the text and notes 10-11 supra).
- 16 See note 12 supra.
- 17 Education Act 2005 s 110(5).
- 18 Ibid s 110(9).
- 19 Ie by virtue of ibid s 110(3)-(5) (see the text and notes 7-17 supra).
- 20 Ibid s 111(1).
- 21 Ie received by virtue of ibid s 110(3) (see the text and notes 7-11 supra).
- 22 Ibid s 111(1)(a). The text refers to disclosure in accordance with s 110(5) (see the text and notes 14-17 supra).
- 23 Ibid s 111(1)(b). For this purpose, 'eligibility for free school lunches and milk' is to be read in accordance with s 110(7) (see note 11 supra): s 111(2).
- 24 Ibid s 111(1)(c).
- 25 Ibid s 111(1)(d).
- 26 Ibid s 111(4). The penalty on conviction on indictment is imprisonment for a term not exceeding two years, a fine or both, and on summary conviction is imprisonment for a term not exceeding 12 months, a fine not exceeding the statutory maximum or both: see s 111(4). As to the statutory maximum see PARA 66 note 26 ante. In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) (general limit on magistrates' courts power to impose imprisonment), the reference to 12 months is to be read as a reference to six months: Education Act 2005 s 111(5). At the date at which this volume states the law, no day had been appointed for the commencement of the Criminal Justice Act 2003 s 154(1).
- 27 Education Act 2005 s 111(3).

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#### **547. Nutritional standards for school lunches.**

Regulations<sup>1</sup> may prescribe<sup>2</sup> nutritional standards, or other nutritional requirements, which<sup>3</sup> are to be complied with in connection with the provision of school lunches<sup>4</sup> for registered pupils<sup>5</sup> at schools maintained by local education authorities<sup>6</sup> or other persons who are provided<sup>7</sup> with school lunches free of charge<sup>8</sup>. Such regulations may make different provision for pupils of different ages<sup>9</sup>, and authorise the Secretary of State to determine the time as from which any provisions of the regulations are to apply to a particular local education authority or school<sup>10</sup>. Where a local education authority or the governing body<sup>11</sup> provides school lunches for registered pupils at such a school or for such other persons who are provided with school lunches free of charge, it must secure that any applicable provisions of such regulations are complied with<sup>12</sup>. This applies whether the lunches are provided on school premises<sup>13</sup> or at any other place where education is being provided<sup>14</sup> and, in the case of lunches provided to registered pupils at schools maintained by local education authorities, whether they are being provided in pursuance of any statutory requirement or otherwise<sup>15</sup>.

1 For these purposes, 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante; and as to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the regulations that have been made under the School Standards and Framework Act 1998 s 114 (as amended) see the Education (Nutritional Standards for School Lunches) (England) Regulations 2000, SI 2000/1777; and the Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001, SI 2001/1784.

2 'Prescribe' means prescribe by regulations: see the School Standards and Framework Act 1998 s 142(1). See note 1 supra.

3 Ie subject to such exceptions as may be provided for by or under the regulations: see note 1 supra.

4 For these purposes, 'school lunch', in relation to a pupil, means food made available for consumption by the pupil as his midday meal on a school day, whether involving a set meal or the selection of items by him or otherwise: School Standards and Framework Act 1998 s 114(5). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8). For the meaning of 'school day' see PARA 533 note 2 ante; definition applied by virtue of s 142(8).

5 For the meaning of 'registered pupil' see PARA 512 ante.

6 School Standards and Framework Act 1998 s 114(1)(a) (renumbered by the Education Act 2002 s 201(3)(a)). For the meaning of 'school maintained by a local education authority' see PARA 94 ante. As to local education authorities see PARA 20 ante.

7 Ie in accordance with the Education Act 1996 s 512ZB (as added) (see PARA 542 ante).

8 School Standards and Framework Act 1998 s 114(1)(b) (added by the Education Act 2002 s 201(3)(a)).

9 School Standards and Framework Act 1998 s 114(4)(a).

10 Ibid s 114(4)(b).

11 As to the governing bodies of maintained schools see PARA 203 et seq ante.

12 School Standards and Framework Act 1998 s 114(2) (amended by the Education Act 2002 s 201(3)(b)).

13 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

14 Ibid s 114(3)(a).

15 Ibid s 114(3)(b) (amended by the Education Act 2002 s 201(3)(c)).

## UPDATE

### 547 Nutritional standards for school lunches

TEXT AND NOTES--Replaced.

Regulations may prescribe requirements which, subject to such exceptions as may be provided for by or under the regulations, are to be complied with in connection with (1) food or drink provided on the premises of any school maintained by a local education authority<sup>1</sup>, or (2) food or drink provided at a place other than school premises<sup>2</sup> by a local education authority or the governing body of a school<sup>3</sup> maintained by such an authority to any registered pupil at the school<sup>4</sup>. Such regulations may, in particular, (a) specify nutritional standards, or other nutritional requirements, which are to be complied with<sup>5</sup>; (b) require that drinking water is to be available, free of charge, on the premises of any school maintained by a local education authority<sup>6</sup>; (c) require that specified descriptions of food or drink are not to be provided<sup>7</sup>. Where a local education authority or the governing body of a school maintained by such an authority provides food or drink to anyone on the premises of the school, or to any registered pupil at the school at a place other than school premises, that authority or, as the case may be, that governing body must secure that any applicable provisions of the regulations are complied with<sup>8</sup>. Where (i) food or drink is provided on the premises of a school maintained by a local education authority<sup>9</sup>; (ii) the provision is by a person ('X') other than the authority or the governing body of the school<sup>10</sup>; and (iii) X uses or occupies the whole or a part of the premises in circumstances related to a use or occupation agreement<sup>11</sup> made, whether by X or any other person, with the authority or the governing body<sup>12</sup>, that authority or, as the case may be, that governing body must secure that any applicable provisions of the regulations are complied with<sup>13</sup>.

1 School Standards and Framework Act 1998 s 114A(1)(a) (s 114A substituted by Education and Inspections Act 2006 s 86(1)). Requirements prescribed by virtue of the 1998 Act s 114A(1)(a) do not apply to food or drink brought on to the premises of a school maintained by a local education authority where the food or drink is brought on to those premises by any person for his own consumption: s 114A(3).

2 A 'place other than school premises' means a place other than the premises of any school maintained by a local education authority: ibid s 114A(9).

3 References in ibid s 114A to food or drink provided by a local education authority or the governing body of a school include references to food or drink provided in pursuance of an agreement or other arrangement made by such an authority or body for the provision of food or drink: s 114A(10).

4 Ibid s 114A(1)(b). Without prejudice to the generality of s 138(7) (see PARA 87), regulations under s 114A may prescribe (1) different requirements in relation to different classes or descriptions of school as specified in the regulations; (2) different requirements in connection with food or drink provided by or to different classes or descriptions of person as specified in the regulations; (3) requirements which apply during different periods of the day as specified in the regulations: s 114A(8). As to the regulations that have been made under s 114A see the Education (Nutritional Standards and Requirements for School Food) (England) Regulations 2007, SI 2007/2359 (which revoked SI 2000/1777 and SI 2006/2381, and is amended by SI 2008/1800); and the Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001, SI 2001/1784 (which have effect as if made under the 1998 Act s 114A: see 2006 Act s 86(2)).

5 1998 Act s 114A(2)(a).

6 Ibid s 114A(2)(b).

7 Ibid s 114A(2)(c).

8 Ibid s 114A(4). This requirement applies whether the food or drink is provided in pursuance of any statutory requirement or otherwise: s 114A(5).

9 Ibid s 114A(6)(a).

10 Ibid s 114A(6)(b) .

11 A 'use or occupation agreement', in relation to the premises of a school, is an agreement or other arrangement relating to the use or occupation of the whole or any part of the premises: ibid s 114A(7).

12 Ibid s 114A(6)(c).

13 Ibid s 114A(6).

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### **(iii) Cleanliness**

#### **548. Examination of pupils for cleanliness.**

A local education authority<sup>1</sup> may by directions in writing authorise one of its medical officers<sup>2</sup> to have the persons and clothing<sup>3</sup> of pupils<sup>4</sup> in attendance at schools<sup>5</sup> maintained by it examined whenever in his opinion such examinations are necessary in the interests of cleanliness<sup>6</sup>. Such directions may be given with respect to all such schools<sup>7</sup>, or any such schools named in the directions<sup>8</sup>. Such an examination must be made by a person authorised by the authority to make such examinations, and, if the examination is of a girl, it must not be made by a man unless he is a registered medical practitioner<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'medical officer' see PARA 44 note 4 ante.

3 As to the meaning of 'clothing' see PARA 538 note 2 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 For the meaning of 'school' see PARA 81 ante.

6 Education Act 1996 s 521(1), (4)(a) (s 521(4)(a) amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 141, Sch 31).

7 Education Act 1996 s 521(2)(a).

8 Ibid s 521(2)(b).

9 Ibid s 521(3).

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#### **549. Compulsory cleansing of a pupil.**

If, on an examination of pupils<sup>1</sup> for cleanliness<sup>2</sup>, the person or clothing<sup>3</sup> of a pupil is found to be infested with vermin or in a foul condition, any officer of the local education authority<sup>4</sup> may serve a notice on the pupil's parent<sup>5</sup> requiring him to cause the pupil's person and clothing to be cleansed<sup>6</sup>. The notice must inform the parent that, unless within the period specified in the notice the pupil's person and clothing are cleansed to the satisfaction of such person as is specified in the notice, the cleansing will be carried out under arrangements made by the authority<sup>7</sup>. The period so specified must not be less than 24 hours from the service of the notice<sup>8</sup>. If, on a report being made to him by the specified person at the end of the specified period, a medical officer<sup>9</sup> of the authority is not satisfied that the pupil's person and clothing have been properly cleansed, he may by order direct that they must be cleansed under arrangements made by the authority<sup>10</sup> for cleansing pupils<sup>11</sup>. Such an order is sufficient to authorise any officer of the authority to cause the pupil's person and clothing to be cleansed in accordance with arrangements made by the authority<sup>12</sup> for cleansing pupils<sup>13</sup>, and for that purpose to convey the pupil to, and detain him at, any premises<sup>14</sup> provided in accordance with such arrangements<sup>15</sup>.

1 For the meaning of 'pupil' see PARA 16 note 4 ante.

2 Ie under the Education Act 1996 s 521 (as amended): see PARA 548 ante.

3 As to the meaning of 'clothing' see PARA 538 note 2 ante.

4 As to local education authorities see PARA 20 ante.

5 As to the meaning of 'parent' see PARA 510 note 1 ante.

6 Education Act 1996 s 522(1). As to the powers of local authorities in relation to the cleansing of verminous persons generally see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 859.

7 Ibid s 522(2).

8 Ibid s 522(3).

9 For the meaning of 'medical officer' see PARA 44 note 4 ante.

10 Ie under the Education Act 1996 s 523: see PARA 550 post.

11 Ibid s 522(4).

12 Ie under ibid s 523: see PARA 550 post.

13 Ibid s 522(5)(a).

14 As to the meaning of 'premises' see PARA 1352 note 3 post.

15 Education Act 1996 s 522(5)(b).

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### **550. Arrangements for cleansing of pupils.**

A local education authority<sup>1</sup> must make arrangements for securing that the person or clothing<sup>2</sup> of any pupil<sup>3</sup> required to be cleansed<sup>4</sup> may be cleansed, whether at the request of a parent<sup>5</sup> or in pursuance of an order<sup>6</sup>, at suitable premises<sup>7</sup>, by suitable persons and with suitable appliances<sup>8</sup>. Where the council of a district in the area of the authority is entitled to the use of any premises or appliances for cleansing the person or clothing of persons infested with vermin, the authority may require the council to permit the authority to use those premises or appliances for such purposes upon such terms as may be determined by agreement between the authority and the council<sup>9</sup>, or in default of such agreement, by the Secretary of State<sup>10</sup>.

A girl may be cleansed under such arrangements only by a registered medical practitioner or by a woman authorised for the purpose by the authority<sup>11</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'clothing' see PARA 538 note 2 ante.

3 For the meaning of 'pupil' see PARA 16 note 4 ante.

4 He required under the Education Act 1996 s 522: see PARA 549 ante.

5 As to the meaning of 'parent' see PARA 510 note 1 ante.

6 He under the Education Act 1996 s 522(4): see PARA 549 ante.

7 As to the meaning of 'premises' see PARA 1352 note 3 post.

8 Education Act 1996 s 523(1).

9 Ibid s 523(2)(a). Section 523(2) does not apply in relation to Wales: s 523(3).

10 Ibid s 523(2)(b). See note 9 supra. As to the Secretary of State see PARA 52 ante.

11 Ibid s 523(4).

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### **551. Suspension of a pupil pending examination or cleansing.**

Where:

- 1051 (1) a medical officer<sup>1</sup> of a local education authority<sup>2</sup> suspects that the person or clothing<sup>3</sup> of a pupil<sup>4</sup> in attendance at a school<sup>5</sup> maintained by the local education authority is infested with vermin or in a foul condition<sup>6</sup>; but
- 1052 (2) action for the examination or cleansing of the pupil's person and clothing cannot be taken immediately<sup>7</sup>,

the medical officer may direct that the pupil is to be suspended from the school until such action has been taken, if he considers it necessary to do so in the interests either of the pupil or of other pupils in attendance at the school<sup>8</sup>.

Such a direction is a defence to any proceedings<sup>9</sup> in respect of the failure of the pupil to attend school on any day on which he is excluded in pursuance of the direction, unless it is proved that the giving of the direction was necessitated by the wilful default of the pupil or his parent<sup>10</sup>.

1 For the meaning of 'medical officer' see PARA 44 note 4 ante.

2 As to local education authorities see PARA 20 ante.

3 As to the meaning of 'clothing' see PARA 538 note 2 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 For the meaning of 'school' see PARA 81 ante.

6 Education Act 1996 s 524(1)(a), (3)(a) (s 524(3)(a) amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 142(b), Sch 31).

7 Education Act 1996 s 524(1)(b).

8 Ibid s 524(1) (amended by the School Standards and Framework Act 1998 Sch 30 para 142(a)).

9 ie under the Education Act 1996 Pt VI Ch II (ss 437-447) (as amended): see PARA 515 et seq ante.

10 Ibid s 524(2).



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## **552. Offence of neglecting the cleanliness of a pupil.**

If, after the person or clothing<sup>1</sup> of a pupil<sup>2</sup> has been cleansed<sup>3</sup>, his person or clothing is again infested with vermin, or in a foul condition, at any time while he is in attendance at a school<sup>4</sup> maintained by a local education authority<sup>5</sup>, and the condition of his person or clothing is due to neglect on the part of his parent<sup>6</sup>, the parent is guilty of an offence<sup>7</sup>. A person guilty of such an offence is liable on summary conviction to a penalty<sup>8</sup>.

1 As to the meaning of 'clothing' see PARA 538 note 2 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

3 Ie under the Education Act 1996 s 522: see PARA 549 ante.

4 For the meaning of 'school' see PARA 81 ante.

5 Education Act 1996 s 525(1)(a), (3) (s 525(3) amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 143, Sch 31). As to local education authorities see PARA 20 ante.

6 Education Act 1996 s 525(1)(b). As to the meaning of 'parent' see PARA 510 note 1 ante.

7 Ibid s 525(1).

8 Ibid s 525(2). The penalty is a fine not exceeding level 1 on the standard scale: s 525(2). As to the standard scale see PARA 481 note 4 ante.

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#### **(iv) Medical Arrangements**

##### **553. Power to require medical examination of pupils.**

Where a question is referred to the Secretary of State<sup>1</sup> by a parent<sup>2</sup> who is aggrieved<sup>3</sup> by the refusal of a local education authority<sup>4</sup> to comply with a request to withdraw a school attendance order<sup>5</sup> or in relation to the determination of any dispute<sup>6</sup> between a local education authority and the governing body<sup>7</sup> of a school<sup>8</sup> as to the exercise of any power conferred or the performance of any duty imposed by or under the Education Act 1996<sup>9</sup>, and in his opinion the examination of any pupil<sup>10</sup> by a registered medical practitioner appointed by him for the purpose would assist in determining the question<sup>11</sup>, he may serve a notice on the parent of that pupil requiring the parent to present the pupil for examination by such a practitioner<sup>12</sup>. Any parent who without reasonable excuse fails to comply with any requirements of such a notice served on him is guilty of an offence<sup>13</sup>. A person guilty of such an offence is liable on summary conviction to a penalty<sup>14</sup>.

1    le under the Education Act 1996 s 442(3): see PARA 519 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2    As to the meaning of 'parent' see PARA 510 note 1 ante.

3    As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

4    As to local education authorities see PARA 20 ante.

5    As to school attendance orders see PARAS 514-525 ante.

6    le under the Education Act 1996 s 495: see PARA 59 ante.

7    As to the governing bodies of maintained schools see PARA 203 et seq ante.

8    For the meaning of 'school' see PARA 81 post.

9    Education Act 1996 s 506(1)(a).

10   For the meaning of 'pupil' see PARA 16 note 4 ante.

11   Education Act 1996 s 506(1)(b).

12   Ibid s 506(1).

13   Ibid s 506(2).

14   Ibid s 506(3). The penalty is a fine not exceeding level 1 on the standard scale: s 506(3). As to the standard scale see PARA 481 note 4 ante.

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#### **554. Medical inspection and treatment of pupils.**

A local education authority<sup>1</sup> must make arrangements for encouraging and assisting pupils<sup>2</sup> to take advantage of the provision for medical and dental inspection and treatment made for them<sup>3</sup>. However, if the parent<sup>4</sup> of a pupil gives notice to the authority that he objects to the pupil availing himself of any of the provision so made, the pupil must not be encouraged or assisted to do so<sup>5</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

3 Education Act 1996 s 520(1). The text refers to the medical and dental inspection and treatment made in pursuance of the National Health Service Act 1977 s 5(1) (as amended) or s 16CB (as added; currently in force in relation to England only and for limited purposes) or Sch 1 para 1(a)(i) (as amended) (see HEALTH SERVICES): Education Act 1996 s 520(1) (amended by the Health and Social Care (Community Health and Standards) Act 2003 s 184, Sch 11 para 66). The amendment introduced by Sch 11 para 66 comes into effect as from a day to be appointed under s 199(1)-(3). In relation to England, the appointed day is 1 April 2006 (see the Health and Social Care (Community Health and Standards) Act 2003 Commencement (No 8) Order 2005, SI 2005/2925, art 10(1), (2)(k)) but at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the reference to the National Health Service Act 1977 s 16CB (as added; currently in force in relation to England only for limited purposes) is to be read as a reference to s 5(1A) (as added and amended; repealed in relation to England; prospectively repealed in relation to Wales).

4 As to the meaning of 'parent' see PARA 510 note 1 ante.

5 Education Act 1996 s 520(2).

#### **UPDATE**

#### **554 Medical inspection and treatment of pupils**

NOTE 3--1996 Act s 520(1) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 184.

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## **(v) Recreation and Social and Physical Training**

### **555. Powers of Secretary of State in relation to physical training and recreation.**

The Secretary of State<sup>1</sup> may, in accordance with arrangements approved by the Treasury<sup>2</sup>, make grants<sup>3</sup>:

- 1053 (1) towards the expenses of a local voluntary organisation<sup>4</sup> in providing, whether as a part of wider activities or not, or in aiding the provision of, facilities for physical training and recreation, including the provision and equipment of gymnasiums, playing fields, swimming baths, bathing places, holiday camps and camping sites, and other buildings and premises for physical training and recreation<sup>5</sup>;
- 1054 (2) towards the expenses of a local voluntary organisation in respect of the training and supply of teachers and leaders<sup>6</sup>; and
- 1055 (3) to the funds of any national voluntary organisation having such objects as are mentioned above, either in aid of its work as a whole, or in aid of any specified branch of its work<sup>7</sup>.

When making a grant, the Secretary of State may attach such conditions to it, including, in the case of a grant to a voluntary association, conditions for securing the continuity of the undertaking assisted, as the Secretary of State may think proper<sup>8</sup>.

The Secretary of State may, with the approval of the Treasury, take steps for disseminating knowledge with respect to the value of physical training and recreation<sup>9</sup>.

1 The Physical Training and Recreation Act 1937 refers to the Board of Education having the power to make grants, but the functions of the Board under the Physical Training and Recreation Act 1937 have been transferred to the Secretary of State: see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

3 Physical Training and Recreation Act 1937 s 3(1) (amended by the Education Act 1944 ss 53(4), 121, Sch 9). All expenses incurred by the Secretary of State for the purposes of the Physical Training and Recreation Act 1937, including the amount of any grants paid or payable under or by virtue of that Act, are to be defrayed out of moneys provided by Parliament: s 8(1).

4 For these purposes, 'voluntary organisation' means any person or body of persons, whether corporate or unincorporate, carrying on, or proposing to carry on, an undertaking otherwise than for profit: *ibid* s 9.

5 *Ibid* s 3(1)(a) (s 3(1)(a), (b) amended by the Local Government Act 1958 s 67, Sch 9 Pt II). The powers of the Secretary of State under the Physical Training and Recreation Act 1937 s 3(1)(a) (as amended) do not extend to the making of a grant in aid of the maintenance of such facilities, except that, if the Secretary of State certifies that the circumstances of a local voluntary organisation are such that special hardship or difficulty would be occasioned if such a grant were not made to it, the Secretary of State may make such a grant: s 3(1) (as amended: see note 3 *supra*).

6 *Ibid* s 3(1)(b) (as amended: see note 5 *supra*).

7 *Ibid* s 3(1)(c).

8 Ibid s 3(2).

9 Ibid s 3(3) (amended by the Education Act 1944 Sch 9 Pt I).

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**556. Functions of local education authorities in respect of facilities for recreation and social and physical training.**

A local education authority<sup>1</sup> must secure that the facilities for primary<sup>2</sup> and secondary<sup>3</sup> education provided for its area include adequate facilities for recreation and social and physical training<sup>4</sup>. It may also provide facilities for recreation and social and physical training as part of the facilities for further education<sup>5</sup> provided, whether or not by it, for its area<sup>6</sup>.

For either purpose<sup>7</sup>, a local education authority<sup>8</sup>:

- 1056 (1) may establish, maintain and manage, or assist the establishment, maintenance and management of, camps, holiday classes, playing fields, play centres, and other places, including playgrounds, gymnasiums and swimming baths not appropriated to any school<sup>9</sup> or other educational institution, at which facilities for recreation and social and physical training are available for persons receiving primary, secondary or further education<sup>10</sup>;
- 1057 (2) may organise games, expeditions and other activities for such persons<sup>11</sup>; and
- 1058 (3) may defray, or contribute towards, the expenses of such games, expeditions and other activities<sup>12</sup>.

When making arrangements for the provision of facilities or the organisation of activities in the exercise of such powers, a local education authority must, in particular, have regard to the expediency of co-operating with any voluntary societies or bodies whose objects include the provision of facilities or the organisation of activities of a similar character<sup>13</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'primary education' see PARA 16 ante.

3 For the meaning of 'secondary education' see PARA 17 ante.

4 Education Act 1996 s 508(1) (amended by the Learning and Skills Act 2000 s 137(1), (2)).

5 For the meaning of 'further education' see PARA 18 ante.

6 Education Act 1996 s 508(1A) (added by the Learning and Skills Act 2000 s 137(1), (3)).

7 I.e. for the purpose of the Education Act 1996 s 508(1) (as amended) or s 508(1A) (as added): see the text and notes 1-6 supra.

8 Ibid s 508(2) (amended by the Learning and Skills Act 2000 s 137(1), (4)).

9 For the meaning of 'school' see PARA 81 ante.

10 Education Act 1996 s 508(2)(a).

11 Ibid s 508(2)(b).

12 Ibid s 508(2)(c).

13 Ibid s 508(3).

## **UPDATE**

### **556 Functions of local education authorities in respect of facilities for recreation and social and physical training**

TEXT AND NOTES--The 1996 Act s 508 only applies to local education authorities in Wales: s 508(1), (1A) (amended by the Education and Inspections Act 2006 Sch 1 para 4). However, in relation to children under 13, local education authorities in England have the same functions in respect of facilities for recreational and social and physical training for primary and secondary education as authorities in Wales: see the 1996 Act s 507A (ss 507A, 507B added by the 2006 Act s 6(1)). Further, local education authorities in England must, so far as reasonably practicable, secure for persons aged from 13 to 19 (and persons aged from 20 to 24 who have a learning difficulty) access to (1) sufficient educational leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities; and (2) sufficient recreational leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities: see 1996 Act s 507B.

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## **(vi) Provision of Board and Lodging otherwise than at School**

### **557. Provision of board and lodging otherwise than at school.**

Where a local education authority<sup>1</sup> is satisfied with respect to any pupil<sup>2</sup> that:

1059 (1) primary<sup>3</sup> or secondary education<sup>4</sup> suitable to his age, ability and aptitude and to any special educational needs<sup>5</sup> he may have can best be provided for him at a particular community, foundation or voluntary or community or foundation special school<sup>6</sup>; but

1060 (2) such education cannot be so provided unless boarding accommodation is provided for him otherwise than at the school<sup>7</sup>,

it may provide such board and lodging for him under such arrangements as it thinks fit<sup>8</sup>. Where a local education authority is satisfied with respect to a pupil with special educational needs that provision of board and lodging for him is necessary for enabling him to receive the required special educational provision<sup>9</sup>, it may provide such board and lodging for him under such arrangements as it thinks fit<sup>10</sup>. In making any such arrangements, a local education authority must, so far as practicable, give effect to the wishes of the pupil's parent<sup>11</sup> as to the religion or religious denomination of the person with whom the pupil will reside<sup>12</sup>.

Where a local education authority has provided a pupil with board and lodging under such arrangements, it must require the pupil's parent to pay it such sums, if any, in respect of the board and lodging as in its opinion he is able to pay without financial hardship<sup>13</sup>. However, no sum is so recoverable if the arrangements were made by the authority on the ground that in its opinion education suitable to the pupil's age, ability and aptitude or special educational needs could not otherwise be provided for him<sup>14</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

3 For the meaning of 'primary education' see PARA 16 ante.

4 For the meaning of 'secondary education' see PARA 17 ante.

5 For the meaning of 'special educational needs' see PARA 984 post.

6 Education Act 1996 s 514(1)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 135). As to community, foundation and voluntary and community and foundation special schools see PARA 102 et seq ante. For the meaning of 'special school' see PARA 1027 post.

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 514 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (uu). For the meaning of 'England' see PARA 52 note 11 ante.

7 Education Act 1996 s 514(1)(b).

8 Ibid s 514(1).



9 For the meaning of 'special educational provision' see PARA 984 post.

10 Education Act 1996 s 514(2).

11 As to the meaning of 'parent' see PARA 510 note 1 ante.

12 Education Act 1996 s 514(3).

13 Ibid s 514(4). The sums recoverable under s 514(4) must not exceed the cost to the authority of providing the board and lodging: s 514(6). Any sum payable under s 514(4) may be recovered summarily as a civil debt: s 514(7).

14 Ibid s 514(5).

## **UPDATE**

### **557 Provision of board and lodging otherwise than at school**

TEXT AND NOTES--A local authority may also secure the provision of boarding accommodation in connection with the provision of education or training for a person in its area who is (1) over compulsory school age but under 25; and (2) subject to learning difficulty assessment (see PARA 27): see Education Act 1996 s 514A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 46).

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## **(vii) Prohibition or Restriction on the Employment of Children**

### **558. Power of local education authorities to prohibit or restrict employment of children.**

If it appears to a local education authority<sup>1</sup> that a child<sup>2</sup> who is a registered pupil<sup>3</sup> at a community, foundation, voluntary or special school<sup>4</sup> is being employed in such a manner as to be prejudicial to his health, or otherwise to render him unfit to obtain the full benefit of the education provided for him, the authority may serve a notice in writing on the employer<sup>5</sup> prohibiting him from employing the child<sup>6</sup>, or imposing such restrictions upon his employment of the child as appears to it to be expedient in the interests of the child<sup>7</sup>. A local education authority may serve a notice in writing on the parent<sup>8</sup> or employer of a child who is a registered pupil at a community, foundation, voluntary or special school requiring the parent or employer to provide the authority, within such period as may be specified in the notice, with such information as appears to the authority to be necessary for the purpose of enabling it to ascertain whether the child is being employed in such a manner as to render him unfit to obtain the full benefit of the education provided for him<sup>9</sup>.

A person who employs a child in contravention of any prohibition or restriction so imposed<sup>10</sup>, or fails to comply with the requirements of a notice so served<sup>11</sup>, is guilty of an offence<sup>12</sup> and is liable on summary conviction to a penalty<sup>13</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'child' see PARA 16 note 2 ante. For the purposes of any enactment relating to the prohibition or regulation of the employment of children or young persons, any person who is not over compulsory school age is deemed to be a child within the meaning of that enactment: Education Act 1996 s 558. For the meaning of 'young person' see PARA 38 note 4 ante. As to the meaning of 'compulsory school age' see PARA 15 ante.

3 For the meaning of 'registered pupil' see PARA 512 ante.

4 As to community, foundation and voluntary schools see PARA 102 et seq ante. For the meaning of 'special school' see PARA 1027 post. The Education Act 1996 s 559 (as amended) applies in relation to a child who is a registered pupil at a pupil referral unit as it applies in relation to a child who is a registered pupil at a community, foundation, voluntary or special school: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 3. For the meaning of 'pupil referral unit' see PARA 457 ante.

5 Education Act 1996 s 559(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 171(a)).

The Education Act 1996 s 559 (as amended) will cease to have effect on the coming into force of the Employment of Children Act 1973 s 2 (as amended): Education Act 1996 s 559(6). At the date at which this volume states the law, the Employment of Children Act 1973 had not been brought into force.

As to work experience in the last year of compulsory schooling see the Education Act 1996 s 560 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 744. Any function of a local education authority in England which is conferred by or under s 560 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (bbb). For the meaning of 'England' see PARA 52 note 11 ante.

6 Education Act 1996 s 559(1)(a).

7 Ibid s 559(1)(b).

8 As to the meaning of 'parent' see PARA 510 note 1 ante.

9 Education Act 1996 s 559(2) (amended by the School Standards and Framework Act 1998 Sch 30 para 171(b)). The provisions of the Children and Young Persons Act 1933 s 28(1), (3) (as amended) (powers of entry for the enforcement of the provisions as to the employment of children: see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 750) apply with respect to the provisions of any notice served under the Education Act 1996 s 559 (as amended) as they apply with respect to the provisions of the Children and Young Persons Act 1933 Pt II (ss 18-30) (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 746 et seq): Education Act 1996 s 559(5).

10 Ibid s 559(3)(a). The text refers to any prohibition or restriction imposed under s 559(1) (as amended): see the text to notes 1-7 supra.

11 Ibid s 559(3)(b). The text refers to a notice served under s 559(2) (as amended): see the text to notes 8-9 supra.

12 Ibid s 559(3).

13 Ibid s 559(4). The penalty is a fine not exceeding level 1 on the standard scale, or imprisonment for a term not exceeding one month, or both: see s 559(4)(a), (b). As to the standard scale see PARA 481 note 4 ante. As from a day to be appointed, s 559(4)(b) is amended so as to refer to one month instead of 51 weeks: see s 559(4)(b) (prospectively amended by the Criminal Justice Act 2003 s 280(2), (3), Sch 26 para 49(1), (3)). At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### **558 Power of local education authorities to prohibit or restrict employment of children**

NOTE 4--1996 Act s 559 also applies in relation to a child who is a registered pupil at a pupil referral unit in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 3. SI 2005/2039 regs 1, 3, Sch 1 para 3 now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 8.

NOTE 5--Employment of Children Act 1973; Education Act 1996 s 559(6) repealed: Statute Law (Repeals) Act 2008.

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## **(8) DISCIPLINE**

### **(i) Promotion of Good Behaviour and Prevention of Breakdown of Discipline**

#### **559. Responsibility of governing body and head teacher for discipline.**

The governing body<sup>1</sup> of a maintained school<sup>2</sup> must ensure that policies designed to promote good behaviour and discipline on the part of its pupils<sup>3</sup> are pursued at the school<sup>4</sup>. In particular, the governing body:

- 1061 (1) must make, and from time to time review, a written statement of general principles to which the head teacher<sup>5</sup> must have regard in determining any measures set out in heads (a) to (d) below<sup>6</sup>; and
- 1062 (2) where it considers it desirable that any particular measures should be so determined by the head teacher or that he should have regard to any particular matters, must notify him of those measures or matters, and may give him such guidance as it considers appropriate<sup>7</sup>.

In exercising its functions<sup>8</sup> under head (1) and head (2) above, the governing body must have regard to any guidance given from time to time by the Secretary of State<sup>9</sup>.

The head teacher must determine measures, which may include the making of rules and provision for enforcing them, to be taken with a view to:

- 1063 (a) promoting, among pupils, self-discipline and proper regard for authority<sup>10</sup>;
- 1064 (b) encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils<sup>11</sup>;
- 1065 (c) securing that the standard of behaviour of pupils is acceptable<sup>12</sup>; and
- 1066 (d) otherwise regulating the conduct of pupils<sup>13</sup>.

The head teacher must in determining such measures act in accordance with the current statement made by the governing body under head (1) above<sup>14</sup>, and have regard to any notification or guidance given to him under head (2) above<sup>15</sup>. The measures so determined by the head teacher must be publicised by him in the form of a written document as follows:

- 1067 (i) he must make the measures generally known within the school and to parents of registered pupils at the school<sup>16</sup>; and
- 1068 (ii) he must in particular, at least once in every school year<sup>17</sup>, take steps to bring them to the attention of all such pupils and parents and all persons employed<sup>18</sup>, or otherwise engaged to provide their services, at the school<sup>19</sup>.

The disciplinary authority of the head teacher may extend to acts that take place outside school<sup>20</sup>, and there may be circumstances in which a failure to exercise those powers would be a breach of the school's duty of care to another pupil<sup>21</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 For the purposes of the School Standards and Framework Act 1998 s 61 (as amended), 'maintained school' includes a maintained nursery school: s 61(8) (added by the Education Act 2002 s 215(1), Sch 21 para 102). For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

The School Standards and Framework Act 1998 s 61 (as amended) applies in relation to pupil referral units as it applies in relation to maintained schools with the modification that for references to 'the governing body' there are substituted references to 'the management committee of the unit' or, in the case of a unit not having a management committee, 'the local education authority': Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 5. For the meaning of 'pupil referral unit' see PARA 457 ante. As to management committees of pupil referral units see PARA 464 ante.

3 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Ibid s 61(1).

5 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

6 Ibid s 61(2)(a). The text refers to any measures under s 61(4) (see the text to notes 10-13 infra). Before making or revising the statement required by head (1) in the text the governing body must consult, in such manner as appears to it to be appropriate, the head teacher and parents of registered pupils at the school: s 61(3). As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of s 142(8). For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of s 142(8).

7 Ibid s 61(2)(b).

8 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 142(8).

9 Ibid s 61(2). See further eg *Social Inclusion: Pupil Support* (July 1999) (Ref: DfEE 10/99); and *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units* (October 2004) (Ref: DfES 0354/2004). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

10 School Standards and Framework Act 1998 s 61(4)(a).

11 Ibid s 61(4)(b). As to the prevention of bullying see the text and note 21 infra.

12 Ibid s 61(4)(c). The standard of behaviour which is to be regarded as acceptable at the school is to be determined by the head teacher, so far as it is not determined by the governing body: s 61(6).

13 Ibid s 61(4)(d).

14 Ibid s 61(5)(a).

15 Ibid s 61(5)(b).

16 Ibid s 61(7)(a).

17 For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of ibid s 142(8).

18 For the meaning of 'employed' see PARA 355 note 14 ante.

19 School Standards and Framework Act 1998 s 61(7)(b).

20 *Cleary v Booth* [1893] 1 QB 465, 57 JP 375, DC; *R v Newport (Salop) Justices, ex p Wright* [1929] 2 KB 416, 27 LGR 518; *R v Solihull Borough Council, ex p W* [1997] ELR 489; *R v Newham London Borough Council, ex p X* [1995] ELR 303, (1994) Times, 15 November (head teacher could use his disciplinary powers against a pupil who had attacked another boy outside school); *Bradford-Smart v West Sussex County Council* [2002] EWCA Civ 07, [2002] LGR 489, [2002] ELR 139. Traditionally, this power has been seen to derive from a delegation of parental authority: see PARA 578 post.

21 *Bradford-Smart v West Sussex County Council* [2002] EWCA Civ 07, [2002] LGR 489, [2002] ELR 139 (in rare circumstances, a head teacher who fails to exercise his disciplinary authority over a pupil who bullies another pupil outside school may be in breach of his duty of care). The prevention of bullying among pupils is

within a teacher's ordinary duty of care: see eg *Scott v Lothian Regional Council* (29 September 1998, unreported). See also *H v Isle of Wight Council* [2001] All ER (D) 315 (Feb); and PARA 872 post.

## UPDATE

### 559 Responsibility of governing body and head teacher for discipline

TEXT AND NOTES 1-19--1998 Act s 61 repealed: Education and Inspections Act 2006 s 96(b), Sch 18 Pt 6 (in force in relation to England (SI 2007/935); in force in part in relation to Wales (SI 2009/2545)). Similar provision is made by the 2006 Act ss 88, 89 (in force in relation to England (SI 2007/935); 2006 Act s 89 in force in part in relation to Wales (SI 2009/2545)). See also the School Governance (New Schools) (England) Regulations 2007, SI 2007/958, reg 30.

TEXT AND NOTES 1-4--1998 Act s 61(1) now Education and Inspections Act 2006 s 88(1). The reference to a maintained school is a reference to a relevant school, which means (1) a community, foundation or voluntary school; (2) a community or foundation special school; (3) a maintained nursery school; (4) a pupil referral unit; or (5) a school approved by the Secretary of State or the Assembly under the Education Act 1996 s 342 (see PARAS 1028, 1029): 2006 Act s 88(5) (prospectively amended by Education and Skills Act 2008 Sch 1 para 39).

NOTE 2--SI 2005/2039 replaced: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979 (amended by SI 2008/3093).

TEXT AND NOTES 5-9--1998 Act s 61(2) now Education and Inspections Act 2006 s 88(2). In exercising its functions under s 88(2) the governing body must have regard to any guidance given from time to time by the Secretary of State (in relation to England) and by the National Assembly for Wales (in relation to Wales): s 88(4).

NOTE 6--Before making or revising the statement the governing body must consult, in such manner as appears to it to be appropriate, the head teacher, such other persons who work at the school (whether or not for payment) as it appears to the governing body to be appropriate to consult, parents of registered pupils at the school and registered pupils at the school: Education and Inspections Act 2006 s 88(3) (replacing the 1998 Act s 61(3)).

TEXT AND NOTES 10-13--1998 Act s 61(4)(a)-(d) now Education and Inspections Act 2006 s 89(1)(a)-(c), (d). Further head (e) securing that pupils complete any tasks reasonably assigned to them in connection with their education: 2006 Act s 89(1)(d).

NOTE 12--1998 Act s 61(6) now Education and Inspections Act 2006 s 89(3) (amended by Learner Travel (Wales) Measure 2008 s 13(4) so as to apply in relation to England). See also Education and Inspections Act 2006 s 89(3A) (added by Learner Travel (Wales) Measure 2008 s 13(5)), which makes corresponding provision in relation to Wales.

TEXT AND NOTES 14-21--1998 Act s 61(5), (7) now Education and Inspections Act 2006 s 89(2), (6) (s 89(2) amended by Learner Travel (Wales) Measure 2008 s 13(2) so as to apply in relation to England). The measures so determined by the head teacher must include the making of rules and provision for disciplinary penalties (as defined by s 90: see PARA 578A): s 89(4). Further, the measures so determined by the head teacher of a relevant school in England may, to such extent as is reasonable, include measures to be taken with a view to regulating the conduct of pupils at a time when they are not on the premises of the school and are not under the lawful control or charge of a member of the staff of the school: s 89(5) (amended by Learner Travel (Wales) Measure 2008 s 13(6)). See also Education and Inspections Act 2006 s 89(2A), (5A) (added by Learner

Travel (Wales) Measure 2008 s 13(3), (7)), which makes corresponding provision in relation to Wales.

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### **560. Duty to prepare plan relating to children with behavioural difficulties in Wales.**

Every local education authority<sup>1</sup> in Wales<sup>2</sup> must prepare, and from time to time review, a statement setting out the arrangements made or proposed to be made by the authority in connection with the education of children<sup>3</sup> with behavioural difficulties<sup>4</sup>. The arrangements to be covered by the statement include in particular:

1069 (1) the arrangements made, or to be made, by the authority for the provision of advice and resources to schools maintained by the authority<sup>5</sup>, whether situated in its area or not, and other arrangements made or to be made by it, with a view to<sup>6</sup>:

2

1. (a) meeting requests by such schools for support and assistance in connection with the promotion of good behaviour and discipline on the part of its pupils<sup>7</sup>; and
2. (b) assisting such schools to deal with general behavioural problems and the behavioural difficulties of individual pupils<sup>8</sup>;

3

1070 (2) the arrangements made or to be made by the authority in pursuance of its duty to provide<sup>9</sup> education for children not otherwise receiving education by reason of being excluded<sup>10</sup> or otherwise<sup>11</sup>; and

1071 (3) any other arrangements made or to be made by it for assisting children with behavioural difficulties to find places at suitable schools<sup>12</sup>.

The statement must also deal with the interaction between the arrangements referred to in heads (1) to (3) above and those made by the authority in relation to pupils with behavioural difficulties who have special educational needs<sup>13</sup>.

In the course of preparing the statement so required, or any revision of it, the authority must carry out such consultation as may be prescribed<sup>14</sup>. The authority must publish the statement in such manner and by such date<sup>15</sup>, and publish revised statements in such manner and at such intervals<sup>16</sup>, as may be prescribed; and it must provide such persons as may be prescribed with copies of the statement or any revised statement<sup>17</sup>.

In discharging its functions under the provisions described above a local education authority must have regard to any guidance given from time to time<sup>18</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'Wales' see PARA 52 note 13 ante. See further note 4 infra.

3 For the meaning of 'child' see PARA 16 note 2 ante.

4 Education Act 1996 s 527A(1) (s 527A added by the Education Act 1997 s 9).

The Education Act 1996 s 527A (as added and amended) is repealed by the Children Act 2004 s 64, Sch 5 Pt 1 as from a day to be appointed under Sch 5 Pt 1. In relation to England, the appointed day is 1 March 2005 (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(1)(l)) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante.



- 5 For the meaning of 'school maintained by the authority' under the School Standards and Framework Act 1998 see PARA 94 ante. For the meaning of 'school' see PARA 81 ante.
- 6 Education Act 1996 s 527A(2)(a), (7) (as added (see note 4 supra); and s 527A(7) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 144).
- 7 Education Act 1996 s 527A(2)(a)(i) (as added: see note 4 supra). For the meaning of 'pupil' see PARA 16 note 4 ante.
- 8 Ibid s 527A(2)(a)(ii) (as added: see note 4 supra).
- 9 le under ibid s 19(1) (as amended) (exceptional provision of education for children not receiving education by reason of being excluded or otherwise: see PARA 457 ante).
- 10 As to the exclusion of pupils see PARAS 562-575 post.
- 11 Education Act 1996 s 527A(2)(b) (as added: see note 4 supra).
- 12 Ibid s 527A(2)(c) (as added: see note 4 supra).
- 13 Ibid s 527A(3) (as added: see note 4 supra). For the meaning of 'special educational needs' see PARA 984 post.
- 14 Ibid s 527A(4) (as added: see note 4 supra). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of this function of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the prescribed consultation see the Local Education Authority (Behaviour Support Plans) Regulations 1998, SI 1998/644, reg 3 (amended by SI 2001/606; SI 2001/828; SI 2001/3710; SI 2002/2469; SI 2005/617).
- 15 Education Act 1996 s 527A(5)(a) (as added: see note 4 supra).
- 16 Ibid s 527A(5)(b) (as added: see note 4 supra).
- 17 Ibid s 527A(5) (as added: see note 4 supra). As to the publication of such statements see the Local Education Authority (Behaviour Support Plans) Regulations 1998, SI 1998/644, regs 4-5.
- 18 Education Act 1996 s 527A(6) (as added: see note 4 supra). The guidance referred to in the text is ministerial guidance: see s 527A(6) (as so added).

## UPDATE

### **560 Duty to prepare plan relating to children with behavioural difficulties in Wales**

NOTES 14, 17--SI 1988/644 (as amended) revoked: SI 2006/877.

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### **561. Local education authority's reserve power to prevent a breakdown of discipline.**

Where: (1) in the opinion of the local education authority<sup>1</sup>, the behaviour of registered pupils<sup>2</sup> at maintained schools<sup>3</sup>, or any action taken by such pupils or their parents<sup>4</sup>, is such that the education of any registered pupils at the school is, or is likely in the immediate future to become, severely prejudiced<sup>5</sup>; and (2) the governing body<sup>6</sup> has been informed in writing of the authority's opinion<sup>7</sup>, or where: (a) a warning notice has been given<sup>8</sup> referring to the safety of pupils or staff at the school being threatened by a breakdown of discipline at the school<sup>9</sup>; (b) the governing body has failed to comply, or secure compliance, with the notice to the authority's satisfaction within the compliance period<sup>10</sup>; and (c) the authority has given reasonable notice in writing to the governing body that it proposes to exercise its powers<sup>11</sup> to prevent the breakdown, or continuing breakdown, of discipline at the school<sup>12</sup>, the local education authority may take such steps in relation to the school as it considers are required to prevent the breakdown, or continuing breakdown, of discipline at the school<sup>13</sup>. Such steps may include the giving of any direction to the governing body or head teacher<sup>14</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 62 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (q). For the meaning of 'England' see PARA 52 note 11 ante.

2 For the meaning of 'registered pupil' see PARA 512 ante.

3 For the purposes of the School Standards and Framework Act 1998 s 62 (as amended), 'maintained school' includes a maintained nursery school: s 62(5) (added by the Education Act 2002 s 215(1), Sch 21 para 103). For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

The School Standards and Framework Act 1998 s 62(1)-(2), (4) applies in relation to a pupil referral unit as it applies in relation to a maintained school as if the reference in s 62(2)(b) (see head (2) in the text) to 'the governing body' were a reference to 'the teacher in charge of the unit' and the reference in s 62(4) (see the text and note 14 infra) to 'the governing body' were omitted: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 6. For the meaning of 'pupil referral unit' see PARA 457 ante. As to management committees of pupil referral units see PARA 464 ante.

4 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). In its application for the purposes of s 62(2), this definition must be taken as referring only to persons who are individuals: s 142(10).

5 Ibid s 62(2)(a).

6 See note 3 supra. As to the governing bodies of maintained schools see PARA 203 et seq ante.

7 School Standards and Framework Act 1998 s 62(2)(b).

8 In accordance with ibid s 15(2): see PARA 1265 post.

9 Ibid s 62(3)(a).

10 Ibid s 62(3)(b).

11 le its powers under *ibid* s 62(1) (see the text to note 13 *infra*), whether or not in conjunction with its powers under either or both of s 16 (as amended) (power to appoint additional governors: see PARA 1268 post) and s 17 (as amended) (power to suspend right to delegated budget: see PARA 1269 post): s 62(3)(c).

12 *Ibid* s 62(3)(c). A notice under s 62(3)(c) may be combined with a notice under s 15(1)(c) (notice of intention to exercise power to appoint additional governors or power to suspend right to delegated budget: see PARA 1265 post): s 62(3).

13 *Ibid* s 62(1).

14 *Ibid* s 62(4). See note 3 *supra*. As to the meaning of 'head teacher' see PARA 93 note 13 *ante*; definition applied by virtue of s 142(8).

## UPDATE

### **561 Local education authority's reserve power to prevent a breakdown of discipline**

NOTE 3--School Standards and Framework Act 1998 s 62(1)-(2), (4) also applies, with modifications, in relation to pupil referral units in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 6. SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 9.

TEXT AND NOTES 8-12--In relation to England, School Standards and Framework Act 1998 s 62(3) now s 62(2A) (added by the Education and Inspections Act 2006 Sch 7 para 14(2), (3)).

NOTE 8--In relation to England, the reference is to the Education and Inspections Act 2006 s 60(2) (see PARA 1265): School Standards and Framework Act 1998 s 62(2A)(a) (see TEXT AND NOTES 8-12).

NOTE 11--In relation to England, the reference is to whether or not the authority's powers are exercised in conjunction with exercising its powers under any one or more of the Education and Inspections Act 2006 ss 63-66 (see PARAS 1267A-1270): School Standards and Framework Act 1998 s 60(2A)(c) (see TEXT AND NOTES 8-12). In relation to Wales, s 62(3)(c) amended: Education and Inspections Act 2006 Sch 17 para 2.

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## **(ii) Exclusion of Pupils**

### **A. POWER TO EXCLUDE PUPILS**

#### **562. Power of head teacher to exclude pupils.**

The head teacher<sup>1</sup> of a maintained school<sup>2</sup> may exclude<sup>3</sup> a pupil<sup>4</sup> from the school for a fixed period or permanently<sup>5</sup>; and the teacher in charge of a pupil referral unit<sup>6</sup> may exclude a pupil from the unit for a fixed period or permanently<sup>7</sup>.

Regulations<sup>8</sup> must make provision:

- 1072 (1) requiring prescribed<sup>9</sup> persons to be given prescribed information relating to any such exclusion<sup>10</sup>;
- 1073 (2) requiring the responsible body<sup>11</sup>, in prescribed cases, to consider whether the pupil should be reinstated<sup>12</sup>;
- 1074 (3) requiring the local education authority to make arrangements for enabling a prescribed person to appeal, in any prescribed case, to a panel constituted in accordance with the regulations against any decision of the responsible body not to reinstate a pupil<sup>13</sup>; and
- 1075 (4) as to the procedure on appeals<sup>14</sup>.

Regulations may also make provision:

- 1076 (a) for the payment by the local education authority of allowances to members of a panel constituted in accordance with the regulations<sup>15</sup>;
- 1077 (b) requiring a person or body exercising functions<sup>16</sup> to have regard to any guidance given from time to time, in relation to England by the Secretary of State, or, in relation to Wales, by the National Assembly for Wales<sup>17</sup>;
- 1078 (c) requiring local education authorities to give prescribed information to the Secretary of State or the Assembly, as the case may be<sup>18</sup>; and
- 1079 (d) in relation to any other matter relating to the exercise of the above powers<sup>19</sup>.

Regulations must make provision enabling a prescribed person, in any prescribed case, to appeal to a panel constituted in accordance with the regulations against any decision made after 31 August 1994<sup>20</sup>, in relation to the permanent exclusion of a pupil from a pupil referral unit<sup>21</sup>. Regulations<sup>22</sup> which relate to exclusions from pupil referral units (whether before or after 24 July 2002<sup>23</sup>), and are made before the repeal by the Education Act 2002 of the existing enactments<sup>24</sup> is fully in force, may provide for any provision made by or under the existing enactments to have effect in relation to exclusions from pupil referral units with such modifications as may be prescribed<sup>25</sup>.

1 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the head teacher's duty to have reference to any ministerial guidance see PARA 575 post.

2 For the purposes of *ibid* s 52, 'maintained school' has the same meaning as in Pt 3 Ch 1 (ss 19-40) (see PARA 98 note 3 ante): s 52(11). In relation to Wales, despite the coming into force of s 52(11) and despite the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 7 (maintained nursery schools: see PARAS 203, 241 ante), the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227 (as amended) apply in relation to maintained nursery schools only in relation to exclusions on or after 1 April 2006: see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 16.

3 In the Education Act 2002 s 52, 'exclude', in relation to the exclusion of a child from a school or pupil referral unit, means exclude on disciplinary grounds; and 'exclusion' must be construed accordingly: s 52(10). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'pupil referral unit' see PARA 457 ante; definition applied by virtue of s 212(2), (3).

When investigating and interviewing a pupil, the Police and Criminal Evidence Act 1984 and its codes (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 856 et seq) may serve as a touchstone of fair procedure outside the criminal justice process: *R v Head Teacher and Independent Appeal Committee of Dunraven School, ex p B* [2000] ELR 156, sub nom *R v Governors of Dunraven School, ex p B* [2000] LGR 494, CA (decided under previous legislation). However, it is important to stress that such matters are not to be conducted as if they are some kind of formal criminal proceeding: *R (on the application of J) v Birmingham City Council Exclusion Appeals Committee* [2003] EWHC 1747 (Admin) at [13], [2003] ELR 743 at [13] per Davis J. See also *R (on the application of C) v Sefton Metropolitan Borough Council Independent Appeals Panel and the Governors of Hillside High School* [2001] ELR 393 (decided under previous legislation). Adequate investigation is important (*R v Camden London Borough Council and the Governors of Hampstead School, ex p H* [1996] ELR 360, sub nom *R v Camden London Borough Council, ex p H (A Minor)* (1996) Times, 15 August, CA; *R v Roman Catholic Schools, ex p S* [1998] ELR 304; *R v Board of Governors and Appeal Committee of Bryn Elan High School, ex p Whippe* [1999] ELR 380 (all cases decided under previous legislation)) and head teachers should keep notes of interviews conducted with pupils (*R v Head Teacher and Independent Appeal Committee of Dunraven School, ex p B* supra). The punishment imposed must be proportionate (see *R v Governors of Bacon's City Technology College, ex p W* [1998] ELR 488; *R (on the application of C) v Sefton Metropolitan Borough Council Independent Appeals Panel and the Governors of Hillside High School* supra (both cases decided under previous legislation)), and the rationality of the decision to exclude may be considered (see *R v Solihull Borough Council, ex p W* [1997] ELR 489 (decided under previous legislation)). In general, though, the courts will be reluctant to question the reasonableness of the punishment in any particular case: *R v Newham London Borough Council, ex p X* [1995] ELR 303, (1994) Times, 15 November (decided under previous legislation).

It used to be considered that an unjustifiable exclusion was probably not an actionable tort (see *Hunt v Damon* (1930) 46 TLR 579) but it now seems that the unlawful exclusion of a pupil from school may give rise to a claim for damages for denial of his right to education under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2: see *A v Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ 382, [2004] QB 1231, [2004] 4 All ER 628 (child's indefinite exclusion from school without due regard to the statutory safeguards and without provision of some adequate or appropriate substitute education); and PARA 3 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

5 *Ibid* s 52(1). See further PARA 563 et seq post.

6 As to the teacher in charge of a pupil referral unit see PARA 458 ante. For the meaning of 'pupil referral unit' see PARA 457 ante.

7 Education Act 2002 s 52(2). See further PARA 564 et seq post.

8 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 52 see the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178 (amended by SI 2003/1377; SI 2004/402); the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179 (amended by SI 2004/402); the School Governance (Procedures) (England) Regulations 2003, SI 2003/1377 (amended by SI 2003/1558; SI 2003/1916; SI 2003/1963; SI 2004/450); the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227 (amended by SI 2004/1805); and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246 (amended by SI 2004/1805).

9 'Prescribed' means prescribed by regulations: Education Act 2002 s 212(1). See note 8 supra.

10 Ibid s 52(3)(a). The text refers to any exclusion under s 52(1) or (2) (see the text and notes 1-7 supra).

11 For the purposes of ibid s 52(3), 'the responsible body' means:

35 (1) in relation to exclusion from a maintained school, the governing body of the school; and

36 (2) in relation to exclusion from a pupil referral unit, such person as may be prescribed,

and, in relation to any time when no responsible body is prescribed in relation to permanent exclusion from a pupil referral unit, s 52(3) has effect in relation to such an exclusion with the omission of head (2) in the text and as if the decision referred to in head (3) in the text were the decision of the teacher in charge of the unit permanently to exclude the pupil: s 52(5). For the purposes of s 52(5), the local education authority which maintains a pupil referral unit is prescribed as the responsible body in relation to a fixed period exclusion from that pupil referral unit: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 3; Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 3. As to local education authorities see PARA 20 ante; and as to the governing bodies of maintained schools see PARA 203 et seq ante.

12 Education Act 2002 s 52(3)(b).

13 Ibid s 52(3)(c).

14 Ibid s 52(3)(d).

15 Ibid s 52(4)(a). Regulations made by virtue of s 52(4)(a) may provide for any of the provisions of the Local Government Act 1972 ss 173-174 (as amended) (allowances to members of local authorities and other bodies: see LOCAL GOVERNMENT vol 69 (2009) PARAS 171-172, 174) to apply with prescribed modifications in relation to members of a panel constituted in accordance with regulations under the Education Act 2002 s 52: s 52(6). As to the regulations so made under s 52 see the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 3; the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 3; and PARA 571 post. As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the Education Act 2002 s 122(2), (3).

16 Ie under ibid s 52(1) or (2) (see the text and notes 1-7 supra) or under the regulations.

17 Ibid s 52(4)(b).

18 Ibid s 52(4)(c).

19 Ibid s 52(4)(d). The text refers to the powers conferred by s 52(1) or (2) (see the text and notes 1-7 supra).

20 Ie under the Education Act 1996 Sch 1 para 7 (repealed), or any enactment repealed by the Education Act 1996.

21 Education Act 2002 s 52(7). The provision that may be made by regulations made by virtue of s 52(7) in relation to any such decision as is mentioned in the text includes any provision that could after the commencement of s 52(2)-(4) (see the text and notes 6-19 supra) be made in relation to a decision falling within s 52(3)(c) (see head (3) in the text): s 52(7).

22 Ie regulations under ibid s 52.

23 Ie before or after the passing of the Education Act 2002.

24 In ibid s 52(8), 'the existing enactments' means the School Standards and Framework Act 1998 ss 64(2)-(3), 65-67, Sch 18 (repealed): Education Act 2002 s 52(9).

25 Ibid s 52(8).

## UPDATE

### 562-575 Exclusion of Pupils

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

### **562 Power of head teacher to exclude pupils**

NOTE 3--*Lord Grey School*, cited, reversed *Ali v Head Teacher and Governors of Lord Grey School* [2006] UKHL 14, [2006] 2 All ER 457.

NOTE 8--SI 2002/3178, SI 2002/3179 further amended: SI 2007/1870. SI 2002/3178 further amended: SI 2008/2683. SI 2003/1377 further amended: SI 2007/959, SI 2007/3464, SI 2009/2680.

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### **563. Duty of head teacher of maintained school to inform parents etc.**

Where the head teacher<sup>1</sup> of a maintained school<sup>2</sup> excludes<sup>3</sup> any pupil, he must, without delay, take reasonable steps to inform the relevant person<sup>4</sup>:

- 1080 (1) of the period of the exclusion (or, if the pupil is being permanently excluded, that he is being so excluded)<sup>5</sup>;
- 1081 (2) of the reasons for the exclusion<sup>6</sup>;
- 1082 (3) that the relevant person may make representations about the exclusion to the governing body<sup>7</sup>; and
- 1083 (4) the means by which such representations may be made<sup>8</sup>.

Where the head teacher decides that any exclusion of a pupil for a fixed period should be made permanent, he must, without delay, take reasonable steps to inform the relevant person of his decision<sup>9</sup> and of the matters specified in heads (2) to (4) above<sup>10</sup>. Where the head teacher:

- 1084 (a) excludes any pupil in circumstances where the pupil would, as a result of the exclusion, be excluded from the school for a total of more than five school days in any one term, or lose an opportunity to take any public examination<sup>11</sup>;
- 1085 (b) excludes a pupil permanently<sup>12</sup>; or
- 1086 (c) decides that any exclusion of a pupil should be made permanent<sup>13</sup>,

he must, without delay, inform the local education authority<sup>14</sup> and the governing body of the period of the exclusion (or, if the pupil is being permanently excluded, that he is being so excluded)<sup>15</sup>, or his decision that any exclusion of a pupil for a fixed period should be made permanent<sup>16</sup>, and, in either case, of the reasons for it<sup>17</sup>.

1 As to the meaning of 'head teacher' see PARA 93 note 13 ante. As to the head teacher's duty to have reference to any ministerial guidance see PARA 575 post.

2 For the meaning of 'maintained school' see PARA 94 ante; and see PARA 562 note 2 ante.

3 For the meaning of 'exclude' see PARA 562 note 3 ante. A head teacher may not exercise his power under the Education Act 2002 s 52(1) (see PARA 562 ante) so as to exclude a pupil from the school for one or more fixed periods if, as a result, the pupil would be excluded for more than 45 school days in any one school year: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 3; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 3. In relation to England, any exclusion for a fixed period consisting of the period between the morning and afternoon school sessions must for these purposes be taken as equivalent to half a school day: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 2(2). In relation to Wales, any exclusion for a fixed period consisting of the period between the morning and afternoon school sessions must for these purposes be taken as equivalent to one-quarter of a school day: Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 2(2). For the meaning of 'school year' see PARA 15 note 9 ante; for the meaning of 'pupil' see PARA 16 note 4 ante; and for the meaning of 'school day' see PARA 533 note 2 ante.

Where it falls to the head teacher, in exercise of the power of exclusion conferred by the Education Act 2002 s 52(1), to establish any fact, any question as to whether that fact is established is to be decided on a balance of probabilities: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI



2002/3178, reg 7A(a) (added by SI 2004/402); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 8A(a) (added by SI 2004/1805).

4 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1). In relation to England, 'the relevant person' means, in relation to a pupil under the age of 18, a parent of his, and, in relation to a pupil who has attained that age, the pupil himself: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 2(1). In relation to Wales, 'the relevant person' (or 'y person perthnasol') means: (1) in relation to a pupil who was aged 10 or below on the day before the beginning of the school year in which that pupil is excluded, a parent of his; (2) in relation to a pupil of compulsory school age who was aged 11 or above on the day before the beginning of the school year in which that pupil is excluded, both that pupil and a parent of his; (3) in relation to a pupil who is above compulsory school age, the pupil himself: Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 2(1). As to the meaning of 'parent' see PARA 510 note 1 ante. For the meaning of 'compulsory school age' see PARA 15 ante.

5 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1)(a).

6 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1)(b).

7 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1)(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1)(c). In relation to Wales, the excluded pupil may also make representations about the exclusion to the governing body where the pupil is not the relevant person: reg 4(1)(c).

8 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1)(d); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1)(d).

9 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(2)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(2)(a).

10 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(2)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(2)(b).

11 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(3)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(3)(a). The head teacher must in each term inform the local education authority and the governing body of any exclusions which do not fall within the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(3) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(3); and in respect of each exclusion must provide details of the period of the exclusion and the reason for it: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(5) (substituted by SI 2004/402); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(5). See also note 17 infra.

12 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(3)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(3)(b). See note 11 supra.

13 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(3)(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(3)(c). See note 11 supra.

14 As to local education authorities see PARA 20 ante.

15 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(4)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(4)(a).

16 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(4)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(4)(b).

17 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(4); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(4).

In relation to England, a local education authority must forward to the Secretary of State at his request any information it has received from a head teacher under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(4) or reg 4(5) (as substituted) (see note 11 supra): reg 7B (added by SI 2004/402). As to the Secretary of State see PARA 52 ante.

In relation to Wales, the governing body must in each term provide the following information on each exclusion to the local education authority: (1) the excluded pupil's name, age, date of birth, gender and ethnic group; (2) whether the excluded pupil has a statement of special educational needs maintained by a local education authority under the Education Act 1996 s 324 (as amended) (see PARA 996 post), is being assessed for such a statement, or is receiving support through School Action or School Action Plus pursuant to *The Special Educational Needs Code of Practice for Wales* (which was issued under the Education Act 1996 s 313 (as amended) (see PARA 1036 post), and came into force on 1 April 2002); (3) whether the excluded pupil is looked after by a local authority; (4) the period of the exclusion; and (5) the reason for the exclusion: Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 5(1) (amended by SI 2004/1805). A local education authority must provide to the National Assembly for Wales at its request any information it has received from a head teacher under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(4) or reg 4(5) or from a governing body under reg 5(1) (as amended): reg 5(2). As to the National Assembly for Wales see PARA 53 ante.

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

### **563 Duty of head teacher of maintained school to inform parents etc**

TEXT AND NOTES--In England, the head teacher is required to give the parent written notice on excluding a pupil: see Education and Inspections Act 2006 s 104; and PARA 563D.

NOTES 11, 17--SI 2002/3178 reg 4(5) substituted: SI 2006/2189.

NOTES 14-17--Where SI 2002/3178 reg 4(4) applies in a case falling within head (b) or (c) of the text, and the pupil resides in the area of a different local education authority, the head teacher must, without delay, inform in addition that local education authority of the matters in reg 4(4): reg 4(4A) (added by SI 2007/1870).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/A. POWER TO EXCLUDE PUPILS/564. Duty of teacher in charge of pupil referral unit to inform parents etc.

#### **564. Duty of teacher in charge of pupil referral unit to inform parents etc.**

Where the teacher in charge of a pupil referral unit<sup>1</sup> excludes<sup>2</sup> any pupil for a fixed period, he must, without delay, take reasonable steps to inform the relevant person<sup>3</sup>:

- 1087 (1) of the period of the exclusion<sup>4</sup>;
- 1088 (2) of the reasons for the exclusion<sup>5</sup>;
- 1089 (3) that the relevant person may make representations about the exclusion to the local education authority<sup>6</sup>; and
- 1090 (4) the means by which such representations may be made<sup>7</sup>.

Where the teacher in charge of a pupil referral unit excludes any pupil for a fixed period in circumstances where the pupil would, as a result of the exclusion:

- 1091 (a) be excluded from the pupil referral unit for a total of more than five school days in any one term<sup>8</sup>; or
- 1092 (b) lose an opportunity to take any public examination<sup>9</sup>,

he must, without delay, inform the local education authority of the period of the exclusion and the reasons for it<sup>10</sup>.

Where the teacher in charge of a pupil referral unit excludes any pupil permanently or decides that any exclusion of a pupil for a fixed period should be made permanent, the teacher in charge must forthwith: (i) inform<sup>11</sup> the relevant person and the local education authority of the decision and the reasons for it<sup>12</sup>; and (ii) in addition give the relevant person notice in writing<sup>13</sup> of: (A) the decision stating the reasons for the decision<sup>14</sup>; (B) his right to appeal against the decision<sup>15</sup>; (C) the person to whom he should give any notice of appeal<sup>16</sup>; (D) that any notice of appeal must contain the grounds of appeal<sup>17</sup>; and (E) the last date on which an appeal may be made<sup>18</sup>.

1 As to the teacher in charge of a pupil referral unit see PARA 458 ante. For the meaning of 'pupil referral unit' see PARA 457 ante.

2 For the meaning of 'exclude' see PARA 562 note 3 ante. A teacher in charge of a pupil referral unit may not exercise his power under the Education Act 2002 s 52(2) (see PARA 562 ante) so as to exclude a pupil from the unit for one or more fixed periods if, as a result, the pupil would be excluded for more than 45 school days in any one school year: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 4; Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 4. In relation to England, any exclusion for a fixed period consisting of the period between the morning and afternoon school sessions must for these purposes be taken as equivalent to half a school day: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 2(2). In relation to Wales, any exclusion for a fixed period consisting of the period between the morning and afternoon school sessions must for these purposes be taken as equivalent to one-quarter of a school day: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 2(2). For the meaning of 'school year' see PARA 15 note 9 ante; for the meaning of 'pupil' see PARA 16 note 4 ante; and for the meaning of 'school day' see PARA 533 note 2 ante.

Where it falls to the teacher in charge of a pupil referral unit, in exercise of the power of exclusion conferred by the Education Act 2002 52(2), to establish any fact, any question as to whether that fact is established is to be decided on a balance of probabilities: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England)

Regulations 2002, SI 2002/3179, reg 8A(a) (added by SI 2004/402); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 9A(a) (added by SI 2004/1805).

3 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(1); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(1). In relation to England, 'the relevant person' means, in relation to a pupil under the age of 18, a parent of his, and, in relation to a pupil who has attained that age, the pupil himself: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 2(1). In relation to Wales, 'the relevant person' (or 'y person perthnasol') means: (1) in relation to a pupil who was aged 10 or below on the day before the beginning of the school year in which that pupil is excluded, a parent of his; (2) in relation to a pupil of compulsory school age who was aged 11 or above on the day before the beginning of the school year in which that pupil is excluded, both that pupil and a parent of his; (3) in relation to a pupil who is above compulsory school age, the pupil himself: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 2(1). As to the meaning of 'parent' see PARA 510 note 1 ante. For the meaning of 'compulsory school age' see PARA 15 ante.

4 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(1)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(1)(a).

5 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(1)(b); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(1)(b).

6 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(1)(c); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(1)(c). In relation to Wales, the excluded pupil may also make representations about the exclusion to the local education authority where the pupil is not the relevant person: reg 5(1)(c). As to local education authorities see PARA 20 ante.

7 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(1)(d); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(1)(d).

8 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(2)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(2)(a). The teacher in charge must in each term inform the local education authority of any exclusions which do not fall within the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(2) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(2); and in respect of each exclusion must provide details of the period of the exclusion and the reason for it: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(5); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(5).

9 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(2)(b); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(2)(b). See note 8 supra.

10 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(2); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(2). See note 8 supra.

11 In relation to Wales, the teacher in charge must take reasonable steps to give the information: see *ibid* reg 5(3)(a).

12 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3)(a). The teacher in charge must in each term inform the local education authority of any exclusions which do not fall within the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3), and in respect of each exclusion must provide details of the period of the exclusion and the reason for it: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(5) (substituted by SI 2004/402); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(5).

13 The notice in writing may be given either by delivering it (by hand) to the relevant person's last known address, or by properly addressing, pre-paying and sending by first class post to the relevant person's last known address a letter containing the notice: Education (Pupil Exclusions and Appeals) (Pupil Referral Units)

(England) Regulations 2002, SI 2002/3179, reg 5(4); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(4).

14 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3)(b)(i); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3)(b)(i). See note 12 *supra*.

15 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3)(b)(ii); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3)(b)(ii). See note 12 *supra*.

16 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3)(b)(iii); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3)(b)(iii). See note 12 *supra*.

17 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3)(b)(iv); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3)(b)(iv). See note 12 *supra*.

18 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3)(b)(v); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3)(b)(v). See note 12 *supra*.

In relation to England, a local education authority must give to the Secretary of State in each school term the information referred to in the Education (School Performance Information) (England) Regulations 2001, SI 2001/3446, reg 12, Sch 9 (amended by SI 2002/2017; SI 2002/3178) (provision of information to local education authorities about excluded pupils) or the Education (School Performance Information) (England) Regulations 2001, SI 2001/3446, reg 13, Sch 10 (provision of information to local education authorities about permanently excluded pupils), as appropriate, in respect of exclusions from a pupil referral unit, together with any information it has received from a teacher in charge under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5: reg 9 (amended by SI 2004/402).

In relation to Wales, the teacher in charge must in each term provide the following information on each exclusion to the local education authority: (1) the excluded pupil's name, age, date of birth, gender and ethnic group; (2) whether the excluded pupil has a statement of special educational needs maintained by a local education authority under the Education Act 1996 s 324 (as amended) (see PARA 996 post), is being assessed for such a statement, or is receiving support through School Action or School Action Plus pursuant to *The Special Educational Needs Code of Practice for Wales* (which was issued under the Education Act 1996 s 313 (as amended) (see PARA 1036 post), and came into force on 1 April 2002); (3) whether the excluded pupil is looked after by a local authority; (4) the period of the exclusion; and (5) the reason for the exclusion: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 6(1) (amended by SI 2004/1805). A local education authority must provide to the National Assembly for Wales at its request any information it has received from a teacher in charge under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(5) (see note 8 *supra*) and reg 6(1) (as amended): reg 6(2). As to the National Assembly for Wales see PARA 53 ante.

## UPDATE

### 562-575 Exclusion of Pupils

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### 562-566 Power to Exclude Pupils

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

**564 Duty of teacher in charge of pupil referral unit to inform parents etc**

NOTES 8, 12, 18--SI 2002/3179 reg 5(5) substituted: SI 2006/2189.

TEXT AND NOTE 18--Also, head (iii) if the pupil resides in the area of a different local education authority, in addition inform that local education authority of the decision and the reasons for it: SI 2002/3179 reg 5(3)(aa) (added by SI 2007/1870).

NOTE 18--SI 2001/3446 regs 12, 13, Schs 9, 10 revoked: SI 2006/2896.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/A. POWER TO EXCLUDE PUPILS/565. Functions of governing body in relation to excluded pupils.

### **565. Functions of governing body in relation to excluded pupils.**

Where the governing body<sup>1</sup> of a maintained school<sup>2</sup> is informed<sup>3</sup> of: (1) the permanent exclusion<sup>4</sup> of a pupil<sup>5</sup>; (2) a decision that any exclusion of a pupil should be made permanent<sup>6</sup>; (3) the exclusion of any pupil, and the circumstances are that the pupil would, as a result of the exclusion, be excluded from the school for a total of more than 15 school days<sup>7</sup> in any one term<sup>8</sup> or lose an opportunity to take a public examination<sup>9</sup>; or (4) the exclusion of any pupil where the pupil would as a result of the exclusion be excluded from the school for a total of more than five school days in any one term and the relevant person<sup>10</sup> expresses a wish<sup>11</sup> to make representations<sup>12</sup>, the governing body must:

- 1093 (a) consider the circumstances in which the pupil was excluded<sup>13</sup>;
- 1094 (b) consider any representations about the exclusion made to the governing body by the relevant person<sup>14</sup>, or by the local education authority<sup>15</sup>;
- 1095 (c) allow the relevant person, and an officer of the local education authority nominated by the authority, to attend a meeting of the governing body and to make oral representations about the exclusion<sup>16</sup>; and
- 1096 (d) consider any oral representations so made<sup>17</sup>.

The governing body must consider whether or not the pupil should be reinstated and, where it considers that the pupil should be reinstated, it must in addition consider whether he should be reinstated immediately or reinstated by a particular date<sup>18</sup>. If the governing body decides that the pupil should be reinstated, it must<sup>19</sup> forthwith give the appropriate direction to the head teacher<sup>20</sup>, and inform the relevant person and the local education authority of its decision<sup>21</sup>. The head teacher must comply with any direction of the governing body for the reinstatement of a pupil who has been excluded from the school<sup>22</sup>. If the governing body decides that the pupil should not be reinstated<sup>23</sup>, it must forthwith<sup>24</sup>:

- 1097 (i) inform the relevant person, the head teacher and the local education authority of its decision<sup>25</sup>; and
- 1098 (ii) in addition, in the case of a pupil who is permanently excluded, give the relevant person notice in writing<sup>26</sup> referring to that decision and stating<sup>27</sup> the reasons for the decision<sup>28</sup>, his right to appeal against the decision<sup>29</sup>, the person to whom he should give any notice of appeal<sup>30</sup>, that any notice of appeal must contain the grounds of appeal<sup>31</sup>, and the last date on which an appeal may be made<sup>32</sup>.

Where the head teacher of a maintained school excludes a pupil in a case where the above provisions<sup>33</sup> do not apply, and the governing body receives any representations made<sup>34</sup> by the relevant person about the exclusion, it must consider those representations<sup>35</sup>.

The governing body must take each of the steps referred to in heads (a) to (d) above:

- 1099 (A) not earlier than six school days<sup>36</sup>; and
- 1100 (B) not later than 15 school days, in the case of a permanent exclusion or an exclusion for a fixed period of more than 15 school days<sup>37</sup>; or

1101 (c) not later than 50 school days, in the case of an exclusion for a fixed period of 15 school days or fewer<sup>38</sup>,

after the date on which it was informed<sup>39</sup> of the period of the exclusion, whether any exclusion should be made permanent, and the reasons<sup>40</sup>. Where a pupil has been excluded in circumstances in which he would, as a result of the exclusion, lose an opportunity to take a public examination, the governing body must (so far as it is practical for it to do so) take each of the steps referred to in heads (a) to (d) above before the date on which the pupil is due to take the examination and in any event no later than is required by heads (A) to (C) above<sup>41</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 For the meaning of 'maintained school' see PARA 94 ante; and see PARA 562 note 2 ante.

3 Ie under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(4) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(4): see PARA 563 ante.

4 For the meaning of 'exclusion' see PARA 562 note 3 ante.

5 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(1)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(1)(a). For the meaning of 'pupil' see PARA 16 note 4 ante.

6 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(1)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(1)(b).

7 For the meaning of 'school day' see PARA 533 note 2 ante.

8 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(1)(c)(i); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(1)(c)(i).

9 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(1)(c)(ii); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(1)(c)(ii).

10 For the meaning of 'relevant person' see PARA 563 note 4 ante.

11 Ie in pursuance of the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1)(c) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1)(c): see PARA 563 ante.

12 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(1)(d); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(1)(d).

13 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(2)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(2)(a). Where it falls to the governing body, in exercise of functions under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5 or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6, to establish any fact, any question as to whether that fact is established is to be decided on a balance of probabilities: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 7A(b) (added by SI 2004/402); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 8A(b) (added by SI 2004/1805).

14 Ie in pursuance of the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1)(c) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1)(c): see PARA 563 ante.

15 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(2)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI



2003/3227, reg 6(2)(b). In relation to Wales, the governing body must also consider representations made by the excluded pupil (where the pupil is not the relevant person in pursuance of reg 4(1)(c)) and by the head teacher: reg 6(2)(b).

16 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(2)(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(2)(c). In relation to Wales, the governing body must convene the meeting and allow the excluded pupil (where the pupil is not the relevant person) and the head teacher, as well as the persons mentioned in head (c) in the text, to attend and to make oral representations: reg 6(2)(c). As to the role of the officer of the local education authority see *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [24], [2002] ELR 556 at [24] (proceedings before an independent appeal panel, but the point applies equally to hearings before the governing body; it is no part of the function of the local education authority to press for a particular conclusion in relation to a particular pupil).

17 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(2)(d); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(2)(d). See *R v Camden London Borough Council and the Governors of Hampstead School, ex p H* [1996] ELR 360, sub nom *R v Camden London Borough Council, ex p H (A Minor)* (1996) Times, 15 August, CA (decided under previous legislation). As a matter of fairness it might be necessary to hear from the child himself: *R v Governors of St Gregory's RC Aided High School and Appeal Committee, ex p M* [1995] ELR 290, sub nom *R v Governors of St Gregory's RC Aided High School, ex p Roberts* (1995) Times, 27 January (decided under previous legislation); *R v Governors of Bacon's City Technology College, ex p W* [1998] ELR 488. See also *R (on the application of C) v Sefton Metropolitan Borough Council Independent Appeals Panel and the Governors of Hillside High School* [2001] ELR 393 (decided under previous legislation; where there was no conflict about whether an event had occurred, there was no need for the governing body to carry out searching inquiries). As to the rules of natural justice as they apply to the governing body see *R v Governing Body of the Rectory School and Richmond London Borough Council, ex p WK (A Minor)* [1997] ELR 484; *R v Board of Governors of Stoke Newington School, ex p M* [1994] ELR 131 (both cases decided under previous legislation). The applicant should be provided with relevant evidence on which the decision to exclude was based: *R (on the application of K) v Governors of the W School* [2001] ELR 311 (decided under previous legislation).

18 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(3); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(3) (substituted by SI 2004/1805). In relation to Wales, the governing body must also consider whether it would not be practical for the head teacher to comply with a direction requiring the reinstatement of the pupil: Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(3) (as so substituted). As to reinstatement see further the cases cited in PARA 567 note 11 post.

19 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(4); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(4). In relation to Wales, the governing body is not under compulsion if it considers that it would not be practical for the head teacher to comply with a direction requiring the reinstatement of the pupil: reg 6(4) (amended by SI 2004/1805).

20 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(4)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(4)(a).

21 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(4)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(4)(b).

22 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(5); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(5).

23 Or, in relation to Wales, having decided that the pupil should be reinstated, decides not to give a direction to the head teacher requiring the reinstatement of the pupil: *ibid* reg 6(6) (amended by SI 2004/1805).

24 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6) (as amended: see note 23 *supra*).

25 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(a).

26 The notice in writing may be given either by delivering it to the relevant person's last known address, or by properly addressing, pre-paying and sending by first class post to the relevant person's last known address a letter containing the notice: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(11); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(11).

27 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(b).

28 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(b)(i); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(b)(i).

29 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(b)(ii); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(b)(ii).

30 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(b)(iii); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(b)(iii).

31 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(b)(iv); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(b)(iv).

32 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(b)(v); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(b)(v).

33 *le* the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(2)-(6) and the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(2)-(6): see the text and notes 13-32 *supra*.

34 *le* made in pursuance of the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(1)(c) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(1)(c): see *PARA 563 ante*.

35 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(7); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(7).

36 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(8)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(8)(a).

37 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(8)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(8)(b).

38 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(8)(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(8)(c).

39 *le* under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 4(4) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 4(4): see *PARA 563 ante*.

40 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(8); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(8). The governing body is not relieved of the duty to take any step referred to in heads (a)-(d) in the text because it has not been taken within the period specified in the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(8) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(8): Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(10); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(10).

41 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(9); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(9). The governing body is not relieved of the duty to take any step referred to in heads (a)-(d) in the text because it has not been taken within the period specified in the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(9) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(9): Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(10); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(10).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

### **565 Functions of governing body in relation to excluded pupils**

NOTE 32--See *R (on the application of P) v Haringey LBC* [2008] EWHC 2357 (Admin), [2009] ELR 49, [2008] All ER (D) 81 (Sep).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/A. POWER TO EXCLUDE PUPILS/566.

Functions of local education authority in relation to pupils excluded from a pupil referral unit for a fixed period.

**566. Functions of local education authority in relation to pupils excluded from a pupil referral unit for a fixed period.**

Where the local education authority<sup>1</sup> is informed<sup>2</sup> of the exclusion<sup>3</sup> of any pupil<sup>4</sup> for a fixed period and the circumstances are that the pupil would, as a result of the exclusion, be excluded from the pupil referral unit<sup>5</sup> for a total of more than 15 school days<sup>6</sup> in any one term<sup>7</sup> or lose an opportunity to take a public examination<sup>8</sup>, the local education authority must:

- 1102 (1) consider the circumstances in which the pupil was excluded<sup>9</sup>;
- 1103 (2) consider any representations about the exclusion made to the local education authority by the relevant person<sup>10</sup>;
- 1104 (3) allow the relevant person and the teacher in charge of the pupil referral unit to attend a meeting of the local education authority and to make oral representations about the exclusion<sup>11</sup>; and
- 1105 (4) consider any oral representations so made<sup>12</sup>.

The local education authority must consider whether or not the pupil should be reinstated and where it considers that the pupil should be reinstated, it must in addition consider whether he should be reinstated immediately, or reinstated by a particular date<sup>13</sup>. If the local education authority decides that the pupil should be reinstated, it must forthwith<sup>14</sup> give the appropriate direction to the teacher in charge<sup>15</sup>, and inform the relevant person of its decision<sup>16</sup>. The teacher in charge must comply with any direction of the local education authority for the reinstatement of a pupil who has been excluded from the pupil referral unit<sup>17</sup>. If the local education authority decides that the pupil should not be reinstated<sup>18</sup>, it must forthwith inform the relevant person and the teacher in charge of its decision and the reasons for it<sup>19</sup>. Where the teacher in charge of a pupil referral unit excludes a pupil for a fixed period in a case where the above provisions<sup>20</sup> do not apply, and the local education authority receives any representations made<sup>21</sup> by the relevant person about the exclusion, it must consider those representations<sup>22</sup>.

The local education authority must take each of the steps referred to in heads (1) to (4) above:

- 1106 (a) not earlier than six school days<sup>23</sup>; and
- 1107 (b) not later than 15 school days, in the case of an exclusion for a fixed period of more than 15 school days<sup>24</sup>; or
- 1108 (c) not later than 50 school days, in the case of an exclusion for a fixed period of 15 school days or fewer<sup>25</sup>,

after the date on which it was informed<sup>26</sup> of the period of the exclusion, whether any exclusion should be made permanent, and the reasons<sup>27</sup>. Where a pupil has been excluded for a fixed period in circumstances in which he would, as a result of the exclusion, lose an opportunity to take a public examination, the local education authority must (so far as it is practical for it to do so) take each of the steps referred to in heads (1) to (4) above before the date on which the pupil is due to take the examination and in any event no later than is required by heads (a) to (c) above<sup>28</sup>.

1 As to local education authorities see PARA 20 ante.

2 le under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(2) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(2): see PARA 564 ante.

3 For the meaning of 'exclusion' see PARA 562 note 3 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 For the meaning of 'pupil referral unit' see PARA 457 ante.

6 For the meaning of 'school day' see PARA 533 note 2 ante.

7 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(1)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(1)(a).

8 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(1)(b); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(1)(b).

9 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(2)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(2)(a).

Where it falls to the local education authority, in exercise of functions under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6 or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7 (as amended), to establish any fact, any question as to whether that fact is established is to be decided on a balance of probabilities: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 8A(b) (added by SI 2004/402); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 9A(b) (added by SI 2004/1805).

10 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(2)(b); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(2)(b). The text refers to representations made by the relevant person in pursuance of the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(1)(c) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(1)(c): see PARA 564 ante. For the meaning of 'relevant person' see PARA 563 note 4 ante. In relation to Wales, the local education authority must also consider representations made by the excluded pupil (where the pupil is not the relevant person in pursuance of reg 5(1)(c)) and by the teacher in charge of the pupil referral unit: reg 7(2)(b). As to the teacher in charge of a pupil referral unit see PARA 458 ante.

11 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(2)(c); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(2)(c). In relation to Wales, the local education authority must also allow the excluded pupil (where the pupil is not the relevant person), as well as the persons mentioned in head (3) in the text, to attend and to make oral representations: reg 7(2)(c).

12 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(2)(d); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(2)(d).

13 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(3); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(3) (substituted by SI 2004/1805). In relation to Wales, the local education authority must also consider whether it would not be practical for the teacher in charge to comply with a direction requiring the reinstatement of the pupil: Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(3) (as so substituted). As to reinstatement see further the cases cited in PARA 567 note 11 post.

14 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(4); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(4). In relation to Wales, the local education authority is not under compulsion if it considers that it would not be practical for the teacher in charge to comply with a direction requiring the reinstatement of the pupil: reg 7(4) (amended by SI 2004/1805).

15 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(4)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(4)(a).

16 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(4)(b); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(4)(b).

17 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(5); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(5).

18 Or, in relation to Wales, having decided that the pupil should be reinstated, decides not to give a direction to the teacher in charge requiring the reinstatement of the pupil: *ibid* reg 7(6) (amended by SI 2004/1805).

19 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(6); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(6) (as amended: see note 18 *supra*).

20 *Ie* the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(2)-(6) and the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(2)-(6): see the text and notes 9-19 *supra*.

21 *Ie* made in pursuance of the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(1)(c) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(1)(c): see *PARA 563 ante*.

22 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(7); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(7).

23 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(8)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(8)(a).

24 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(8)(b); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(8)(b).

25 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(8)(c); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(8)(c).

26 *Ie* under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(2) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(2): see *PARA 564 ante*.

27 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(8); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(8). The local education authority must not be relieved of the duty to take any step referred to in heads (1)-(4) in the text because it has not been taken within the period specified in the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(8) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(8); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(10); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(10).

28 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(9); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(9). The local education authority must not be relieved of the duty to take any step referred to in heads (1)-(4) in the text because it has not been taken within the period specified in the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(9) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(9); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 6(10); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 7(10).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/A. POWER TO EXCLUDE PUPILS/566A. Duty of governing body where pupil excluded for fixed period in England.

### **566A. Duty of governing body where pupil excluded for fixed period in England.**

Except in prescribed cases<sup>1</sup>, the governing body of a relevant school<sup>2</sup> in England must make arrangements for the provision of suitable full-time education<sup>3</sup> for pupils of compulsory school age<sup>4</sup> who are excluded from the school for a fixed period on disciplinary grounds<sup>5</sup>. The education must be provided from a day that, in relation to the pupil concerned, is determined in accordance with regulations made by the Secretary of State<sup>6</sup>. The education must not be provided at the school unless it is provided there in pursuance of arrangements which (1) are made jointly with the governing body of at least one other relevant school<sup>7</sup>; and (2) make provision for the education of pupils excluded on disciplinary grounds from any of the schools that are parties to the arrangements<sup>8</sup>. In determining what arrangements to make in the case of any pupil, a governing body must have regard to any guidance given from time to time by the Secretary of State<sup>9</sup>.

<sup>1</sup> In cases prescribed by regulations made by the Secretary of State: Education and Inspections Act 2006 s 100(5). See the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, SI 2007/1870, reg 5.

<sup>2</sup> 'Relevant school' means a maintained school, an academy, a city technology college or a city college for the technology of the arts; 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a pupil referral unit: 2006 Act s 111. However, in s 100, 'relevant school' does not include a pupil referral unit: s 100(5). 'Governing body', in relation to a relevant school which is an academy, a city technology college or a city college for the technology of the arts, means proprietor: s 100(5). As to the meanings of 'academy', 'city technology college' and 'city college for the technology of the arts' see PARA 496; definitions applied by virtue of s 187(2), (3).

<sup>3</sup> 'Suitable full-time education', in relation to a pupil, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have: *ibid* s 100(5). For the meaning of 'pupil' see PARA 16; definition applied by virtue of s 187(2), (3).

<sup>4</sup> For the meaning of 'compulsory school age' see PARA 15; definition applied by virtue of *ibid* s 187(2), (3).

<sup>5</sup> *Ibid* s 100(1).

<sup>6</sup> *Ibid* s 100(2), (5). See the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, SI 2007/1870, reg 30.

<sup>7</sup> 2006 Act s 100(3)(a).

<sup>8</sup> *Ibid* s 100(3)(b).

<sup>9</sup> *Ibid* s 100(4).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**



The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/A. POWER TO EXCLUDE PUPILS/566B. Reintegration interviews.

### **566B. Reintegration interviews.**

The following provisions are not yet in force in relation to Wales.

Regulations<sup>1</sup> may require the head teacher<sup>2</sup> of a relevant school<sup>3</sup> in prescribed cases to request any parent<sup>4</sup> of a temporarily excluded pupil<sup>5</sup> to attend an interview ('a reintegration interview') at the school with the head teacher of the school or any other person authorised by the head teacher<sup>6</sup>. The purpose of a reintegration interview is to assist the reintegration of the pupil after the period of exclusion and to promote the improvement of his behaviour<sup>7</sup>.

In relation to relevant schools in England, the head teacher must request an interview with a parent of a temporarily excluded pupil, being an individual who resides with the pupil, who has been excluded on disciplinary grounds from a primary school for any fixed period, or from a secondary school for a fixed period of six or more school days<sup>8</sup>.

1 The regulations made by the Secretary of State or the National Assembly for Wales: Education and Inspections Act 2006 s 102(1), (4).

2 As to the meaning of 'head teacher' see PARA 93; definition applied by virtue of ibid s 187(2), (3).

3 As to the meaning of 'relevant school' see PARA 566A.

4 As to the meaning of 'parent' see PARA 510; definition applied by virtue of 2006 Act s 187(2), (3).

5 'A temporarily excluded pupil' means a pupil who is or has been excluded on disciplinary grounds for a fixed period: ibid s 102(4). For the meaning of 'pupil' see PARA 16; definition applied by virtue of s 187(2), (3).

6 Ibid s 102(1). Regulations under s 102 may make provision about the time within which any reintegration interview must be held, the procedure for arranging the interview and the notification of any request to the parent: s 102(3).

7 Ibid s 102(2).

8 Education (Reintegration Interview) (England) Regulations 2007, SI 2007/1868, regs 1(2), 3(1), (2). However, the head teacher need not make such a request if the exclusion starts within ten days of the end of the summer term or the pupil is expected to leave the school for a reason unconnected with his behaviour: reg 3(3). As to the form of and notice of the request and timing of the interview, and the combination of notices, see regs 4, 5.

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B.

In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

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### **566C. Duty of parent in relation to excluded pupil in England.**

Where a pupil<sup>1</sup> of compulsory school age<sup>2</sup> ('the excluded pupil') is excluded on disciplinary grounds from a relevant school<sup>3</sup> in England, whether for a fixed period or permanently, and a notice<sup>4</sup> has been given to a parent<sup>5</sup> of the pupil<sup>6</sup>, the parent of the excluded pupil must ensure that the pupil is not present in a public place<sup>7</sup> at any time during school hours<sup>8</sup> on a day which (1) is one of the first five school days<sup>9</sup> to which the exclusion relates or, where that exclusion is for a fixed period of five days or less, any of the days to which the exclusion relates, and (2) is stated in the notice<sup>10</sup> to be a day on which the parent is subject to this duty<sup>11</sup>. A parent who fails to comply with this duty commits an offence<sup>12</sup>.

1 For the meaning of 'pupil' see PARA 16; definition applied by virtue of the Education and Inspections Act 2006 s 187(2), (3).

2 For the meaning of 'compulsory school age' see PARA 15; definition applied by virtue of ibid s 187(2), (3).

3 As to the meaning of 'relevant school' see PARA 566A.

4 2006 Act s 103(1), referring to a notice under s 104.

5 As to the meaning of 'parent' see PARA 510; definition applied by virtue of ibid s 187(2), (3). In s 103 'parent', in relation to a pupil, does not include any person who is not an individual: s 103(8).

6 Ibid s 103(1).

7 'Public place' means any highway, and any place to which at the material time the public or any section of the public have access, on payment or otherwise, as of right or by virtue of express or implied permission: ibid s 103(8).

8 'School hours' means any time during a school session of the school or during a break between sessions of that school on the same day: ibid s 103(8).

9 For the meaning of 'school day' see PARA 533; definition applied by virtue of ibid s 187(2), (3). Where the excluded pupil is excluded during the course of a school day but before the beginning of any afternoon session on that day, that day is to be treated as the first day to which the exclusion relates: s 103(7).

10 Ibid s 103(2), referring to a notice under s 104.

11 Ibid s 103(2).

12 Ibid s 103(3). It is a defence for a person charged with an offence under s 103(3) to prove that he had a reasonable justification for his failure to comply with the duty: s 103(4). A person guilty of an offence under s 103(3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 103(5). As to the standard scale see PARA 481. Proceedings for an offence under s 103(3) may not be instituted except by a local education authority: s 103(6). Where an authorised officer has reason to believe that a person has committed an offence under s 103(3), he may give the person a penalty notice in respect of the offence: see ss 105, 106; Education (Penalty Notices) (England) Regulations 2007, SI 2007/1867.

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/A. POWER TO EXCLUDE PUPILS/566D. Notice to parent relating to excluded pupil in England.

### **566D. Notice to parent relating to excluded pupil in England.**

The head teacher<sup>1</sup> of a relevant school<sup>2</sup> in England, on excluding from the school a pupil<sup>3</sup> of compulsory school age<sup>4</sup>, must give the parent<sup>5</sup> by the prescribed time<sup>6</sup> a notice in writing<sup>7</sup>. Where the appropriate authority<sup>8</sup> is or will be obliged under the relevant enactment<sup>9</sup> to make arrangements for the provision of full-time education for the excluded pupil during his exclusion, or intend to do so without being so obliged, the notice must specify the first day on which full-time education is to be provided for the excluded pupil<sup>10</sup>. The notice must specify as days on which the parent is to be subject to a duty to ensure that the pupil is not present in a public place<sup>11</sup> each school day beginning with the first school day<sup>12</sup> to which the exclusion relates and ending with the earliest of the following: (1) where a day is specified<sup>13</sup>, the school day preceding that day<sup>14</sup>; (2) the fifth school day to which the exclusion relates<sup>15</sup>; and (3) the last school day to which the exclusion relates<sup>16</sup>.

1 As to the meaning of 'head teacher' see PARA 93; definition applied by virtue of the Education and Inspections Act 2006 s 187(2), (3).

2 As to the meaning of 'relevant school' see PARA 566A.

3 For the meaning of 'pupil' see PARA 16; definition applied by virtue of the 2006 Act s 187(2), (3).

4 For the meaning of 'compulsory school age' see PARA 15; definition applied by virtue of ibid s 187(2), (3).

5 As to the meaning of 'parent' see PARA 510; definition applied by virtue of ibid s 187(2), (3).

6 As to the prescribed time, see the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, SI 2007/1870, regs 6, 9.

7 2006 Act s 104(1). The notice must comply with s 104(2) and (3) and contain such other information as may be prescribed by regulations made by the Secretary of State: s 104(1), (8). See the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, SI 2007/1870, reg 7. The Education Act 1996 s 572 (see PARA 463), which provides for the methods by which notices may be served under the 1996 Act, does not preclude a notice under the 2006 Act s 104 from being given to the parent of the excluded pupil by any effective method: s 104(6). Regulations may enable a notice under s 104 to be combined with a notice required by virtue of the Education Act 2002 s 52(3)(a) (see PARA 562): 2006 Act s 104(7). See SI 2007/1870 reg 8.

8 'The appropriate authority' means (1) in the case of a permanent exclusion or an exclusion from a pupil referral unit, a local education authority; (2) in the case of an exclusion for a fixed period from a maintained school, the governing body of the school; and (3) in the case of an exclusion for a fixed period from a relevant school which is an academy, a city technology college or a city college for the technology of the arts, the proprietor of the school: 2006 Act s 104(8). As to the meanings of 'academy', 'city technology college' and 'city college for the technology of the arts' see PARA 496; definitions applied by virtue of s 187(2), (3).

9 'The relevant enactment' means, where the appropriate authority is a local education authority, the Education Act 1996 s 19 (see PARA 457) and, in any other case, the 2006 Act s 100 (see PARA 566A): s 104(8).

10 Ibid s 104(2). Where the appropriate authority is a local education authority, it must provide the head teacher with such information as will enable him to give a notice complying with s 104(2): s 104(5).

11 Ie the duty under ibid s 103(2) (see PARA 566C).

12 For the meaning of 'school day' see PARA 533; definition applied by virtue of *ibid* s 187(2), (3). Where the excluded pupil is excluded during the course of a school day but before the beginning of any afternoon session on that day, that day is to be treated as the first day to which the exclusion relates: ss 103(7), 104(4).

13 *Ie* under *ibid* s 104(2).

14 *Ibid* s 104(3)(a).

15 *Ibid* s 104(3)(b).

16 *Ibid* s 104(3)(c).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **562-566 Power to Exclude Pupils**

The head teacher may request that a parent of a temporarily excluded pupil attend a reintegration interview: see Education and Inspections Act 2006 s 102; and PARA 566B. In England, the governing body must make arrangements for the provision of suitable full-time education for pupil excluded for a fixed period, and where a notice has been given to a parent of an excluded pupil that parent has a duty, in certain circumstances, to ensure that the pupil is not in a public place during school hours: see ss 100, 103-106; and PARAS 566A, 566C, 566D.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/567. Appeals against permanent exclusion of pupils from maintained schools.

## **B. APPEALS AGAINST EXCLUSION**

### **567. Appeals against permanent exclusion of pupils from maintained schools.**

A local education authority<sup>1</sup> must make arrangements for enabling the relevant person<sup>2</sup> to appeal against any decision of the governing body<sup>3</sup> not to reinstate a pupil<sup>4</sup> who has been permanently excluded<sup>5</sup> from a school maintained by the authority<sup>6</sup>. The decision of an appeal panel<sup>7</sup> on an appeal pursuant to such arrangements is binding on the relevant person, the governing body, the head teacher<sup>8</sup> and the local education authority<sup>9</sup>. On such an appeal, the appeal panel may uphold the exclusion<sup>10</sup>, direct that the pupil is to be reinstated (either immediately or by a date specified in the direction)<sup>11</sup>, or decide that, because of exceptional circumstances or for other reasons it is not practical to give a direction requiring his reinstatement, but that it would otherwise have been appropriate to give such a direction<sup>12</sup>. An appeal panel is not to determine that a pupil is to be reinstated merely because of a failure to comply with any procedural requirement imposed by or under the statutory provisions governing the exclusion of pupils<sup>13</sup> in relation to the decision<sup>14</sup> against which the appeal is brought, or the exclusion or decision by the head teacher to which that decision related<sup>15</sup>.

There appear to be difficulties in holding that the right to a fair trial, as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)<sup>16</sup>, applies to an exclusion appeal panel as a body which determines a pupil's civil rights, whether to education or to reputation<sup>17</sup>.

1 As to local education authorities see PARA 20 ante. As to the local education authority's duty to have reference to any ministerial guidance see PARA 575 post.

2 For the meaning of 'the relevant person' see PARA 563 note 4 ante.

3 Under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5 or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6 (as amended): see PARA 565 ante. The Welsh regulations refer to reg 5, but it is submitted that the reference should be a reference to reg 6. As to the governing bodies of maintained schools see PARA 203 et seq ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 For the meaning of 'exclude' see PARA 562 note 3 ante.

6 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(1). For the meaning of 'school maintained by a local education authority' under the School Standards and Framework Act 1998 see PARA 94 ante. See also PARA 562 note 3 ante. As to the arrangements so made see PARA 569 et seq post.

7 For these purposes, 'appeal panel' means an appeal panel constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2 (as amended) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2 (see PARA 570 post): Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2).

In relation to England, an appeal panel, in making any decision on an appeal pursuant to arrangements made under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI



2002/3178, reg 6(1), must have regard both to the interests of the excluded pupil and to the interests of other pupils and persons working at the school (including persons working at the school voluntarily): reg 6(3).

8 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

9 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(5); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(4).

An application for judicial review of the decision of a governing body to exclude a pupil is not disallowed by the existence of the right of appeal: *R (on the application of A) v Governing Body of K School* [2002] EWHC 395 (Admin), [2002] ELR 631 (judicial review may be justified in cases involving permanent exclusion or exclusion resulting in a pupil being unable to sit public examinations). However, see also *R (on the application of DR) v Head Teacher of St George's Catholic School*, *R (on the application of AM) v Governing Body of Kingsmead School* [2002] EWCA Civ 1822, [2003] LGR 371, [2003] ELR 104, where Simon Brown LJ said (obiter) at [45] that, except in very rare cases where a governing body is plausibly said to have acted quite improperly, or where the court's guidance on some real point of principle is required, the court's proper response to an application for judicial review of a governing body's decision is almost always to leave the pupil to his statutory remedy.

10 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(6)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(5)(a).

11 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(6)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(5)(b).

12 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(6)(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(5)(c). See *R (on the application of MB) v Independent Appeal Panel for SMBC* [2002] ELR 676 (pupil excluded for violence allowed to sit examinations as a visitor but not under reinstatement).

'Reinstatement' is not defined. Under the School Standards and Framework Act 1998 s 67 (repealed), 'reinstatement' was held to mean that the termination of the school-pupil relationship is reversed and the responsibilities and obligations of the school towards the pupil resumed: *R (on the application of L) v Governors of J School* [2003] UKHL 9, [2003] 2 AC 633, [2003] 1 All ER 1012, [2003] ELR 309. The jurisdiction of the independent appeal panel is restricted to the question of whether a permanently-excluded pupil should be reinstated and does not extend to the separate question of how reinstatement following a successful appeal is performed, this being a matter, once the direction to reinstate has been complied with satisfactorily, in which the head teacher and governors have considerable discretion, taking into account their general obligations and responsibilities to all pupils and staff in the organisation, control and management of a maintained school: *R (on the application of L) v Governors of J School* supra ('reinstatement' in a school can accommodate the almost complete segregation of the pupil from the rest of the school community).

There is no principle of law which governs the stage at which the independent appeal panel should elicit evidence regarding the practicality of reinstatement: *R (on the application of Q) v Wolverhampton City School Admission Appeals Panel* [2005] EWHC 277 (Admin) at [25]-[26], [2005] ELR 501 at [25]-[26] per Newman J.

13 Ie the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178 (as amended) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227 (as amended).

14 Ie the decision under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5 or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6 (as amended): see PARA 565 ante.

15 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(4); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(3).

16 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134.

17 See *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [30], [2002] ELR 556 at [30], where, however, it was held to be perfectly tenable also to assume 'that domestic human rights law, and arguably the European Court of Human Rights's jurisprudence too, will today regard at least the right not to be permanently excluded from school without good reason as a civil right for [these] purposes'. See further PARA 3 ante.

**UPDATE**

**562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/568. Appeals against permanent exclusion of pupils from pupil referral units.

### **568. Appeals against permanent exclusion of pupils from pupil referral units.**

A local education authority<sup>1</sup> must make arrangements for enabling the relevant person<sup>2</sup> to appeal against any decision<sup>3</sup> of the teacher in charge of a pupil referral unit<sup>4</sup> to permanently exclude<sup>5</sup> a pupil<sup>6</sup> from a pupil referral unit maintained by the authority<sup>7</sup>. The decision of an appeal panel<sup>8</sup> on an appeal pursuant to such arrangements is binding on the relevant person, the teacher in charge and the local education authority<sup>9</sup>. On such an appeal, the appeal panel may uphold the exclusion<sup>10</sup>, direct that the pupil is to be reinstated (either immediately or by a date specified in the direction)<sup>11</sup>, or decide that because of exceptional circumstances or for other reasons it is not practical to give a direction requiring his reinstatement but that it would otherwise have been appropriate to give such a direction<sup>12</sup>. An appeal panel must not determine that a pupil is to be reinstated merely because of a failure to comply with any procedural requirement imposed by or under the statutory provisions governing the exclusion of pupils<sup>13</sup> in relation to the decision<sup>14</sup> against which the appeal is brought<sup>15</sup>.

1 As to local education authorities see PARA 20 ante. As to the local education authority's duty to have reference to any ministerial guidance see PARA 575 post.

2 For the meaning of 'the relevant person' see PARA 563 note 4 ante.

3 I.e. under the Education Act 2002 s 52(2): see PARA 562 ante.

4 As to the teacher in charge of a pupil referral unit see PARA 458 ante. For the meaning of 'pupil referral unit' see PARA 457 ante.

5 For the meaning of 'exclude' see PARA 562 note 3 ante.

6 For the meaning of 'pupil' see PARA 16 note 4 ante.

7 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(1); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(1).

8 For these purposes, 'appeal panel' means an appeal panel constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2 (as amended and modified) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2 (as modified): Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(2); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(2).

In relation to England, an appeal panel, in making any decision on an appeal pursuant to arrangements made under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(1), must have regard both to the interests of the excluded pupil and to the interests of other pupils and persons working at the pupil referral unit (including persons working at the unit voluntarily): reg 7(3).

9 Ibid reg 7(5); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(4). As to the possibility of applying for judicial review of the decision see the case law cited in PARA 567 note 9 ante; and as to the application of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 6(1) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134) to proceedings before an exclusion appeal panel see PARA 567 text and notes 16-17 ante.

10 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(6)(a); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(5)(a).

11 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(6)(b); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(5)(b).

12 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(6)(c); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(5)(c). As to reinstatement see further the case law cited in PARA 567 note 12 ante.

13 Ie the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179 (as amended) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246 (as amended).

14 Ie the decision under the Education Act 2002 s 52(2): see PARA 562 ante.

15 Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(4); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(3).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/569. Time limits and notices waiving right to appeal.

### **569. Time limits and notices waiving right to appeal.**

No appeal<sup>1</sup> against a decision not to reinstate a pupil<sup>2</sup> who has been permanently excluded<sup>3</sup> from a school maintained by the local education authority<sup>4</sup> may be made after the fifteenth school day<sup>5</sup> after the day on which the relevant person<sup>6</sup> is given notice in writing<sup>7</sup> of that decision<sup>8</sup>. No appeal<sup>9</sup> against a decision to permanently exclude a pupil from a pupil referral unit<sup>10</sup> maintained by the local education authority may be made after the fifteenth school day after the day on which the relevant person is given notice in writing<sup>11</sup> of that decision<sup>12</sup>.

Any notice in writing given by the relevant person to the local education authority, which states that he does not intend to appeal against a decision<sup>13</sup>, is final<sup>14</sup>.

1    Ie under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(1) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(1): see PARA 565 ante.

2    For the meaning of 'pupil' see PARA 16 note 4 ante.

3    For the meaning of 'exclude' see PARA 562 note 3 ante.

4    For the meaning of 'school maintained by a local education authority' under the School Standards and Framework Act 1998 see PARA 94 ante. As to local education authorities see PARA 20 ante.

5    For the meaning of 'school day' see PARA 533 note 2 ante.

6    For the meaning of 'the relevant person' see PARA 563 note 4 ante.

7    Ie under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 5(6)(b) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 6(6)(b): see PARA 565 ante.

8    Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 1(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 1(1).

For the purposes of calculating the period referred to in the text, a notice is to be taken to have been given, where first class post is used, on the second working day after the date of posting or, where the notice is delivered, on the date of delivery, unless, in either case, the contrary is shown: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 1(2); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 1(2). For this purpose, 'working day' means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321): Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 16; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 16.

9    Ie under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(1) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(1): see PARA 568 ante.

10   For the meaning of 'pupil referral unit' see PARA 457 ante.

11   Ie under the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 5(3)(b) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 5(3)(b): see PARA 564 ante.

12 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 1(1) (modified by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 1(1) (modified by SI 2003/3246). As to calculating the period referred to in the text see note 8 *supra*.

13 I.e. a decision not to reinstate the pupil (in the case of exclusion from a maintained school), or a decision to permanently exclude the pupil (in the case of exclusion from a pupil referral unit).

14 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 1(3) (modified by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 1(3) (modified by SI 2003/3246).

In relation to Wales, where the relevant person is both a pupil of compulsory school age who was aged 11 or above on the day before the beginning of the school year in which that pupil is excluded and a parent of his, a notice in writing given under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 1(3) by a parent is to be treated as final whether or not the pupil has given such notice in writing: Schedule para 1(4). As to the meaning of 'parent' see PARA 510 note 1 *ante*. For the meaning of 'compulsory school age' see PARA 15 *ante*; and for the meaning of 'school year' see PARA 15 note 9 *ante*.

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/570. Constitution of appeal panels.

### **570. Constitution of appeal panels.**

An appeal pursuant to arrangements made by a local education authority<sup>1</sup>, against any decision of a governing body<sup>2</sup> not to reinstate a pupil<sup>3</sup> who has been permanently excluded<sup>4</sup> from a school maintained by the authority<sup>5</sup> or pupil referral unit<sup>6</sup>, must be made to an appeal panel consisting<sup>7</sup> of three or five members appointed by the authority from: (1) persons who are eligible to be lay members<sup>8</sup>; (2) (in relation to England) persons who are, or have been within the previous five years, head teachers of maintained schools or teachers in charge of a pupil referral unit<sup>9</sup>, or (in relation to Wales) persons who are currently working in education or education management<sup>10</sup>; and (3) persons who are or have been governors of maintained schools<sup>11</sup>, provided they have served as governors for at least 12 consecutive months within the last six years and have not been teachers or head teachers<sup>12</sup> during the last five years<sup>13</sup>. Of the members of an appeal panel: (a) where it consists of three members, one must be appointed from each of the three categories given in heads (1) to (3) above<sup>14</sup>; and (b) where it consists of five members, one must be a person who is eligible to be a lay member and is appointed as such<sup>15</sup>, two must be persons falling within head (2) above<sup>16</sup>, and two must be persons falling within head (3) above<sup>17</sup>. Sufficient persons may be so appointed by the authority to enable two or more appeal panels to sit at the same time<sup>18</sup>.

No person is to be a member of an appeal panel if he is disqualified<sup>19</sup>. In relation to maintained schools, persons disqualified for membership of an appeal panel are<sup>20</sup>:

- 1109 (i) any member of the authority or of the governing body of the school in question<sup>21</sup>;
- 1110 (ii) the head teacher of the school in question or any person who has held that position within the previous five years<sup>22</sup>;
- 1111 (iii) any person employed<sup>23</sup> by the authority, other than as a head teacher<sup>24</sup>;
- 1112 (iv) any person who has, or at any time has had, any connection with the authority or the school, or with any person within head (iii) above (in relation to England) or within head (ii) or head (iii) above (in relation to Wales)<sup>25</sup>, or the pupil in question or the incident leading to his exclusion<sup>26</sup>, of a kind which might reasonably be taken to raise doubts about his ability to act impartially<sup>27</sup>.

In relation to pupil referral units, persons disqualified for membership of an appeal panel are<sup>28</sup>:

- 1113 (A) any member of the local education authority or of the management committee (where one exists) of the pupil referral unit in question<sup>29</sup>;
- 1114 (B) the teacher in charge of (or, in relation to Wales, any teacher at) the pupil referral unit in question or any person who has held any such position within the previous five years<sup>30</sup>;
- 1115 (C) any person employed by the local education authority, other than a person employed as a head teacher or a teacher in charge of a pupil referral unit (in relation to England) or a teacher (in relation to Wales)<sup>31</sup>;
- 1116 (D) any person who has, or at any time has had, any connection with the local education authority or the pupil referral unit, or with any person within head (C) above (in relation to England) or within head (B) or head (C) above (in relation to Wales)<sup>32</sup>, or the pupil in question or the incident leading to his exclusion<sup>33</sup>, of a kind

which might reasonably be taken to raise doubts about his ability to act impartially<sup>34</sup>.

Where, at any time after an appeal panel consisting of five members has begun to consider an appeal, any of the members dies, or becomes unable through illness to continue as a member, the panel may continue with its consideration and determination of the appeal so long as the number of the remaining members is not less than three and the requirements of head (a) above are satisfied<sup>35</sup>.

An appeal panel must be chaired by the person appointed as a lay member<sup>36</sup>.

1 le under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(1), the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(1), the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(1) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(1): see PARA 565 ante. As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 For the meaning of 'pupil' see PARA 16 note 4 ante.

4 For the meaning of 'exclude' see PARA 562 note 3 ante.

5 For the meaning of 'school maintained by the authority' under the School Standards and Framework Act 1998 see PARA 94 ante.

6 For the meaning of 'pupil referral unit' see PARA 457 ante.

7 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2(1) (modified by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2(1) (modified by SI 2003/3246).

Exclusion appeal panels constituted in accordance with regulations under the Education Act 2002 s 52 (see PARA 562 ante) are under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1), Sch 1 Pt I para 15 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57. As to the appeal panel's duty to have reference to any ministerial guidance see PARA 575 post. The independence of appeal panels was commented upon in *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693, [2002] ELR 556; and see also, at first instance in the case of one of the appeals, *R (on the application of B) v Head Teacher of Alperton Community School*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of C) v Governing Body of Cardinal Newman High School* [2001] EWHC Admin 229 at [70]-[72], [2001] ELR 359 at [70]-[72] per Newman J. As to the independence of the legal clerk who usually supports the panel see *R (on the application of S) v Head Teacher of Claremont High School* [2001] EWHC Admin 513 at [29]-[37] per Richards J (dual role as clerk to the panel and legal services manager for the local education authority); and as to the role of a legal clerk see *R (on the application of A (A Minor)) v Independent Appeal Panel for G College* [2005] EWHC 558 (Admin) at [13]-[16], [2005] ELR 490 at [13]-[16] per Bean J.

8 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(2)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(2)(a). For these purposes, a person is eligible to be a lay member if he is a person without personal experience in the management of any school or the provision of education in any school, disregarding any such experience as a governor or in any other voluntary capacity: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(4); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(4). For the meaning of 'school' see PARA 81 ante.

9 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(2)(b) (modified by SI 2002/3179).

10 Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(2)(b).

11 As to the governance of maintained schools see PARA 203 et seq ante.



12 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

13 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(2)(c) (substituted by SI 2004/402); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(2)(c).

14 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(3)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(3)(a).

15 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(3)(b)(i); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(3)(b)(i).

16 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(3)(b)(ii); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(3)(b)(ii).

17 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(3)(b)(iii); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(3)(b)(iii).

18 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(5); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(5).

19 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(6); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(6).

20 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7).

21 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(a).

22 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(b). In relation to Wales, this category extends also to any teacher at the school in question or any person who has held any such position within the previous five years: Schedule para 2(7)(b).

23 For the meaning of 'employment' see PARA 355 note 14 ante.

24 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(c). In relation to Wales, this category extends also to any person employed by the local education authority other than as a teacher: Schedule para 2(7)(c).

25 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(d)(i); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(d)(i). In relation to England, a person employed by the authority as a teacher is not to be taken, by reason only of that employment, to have such a connection with the authority as is mentioned in head (iv) in the text: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(8). In relation to Wales, a person employed by the authority as a head teacher or a teacher is not to be taken, by reason only of that employment, to have such a connection with the authority as is mentioned in head (iv) in the text: Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(8).

26 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(d)(ii); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(d)(ii).

27 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(d); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(d).

28 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7) (substituted by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7) (substituted by SI 2003/3246).

29 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(a) (substituted by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(a) (substituted by SI 2003/3246).

30 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(b) (substituted by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(b) (substituted by SI 2003/3246). As to the teacher in charge of a pupil referral unit see PARA 458 ante.

31 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(c) (substituted by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(c) (substituted by SI 2003/3246).

32 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(d)(i) (substituted by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(d)(i) (substituted by SI 2003/3246).

33 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(d)(ii) (substituted by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(d)(ii) (substituted by SI 2003/3246).

34 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(7)(d) (substituted by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(7)(d) (substituted by SI 2003/3246).

35 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(9); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(9).

36 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2(10); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2(10).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### **570 Constitution of appeal panels**

TEXT AND NOTES--New head (v) any person who does not satisfy specified training requirements: SI 2002/3178 Schedule para 2(7)(e) (added by SI 2006/2189). A local education authority may appoint a clerk, who satisfies specified training requirements, to assist the members of an appeal panel: SI 2002/3178 Schedule para 2A (added by SI 2006/2189). As to such specified training requirements see SI 2002/3178 Schedule para 2B (added by SI 2006/2189).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/571. Allowances for members of appeal panels.

### **571. Allowances for members of appeal panels.**

The provisions of the Local Government Act 1972 relating to financial loss allowances<sup>1</sup> apply, with any necessary modifications, to any member of an appeal panel constituted<sup>2</sup> for exclusion appeal arrangements<sup>3</sup>.

<sup>1</sup> The financial loss allowances under the Local Government Act 1972 s 173(4) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 172.

<sup>2</sup> The constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2 (as amended) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2.

<sup>3</sup> Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 3(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 3(1).

For these purposes, the reference to an approved duty in the Local Government Act 1972 s 173(4) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 172) is to be read as a reference to attendance at a meeting of an appeal panel: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 3(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 3(1).

An appeal panel is included in the bodies to which the Local Government Act 1972 s 174(1) (as amended) (travelling and subsistence allowances) (see LOCAL GOVERNMENT vol 69 (2009) PARA 174) applies: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 3(2); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 3(2). In the Local Government Act 1972 s 174(1) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 174), in its application to a panel constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2 (as amended) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2, the reference to payments at rates determined by the body in question is to be read as a reference to payments at rates determined by the local education authority: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 3(2); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 3(2). As to local education authorities see PARA 20 ante.

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/572. Duty to advertise for lay members.

## **572. Duty to advertise for lay members.**

Any local education authority<sup>1</sup> which is required<sup>2</sup> to make arrangements for appeals against the exclusion<sup>3</sup> of pupils<sup>4</sup> must, at the intervals specified<sup>5</sup>, secure the publication of an advertisement for lay members of appeal panels constituted<sup>6</sup> for exclusion appeals by that authority<sup>7</sup>. Such an advertisement must:

- 1117 (1) identify by name, class, or general description, the schools<sup>8</sup> served by the appeal panels to which the advertisement refers<sup>9</sup>;
- 1118 (2) be placed in at least one local newspaper circulating in the area in which the schools identified in the advertisement are situated<sup>10</sup>;
- 1119 (3) allow a period of at least 21 days from the date of publication of the advertisement for replies<sup>11</sup>.

Before appointing any lay members, the appropriate authority must consider any eligible persons who have applied to the authority in response to the most recent advertisement or series of advertisements placed<sup>12</sup>, indicating that they wish to be considered for such appointment<sup>13</sup>.

1 As to local education authorities see PARA 20 ante. As to the local education authority's duty to have reference to any ministerial guidance see PARA 575 post.

2 I.e. under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(1), or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(1), or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(1) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(1): see PARA 565 ante.

3 For the meaning of 'exclusion' see PARA 562 note 3 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 I.e. in every three-year period following the date upon which an advertisement (or the final advertisement of a series of advertisements) was last published: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 4(2) (modified by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 4(2) (modified by SI 2003/3246).

6 I.e. constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 2 (as amended) or Schedule para 2 (as modified) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 2 or Schedule para 2 (as modified).

7 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 4(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 4(1).

8 For the meaning of 'school' see PARA 81 ante.

9 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 4(3)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 4(3)(a).

10 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 4(3)(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 4(3)(b).

11 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 4(3)(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 4(3)(c).

12 Is placed in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 4 or Schedule para 4 (as modified) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 4 or Schedule para 4 (as modified).

13 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 4(4); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 4(4).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/573. Indemnity.

### **573. Indemnity.**

Any local education authority<sup>1</sup> required to make arrangements<sup>2</sup> for appeals against the exclusion<sup>3</sup> of pupils<sup>4</sup> must indemnify the members of any appeal panel required to be constituted<sup>5</sup> for the purposes of those arrangements against any reasonable legal costs and expenses reasonably incurred by those members in connection with any decision or action taken by them in good faith in pursuance of their functions as members of that panel<sup>6</sup>.

<sup>1</sup> As to local education authorities see PARA 20 ante. As to the local education authority's duty to have reference to any ministerial guidance see PARA 575 post.

<sup>2</sup> Ie under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(1) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(1) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(1) or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(1): see PARA 565 ante.

<sup>3</sup> For the meaning of 'exclusion' see PARA 562 note 3 ante.

<sup>4</sup> For the meaning of 'pupil' see PARA 16 note 4 ante.

<sup>5</sup> Ie constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2 (as amended) or Schedule para 2 (as modified) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2 or Schedule para 2 (as modified).

<sup>6</sup> Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 5 (modified by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 5 (modified by SI 2003/3246).

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/2. NURSERY, PRIMARY AND SECONDARY EDUCATION/(8) DISCIPLINE/(ii) Exclusion of Pupils/B. APPEALS AGAINST EXCLUSION/574. Procedure on an appeal.

#### **574. Procedure on an appeal.**

An appeal<sup>1</sup> must be made by notice in writing setting out the grounds on which it is made<sup>2</sup>. The appeal panel must meet to consider an appeal on such date as the local education authority<sup>3</sup> may determine<sup>4</sup>. The date so determined must not be later than the closing date for appeals<sup>5</sup>, namely the fifteenth school day<sup>6</sup> after the day on which the appeal is lodged<sup>7</sup>. For the purpose of fixing the time<sup>8</sup> at which the hearing of an appeal is to take place, the local education authority must take reasonable steps to ascertain any times falling on or before the closing date for appeals when the relevant person<sup>9</sup>, or any other person who wishes, and would be entitled, to appear and make oral representations<sup>10</sup>, would be unable to attend<sup>11</sup>. Where, accordingly, the authority has ascertained any such times in the case of any such person, it must, when fixing the time at which the hearing is to take place, take those times into account with a view to ensuring, so far as it is reasonably practicable to do so, that that person is able to appear and make such representations at the hearing<sup>12</sup>. The appeal panel must allow the relevant person<sup>13</sup> to appear and make oral representations<sup>14</sup>, and must allow him to be represented at the hearing or to be accompanied by a friend<sup>15</sup>. In relation to pupils excluded from a maintained school<sup>16</sup>, the panel must also allow: (1) the head teacher<sup>17</sup>; (2) the local education authority<sup>18</sup>; and (3) the governing body<sup>19</sup>, to make written representations, to be represented<sup>20</sup> and to appear<sup>21</sup> and make oral representations<sup>22</sup>. In relation to pupils excluded from a pupil referral unit in England<sup>23</sup>, the panel must also allow: (a) the teacher in charge to make written representations and to appear and make oral representations<sup>24</sup>; (b) the local education authority to make written representations<sup>25</sup>; and (c) an officer of the authority nominated by the authority to appear and make oral representations<sup>26</sup>. In relation to pupils excluded from a pupil referral unit in Wales, the panel must also allow: (i) the teacher in charge to make written representations, to be represented, and to appear and make oral representations<sup>27</sup>; and (ii) the local education authority to make written representations in addition to the statement the authority is required to submit to the panel<sup>28</sup>, to be represented, and to appear and make oral representations<sup>29</sup>.

The appeal panel may from time to time adjourn the hearing<sup>30</sup>.

Appeals must be heard in private<sup>31</sup>. However, if the panel so directs, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel<sup>32</sup>, and one member of the Council on Tribunals<sup>33</sup> may attend, as an observer, any meeting of an appeal panel at which an appeal is considered<sup>34</sup>.

Two or more appeals may be combined and dealt with in the same proceedings if the appeal panel considers that it is expedient to do so because the issues raised by the appeals are the same or connected<sup>35</sup>.

In the event of a disagreement between the members of an appeal panel, the appeal under consideration must be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel has a second or casting vote<sup>36</sup>. The decision of an appeal panel and the grounds on which it is made must be communicated by the panel in writing to the relevant person, the local education authority, the governing body<sup>37</sup> and the head teacher<sup>38</sup>, and be so communicated by the end of the second working day<sup>39</sup> after the conclusion of the hearing of the appeal<sup>40</sup>.

Subject to the provisions described above<sup>41</sup>, all matters relating to the procedure on appeals must be determined by the local education authority<sup>42</sup>. The local education authority must, in setting any time limits in connection with appeals, have regard to the desirability of securing that appeals are disposed of without delay<sup>43</sup>.

Where it falls to an appeal panel<sup>44</sup> to establish any fact, any question as to whether that fact is established is to be decided on a balance of probabilities<sup>45</sup>. In reaching its decision the appeal panel must apply basic standards of fairness<sup>46</sup>.

1     le an appeal under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(1), the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 7(1), the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(1), or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8(1) (see PARA 565 ante): Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 6 (modified by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 6 (modified by SI 2003/3246).

2     Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 7; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 7.

3     As to local education authorities see PARA 20 ante.

4     Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 8(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 8(1). As to the duty of the appeal panel and the local education authority to have reference to any ministerial guidance see PARA 575 post.

5     Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 8(2); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 8(2).

6     For the meaning of 'school day' see PARA 533 note 2 ante.

7     Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 6; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 6.

8     le in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 8 or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 8: see the text to notes 3-5 supra.

9     For the meaning of 'the relevant person' see PARA 563 note 4 ante.

10    le in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10 or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10: see the text to notes 13-30 infra.

11    Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 9(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 9(1).

12    Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 9(2); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 9(2).

13    And, in relation to Wales, the excluded pupil where the pupil is not the relevant person: *ibid* Schedule para 10(1).

14    And, in relation to Wales, written representations: *ibid* Schedule para 10(1).

15    Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(1). As to adult witnesses see *R (on the application of S) v Brent London*



*Borough Council, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [28], [2002] ELR 556 at [28].

16 As to maintained schools see PARA 94 ante.

17 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(2)(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(2)(a). As to the meaning of 'head teacher' see PARA 93 note 13 ante.

18 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(2)(b), (c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(2)(b). As to the role of the officer of the local education authority see *R (on the application of S) v Brent London Borough Council, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [22]-[24], [2002] ELR 556 at [22]-[24] (it is no part of the function of the local education authority to press for a particular conclusion in relation to a particular pupil).

19 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(2)(b), (c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(2)(c). As to the governing bodies of maintained schools see PARA 203 et seq ante.

20 In relation to England, there is no provision for the head teacher to be represented: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(2)(a).

21 As corporate bodies, the local education authority and the governing body can only be represented: see *ibid* Schedule para 10(2)(b), (c).

22 *Ibid* Schedule para 10(2)(a)-(c); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(2)(a)-(c). The appeal panel may also permit the excluded pupil to appeal and make oral representations: see the Department for Education and Employment Circular *Social Inclusion: Pupil Support* (July 1999) (Ref: DFEE 10/99) (supplemented on 21 January 2000). See also *R v Governors of St Gregory's RC Aided High School and Appeal Committee, ex p M* [1995] ELR 290, sub nom *R v Governors of St Gregory's RC Aided High School, ex p Roberts* (1995) Times, 27 January (decided under previous legislation); *R v Governors of Bacon's City Technology College, ex p W* [1998] ELR 488; *R v Independent Appeals Tribunal of Hillingdon Borough Council ex p Governing Body of Mellow Lane School* [2001] ELR 200.

23 For the meaning of 'pupil referral unit' see PARA 457 ante.

24 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(2)(a) (substituted by SI 2002/3179). As to the teacher in charge of a pupil referral unit see PARA 458 ante.

25 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(2)(b) (substituted by SI 2002/3179).

26 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(2)(c) (substituted by SI 2002/3179).

27 Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(2)(a) (substituted by SI 2003/3246).

28 *Ie* under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(1): see the text and notes 13-15 supra.

29 Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(2)(b) (substituted by SI 2003/3246).

30 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 10(3); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 10(3).

31 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 11; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 11. In relation to England, appeals must be heard in private except when the local

education authority directs otherwise: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 11.

32 Ibid Schedule para 11(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 11(a).

33 As to the Council on Tribunals see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 55 et seq.

34 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 11(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 11(b).

35 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 12; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 12. As to the position where the excluded child whose case is before the appeal panel is also the subject of separate criminal proceedings see *R v Independent Appeal Panel of Sheffield City Council, ex p N* [2000] ELR 700.

36 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 13; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 13.

37 In relation to pupils excluded from a pupil referral unit, the governing body is omitted from this list: Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 14(a) (amended by SI 2002/3179); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 14(a) (amended by SI 2003/3246).

38 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 14(a); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 14(a). The committee must explain, however briefly, why the child has been excluded from the school: *R v Northamptonshire County Council, ex p W* [1998] ELR 291 at 295 per Laws J (decided under previous legislation); *R v Staffordshire County Council Education Appeal Committee, ex p Ashworth* (1997) 9 Admin LR 373, [1997] COD 132 (decided under previous legislation; omission of the word 'serious' in the decision letter did not vitiate the decision); *R (on the application of A (A Minor)) v Independent Appeal Panel for G College* [2005] EWHC 558 (Admin), [2005] ELR 490 (losing parties not required to undertake microscopic analysis of the reasons to determine why they lost). Contrast the practice in employment appeals tribunals which are allowed lawfully to request further written reasons where the employment tribunal has already provided written reasons: see EMPLOYMENT vol 41 (2009) PARA 1494.

39 For this purpose, 'working day' means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971 (see TIME vol 97 (2010) PARA 321); Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 16; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 16.

40 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 14(b); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 14(b).

41 Ie the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule paras 7-14 or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule paras 7-14: see the text to notes 1-40 supra.

42 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 15(1); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 15(1).

43 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, Schedule para 15(2); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, Schedule para 15(2).

44 Ie constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2 (as amended) or Schedule para 2 (as modified) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2 or Schedule para 2 (as modified), in exercise of functions under the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6, the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7 (see PARA 565 ante), the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations

2002, SI 2002/3179, reg 7, or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 8 (see PARA 566 ante).

45 Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 7A(c) (added by SI 2004/402); Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 8A(c) (added by SI 2004/1805); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 8A(c) (added by SI 2004/402); Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 9A(c) (added by SI 2004/1805). See also *Social Inclusion: Pupil Support* (July 1999) (Ref: DfEE 10/99); and *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units* (October 2004) (Ref: DfES 0354/2004).

This principle is consistent with the line of authority which established that the standard of proof as regards the culpability of the excluded pupil for the act or acts in question is the balance of probabilities, although for grounds of exclusion to be established on the balance of probabilities, it must be distinctly more probable that the child did the act than that he did not: see *R (on the application of K) v Governors of the W School* [2001] ELR 311; *R v Head Teacher and Independent Appeal Committee of Dunraven School, ex p B* [2000] ELR 156, sub nom *R v Governors of Dunraven School, ex p B* [2000] LGR 494, CA (applying the test laid down by Lord Nicholls of Birkenhead in *Re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563 at 566-567, [1996] 1 All ER 1 at 16-18, HL). See also *R (on the application of S) v Brent London Borough Council, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693, [2002] ELR 556; *R (on the application of S) v Head Teacher of C School* [2001] EWHC Admin 513, [2002] ELR 73. In proceedings before an independent appeals panel, a school is not required to prove that a pupil's confession was made voluntarily, notwithstanding the Police and Criminal Evidence Act 1984 s 76 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1540 et seq): *R (on the application of M) v Independent Appeal Panel, Governing Body and Head Teacher of CH School* [2004] EWHC 1831 (Admin) at [12], [2005] ELR 38 at [12] per Newman J (distinguishing *R v Headteacher and Independent Approval Committee of Dunraven School, ex p B* supra).

46 Appeal panels and governing bodies should be prepared to disregard anonymised statements of evidence if their use could lead to injustice: *R v Governors of Bacon's City Technology College, ex p W* [1998] ELR 488 (parents not given copies of witness statements relied upon by the school); *R (on the application of S) v Brent London Borough Council, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [29], [2002] ELR 556 at [29]; *R (on the application of T) v Head Teacher of Elliott School* [2002] EWCA Civ 1349, [2002] All ER (D) 537 (Jul). However, there is no general rule that there must be full disclosure of all statements made by a witness whose evidence is being considered by a panel: *R (on the application of M) v Independent Appeal Panel, Governing Body and Head Teacher of CH School* [2004] EWHC 1831 (Admin), [2005] ELR 38 (distinguishing *R v Head Teacher and Independent Appeal Committee of Dunraven School, ex p B* [2000] ELR 156, sub nom *R v Governors of Dunraven School, ex p B* [2000] LGR 494, CA). Those carrying out the investigation should, having decided on the factual issues that need resolving and the inquiries that could reasonably resolve them, conduct a reasonably thorough investigation: *R v Camden London Borough Council and the Governors of the Hampstead School, ex p H* [1996] ELR 360, sub nom *R v Camden London Borough Council, ex p H (A Minor)* (1996) Times, 15 August, CA; *R v Roman Catholic Schools, ex p S* [1998] ELR 304. It must take account of all relevant evidence: *R v Board of Governors and Appeal Committee of Bryn Elan High School, ex p Whippe* [1999] ELR 380. See also *R (on the application of S) v Oxfordshire School Exclusion Appeals Panel* [2005] EWHC 53 (Admin), [2005] ELR 533 (when deciding whether the appeal panel had reached a decision that was unlawful, irrational or perverse or contrary to the rules of natural justice the court had to look at the whole of the proceedings before the appeal panel).

## UPDATE

### 562-575 Exclusion of Pupils

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

### 574 Procedure on an appeal

NOTES--See *R (on the application of O) v Independent Appeal Panel of Tower Hamlets LB* [2007] EWHC 1455 (Admin), [2007] ELR 468.

NOTE 10--SI 2002/3178 Schedule para 10 amended: SI 2006/2189.

TEXT AND NOTE 15--Now, the appeal panel must give the relevant person, the head teacher, the governing body, and the local education authority an opportunity of making written representations and appearing and making oral representations, and allow him to be represented, or to be accompanied by a friend, except in the case of the governing body and local education authority: SI 2002/3178 Schedule para 10(1) (substituted by SI 2006/2189).

NOTE 45--See also *R (on the application of LG) v Independent Appeal Panel for Tom Hood School* [2010] EWCA Civ 142, [2010] All ER (D) 292 (Feb).

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## **C. GUIDANCE**

### **575. Guidance on the exclusion of pupils.**

In discharging any functions under the provisions relating to the exclusion of pupils<sup>1</sup>, the head teacher<sup>2</sup> or the governing body<sup>3</sup> of a maintained school<sup>4</sup>, the teacher in charge of a pupil referral unit<sup>5</sup>, a local education authority<sup>6</sup>, or an appeal panel<sup>7</sup>, must have regard to any guidance given from time to time by the Secretary of State<sup>8</sup> or by the National Assembly for Wales<sup>9</sup>.

1     le under the Education Act 2002 s 52(1), (2) (see PARA 562 ante), the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178 (as amended); the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227 (as amended); the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179 (as amended); or the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246 (as amended).

2     As to the meaning of 'head teacher' see PARA 93 note 13 ante.

3     As to the governing bodies of maintained schools see PARA 203 et seq ante.

4     For the meaning of 'maintained school' see PARA 94 ante.

5     As to the teacher in charge of a pupil referral unit see PARA 458 ante. For the meaning of 'pupil referral unit' see PARA 457 ante.

6     As to local education authorities see PARA 20 ante.

7     le constituted in accordance with the Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 6(2), Schedule para 2 (as amended) or the Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 7(2), Schedule para 2: see PARA 570 ante.

8     As to the Secretary of State see PARA 52 ante.

9     Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, SI 2002/3178, reg 7; Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003, SI 2003/3227, reg 8; Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, reg 8; Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003, SI 2003/3246, reg 9. As to the National Assembly for Wales see PARA 53 ante.

As to the guidance given see eg *Social Inclusion: Pupil Support* (July 1999) (Ref: DfEE 10/99); *Social Inclusion: The LEA role in Pupil Support* (1999) (Ref: DfEE 11/99); and *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units* (October 2004) (Ref: DfES 0354/2004).

Any guidance given neither fetters an appeal panel's discretion nor detracts from its independence as it is not directory; there is nothing in the statutory scheme which blocks the application of the longstanding default principle that the common law will supplement procedures to the extent necessary to ensure that they operate fairly: *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [14]-[15], [2002] ELR 556 at [14]-[15]. One consequence is that the content of the guidance has not only to stay within and promote the statutory purposes but, at least since 2 October 2000, has also to be compliant with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969): *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* supra. Guidance which collapses the constitutional distinction between the

adjudicative and the administrative (ie policy-making) functions of the state has been said (obiter) to be highly objectionable: *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* supra.

## **UPDATE**

### **562-575 Exclusion of Pupils**

Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002, SI 2002/3179, replaced by Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, SI 2008/532.

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### (iii) Restraint and Punishment of Pupils

#### 576. Power of members of staff to restrain pupils.

A member of the staff<sup>1</sup> of a school may use, in relation to any pupil at the school, such force as is reasonable in the circumstances<sup>2</sup> for the purpose of preventing the pupil from doing, or continuing to do, any of the following, namely:

- 1120 (1) committing any offence<sup>3</sup>;
- 1121 (2) causing personal injury to, or damage to the property of, any person, including the pupil himself<sup>4</sup>; or
- 1122 (3) engaging in any behaviour prejudicial to the maintenance of good order and discipline at the school or among any of its pupils, whether that behaviour occurs during a teaching session or otherwise<sup>5</sup>.

This applies where a member of the staff of a school is on the premises<sup>6</sup> of the school<sup>7</sup>, or elsewhere at a time when, as a member of its staff, he has lawful control or charge of the pupil concerned<sup>8</sup>, but does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment<sup>9</sup>, and must not be taken to prevent any person from relying on any defence otherwise<sup>10</sup> available to him<sup>11</sup>.

1 For these purposes, 'member of the staff', in relation to a school, means any teacher who works at the school and any other person who, with the authority of the head teacher, has lawful control or charge of pupils at the school: Education Act 1996 s 550A(4) (s 550A added by the Education Act 1997 s 4). For the meaning of 'school' see PARA 81 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante. For the meaning of 'pupil' see PARA 16 note 4 ante.

2 For a case where a teacher was found to have behaved unreasonably while trying to restrain a pupil, albeit in the context of a claim for compensation by the teacher for injuries sustained, see *R (Criminal Injuries Compensation Appeals Panel) v Shields* [2001] ELR 164 (claim for compensation refused on grounds that teacher lacked training in restraint methods, had failed to call for help, and had a natural advantage over the child).

3 Education Act 1996 s 550A(1)(a) (as added: see note 1 supra). For these purposes, 'offence' includes anything that would be an offence but for the operation of any presumption that a person under a particular age is incapable of committing an offence: s 550A(4) (as so added). As to incapacity to commit offences see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1232 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 37.

4 Ibid s 550A(1)(b) (as added: see note 1 supra).

5 Ibid s 550A(1)(c) (as added: see note 1 supra).

6 As to the meaning of 'premises' see PARA 1352 note 3 post.

7 Education Act 1996 s 550A(2)(a) (as added: see note 1 supra)

8 Ibid s 550A(2)(b) (as added: see note 1 supra)

9 Ibid s 550A(2) (as added: see note 1 supra). As to the meaning of 'corporal punishment' see PARA 577 note 3 post; definition applied by s 550A(2) (as so added).

10     le any defence available otherwise than by virtue of *ibid* s 550A (as added): see s 550A(3) (as added: see note 1 *supra*).

11     *Ibid* s 550A(3) (as added: see note 1 *supra*).

## **UPDATE**

### **576 Power of members of staff to restrain pupils**

TEXT AND NOTES--As to the power of members of staff to search pupils for weapons see PARA 576A. 1996 Act s 550A repealed: Education and Inspections Act 2006 s 96(a), Sch 18 Pt 6 (in force in relation to England: SI 2007/935). Similar provision is made by the 2006 Act ss 93, 95 (in force in relation to England: SI 2007/935).

TEXT AND NOTES 1-5--1996 Act s 550A(1), (4) now Education and Inspections Act 2006 ss 93(1), (2), (6), 95.

TEXT AND NOTES 6-9--1996 Act s 550A(2) now Education and Inspections Act 2006 s 93(3), (4).

TEXT AND NOTES 10, 11--See now *ibid* s 93(5).



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### **576A. Power of members of staff to search pupils for weapons.**

The following provisions are in force in relation to England: SI 2007/858.

A member of the staff<sup>1</sup> of a school who has reasonable grounds for suspecting that a pupil at the school may have with him or in his possessions<sup>2</sup> (1) an article to which the Criminal Justice Act 1988<sup>3</sup> applies (knives and blades etc), or (2) an offensive weapon<sup>4</sup>, may search that pupil or his possessions for such articles and weapons<sup>5</sup>. A search under these provisions may be carried out only where (a) the member of the staff and the pupil are on the premises of the school; or (b) they are elsewhere and the member of the staff has lawful control or charge of the pupil<sup>6</sup>. A person may carry out a search under these provisions only if (i) he is the head teacher of the school; or (ii) he has been authorised by the head teacher to carry out the search<sup>7</sup>. Nothing in any enactment, instrument or agreement will be construed as authorising a head teacher of a school to require a person other than a member of the security staff<sup>8</sup> of the school to carry out a search under these provisions<sup>9</sup>. A person who carries out a search of a pupil under these provisions (A) may not require the pupil to remove any clothing other than outer clothing<sup>10</sup>; (B) must be of the same sex as the pupil; and (C) may carry out the search only in the presence of another member of the staff who is also of the same sex as the pupil<sup>11</sup>. A pupil's possessions may not be searched under these provisions except in his presence and in the presence of another member of the staff<sup>12</sup>. If, in the course of a search, the person carrying out the search finds anything which he has reasonable grounds for suspecting falls within head (1) or (2) above, or any other thing which he has reasonable grounds for suspecting is evidence in relation to an offence, he may seize and retain it<sup>13</sup>. A person who exercises a power under these provisions may use such force as is reasonable in the circumstances for exercising that power<sup>14</sup>. The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under these provisions as it applies to property which has come into the possession of the police in the circumstances mentioned in the Police (Property) Act 1897<sup>15</sup>.

The powers conferred by the above provisions are in addition to any powers exercisable by the member of the staff in question apart from the above provisions and are not to be construed as restricting such powers<sup>16</sup>.

1 In the Education Act 1996 s 550AA 'member of the staff', in relation to a school, means (1) any teacher who works at the school; and (2) any other person who, with the authority of the head teacher, has lawful control or charge of pupils for whom education is being provided at the school: s 550AA(12) (added by Violent Crime Reduction Act 2006 s 45).

2 'Possessions', in relation to a pupil of a school, includes any goods over which he has or appears to have control: Education Act 1996 s 550AA(12) (as added: see NOTE 1).

3 Ie the Criminal Justice Act 1988 s 139.

4 Within the meaning of the Prevention of Crime Act 1953.

5 Education Act 1996 s 550AA(1) (as added: see NOTE 1).

6 Ibid s 550AA(2) (as added: see NOTE 1).

7 Ibid s 550AA(3) (as added: see NOTE 1). An authorisation for the purposes of head (ii) in the text may be given either in relation to a particular search or generally in relation to searches under these provisions or to a particular description of such searches: s 550AA(11) (as so added).

8 'Member of the security staff' means a member of the staff whose work at the school consists wholly or mainly of security-related activities: ibid s 550AA(12) (as added: see NOTE 1).

9 Ibid s 550AA(4) (as added: see NOTE 1).

10 'Outer clothing' means (1) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or (2) a hat, shoes, boots, gloves or a scarf: ibid s 550AA(12) (as added: see NOTE 1).

11 Ibid s 550AA(5) (as added: see NOTE 1).

12 Ibid s 550AA(6) (as added: see NOTE 1).

13 Ibid s 550AA(7) (as added: see NOTE 1). A person who seizes anything under s 550AA(7) must deliver it to a police constable as soon as reasonably practicable: s 550AA(9) (as so added).

14 Ibid s 550AA(8) (as added: see NOTE 1).

15 Ibid s 550AA(10) (as added: see NOTE 1).

16 Ibid s 550AA(13) (as added: see NOTE 1).

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### **577. No right to give corporal punishment.**

Within limits, corporal punishment is neither contrary to the prohibition on torture, inhuman and degrading treatment or punishment contained in the European Convention for the Protection of Fundamental Rights and Freedoms (1950)<sup>1</sup>, nor unlawful as a battery at common law<sup>2</sup>. However, corporal punishment<sup>3</sup> given by, or on the authority of, a member of staff<sup>4</sup> to a child for whom:

- 1123 (1) education is provided at any school<sup>5</sup>; or
- 1124 (2) education is provided, otherwise than at school, under any arrangements made by a local education authority<sup>6</sup>; or
- 1125 (3) specified nursery education<sup>7</sup> is provided otherwise than at school<sup>8</sup>,

cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such<sup>9</sup>. This applies to corporal punishment so given to a child at any time, whether at the school or other place at which education is provided for the child, or elsewhere<sup>10</sup>.

1 See *Tyrer v United Kingdom* (1978) 2 EHRR 1, ECtHR; *Costello-Roberts v United Kingdom* [1994] ELR 1, [1994] 1 FCR 65, ECtHR; *A v United Kingdom (Human Rights: Punishment of Child)* [1998] 2 FLR 959, ECtHR; *Warwick v United Kingdom* 60 DR 5 (1986); *Y v United Kingdom* (1992) 17 EHRR 238, ECtHR. The text refers to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 134.

Corporal punishment may, however, be in conflict with a parent's philosophical convictions for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2: *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293, ECtHR. See further note 9 infra.

2 At common law, it was implicit that the school had authority to administer punishment within the limits set by the common law: *Mansell v Griffin* [1908] 1 KB 160, 98 LT 51; *Ryan v Fildes* [1938] 3 All ER 517. See also *R v Hopley* (1860) 2 F & F 202; *Mansell v Griffin* [1908] 1 KB 160, 98 LT 51; *Cleary v Booth* [1893] 1 QB 465; *Gray v Hawthorn* 1964 JC 69; *M'Shane v Paton* 1922 JC 26; *Gardner v Bygrave* (1889) 6 TLR 23; *Scorgie v Lawrie* (1883) 10 R (Ct of Sess) 610; *Ryan v Fildes* [1938] 3 All ER 517; *R v Newport (Salop) Justices, ex p Wright* [1929] 2 KB 416, DC; *Re Basingstoke School* (1877) 41 JP Jo 118. As to assault and battery see TORT vol 97 (2010) PARA 526 et seq; and see also CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 147 et seq.

3 For these purposes, any reference to giving corporal punishment to a child is a reference to doing anything for the purpose of punishing that child, whether or not there are other reasons for doing it, which, apart from any justification, would constitute battery: Education Act 1996 s 548(3), (4) (s 548 substituted by the School Standards and Framework Act 1998 s 131(1)). 'Child' (except in the Education Act 1996 s 548(8) (as substituted) (see note 7 infra)) means a person under the age of 18: s 548(3), (7) (as so substituted). However, corporal punishment must not be taken to be given to a child by virtue of anything done for reasons that include averting an immediate danger of personal injury to, or an immediate danger to the property of any person, including the child himself: s 548(3), (5) (as so substituted).

4 For these purposes, 'member of staff', in relation to the child concerned, means: (1) any person who works as a teacher at the school or other place at which education is provided for the child; or (2) any other person who, whether in connection with the provision of education for the child or otherwise, works at that school or place, or otherwise provides his services there (whether or not for payment), and has lawful control or charge of the child: *ibid* s 548(3), (6) (as substituted: see note 3 supra). For the meaning of 'school' see PARA 81 ante.

5 *Ibid* s 548(1)(a) (as substituted: see note 3 supra).

6 Ibid s 548(1)(b) (as substituted: see note 3 supra). As to local education authorities see PARA 20 ante.

7 For these purposes, 'specified nursery education' means full-time or part-time education suitable for children who have not attained compulsory school age which is provided:

37 (1) by a local education authority (ibid s 548(3), (8)(a) (as substituted: see note 3 supra)); or

38 (2) by any other person: (a) who is, or is to be, in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of the School Standards and Framework Act 1998 s 120(2)(a) (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 88 ante); or (b) who is, or is to be, in receipt of grants under the Nursery Education and Grant-Maintained Schools Act 1996 s 1 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 91 ante) (Education Act 1996 s 548(3), (8)(b) (as so substituted)).

As to the meaning of 'compulsory school age' see PARA 15 ante. As to nursery education see PARA 85 et seq ante. Head (2)(b) supra is repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

8 Education Act 1996 s 548(1)(c) (as substituted: see note 3 supra).

9 Ibid s 548(1) (as substituted: see note 3 supra). The phrase 'by virtue of his position as such' limits the application of s 548(1) (as substituted) to corporal punishment given by a teacher while discharging his functions as a teacher and it cannot be used to draw a distinction in cases where a parent expressly delegates to the teacher the common law right to administer physical punishment: *R (on the application of Williamson) v Secretary of State for Education and Employment* [2005] UKHL 15, [2005] 2 AC 246, [2005] 2 All ER 1 (prohibition of corporal punishment in independent religious schools). The Education Act 1996 s 548 (as substituted) is a justified infringement on: (1) a parent's (or a teacher's) right to manifest a belief under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 9 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 156-157), in the form that the duty of education in the Christian context allows teachers to stand in loco parentis and administer corporal punishment as a means of discipline; and (2) the rights of a parent under the First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 166) to ensure that a child's education should conform with their religious and philosophical convictions, in that the term 'education' is wide enough to include the manner in which discipline is administered in a school: *R (on the application of Williamson) v Secretary of State for Education and Employment* supra.

10 Education Act 1996 s 548(2) (as substituted: see note 3 supra).

## UPDATE

### 577 No right to give corporal punishment

TEXT AND NOTES 3-10--Education Act 1996 s 548 further amended: Education and Skills Act 2008 Sch 1 para 9 (not yet in force).

TEXT AND NOTES 7, 8--1996 Act s 548(1)(c) amended and s 548(8) substituted: Childcare Act 2006 Sch 2 para 27 (in force in relation to England: SI 2008/2261).

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### **578. Detention outside school hours lawful despite absence of parental consent.**

The detention of a child for disciplinary purposes is sanctioned at common law provided its use is not for improper purpose or unreasonable<sup>1</sup>. The traditional basis of the teacher's authority to detain pupils is the *in loco parentis* principle, whereby the parent, when he places his child in school, delegates to the head teacher all his own authority, so far as it is necessary for the welfare of the child, including disciplinary authority<sup>2</sup>. Detention of a child by his parent is unlawful if it is for such a period or in such circumstances as to take it out of the realm of reasonable parental discipline<sup>3</sup>. At common law, if a detention is imposed without the parent's consent it is possible that the parent may succeed in a claim for false imprisonment<sup>4</sup>.

However, statute now provides that where a pupil<sup>5</sup> who has not attained the age of 18 and is attending a school<sup>6</sup> maintained by a local education authority<sup>7</sup>, a city technology college<sup>8</sup>, a city college for the technology of the arts<sup>9</sup>, or an academy<sup>10</sup> is required on disciplinary grounds to spend a period of time in detention at his school after the end of any school session, his detention is not rendered unlawful by virtue of the absence of his parent's<sup>11</sup> consent to it if the conditions set out below are satisfied<sup>12</sup>. The conditions, all of which must be satisfied, are that:

- 1126 (1) the head teacher<sup>13</sup> of the school must have previously determined, and have made generally known within the school and taken steps to bring it to the attention of the parent of every person who is for the time being a registered pupil<sup>14</sup> there, that the detention of pupils after the end of a school session is one of the measures that may be taken with a view to regulating the conduct of pupils<sup>15</sup>;
- 1127 (2) the detention must be imposed by the head teacher or by another teacher at the school specifically or generally authorised by him for the purpose<sup>16</sup>;
- 1128 (3) the detention must be reasonable in all the circumstances<sup>17</sup>; and
- 1129 (4) the pupil's parent must have been given at least 24 hours' notice in writing that the detention was due to take place<sup>18</sup>.

1 *Fitzgerald v Northcote* (1865) 4 F & F 656.

2 *Cleary v Booth* [1893] 1 QB 465, 57 JP 375, DC; *Ryan v Fildes* [1938] 3 All ER 517. See also *Price v Wilkins* (1888) 58 LT 680, 4 TLR 231; *Fitzgerald v Northcote* (1865) 4 F & F 656; *Goldney v King* (1910) Times, 7 February; *Hutt v Governors of Haileybury College* (1888) 4 TLR 623 at 624 per Field J. See also *Mansell v Griffin* [1908] 1 KB 160, 98 LT 51 (teacher's right to punish a child extends to a responsible assistant teacher). Note also the right of the person holding parental responsibility under the Children Act 1989 s 3(1) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134) to arrange for others to exercise it on their behalf (see s 2(9); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 143), and the authority given to a person caring for a child to do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare (see s 3(5); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 137).

3 *R v Rahman* (1985) 81 Cr App Rep 349 at 354, 129 Sol Jo 431 at 432, CA, per Lord Lane LCJ.

4 See *Price v Wilkins* (1888) 58 LT 680, 4 TLR 231. See also *Terrington v Lancashire County Council* (28 August 1986, unreported) (conflict between parent and teacher had to be balanced with the need to administer punishment; blanket detention of the entire class for ten minutes at the end of school was a reasonable punishment). In the latter case, the judge added (obiter) that if there had been evidence showing that the father had withdrawn his parental authority for his son to be detained for minor indiscipline then the claim for false imprisonment would have succeeded: *Terrington v Lancashire County Council* supra. It is submitted that the local education authority might, in such a case, be able to establish that the school's disciplinary arrangements include detention after school; that those arrangements were made known to all parents before

their children were admitted to the school; and that it is not open to a parent unilaterally to change those arrangements. The Elementary Education Acts 1870 and 1876 (both repealed) did not authorise the setting of lessons to be prepared at home by children attending a board school. The detention at school after hours of a child for not doing home lessons was therefore unlawful, and rendered the master who detained the child liable to be convicted for an assault: *Hunter v Johnson* (1884) 13 QBD 225.

5 For the meaning of 'pupil' see PARA 16 note 4 ante.

6 For the meaning of 'school' see PARA 81 ante.

7 As to local education authorities see PARA 20 ante.

8 For the meaning of 'city technology college' see PARA 496 note 31 ante.

9 For the meaning of 'city college for the technology of the arts ' see PARA 496 note 32 ante.

10 Education Act 1996 s 550B(2) (s 550B added by the Education Act 1997 s 5; and the Education Act 1996 s 550B(2) amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 165, Sch 31; the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 62; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 6(1), (7)). As to the meaning of 'academy' see PARA 496 note 29 ante.

11 As to the meaning of 'parent' see PARA 510 note 1 ante.

12 Education Act 1996 s 550B(1) (as added: see note 10 supra).

13 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

14 For the meaning of 'registered pupil' see PARA 512 ante.

15 Education Act 1996 s 550B(3)(a) (as added: see note 10 supra).

16 Ibid s 550B(3)(b) (as added: see note 10 supra).

17 Ibid s 550B(3)(c) (as added: see note 10 supra). In determining, for the purposes of head (3) in the text, whether a pupil's detention is reasonable, the matters that in particular must be taken into account are:

39 (1) whether the detention constitutes a proportionate punishment in the circumstances of the case (s 550B(4)(a) (as so added)); and

40 (2) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it, or of which he ought reasonably to be aware, including in particular: (a) the pupil's age; (b) any special educational needs he may have; (c) any religious requirements affecting him; and (d) where arrangements have to be made for him to travel from the school to his home, whether suitable alternative arrangements can reasonably be made by his parent (s 550B(4)(b) (as so added)).

For the meaning of 'special educational needs' see PARA 984 post. As to suitable travel arrangements see PARA 534 ante.

18 Ibid s 550B(3)(d) (as added: see note 10 supra). Section 572 (as amended) (see PARA 463 ante), which provides for the methods by which notices may be served under the Education Act 1996, does not preclude a notice from being given to a pupil's parent under s 550B (as added) by any other effective method: s 550B(5) (as so added).

## UPDATE

### 578 Detention outside school hours lawful despite absence of parental consent

TEXT AND NOTES 5-18--1996 Act s 550B repealed: Education and Inspections Act 2006 s 96(a), Sch 18 Pt 6 (in force in relation to England: SI 2007/935). Provision as to disciplinary penalties is now made by the 2006 Act ss 90-92, 94, 95 (in force in relation to England: SI 2007/935); see PARA 578A.

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### **578A. Disciplinary penalties.**

The following provisions are not yet in force in relation to Wales.

In relation to a disciplinary penalty<sup>1</sup> imposed on a pupil by any school at which education is provided for him, other than a penalty which consists of exclusion<sup>2</sup>, the imposition of the disciplinary penalty is lawful if three conditions are satisfied<sup>3</sup>, but does not authorise anything to be done in relation to a pupil which constitutes the giving of corporal punishment<sup>4</sup>. Those conditions are: (1) that the imposition of the penalty on the pupil is not in breach of any statutory requirement or prohibition<sup>5</sup>, and is reasonable in all the circumstances<sup>6</sup>; (2) that the decision to impose the penalty on the pupil was made by any paid member of the staff<sup>7</sup> of the school, except in circumstances where the head teacher has determined that the member of staff is not permitted to impose the penalty on the pupil<sup>8</sup>, or by any other member of the staff of the school, in circumstances where the head teacher has authorised the member of the staff to impose the penalty on the pupil and it was reasonable for the head teacher to do so<sup>9</sup>; and (3) that the decision to impose the penalty was made, and any action taken on behalf of the school to implement the decision was taken on the premises of the school<sup>10</sup>, or elsewhere at a time when the pupil was under the lawful control or charge of a member of staff of the school<sup>11</sup>.

In relation to a disciplinary penalty which consists of the detention of a pupil outside school sessions<sup>12</sup>, the imposition of the disciplinary penalty is lawful if, in addition to the conditions set out in heads (1)-(3) above, four further conditions are satisfied<sup>13</sup>. Those further conditions are: (a) that the pupil has not attained the age of 18<sup>14</sup>; (b) that the head teacher of the school has previously determined, and has made generally known within the school and to parents of registered pupils at the school, that the detention of pupils outside school sessions is one of the measures that may be taken with a view to regulating the conduct of pupils<sup>15</sup>; (c) that the detention is on a permitted day of detention<sup>16</sup>; and (d) that the pupil's parent has been given at least 24 hours' notice in writing that the detention is due to take place<sup>17</sup>. In relation to detention outside school sessions, in assessing whether the imposition of the detention is reasonable, if arrangements have to be made for the pupil to travel to school for the purposes of the detention or to travel home after the detention, then account must be taken of whether the pupil's parent can reasonably make suitable travelling arrangements<sup>18</sup>.

Where, as a disciplinary penalty, an item which a pupil has with him or in his possessions<sup>19</sup> is seized and the item is retained for any period or is disposed of<sup>20</sup>, a person who seizes, retains or disposes of the item is not liable in any proceedings in respect of the seizure, retention or disposal, or any damage or loss which arises in consequence of it, if he proves that the seizure, retention or disposal was lawful<sup>21</sup>.

1 'Disciplinary penalty' means a penalty imposed on a pupil, by any school at which education is provided for him, where his conduct falls below the standard which could reasonably be expected of him, whether because he fails to follow a rule in force at any such school or an instruction given to him by a member of its staff or for any other reason: Education and Inspections Act 2006 s 90(1). The reference to conduct, in relation to a pupil, includes (1) conduct which occurs at a time when the pupil is not on the premises of a school and is not under the lawful control or charge of a member of the staff of a school, but only to the extent that it is reasonable for the school imposing the penalty to regulate the pupil's conduct at such a time; and (2) conduct which consists of a failure by the pupil to comply with a penalty previously imposed on him: s 90(2). For the meaning of 'school' see PARA 81; definition applied by virtue of s 187(2), (3).

2 Ibid s 91(1). Where the disciplinary penalty is detention outside school sessions, s 91 has effect subject to s 92: s 91(9).

3 Ibid s 91(2).

4 Ibid s 91(10). As to the meaning of 'corporal punishment' see PARA 577; definition applied by virtue of s 187(2), (3)(e). Section 91 must not be construed as restricting what may lawfully be done apart from s 91: s 91(11).

5 Ibid s 91(3)(a).

6 Ibid s 91(3)(b). In determining whether the imposition of the penalty is so reasonable, the following matters must be taken into account: (1) whether the imposition of the penalty constitutes a proportionate punishment in the circumstances of the case; and (2) any special circumstances relevant to its imposition on the pupil which are known to the person imposing it, or of which he ought reasonably to be aware, including in particular the pupil's age, any special educational needs he may have, any disability he may have, and any religious requirements affecting him: s 91(6). A pupil has a disability if he has a disability for the purposes of the Disability Discrimination Act 1995: 2006 Act s 91(7).

7 'Paid member of the staff', in relation to a school, means any member of the staff who works at the school for payment, whether under a contract of employment or a contract for services; and, for this purpose, it is immaterial whether the contract of employment or contract for services is made with the governing body or proprietor of the school or with any other person: ibid s 91(12). 'Member of the staff', in relation to a school, means any teacher who works at the school and any other person who, with the authority of the head teacher, has lawful control or charge of pupils for whom education is being provided at the school: s 95.

8 Ibid s 91(4)(a).

9 Ibid s 91(4)(b). Such a determination or authorisation may be made (1) in relation to a particular member of staff or members of staff of a particular description; (2) in relation to a particular disciplinary penalty or disciplinary penalties of a particular description; (3) in relation to a particular pupil or pupils of a particular description or generally in relation to pupils: s 91(8).

10 Ibid s 91(5)(a).

11 Ibid s 91(5)(b).

12 Ibid s 92(1).

13 Ibid s 92(2). Section 92 must not be construed as restricting what may lawfully be done apart from s 92: s 92(7).

14 Ibid s 92(3)(a). The additional conditions set out in heads (a), (c) and (d) do not apply in the case of a detention during a break between school sessions on the same day: s 92(4).

15 Ibid s 92(3)(b).

16 Ibid s 92(3)(c). 'Permitted day of detention', in relation to a pupil, means any of the following days: (1) a school day, other than a day on which the pupil has leave to be absent, and for this purpose 'leave' means leave granted by a person authorised to do so by the governing body or proprietor of the school; (2) a Saturday or Sunday during a school term, other than a Saturday or Sunday which falls during, or at a weekend immediately preceding or immediately following, a half-term break; (3) a day, whether or not during a school term, which is set aside wholly or mainly for the performance of duties by members of the staff of the school other than teaching, other than such a day which is excluded by regulations made by the Secretary of State or the National Assembly for Wales: s 92(8). See the Education (Excluded Days of Detention) (England) Regulations 2007, SI 2007/1304.

17 2006 Act s 92(3)(d). The Education Act 1996 s 572 (see PARA 463), which provides for the methods by which notices may be served under the 1996 Act, does not preclude a notice from being given to a pupil's parent under the 2006 Act s 92(3)(d) by any other effective method: s 92(6).

18 See ibid s 92(5).

19 'Possessions', in relation to a pupil, includes any goods over which he appears to have control: ibid s 95.

20 Ibid s 94(1).



21 Ibid s 94(2). Nothing in s 94 applies where an item is seized under the Education Act 1996 s 550AA (see PARA 576A) (2006 Act s 94(3)), and s 94 is not to be construed as preventing any person relying on any defence on which he is otherwise entitled to rely (s 94(4)).

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### **3. FURTHER EDUCATION**

#### **(1) INSTITUTIONS WITHIN THE FURTHER EDUCATION SECTOR**

##### **(i) The Institutions**

##### **579. Meaning of 'institution within the further education sector'.**

Further education<sup>1</sup> is provided at a variety of institutions, generally described as 'institutions within the further education sector'. For the purposes of the Education Acts<sup>2</sup>, references to institutions within the further education sector are references to institutions conducted by further education corporations<sup>3</sup> and institutions designated for the purposes of Part I of the Further and Higher Education Act 1992<sup>4</sup>. References to institutions outside the further education sector are to be read accordingly<sup>5</sup>.

Institutions within the further education sector may also provide secondary or higher education<sup>6</sup>.

1 For the meaning of 'further education' see PARA 18 ante; definition applied by the Further and Higher Education Act 1992 s 90(1) (definition added by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(2)).

2 For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by the Further and Higher Education Act 1992 s 90(1) (definition amended by the Education Act 1996 Sch 37 Pt I para 115(2)).

3 Further and Higher Education Act 1992 s 91(1), (3)(a). 'Further education corporation' means a body corporate established under s 15 (see PARA 583 post) or s 16 (as amended) (see PARA 584 post), or which has become a further education corporation by virtue of s 47 (as amended) (see PARA 580 post): s 17(1) (amended by the Teaching and Higher Education Act 1998 s 44(1), Sch 3 para 7).

4 Further and Higher Education Act 1992 s 91(1), (3)(b). For the purposes of Pt I (ss 15-61A) (as amended), 'designated institution' means an institution in relation to which a designation under s 28 (as amended) (see PARA 599 post) has effect: s 28(4).

5 Ibid s 91(1), (3); and see the Education Act 1996 s 4(3). As to institutions outside the further education sector providing further education see PARA 606 et seq post.

6 See PARAS 596, 599 post. For the meaning of 'secondary education' see PARA 17 ante; and for the meaning of 'higher education' see PARA 19 ante.

#### **UPDATE**

##### **579 Meaning of 'institution within the further education sector'**

TEXT AND NOTES--Provision is also made for a new sixth form college sector: see PARA 579A.

TEXT AND NOTES 2-4--For these purposes, references to institutions within the further education sector are also references to sixth form colleges: Further and Higher Education Act 1992 s 91(1), (3)(c) (s 91(3)(c), (3A) added by Apprenticeships, Skills,

Children and Learning Act 2009 Sch 8 paras 13(1)-(3)). References to sixth form colleges are to institutions conducted by sixth form college corporations: Further and Higher Education Act 1992 s 91(3A).

NOTE 3--Definition of 'further education corporation' further amended to include a body corporate which has become a further education corporation by virtue of s 33D (see PARA 579A): Further and Higher Education Act 1992 s 17(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 2).

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**579A. Sixth form college sector: England.**

The Secretary of State may designate a body corporate which is (1) a further education corporation established in respect of an institution in England; or (2) a body corporate established by an order under the Learning and Skills Act 2000 s 143(4) (see PARA 604) in respect of an institution in England, as a sixth form college corporation for the purpose of conducting an educational institution specified in the order: see Further and Higher Education Act 1992 s 33A (ss 33A-33N added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 3). The Secretary of State may also designate such a body corporate as a sixth form college corporation once the power above is no longer exercisable (Further and Higher Education Act 1992 s 33B), and make provision for the establishment of a body corporate as a sixth form college corporation (Further and Higher Education Act 1992 s 33C). The Secretary of State may convert a sixth form college corporation into a further education corporation: Further and Higher Education Act 1992 s 33D.

A sixth form college corporation has specified principal and supplementary powers (Further and Higher Education Act 1992 ss 33E-33G) and, in exercising its functions, must have regard to the objective of promoting the economic and social well-being of the local area (Further and Higher Education Act 1992 s 33H). Every sixth form college corporation must have an instrument and articles of government (Further and Higher Education Act 1992 s 33I) and, for certain institutions specified by the Secretary of State, the instrument of government must provide for the governing body to include members appointed to preserve the established character of the college (Further and Higher Education Act 1992 s 33J). The first instrument and articles of government are to be made by the Young People's Learning Agency for England ('YPLA') (see PARA 27A): Further and Higher Education Act 1992 s 33K. The YPLA may modify instruments and articles in consultation with sixth form college corporations: Further and Higher Education Act 1992 s 33L. A sixth form college corporation is a charity within the meaning of the Charities Act 1993: Further and Higher Education Act 1992 s 33M. The Secretary of State may dissolve a sixth form college corporation and transfer its property, rights, liabilities and staff: see Further and Higher Education Act 1992 s 33N. Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 33N: Further and Higher Education Act 1992 s 88(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 9). A land transaction effected under or by virtue of s 33N is also exempt from charge for the purposes of stamp duty land tax: Further and Higher Education Act 1992 s 88A(1) (s 88A added by SI 2003/2867 and amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 10).

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### **580. Transfer of higher education institutions to further education sector.**

The Secretary of State<sup>1</sup> may by order provide for the transfer of a higher education corporation<sup>2</sup> to the further education sector<sup>3</sup>. On such date as may be specified in the order the corporation ceases to be a higher education corporation and becomes a further education corporation<sup>4</sup>.

An order<sup>5</sup> in respect of any institution designating it as a further education institution may revoke any order<sup>6</sup> in respect of that institution designating it as a higher education institution<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'higher education corporation' see PARA 646 note 3 post.

3 Further and Higher Education Act 1992 s 47(1). Where an order is made under s 47 (as amended) in respect of a higher education corporation, the provisions of s 20 (see PARA 590 post) and s 21 (as amended) (see PARA 591 post) have effect as if, on the date the order has effect, the corporation were established as a further education corporation; and the order may make provision as to the initial name of the corporation as a further education corporation: s 47(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 43). For the meaning of 'further education corporation' see PARA 579 note 3 ante.

4 Further and Higher Education Act 1992 s 47(3).

5 ie an order under *ibid* s 28 (as amended): see PARA 599 post.

6 ie an order under the Education Reform Act 1988 s 129 (as amended): see PARA 701 post.

7 Further and Higher Education Act 1992 s 47(4).

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### **581. Transfer of further education corporations to higher education sector.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the transfer of a further education corporation<sup>3</sup> to the higher education sector if it appears to him that the full-time equivalent enrolment number<sup>4</sup> of the institution conducted by the corporation for courses of higher education<sup>5</sup> exceeds 55 per cent of its total full-time equivalent enrolment number<sup>6</sup>. On such date as may be specified in the order the corporation ceases to be a further education corporation and becomes a higher education corporation<sup>7</sup> and any member of the further education corporation who is not re-appointed by the Secretary of State<sup>8</sup> ceases to hold office<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. Orders under the Education Reform Act 1988 s 122A (as added) are local in nature, and are not recorded in this work.

3 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

4 As to the meaning of 'full-time equivalent enrolment number' see PARA 678 post.

5 For the meaning of 'courses of higher education' see PARA 726 post.

6 Education Reform Act 1988 s 122A(1) (s 122A added by the Further and Higher Education Act 1992 s 74(1)). As to the calculation of full-time equivalent enrolment numbers see PARA 678 post.

7 For the meaning of 'higher education corporation' see PARA 672 post.

8 *Ie* in pursuance of the Education Reform Act 1988 s 122A(2)(b) (as added): see note 9 *infra*.

9 *Ibid* s 122A(4) (as added: see note 6 *supra*). Where an order under s 122A (as added) is made in respect of a further education corporation s 124A (as added) (constitution and conduct of corporations: see PARA 686 post) and s 125 (as amended) (articles of government: see PARA 697 post) have effect as if: (1) on the date the order has effect, the corporation were established as a higher education corporation (s 122A(2)(a) (as so added)); and (2) the Secretary of State were the appointing authority in relation to the first members of the higher education corporation (s 122A(2)(b) (as so added)). In determining in pursuance of s 122A(2)(b) (as added) the number of members to appoint within each variable category of members, the Secretary of State must secure that at least half of all the members of the higher education corporation as first constituted are independent members: s 122A(3) (as so added). For the meaning of references to 'variable category of members' see PARA 690 note 4 post; definition applied by s 122A(3) (as so added). For the meaning of 'independent members' see PARA 689 note 6 post; definition applied by s 122A(3) (as so added).

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## **582. Unauthorised use of 'university' in title of institution.**

An institution within the further education sector<sup>1</sup> in England<sup>2</sup> or Wales<sup>3</sup> must not, when making available (or offering to make available)<sup>4</sup> educational services, do so under a name which includes the word 'university' unless the inclusion of that word in that name is authorised by or by virtue of any Act or Royal Charter<sup>5</sup>, or is approved by the Privy Council<sup>6</sup>. A person carrying on such an institution must not, when making available (or offering to make available) educational services through the institution, use with reference either to himself or the institution a name which includes the word 'university', unless the inclusion of that word in that name is so authorised or approved<sup>7</sup>.

In approving the inclusion of the word 'university' in any name, the Privy Council must have regard to the need to avoid names which are or may be confusing<sup>8</sup>.

1 As to references to institutions within the further education sector see PARA 579 ante; definition applied by the Teaching and Higher Education Act 1998 s 39(7).

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 For the meaning of 'Wales' see PARA 52 note 13 ante.

4 The provisions of the Teaching and Higher Education Act 1998 s 39(1), (2) apply where the educational services are made available, or (as the case may be) the offer to make such services available is made, in any part of the United Kingdom: s 39(3). For the meaning of 'United Kingdom' see PARA 63 note 3 ante.

5 Ibid s 39(1)(a). For the purposes of s 39(1) or (2), the inclusion of the word 'university' in any name must not be taken to be authorised by or by virtue of a Royal Charter relating to a university by reason of any provision of the Royal Charter with respect to the affiliation or association of other institutions to the university (s 39(4)(a)), or the accreditation by the university of educational services provided by other institutions (s 39(4)(b)). As to the meaning of 'university' in the context of the reference in s 39(4) to a Royal Charter relating to a university see PARA 646 note 8 post (definition applied by s 39(7)); and see also PARA 648 post.

6 Ibid s 39(1)(b). The Privy Council's power of approval under s 39(1) or (2) is not exercisable in a case where the inclusion of the word 'university' in the name in question may be authorised by virtue of any other Act or any Royal Charter: s 39(6). See also *R v Secretary of State for Education and Employment, ex p Liverpool Hope University College* [2001] EWCA Civ 362, [2001] ELR 552.

7 Teaching and Higher Education Act 1998 s 39(2). See also notes 5-6 supra.

8 Ibid s 39(5).

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## **(ii) Further Education Corporations**

### **A. INCORPORATION**

#### **(A) INCORPORATION OF INSTITUTIONS**

##### **583. Initial incorporation of existing institutions.**

A body corporate had to be established on 30 September 1992<sup>1</sup> for each institution<sup>2</sup> specified by order<sup>3</sup> by the Secretary of State, for the purpose of conducting the institution as from the operative date<sup>4</sup>.

<sup>1</sup>    le the day appointed under the Further and Higher Education Act 1992 s 94 for the commencement of s 15(4): s 15(7).

<sup>2</sup>    le an institution falling within one of the following provisions: (1) each educational institution maintained by a local education authority for which it appeared to the Secretary of State that on 1 November 1990 its enrolment number calculated in accordance with *ibid* Sch 3 para 1(1) was not less than 15% of its total enrolment number calculated in accordance with Sch 3 para 1(2) (see s 15(1)(a), (2)); and (2) each county school, controlled school or grant-maintained school for which it appeared to the Secretary of State that on 17 January 1991 not less than 60% of the pupils at the institution were receiving full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19 years (see s 15(1)(b), (3)). As to local education authorities see PARA 20 ante. As to the Secretary of State see PARA 52 ante. As to county schools see PARAS 102 note 13, 105 ante; as to controlled schools see PARAS 102 note 14, 105 ante; and as to grant-maintained schools see PARAS 102 note 16, 106 et seq ante. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46). As to the meaning of 'compulsory school age' see PARA 15 ante.

Under the Further and Higher Education Act 1992 Sch 3 para 1(1), the enrolment number for any institution at any time is the aggregate of the number of full-time students enrolled at that institution at that time to follow courses of further or higher education, and the numbers arrived at by multiplying by the appropriate multiplier the number of students enrolled at the institution at the time in question to follow such courses as sandwich courses, block release courses and day release courses: see Sch 3 paras 1(1), (3), 2. Under Sch 3 para 1(2), the total enrolment number for any institution at any time is the aggregate of the number of full-time students enrolled at that institution at that time to follow courses of further or higher education, and the numbers arrived at by multiplying by the appropriate multiplier the number of students enrolled at the institution at the time in question to follow such courses as sandwich courses, block release courses, day release courses, part-time courses (other than day release but including some day-time study), evening part-time courses and open or distance learning courses: see Sch 3 paras 1(2), (3), 2.

Where an educational institution, being an institution maintained by a local education authority or a grant-maintained school, was established after 1 November 1990 or, as the case may be, 17 January 1991 by a merger of two or more institutions existing on that date, the institution had to be treated as falling within s 15(2) or, as the case may be s 15(3) if it would have done so if the merger had taken place before that date: s 15(6).

<sup>3</sup>    As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 post. Orders under s 15 are local in nature, and are not recorded in this work. The name given in the order as the name of the institution was the initial name of the body corporate: s 15(5).

<sup>4</sup>    See *ibid* s 15(1), (4). In the case of a further education corporation established under s 15, the 'operative date' means such date as the Secretary of State may by order appoint in relation to the corporations so established: s 17(2)(a). The operative date for these purposes is 1 April 1993: see the Education (Further



Education Corporations) Order 1992, SI 1992/2097. For the meaning of 'further education corporation' see PARA 579 note 3 ante.

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#### **584. Orders incorporating further institutions.**

The Secretary of State or the National Assembly for Wales<sup>1</sup> may by order<sup>2</sup> make provision for the establishment of a body corporate for the purpose of establishing and conducting an educational institution<sup>3</sup>, or for the purpose of conducting an existing educational institution<sup>4</sup>. An order may not, however, be made in respect of an existing institution without the consent of the governing body<sup>5</sup>.

Provision may also be made by order<sup>6</sup> for the establishment of a body corporate for the purpose of conducting an institution which: (1) is maintained by a local education authority<sup>7</sup>; and (2) is principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age<sup>8</sup> who have not attained the age of 19 years<sup>9</sup>.

An order under the provisions described above must provide for the institution to be conducted by the body corporate as from the operative date<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 post. Orders under s 16(1) are local in nature, and are not recorded in this work. The name given in the order as the name of the institution is to be the initial name of the body corporate: s 16(4).

3 Ibid s 16(1)(a). Section 16(1) does not apply to an institution which is maintained by a local education authority: s 16(2) (substituted by the Learning and Skills Act 2000 s 111(1)). As to institutions maintained by local education authorities see the Further and Higher Education Act 1992 s 16(3) (as substituted); and the text and notes 6-9 infra. As to local education authorities see PARA 20 ante.

4 Ibid s 16(1)(b). See note 3 supra.

5 Ibid s 16(1). See note 3 supra. 'Governing body', in relation to an institution, means: (1) in the case of an institution conducted by a further education corporation or a higher education corporation, the corporation; (2) in the case of a university not falling within head (1) supra, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs; (3) in the case of any other institution not falling within head (1) or head (2) supra for which there is an instrument of government providing for the constitution of a governing body, the governing body so provided for; and (4) in any other case, any board of governors of the institution or any persons responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors: s 90(1). For the meaning of 'further education corporation' see PARA 579 note 3 ante; and for the meaning of 'higher education corporation' see PARA 646 note 3 post. The Secretary of State may by order provide for any reference in the Education Acts to the governing body of an institution, in relation to an institution which is a designated institution for the purposes of the Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended) or Pt II (ss 62-81) (as amended) and which is conducted by a company, to be read as a reference to the governing body provided for in the instrument of government, or to the company, or to both: s 90(2). The Education (Designated Institutions in Further and Higher Education) (Interpretation) Order 1993, SI 1993/563 (amended by SI 1993/870) has been made under the Further and Higher Education Act 1992 s 90(2). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by the Further and Higher Education Act 1992 s 90(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115).

6 The name given in the order as the name of the institution is to be the initial name of the body corporate: Further and Higher Education Act 1992 s 16(4). Orders under s 16(3) (as substituted) are local in nature, and are not recorded in this work.

7 See ibid s 16(3)(a) (s 16(3) substituted by the Learning and Skills Act 2000 s 111(1)).

8 As to the meaning of 'compulsory school age' see PARA 15 ante.

9 See the Further and Higher Education Act 1992 s 16(3)(b) (as substituted: see note 7 supra).

10 Ibid s 16(5). In the case of a further education corporation established under s 16 (as amended), the 'operative date' means such date as the Secretary of State may by order appoint in relation to that corporation: s 17(2)(b). Orders under s 17(2)(b) are local in nature, and are not recorded in this work.

## **UPDATE**

### **584 Orders incorporating further institutions**

NOTE 5--Head (1). 'Governing body' also means the corporation in the case of an institution conducted by a sixth form college corporation (see PARA 579A): Further and Higher Education Act 1992 s 90(1) (definition amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 12(1), (2)).

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### **585. Publication of draft proposals for incorporation or dissolution.**

Neither the Learning and Skills Council for England<sup>1</sup> (in relation to England) nor the National Council for Education and Training for Wales<sup>2</sup> (in relation to Wales) may make a proposal for the establishment of a body corporate under the Further and Higher Education Act 1992<sup>3</sup> or for the dissolution of any further education corporation<sup>4</sup> unless certain conditions have been complied with<sup>5</sup>. The conditions are that:

- 1130 (1) a draft of the proposal, or of a proposal in substantially the same form, giving such information as may be prescribed<sup>6</sup> has been published by such time and in such manner as may be prescribed<sup>7</sup>;
- 1131 (2) the relevant council has considered any representations about the draft made to it within the prescribed period<sup>8</sup>; and
- 1132 (3) copies of the draft and of any such representations have been sent to the Secretary of State or the National Assembly for Wales, as the case may be<sup>9</sup>.

An order for the establishment of a body corporate<sup>10</sup>, other than an order made for the purpose of giving effect to a proposal by the relevant council, may not be made unless a draft of the proposed order, or of an order in substantially the same form, has been published by such time and in such manner as may be prescribed<sup>11</sup>.

A draft proposal or order in respect of an institution which is maintained by a local education authority<sup>12</sup> is not to be published without the consent of the governing body<sup>13</sup> and the local education authority<sup>14</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq post. See also PARA 598 note 7 post.

2 As to the National Council for Education and Training for Wales see PARA 1113 et seq post. See also PARA 598 note 7 post.

3 Ie under the Further and Higher Education Act 1992 s 16(1) or (3) (as substituted): see PARA 584 ante.

4 Ie under ibid s 27: see PARA 598 post.

5 Ibid s 51(1).

6 For these purposes, 'prescribed' means prescribed by regulations: ibid s 51(4). Any power to make orders or regulations under the Further and Higher Education Act 1992 must be exercised by statutory instrument: s 89(1). A statutory instrument containing any order or regulations under that Act is subject to annulment in pursuance of a resolution of either House of Parliament: s 89(3). Orders or regulations under that Act may make different provision for different cases, circumstances or areas and may contain incidental, supplemental, saving or transitional provisions: see s 89(4). The Education Act 1996 s 570 (as amended) (revocation and variation of orders and directions: see PARA 15 note 6 ante) applies to directions given under the Further and Higher Education Act 1992 as it applies to directions given under the Education Act 1996: Further and Higher Education Act 1992 s 89(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 114). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

As to the regulations that have been made under the Further and Higher Education Act 1992 s 51 (as amended) see the Education (Publication of Draft Proposals and Orders) (Further Education Corporations) (England) Regulations 2001, SI 2001/782; and the Education (Publication of Draft Proposals and Orders) (Further Education Corporations) (Wales) Regulations 2001, SI 2001/2069.

- 7 Further and Higher Education Act 1992 s 51(2)(a).
- 8 Ibid s 51(2)(b).
- 9 Ibid s 51(2)(c).
- 10 Ie under ibid s 16(1) or (3) (as substituted): see PARA 584 ante.
- 11 Ibid s 51(3) (amended by the Learning and Skills Act 2000 s 111(2)(a)).
- 12 As to local education authorities see PARA 20 ante.
- 13 For the meaning of 'governing body' see PARA 584 note 5 ante.
- 14 Further and Higher Education Act 1992 s 51(3A) (added by the Learning and Skills Act 2000 s 111(2)(b)). This provision does not apply in relation to an institution which became a school on the coming into force of the Learning and Skills Act 2000 s 110(1) (ie by virtue of the definition in the Education Act 1996 s 4(1) (as substituted and amended): see PARA 81 ante): Learning and Skills Act 2000 s 110(2), (5). Section 110(1) came into force, in relation to England, for certain purposes on 1 September 2000 (see the Learning and Skills Act 2000 (Commencement No 1) Order 2000, SI 2000/2114) and for the remaining purposes on 1 April 2001 (see the Learning and Skills Act 2000 (Commencement No 3 and Savings and Transitional Provisions) Order 2001, SI 2001/654) and, in relation to Wales, on 1 April 2001 (see the Learning and Skills Act 2000 (Commencement No 3 and Transitional Provisions) (Wales) Order 2001, SI 2001/1274). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

## UPDATE

### 585 Publication of draft proposals for incorporation or dissolution

TEXT AND NOTE 2--Reference to National Council for Education and Training for Wales omitted: 1992 Act s 51(1) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 6--Further and Higher Education Act 1992 s 89(4) amended, s 89(5) substituted: Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 11(3), (4). SI 2001/782 amended: SI 2010/789. SI 2001/2069 amended: SI 2005/3238. See also the Further Education Corporations (Publication of Draft Orders) (Wales) Regulations 2007, SI 2007/854.

TEXT AND NOTES 8, 11--For 'relevant council' (in both places) read 'Learning and Skills Council for England': 1992 Act s 51(2)(b), (3) (amended by SI 2005/3238).

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## (B) TRANSFERS

### **586. Transfer of property etc where institution was maintained by a local education authority.**

Where a further education corporation<sup>1</sup> is established to conduct an institution which, on the date the corporation was established, was maintained by a local education authority<sup>2</sup>, then on the operative date<sup>3</sup>:

- 1133 (1) all land<sup>4</sup> or other property which, immediately before that date, was property of any local authority<sup>5</sup> used or held for the purposes of the institution the corporation is established to conduct<sup>6</sup>; and
- 1134 (2) all rights and liabilities<sup>7</sup> of any such authority subsisting immediately before that date which were acquired or incurred for those purposes<sup>8</sup>,

must be transferred to, and by virtue of the Further and Higher Education Act 1992 vest in, that corporation<sup>9</sup>. This does not apply to any liability of any such authority in respect of the principal of, or interest on, any loan<sup>10</sup>, or to any excluded<sup>11</sup> property, rights or liabilities<sup>12</sup>.

On the operative date:

- 1135 (a) all land and other property which, immediately before that date, was property of the former governing body<sup>13</sup>; and
- 1136 (b) all rights and liabilities of that body subsisting immediately before that date<sup>14</sup>,

must be transferred to and, by virtue of the Further and Higher Education Act 1992, vest in the corporation<sup>15</sup>.

Special transfer provision is made in relation to agreements or arrangements for the supply of goods or services<sup>16</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 Further and Higher Education Act 1992 s 23(1). As to local education authorities see PARA 20 ante.

3 For the meaning of 'operative date' see PARAS 583 note 4, 584 note 10 ante.

4 As to the meaning of 'land' see PARA 1355 note 3 post.

5 'Local authority' means a county council, a county borough council, a district council, a London borough council or (in its capacity as a local authority) the Common Council of the City of London: Further and Higher Education Act 1992 s 90(1) (definition amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 95). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

6 Further and Higher Education Act 1992 s 23(2)(a).

7 'Liability' includes obligation: *ibid* s 90(1).

8 *Ibid* s 23(2)(b).

9 *Ibid* s 23(2). See *Birmingham City Council v Birmingham College of Food and Sutton Coldfield College, Cheshire County Council v Halton College* [1996] ELR 1 (treatment of European Social Fund grants). For general and supplementary provisions relating to transfers see the Further and Higher Education Act 1992 s 36 (as amended), s 87, Sch 5, Sch 7 (Schs 5, 7 as amended); and PARAS 1397-1398 post.

References in Pt I (ss 15-61A) (as amended), except in s 26 (as amended) (see PARA 589 post), to the transfer of any person's rights or liabilities do not include rights or liabilities under a contract of employment, or liabilities of that person in respect of compensation for premature retirement of any person formerly employed by him: s 61(2). For these purposes, 'contract of employment' has the same meaning as in the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2): Further and Higher Education Act 1992 s 90(1) (definition amended by the Employment Rights Act 1996 s 240, Sch 1 para 52). 'Employed' means employed under a contract of employment: Further and Higher Education Act 1992 s 90(1).

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 23 (as amended): s 88(1). However, no instrument (other than a statutory instrument) made or executed under or in pursuance of s 23 (as amended) is to be treated as duly stamped unless it is stamped with the duty to which it would, but for s 88 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the provisions of the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Further and Higher Education Act 1992 s 88(2).

10 *Ibid* s 23(3)(a).

11 *Ie* excluded under *ibid* s 23(4) (as amended) or s 23(5). If before the operative date the governing body of the institution and the local authority have agreed in writing to exclude any land, then the land, and any rights or liabilities relating to it, are to be excluded: s 23(4) (amended by the Education Act 2002 s 215, Sch 21 para 13, Sch 22 Pt 3). If, in default of agreement under the Further and Higher Education Act 1992 s 23(4) (as amended), the governing body or the local authority has applied to the Secretary of State to exclude any land, and the Secretary of State has by order directed its exclusion, then the land, and any rights or liabilities relating to it, must be excluded: s 23(5). An agreement under s 23(4) (as amended) may provide for the land to be used for the purposes of the institution on such terms as may be specified in or determined in accordance with the agreement; and directions under s 23(5) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and have effect as if contained in such an agreement: s 23(6). Orders under s 23(5) are local in nature, and are not recorded in this work. References in s 23(4), (5) (as amended) to anything done, other than the making of an order, include anything done before 6 March 1992 (*ie* the date of the passing of the Further and Higher Education Act 1992): s 23(7). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

12 *Ibid* s 23(3)(b).

13 *Ibid* s 23(8)(a). For these purposes, 'former governing body', in relation to an institution, means the governing body of the institution immediately before the operative date: s 23(9).

14 *Ibid* s 23(8)(b).

15 *Ibid* s 23(8).

16 Where in exercise of its powers under the Further Education Act 1985 s 2 (as amended) (see PARA 48 ante) a local authority:

41 (1) has entered into an agreement for the supply of goods or services or both through an educational institution (Further and Higher Education Act 1992 s 24(1)(a)); or

42 (2) for the purposes of any agreement for such a supply through such an institution, holds shares in any body corporate (s 24(1)(b)),

and a further education corporation is established to conduct the institution, then the rights and liabilities of the authority under or by virtue of the agreement or, as the case may be, the interest of the authority in the shares is to be treated as falling within s 23(2) (see the text and notes 3-9 *supra*) (s 24(1)). As to when goods or services are supplied through an institution see PARA 48 note 5 ante; definition applied by s 24(2).

Where, immediately before the operative date in relation to a further education corporation, arrangements exist for the supply by a local authority of goods or services for the purposes of the institution in pursuance of a bid prepared under the Local Government Act 1988 s 7 (repealed), those arrangements are to have effect as from that date as if: (a) they were contained in an agreement made before that date between the local authority and the corporation on the terms specified in the bid; and (b) the agreement required the corporation or, as the case may be, the local authority to make payments corresponding to the provision made in the bid in pursuance of s 8(3) (repealed) for items to be credited or, as the case may be, debited to any account: Further and Higher Education Act 1992 s 24(3). Where such arrangements are for the supply to others as well as to the institution, those arrangements are to have effect as mentioned in s 24(3) only to the extent that they relate to the institution in question, and the rights and liabilities arising under the agreement are to be such rights and liabilities as are properly required to give effect to the arrangements so far as relating to that institution: s 24(4). Where arrangements for the supply by a local authority of goods or services for the purposes of an institution to be conducted by a further education corporation are to have effect as from the operative date in accordance with s 24(4) as if contained in an agreement made before that date between the local authority and the corporation, the provisions of Sch 5 paras 2-5 (as amended) (see PARA 1398 post) have effect as if the rights and liabilities of the corporation under the agreement were rights and liabilities of the local authority transferred to the corporation under a transfer to which s 36 (as amended) applies (see PARA 1397 post): s 36(4). As to the replacement of compulsory competitive tendering with best value requirements see LOCAL GOVERNMENT vol 69 (2009) PARA 688 et seq. As to the supply of goods and services by and to local authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 495.

Where at any time land is used for the purposes of such an institution, any interest of a local authority in the land subsisting at that time must be taken for the purposes of s 23 (as amended) to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used): s 24(5). As to the meaning of 'interest in land' see PARA 1355 note 3 post.



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### **587. Transfer of property etc from foundation bodies.**

Where a further education corporation<sup>1</sup> is established to conduct an institution which, on the date the corporation is established, is a foundation or voluntary school<sup>2</sup> belonging to the group<sup>3</sup> of schools for which a foundation body<sup>4</sup> acts<sup>5</sup>, regulations<sup>6</sup> may make such provision as the Secretary of State considers necessary or expedient in connection with the transfer, in any such case, of property, rights and liabilities<sup>7</sup> from the foundation body to the further education corporation<sup>8</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 As to foundation and voluntary schools see PARA 102 et seq ante.

3 For the meaning of 'group', in relation to a foundation body, see PARA 104 note 6 ante; definition applied by the Further and Higher Education Act 1992 s 25(4) (s 25 substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 36).

4 For the meaning of 'foundation body' see PARA 104 note 6 ante; definition applied by the Further and Higher Education Act 1992 s 25(4) (as substituted: see note 3 supra).

5 Ie under the School Standards and Framework Act 1998 s 21: see PARA 104 ante.

6 For the purposes of the Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended), 'regulations' means regulations made by the Secretary of State: s 61(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Further and Higher Education Act 1992 see PARA 585 note 6 ante. Regulations under s 25(2) (as substituted) may, in relation to any such transfer of property, rights or liabilities:

43 (1) modify any provision made by or under s 23 (as amended) (see PARA 586 ante), s 24 (see PARA 586 ante), s 36 (as amended) (see PARA 1397 post), s 38 (see PARA 645 post) and Sch 5 (as amended) (see PARA 1398 post) (s 25(3)(a) (as substituted: see note 3 supra));

44 (2) apply any such provision with or without modifications (s 25(3)(b) (as so substituted));

45 (3) make provision corresponding or similar to any such provision (s 25(3)(c) (as so substituted)).

Regulations under s 25 (as substituted) are local in nature, and are not recorded in this work.

7 As to the meaning of 'liability' see PARA 586 note 7 ante. As to references to the transfer of rights or liabilities see PARA 586 note 9 ante.

8 Further and Higher Education Act 1992 s 25(1), (2) (as substituted: see note 3 supra).

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 25 (as substituted): s 88(1). However, no instrument (other than a statutory instrument) made or executed under or in pursuance of s 25 (as substituted) is to be treated as duly stamped unless it is stamped with the duty to which it would, but for s 88 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the provisions of the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Further and Higher Education Act 1992 s 88(2). A land transaction effected under or by virtue of s 25 (as substituted) is also exempt from charge for the purposes of stamp duty land tax: s 88A(1) (s 88A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 18). Relief under the Further and Higher Education Act 1992 s 88A (as added) must be claimed in a land

transaction return or an amendment of such a return: s 88A(2) (as so added). For these purposes, 'land transaction' has the meaning given by the Finance Act 2003 s 43(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX); and 'land transaction return' has the meaning given by the Finance Act 2003 s 76(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX): Further and Higher Education Act 1992 s 88A(3) (as so added).

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### **588. Effect of agreements made before date of transfer.**

Where any land<sup>1</sup> or other property of a local authority<sup>2</sup> would<sup>3</sup> on any date ('the date of transfer') be transferred under Part I of the Further and Higher Education Act 1992<sup>4</sup> to the governing body<sup>5</sup> of an institution within the further education sector<sup>6</sup>, and at any time before that date the authority, the governing body of the institution and the governing body of any other institution which will on that date be an institution within the further education sector have agreed in writing that the land or property should be transferred on that or a subsequent date to the governing body of that other institution<sup>7</sup>, then, if the Secretary of State<sup>8</sup> has approved the agreement at any time before the date of transfer, the provisions of Part I of the Further and Higher Education Act 1992 are to have effect as if they required the property to be transferred in accordance with the agreement<sup>9</sup>.

1 As to the meaning of 'land' see PARA 1355 note 3 post.

2 For the meaning of 'local authority' see PARA 586 note 5 ante.

3 Ie otherwise than under the Further and Higher Education Act 1992 s 84.

4 Ie *ibid* Pt I (ss 15-61A) (as amended).

5 For the meaning of 'governing body' see PARA 584 note 5 ante.

6 Further and Higher Education Act 1992 s 84(1)(a). As to references to institutions within the further education sector see PARA 579 ante.

7 *Ibid* s 84(1)(b).

8 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 Further and Higher Education Act 1992 s 84(2). References in s 84 to anything done include references to anything done before 6 March 1992 (ie the date of the passing of the Further and Higher Education Act 1992): s 84(3).

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### **589. Transfer of staff to further education corporations.**

A contract of employment<sup>1</sup> between:

- 1137 (1) any person who, immediately before the operative date<sup>2</sup> in relation to a further education corporation<sup>3</sup> established to conduct an institution which, on the date the corporation was established, was maintained by a local education authority<sup>4</sup>, is employed by the transferor<sup>5</sup> to work solely at the institution the corporation is established to conduct, or is employed by the transferor to work at that institution and is designated for these purposes by an order made by the Secretary of State<sup>6</sup>; and
- 1138 (2) the transferor<sup>7</sup>,

is to have effect from the operative date as if originally made between that person and the corporation<sup>8</sup>. All the transferor's rights, powers, duties and liabilities<sup>9</sup> under or in connection with such a contract are transferred<sup>10</sup> to the corporation on the operative date, and anything done before that date by or in relation to the transferor in respect of that contract or the employee is to be deemed from that date to have been done by or in relation to the corporation<sup>11</sup>.

The provisions described above<sup>12</sup> are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer<sup>13</sup>.

1 For the meaning of 'contract of employment' see PARA 586 note 9 ante.

2 For the meaning of 'operative date' see PARAS 583 note 4, 584 note 10 ante.

3 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

4 As to local education authorities see PARA 20 ante.

5 For the purposes of the Further and Higher Education Act 1992 s 26 (as amended), a person employed by the transferor is to be regarded as employed to work at an institution if his employment with the transferor for the time being involves work at that institution (s 26(7)(a)), and a person employed by the transferor is to be regarded as employed to work solely at an institution if his only employment with the transferor (disregarding any employment under a separate contract with the transferor) is for the time being at that institution (s 26(7)(b)). A person employed by the transferor in connection with the provision of meals is not to be regarded for the purposes of s 26(7)(b) as employed to work solely at an institution unless the meals are provided solely for consumption by persons at the institution: s 26(8). For the meaning of 'employed' see PARA 586 note 9 ante. References in s 26 (as amended), in relation to a further education corporation, to the transferor are:

46 (1) in relation to a corporation established to conduct an institution which, on the date on which it was established, was maintained by a local education authority, references to that authority (s 26(6)(a) (amended by the School Standards and Framework Act 1998 s 140, Sch 30 paras 33, 37)); and

47 (2) in relation to a corporation established to conduct an institution which, on that date, was a foundation or voluntary aided school, references to the governing body of that school (Further and Higher Education Act 1992 s 26(6)(b) (substituted by the School Standards and Framework Act 1998 Sch 30 paras 33, 37)).

For the purposes of the Further and Higher Education Act 1992, references to a voluntary aided school are: (a) in relation to any time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), references to a voluntary aided school within the meaning of the Education Act 1996 (see PARA 102 note 14 ante); or (b) in relation to any time on or after that date, references to a voluntary aided school within the meaning of the School Standards and Framework Act 1998 (see PARA 102 ante): Further and Higher Education Act 1992 s 90(3A) (added by the School Standards and Framework Act 1998 Sch 30 paras 33, 46). As to foundation schools and voluntary schools see PARA 102 et seq ante. As to the governing bodies of maintained schools in relation to England see PARA 203 et seq ante; and as to the governing bodies of maintained schools in relation to Wales see PARA 251 et seq ante.

6 Further and Higher Education Act 1992 s 26(1), (2) (s 26(1) amended by the School Standards and Framework Act 1998 Sch 30 paras 33, 37, Sch 31). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. An order under the Further and Higher Education Act 1992 s 26 (as amended) may designate a person either individually or as a member of a class or description of employees: s 26(5). Orders made under s 26 (as amended) are local in nature, and are not recorded in this work. 'Employee' has the same meaning as in the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2): Further and Higher Education Act 1992 s 90(1) (definition amended by the Employment Rights Act 1996 Sch 1 para 52).

7 Further and Higher Education Act 1992 s 26(2).

8 Ibid s 26(2). As to the statutory protections which are afforded to employees generally when a relevant transfer takes place see EMPLOYMENT vol 39 (2009) PARA 111 et seq.

9 As to the meaning of 'liability' see PARA 586 note 7 ante.

10 Ie by virtue of the Further and Higher Education Act 1992 s 26 (as amended).

11 Ibid s 26(3). This provision is without prejudice to s 26(2): see the text and notes 1-8 supra.

12 Ie ibid s 26(2), (3): see the text and notes 1-11 supra.

13 Ibid s 26(4). The reference in the text to the change in employer is a reference to the change in employer effected by s 26 (as amended). 'Employer' has the same meaning as in the Employment Rights Act 1996 (see EMPLOYMENT vol 39 (2009) PARA 2): Further and Higher Education Act 1992 s 90(1) (definition amended by the Employment Rights Act 1996 Sch 1 para 52).

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## ***B. CONSTITUTION AND GOVERNANCE***

### **590. Requirement for instruments of government and articles of government.**

For every further education corporation<sup>1</sup> established to conduct an educational institution there must be:

- 1139 (1) an instrument providing for the constitution of the corporation (the 'instrument of government')<sup>2</sup>; and
- 1140 (2) an instrument in accordance with which the corporation, and the institution, are to be conducted (the 'articles of government')<sup>3</sup>.

Instruments of government and articles of government must comply with certain requirements<sup>4</sup>, and may make any authorised provision<sup>5</sup> and such other provision as may be necessary or desirable<sup>6</sup>. Every document purporting to be an instrument made or issued by or on behalf of a further education corporation and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, is to be received in evidence and to be treated, without further proof, as being so made or issued unless the contrary is shown<sup>7</sup>.

An instrument of government or articles of government must provide for the number of members of the further education corporation, the eligibility of persons for membership and the appointment of members<sup>8</sup>. An instrument may provide for the nomination of any person for membership by another, including by a body nominated by the Secretary of State<sup>9</sup>. It must provide for one or more officers to be chosen from among the members<sup>10</sup>, and may provide for the corporation to establish committees and permit such committees to include persons who are not members of the corporation<sup>11</sup>. The validity of any proceedings of a further education corporation, or of any committee of the corporation, is not affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member<sup>12</sup>. An instrument of government or articles of government may provide for the corporation to pay allowances to its members<sup>13</sup>.

Such an instrument must provide for the appointment of a principal of the institution and determine which functions exercisable in relation to the institution are to be exercised by the corporation, its officers or committees and which by the principal of the institution<sup>14</sup>. It may provide for the delegation of functions of the corporation to officers or committees or to the principal of the institution<sup>15</sup>.

An instrument of government or articles of government must make provision about the procedures of the corporation and of the institution<sup>16</sup>, and must provide for the authentication of the application of the seal of the corporation<sup>17</sup>. It must require the corporation to keep proper accounts and proper records in relation to the accounts and to prepare in respect of each financial year of the corporation a statement of accounts<sup>18</sup>.

An instrument of government or articles of government must provide for the appointment, promotion, suspension and dismissal of staff<sup>19</sup> and for the admission, suspension and expulsion of students<sup>20</sup>, and may make provision authorising the corporation to make rules or byelaws for

the government and conduct of the institution, including in particular rules or byelaws about the conduct of students, staff or both<sup>21</sup>.

- 1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.
- 2 Further and Higher Education Act 1992 s 20(1)(a).
- 3 Ibid s 20(1)(b).
- 4 Ibid s 20(2)(a). The requirements referred to in the text are those of s 20(2), Sch 4 (as amended): see the text and notes 8-21 infra.
- 5 ie any provision authorised to be made by ibid Sch 4 (as amended): see the text and notes 8-21 infra.
- 6 Ibid s 20(2)(b).
- 7 Ibid s 20(4). As to rules of civil evidence see generally CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.
- 8 Ibid Sch 4 paras 1, 2(1). Provision made by an instrument of government or articles of government in relation to the appointment of members must take into account the members who may be appointed by the Learning and Skills Council for England under the Learning and Skills Act 2000 s 11 (see PARA 593 post) or the National Council for Education and Training for Wales under s 39 (see PARA 593 post): Further and Higher Education Act 1992 Sch 4 paras 1, 1A (Sch 4 para 1A added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 44). As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post.
- 9 Further and Higher Education Act 1992 Sch 4 paras 1, 2(2). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 10 Ibid Sch 4 paras 1, 3.
- 11 Ibid Sch 4 paras 1, 4.
- 12 Ibid s 20(3).
- 13 Ibid Sch 4 paras 1, 6.
- 14 Ibid Sch 4 paras 1, 9.
- 15 Ibid Sch 4 paras 1, 5 (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 44).
- 16 Further and Higher Education Act 1992 Sch 4 paras 1, 10. However, an instrument does not lay down a complete and exhaustive code for the conduct of meetings: *R v City of Bath College Corpn, ex p Bashforth* [1999] ELR 459 at 469 per Dyson J.
- 17 Further and Higher Education Act 1992 Sch 4 paras 1, 7.
- 18 Ibid Sch 4 paras 1, 8.
- 19 Ibid Sch 4 paras 1, 11(a).
- 20 Ibid Sch 4 paras 1, 11(b).
- 21 Ibid Sch 4 paras 1, 12.

## UPDATE

### 590 Requirement for instruments of government and articles of government

TEXT AND NOTES 8-21--1992 Act Sch 4 para 1 substituted, Sch 4 paras 1A, 2 amended, Sch 4 para 1B added to make provision for sixth form college corporations (see para 579A): Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 15.

NOTE 8--Reference to the National Council for Education and Training for Wales is now to the National Assembly for Wales and reference to the Learning and Skills Council for England under the Learning and Skills Act 2000 s 11 is now to the Chief Executive of Skills Funding under the Further and Higher Education Act 1992 s 56AA: 1992 Act Sch 4 para 1A (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238, Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 12).



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### **591. Initial instruments of government and articles of government.**

As from the date on which a further education corporation<sup>1</sup> is established, the instrument of government and articles of government<sup>2</sup> are to be such as are prescribed by regulations<sup>3</sup>. Such regulations<sup>4</sup>:

- 1141 (1) may provide for all or any of the persons who, on the date on which a corporation is established to conduct the existing institution, are the members of the governing body<sup>5</sup> of the institution to be the initial members of the corporation<sup>6</sup>; and
- 1142 (2) may make such other provision in relation to existing institutions as appears to the Secretary of State necessary or desirable to secure continuity in their government<sup>7</sup>.

In the case of a further education corporation established to conduct an institution which, on the date the corporation was established, was a maintained school<sup>8</sup>, the governing body<sup>9</sup> must, on the operative date<sup>10</sup>, be dissolved<sup>11</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 As to the requirement for instruments of government and articles of government see PARA 590 ante.

3 Further and Higher Education Act 1992 s 21(1) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 33, 35, Sch 31). For the purposes of the Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended), 'regulations' means regulations made by the Secretary of State: s 61(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Further and Higher Education Act 1992 see PARA 585 note 6 ante. As to the regulations that have been made under s 21 (as amended) see the Education (Government of Further Education Corporations) (Former Sixth Form Colleges) Regulations 1992, SI 1992/1957 (revoked, in relation to England, by SI 2002/1094); and the Education (Government of Further Education Corporations) (Former Further Education Colleges) Regulations 1992, SI 1992/1963 (revoked, in relation to England, by SI 2002/1094). Other regulations made under the Further and Higher Education Act 1992 s 21 (as amended) are local in nature, and are not recorded in this work.

4 Ibid s 21(2) (amended by the School Standards and Framework Act 1998 Sch 30 paras 33, 35, Sch 31).

5 For the meaning of 'governing body' see PARA 584 note 5 ante.

6 Further and Higher Education Act 1992 s 21(2)(a) (as amended: see note 4 supra).

7 Ibid s 21(2)(b) (as amended: see note 4 supra).

8 As to maintained schools see PARA 102 et seq ante.

9 Incorporated under the Education Act 2002 s 19 (see PARAS 203, 251 ante).

10 For the meaning of 'operative date' see PARAS 583 note 4, 584 note 10 ante.

11 Further and Higher Education Act 1992 s 21(3) (amended by the School Standards and Framework Act 1998 Sch 30 paras 33, 35; and by the Education Act 2002 s 215(2), Sch 21 para 12).

### **UPDATE**

**591 Initial instruments of government and articles of government**

NOTE 3--SI 1992/1957, 1963 revoked in relation to Wales: SI 2006/621.

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## **592. Subsequent instruments of government and articles of government.**

The Secretary of State<sup>1</sup> may, after consulting the appropriate learning and skills council<sup>2</sup>:

- 1143 (1) if a further education corporation<sup>3</sup> submits a draft of an instrument of government<sup>4</sup> to have effect in place of its existing instrument, by order make a new instrument of government in terms of the draft or in such terms as he thinks fit<sup>5</sup>; and
- 1144 (2) if such a corporation submits draft modifications of an instrument made under head (1) above, by order modify the instrument in terms of the draft or in such terms as he thinks fit<sup>6</sup>.

He may not, however, make a new instrument otherwise than in terms of the draft, or modify the instrument otherwise than in terms of the draft, unless he has consulted the corporation<sup>7</sup>.

The Secretary of State may by order modify, replace or revoke any instrument of government or articles of government<sup>8</sup> of any further education corporation<sup>9</sup>. Such an order may relate to all further education corporations, to any category of such corporations specified in the order or to any such corporation so specified<sup>10</sup>, but must not be made unless the Secretary of State has consulted the appropriate learning and skills council and each further education corporation to which the order relates<sup>11</sup>.

A further education corporation may, with the consent of the Secretary of State, make new articles of government in place of its existing articles<sup>12</sup>, or modify its existing articles<sup>13</sup>.

The Secretary of State may, by a direction, require further education corporations, any class of such corporations specified in the direction, or any particular further education corporation so specified<sup>14</sup>:

- 1145 (a) to modify, replace or revoke its articles of government<sup>15</sup>; or
- 1146 (b) to secure that any rules or byelaws made in pursuance of its articles of government are modified, replaced or revoked<sup>16</sup>,

in any manner so specified<sup>17</sup>. Before giving such a direction, the Secretary of State must consult the further education corporation or (as the case may be) each further education corporation to which the direction applies<sup>18</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 The Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended) refers to a 'council' but for the purposes of that Part, any reference to a council is a reference to a learning and skills council: s 61A(1) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 37). For the purposes of the Further and Higher Education Act 1992 Pt I (as amended), a reference to the 'appropriate council', in relation to any educational institution, is to be construed as follows: (1) if the institution mainly serves the population of England, the reference is to the Learning and Skills Council for England; (2) if the institution mainly serves the population of Wales, the reference is to the National Council for Education and Training for Wales; (3) if the institution receives financial support from the other council, the reference is to that council also: s 61A(2) (as so added). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post. See also PARA 598 note 7 post.

3 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

4 As to the requirement for instruments of government see PARA 590 ante.

5 Further and Higher Education Act 1992 s 22(1)(a). Orders under s 22 (as amended) are not made by statutory instrument: see s 89(2).

6 Ibid s 22(1)(b).

7 Ibid s 22(1).

8 As to the requirement for articles of government see PARA 590 ante.

9 Further and Higher Education Act 1992 s 22(2) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 23).

10 Further and Higher Education Act 1992 s 22(3)(a).

11 Ibid s 22(3)(b).

12 Ibid s 22(4)(a).

13 Ibid s 22(4)(b).

14 Ibid s 22(5).

15 Ibid s 22(5)(a) (s 22(5)(a), (b) amended by the Learning and Skills Act 2000 Sch 9 paras 1, 23).

16 Further and Higher Education Act 1992 s 22(5)(b) (as amended: see note 15 supra).

17 Ibid s 22(5).

18 Ibid s 22(6).

## UPDATE

### 592 Subsequent instruments of government and articles of government

TEXT AND NOTES 2, 11--For 'appropriate learning and skills council' (in both places) read 'appropriate body': 1992 Act s 22(1), (3)(b) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238). There is no requirement for the National Assembly for Wales to consult itself: 1992 Act s 22(7) (added by SI 2005/3238).

NOTE 2--1992 Act s 61A(1) repealed: SI 2005/3238. For 'appropriate council' read 'appropriate body'; for 'National Council for Education and Training for Wales' read 'National Assembly for Wales'; and for 'other council ... that council' read 'other body ... that body': 1992 Act s 61A(2) (amended by SI 2005/3238).

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### **593. Appointment of governors.**

The Learning and Skills Council for England<sup>1</sup> may appoint a person to be a member of the governing body of an institution which falls within the further education sector<sup>2</sup> and which mainly serves the population of England<sup>3</sup>. The National Council for Education and Training for Wales<sup>4</sup> may appoint a person to be a member of the governing body of an institution which falls within the further education sector<sup>5</sup> and which mainly serves the population of Wales<sup>6</sup>.

However, no more than two members of the governing body of a given institution may at any given time have been so appointed<sup>7</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq post.

2 Ie within the meaning given by the Further and Higher Education Act 1992 s 91(3) (see PARA 579 ante); Learning and Skills Act 2000 s 11(1).

3 Ibid s 11(1). For the meaning of 'England' see PARA 52 note 11 ante.

4 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

5 Ie within the meaning given by the Further and Higher Education Act 1992 s 91(3) (see PARA 579 ante); Learning and Skills Act 2000 s 39(1).

6 Ibid s 39(1). For the meaning of 'Wales' see PARA 52 note 13 ante.

7 Ibid ss 11(2), 39(2).

## **UPDATE**

### **593 Appointment of governors**

TEXT AND NOTES--In exercising their functions, the governing body must have regard to any guidance given from time to time by the Secretary of State or the Welsh Ministers about consultation with persons who are or are likely to become students of the institution, or employers, in connection with the taking of decisions affecting them: Further and Higher Education Act 1992 s 49A (added by the Further Education and Training Act 2007 s 22).

TEXT AND NOTES 1-3, 7--2000 Act s 11 repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 26, Sch 16 Pt 2.

TEXT AND NOTE 4--Reference to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act s 39(1) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

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#### **594. Liability.**

Where a member of a further education corporation<sup>1</sup> is found liable in civil legal proceedings in respect of something which he did or omitted to do in the course of carrying out his duties as a member of the corporation<sup>2</sup>, a court<sup>3</sup> may make an order extinguishing, reducing or varying the liability<sup>4</sup> if the member applies to the court for such an order<sup>5</sup> and the court considers that the action or omission which gives rise to the member's liability was honest and reasonable<sup>6</sup>.

Where a member of such a corporation applies to a court for such an order, the court may make any order which: (1) relates to liability in civil legal proceedings which may come to be incurred by the member in respect of a specified course of action<sup>7</sup>; and (2) is of a kind which the court could have made if the liability had already been incurred<sup>8</sup>.

<sup>1</sup> Is established by virtue of the Further and Higher Education Act 1992 s 15 (see PARA 583 ante), s 16 (as amended) (see PARA 584 ante) or s 47 (as amended) (see PARA 580 ante); Learning and Skills Act 2000 s 145(3) (a).

<sup>2</sup> Ibid s 145(1).

<sup>3</sup> For these purposes, 'a court' means the High Court or a county court: ibid s 145(5). However, s 145(5) is subject to any order under the Courts and Legal Services Act 1990 s 1 (allocation of business between High Court and county courts: see COURTS vol 10 (Reissue) PARA 579); Learning and Skills Act 2000 s 145(5).

<sup>4</sup> Ibid s 145(2).

<sup>5</sup> Ibid s 145(2)(a).

<sup>6</sup> Ibid s 145(2)(b).

<sup>7</sup> Ibid s 145(4)(a).

<sup>8</sup> Ibid s 145(4)(b).

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### **595. Charitable status of a further education corporation.**

A further education corporation<sup>1</sup> is a charity<sup>2</sup> which is an exempt charity for the purposes of the Charities Act 1993<sup>3</sup>. So far as it is a charity, any institution<sup>4</sup> which:

- 1147 (1) is administered by or on behalf of any further education corporation<sup>5</sup>; and
- 1148 (2) is established for the general purposes of, or for any special purpose of or in connection with, that corporation<sup>6</sup>,

is also an exempt charity for the purposes of the Charities Act 1993<sup>7</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 For these purposes, 'charity' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 1): Further and Higher Education Act 1992 s 22A(3) (s 22A added by the Teaching and Higher Education Act 1998 s 41(2)).

3 Further and Higher Education Act 1992 s 22A(1) (as added: see note 2 supra). As to exempt charities see CHARITIES vol 8 (2010) PARA 315 et seq.

4 For these purposes, 'institution' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 1): Further and Higher Education Act 1992 s 22A(3) (as added: see note 2 supra).

5 Ibid s 22A(2)(a) (as added: see note 2 supra).

6 Ibid s 22A(2)(b) (as added: see note 2 supra).

7 Ibid s 22A(2) (as added: see note 2 supra).

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### ***C. POWERS OF FURTHER EDUCATION CORPORATIONS***

#### **596. Principal powers of a further education corporation.**

A further education corporation<sup>1</sup> has powers ('principal powers'<sup>2</sup>) under which it may:

- 1149 (1) provide further and higher education<sup>3</sup>;
- 1150 (2) provide secondary education<sup>4</sup> suitable to the requirements of persons who have attained the age of 14 years<sup>5</sup>;
- 1151 (3) provide education which is secondary education by virtue of the provisions of the Education Act 1996<sup>6</sup> which extend the definition of secondary education to include full-time education received partly at a school<sup>7</sup> and partly at another institution<sup>8</sup>;
- 1152 (4) participate in the provision of secondary education at a school<sup>9</sup>; and
- 1153 (5) supply goods<sup>10</sup> or services<sup>11</sup> in connection with its provision of education<sup>12</sup>.

A further education corporation may not provide education of a kind specified in head (2), head (3) or head (4) above unless it has consulted such local education authorities<sup>13</sup> as it considers appropriate<sup>14</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 I.e. as the powers are referred to in the Further and Higher Education Act 1992 s 19 (as amended): s 18(1) (amended by the School Standards and Framework Act 1998 s 125(1), (3); and the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 21).

3 Further and Higher Education Act 1992 s 18(1)(a). For the meaning of 'further education' see PARA 18 ante; definition applied by s 90(1) (definition added by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (2)). For the meaning of 'higher education' see PARA 19 ante; definition applied by the Further and Higher Education Act 1992 s 90(1).

4 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of ibid s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46).

5 Further and Higher Education Act 1992 s 18(1)(aa) (added by the School Standards and Framework Act 1998 s 113(1); substituted by the Learning and Skills Act 2000 s 142(1)(a); and amended by the Education Act 2002 s 215(1), Sch 21 para 11).

6 I.e. by virtue of the Education Act 1996 s 2(2B) (as added and amended): see PARA 17 ante.

7 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115; and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46(b)).

8 Further and Higher Education Act 1992 s 18(1)(ab) (added by the Learning and Skills Act 2000 s 142(1)(a)).

9 Further and Higher Education Act 1992 s 18(1)(ac) (added by the Learning and Skills Act 2000 s 142(1)(a)).

10 For the purposes of the Further and Higher Education Act 1992 s 18(1) (as amended), goods are supplied in connection with the provision of education by a further education corporation if they result from:



- 48 (1) its provision of education or anything done by it under the Further and Higher Education Act 1992 for the purpose of or in connection with its provision of education (s 18(2)(a));
- 49 (2) the use of its facilities or the expertise of persons employed by it in the fields in which they are so employed (s 18(2)(b)); or
- 50 (3) ideas of a person employed by it, or of one of its students, arising out of its provision of education (s 18(2)(c)).

For the meaning of 'employed' see PARA 586 note 9 ante. As to the supply of goods generally see SALE OF GOODS AND SUPPLY OF SERVICES.

11 For the purposes of *ibid* s 18(1) (as amended), services are supplied in connection with the provision of education by a further education corporation if:

- 51 (1) they result from its provision of education or anything done by it under the Further and Higher Education Act 1992 for the purpose of or in connection with its provision of education (s 18(3)(a));
- 52 (2) they are provided by making available its facilities or the expertise of persons employed by it in the fields in which they are so employed (s 18(3)(b)); or
- 53 (3) they result from ideas of a person employed by it, or of one of its students, arising out of its provision of education (s 18(3)(c)).

As to the supply of services generally see SALE OF GOODS AND SUPPLY OF SERVICES.

12 *Ibid* s 18(1)(b).

13 As to local education authorities see PARA 20 ante.

14 Further and Higher Education Act 1992 s 18(1A) (added by the Learning and Skills Act 2000 s 142(1)(b)).

## UPDATE

### 596-597 Powers of Further Education Corporations

A further education body may enter into collaboration arrangements with maintained schools or other further education bodies: see the Education and Inspections Act 2006 s 166; and PARA 597A.

### 596 Principal powers of a further education corporation

TEXT AND NOTES--See Further and Higher Education Act 1992 s 19A; and PARA 597.

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### **597. Supplementary powers of a further education corporation.**

A further education corporation<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of its principal powers<sup>2</sup>. In particular, a further education corporation may conduct an educational institution for the purpose of carrying on activities undertaken in the exercise of its powers to provide further or higher education<sup>3</sup> and, in particular, may assume as from the operative date<sup>4</sup> the conduct of the institution in respect of which the corporation is established<sup>5</sup>. A further education corporation may provide facilities of any description appearing to the corporation to be necessary or desirable for the purposes of or in connection with carrying on any activities undertaken in the exercise of its principal powers (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties)<sup>6</sup>.

A further education corporation may also:

- 1154 (1) acquire and dispose of land<sup>7</sup> and other property<sup>8</sup>;
- 1155 (2) enter into contracts, including in particular: (a) contracts for the employment<sup>9</sup> of teachers and other staff for the purposes of or in connection with carrying on any activities undertaken in the exercise of its principal powers<sup>10</sup>; and (b) contracts with respect to the carrying on by the corporation of any such activities<sup>11</sup>;
- 1156 (3) subscribe for or otherwise acquire shares in or securities of a company<sup>12</sup>;
- 1157 (4) borrow such sums as the corporation thinks fit for the purposes of carrying on any activities it has power to carry on or meeting any liability<sup>13</sup> transferred to it<sup>14</sup> and, in connection with such borrowing, may grant any mortgage, charge or other security in respect of any land or other property of the corporation<sup>15</sup>;
- 1158 (5) invest any sums not immediately required for the purposes of carrying on any activities it has power to carry on<sup>16</sup>;
- 1159 (6) accept gifts of money, land or other property and apply it, or hold and administer it on trust for, any of those purposes<sup>17</sup>; and
- 1160 (7) do anything incidental to the conduct of an educational institution providing further or higher education, including founding scholarships or exhibitions, making grants and giving prizes<sup>18</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 Further and Higher Education Act 1992 s 19(1). As to the principal powers of further education corporations see PARA 596 ante. As to powers and duties see also PARA 619 et seq post.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by *ibid* s 90(1) (definition added by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (2)). For the meaning of 'higher education' see PARA 19 ante; definition applied by the Further and Higher Education Act 1992 s 90(1).

4 For the meaning of 'operative date' see PARAS 583 note 4, 584 note 10 ante.

5 Further and Higher Education Act 1992 s 19(2).

6 *Ibid* s 19(3) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 22). A person has a learning difficulty if: (1) he has a significantly greater difficulty in learning than the majority of persons of his

age; or (2) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions within the further education sector for persons of his age: Further and Higher Education Act 1992 s 19(6) (s 19(6), (7) added by the Learning and Skills Act 2000 Sch 9 paras 1, 22). A person is not, however, to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home: Further and Higher Education Act 1992 s 19(7) (as so added). As to learning difficulties which call for special educational provision see PARA 984 post.

7 As to the meanings of 'land' and 'interest in land' see PARA 1355 note 3 post.

8 Further and Higher Education Act 1992 s 19(4)(a).

9 For the meaning of 'contract of employment' see PARA 586 note 9 ante.

10 Further and Higher Education Act 1992 s 19(4)(b)(i).

11 Ibid s 19(4)(b)(ii).

12 Ibid s 19(4)(bb) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 22). This power may not be exercised for the purpose of conducting an educational institution (Further and Higher Education Act 1992 s 19(4A) (s 19(4A)-(4C) added by the Learning and Skills Act 2000 Sch 9 paras 1, 22)), nor may it be exercised for the purpose of the provision of education if the provision is secured (wholly or partly) by financial resources provided by the Learning and Skills Council for England or the National Council for Education and Training for Wales (Further and Higher Education Act 1992 s 19(4B) (as so added)). However, the restriction in s 19(4B) (as added) does not apply to the extent that the council concerned consents to the exercise of the power conferred by s 19(4)(bb) (as added) in a way which does not comply with that restriction: s 19(4C) (as so added). As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post. See also PARA 598 note 7 post.

13 As to the meaning of 'liability' see PARA 586 note 7 ante.

14 Ie under the Further and Higher Education Act 1992 ss 23-27 (as amended): see PARA 586 et seq ante.

15 Ibid s 19(4)(c). This power to borrow money may not be exercised without the consent of the appropriate learning and skills council, and such consent may be given for particular borrowing or for borrowing of a particular class: s 19(5). The Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended) refers to a 'council' but for the purposes of that Part, any reference to a council is a reference to a learning and skills council: s 61A(1) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 37). For the purposes of the Further and Higher Education Act 1992 Pt I (as amended), a reference to the 'appropriate council', in relation to any educational institution, is to be construed as follows: (1) if the institution mainly serves the population of England, the reference is to the Learning and Skills Council for England; (2) if the institution mainly serves the population of Wales, the reference is to the National Council for Education and Training for Wales; (3) if the institution receives financial support from the other council, the reference is to that council also: s 61A(2) (as so added). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

16 Ibid s 19(4)(d).

17 Ibid s 19(4)(e).

18 Ibid s 19(4)(f).

## UPDATE

### 596-597 Powers of Further Education Corporations

A further education body may enter into collaboration arrangements with maintained schools or other further education bodies: see the Education and Inspections Act 2006 s 166; and PARA 597A.

### 597 Supplementary powers of a further education corporation

TEXT AND NOTES--In carrying out their functions under the 1992 Act ss 18, 19 further education corporations in England must have regard to the objective of promoting the

economic and social well-being of the local area: see Further and Higher Education Act 1992 s 19A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 256(3)).

TEXT AND NOTE 12--Now head (3)(a) form, participate in forming or invest in a company, or (b) form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of the Charities Act 1993 s 69A): 1992 Act s 19(4)(bb), (bc) (s 19(4)(bb), (4A) substituted, s 19(4)(bc), (4AA)-(4AC) added by the Further Education and Training Act 2007 s 21(2), (3); s 19(4AC) amended by the Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 3(2)). The power mentioned in head (3)(a) may not be exercised for the purpose of conducting an educational institution, or investing in a company conducting an educational institution: 1992 Act s 19(4A). The power mentioned in head (3)(b) may not be exercised for the purpose of conducting an educational institution, or becoming a member of a charitable incorporated organisation conducting an educational institution: s 19(4A). However, a restriction on the exercise of a power imposed by s 19(4A) or (4AA) does not apply to the extent that the Chief Executive of Skills Funding consents or the Welsh Ministers consent to the exercise of the power in a way which does not comply with the restriction: s 19(4AB), (4AC). A reference in s 19 to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise: s 19(8) (added by the 2007 Act s 21(6)). A further education corporation may provide advice and assistance to any other person where it appears to the corporation to be appropriate for it to do so for the purpose of or in connection with the provision of education by the other person: s 19(9) (added by Apprenticeships, Skills, Children and Learning Act 2009 s 256(2)). See also s 21(7).

NOTE 12--For 'National Council for Education and Training for Wales' read 'National Assembly for Wales in the discharge of its functions under the Learning and Skills Act 2000 Pt 2 (ss 30-51)': 1992 Act s 19(4B) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238). For 'council concerned' read 'council or the National Assembly for Wales, as the case may be': 1992 Act s 19(4C) (amended by SI 2005/3238; Further Education and Training Act 2007 Sch 1 para 7). 1992 Act s 19(4B) amended by the Further Education and Training Act 2007 s 21(4), (5) so as to refer to the power conferred by the 1992 Act s 19(4)(bb), (bc) and by the Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 3(3) to replace reference to the Learning and Skills Council for England with reference to the Chief Executive of Skills Funding.

NOTE 15--For 'appropriate learning and skills council' read 'appropriate body': 1992 Act s 19(5) (amended by SI 2005/3238). 1992 Act s 61A(1) repealed: SI 2005/3238. For 'appropriate council' read 'appropriate body'; for 'National Council for Education and Training for Wales' read 'National Assembly for Wales'; and for 'other council ... that council' read 'other body ... that body': 1992 Act s 61A(2) (amended by SI 2005/3238).

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**597A. Collaboration arrangements: maintained schools and further education bodies.**

Regulations<sup>1</sup> may enable: (1) the governing body of a maintained school<sup>2</sup>, whether alone or together with other such governing bodies, to make collaboration arrangements<sup>3</sup> with one or more further education bodies<sup>4</sup>; (2) a further education body, whether alone or together with other further education bodies, to make collaboration arrangements with the governing body of a maintained school or the governing bodies of two or more such schools<sup>5</sup>; (3) a further education body to make collaboration arrangements with one or more further education bodies<sup>6</sup>. Regulations may make provision as to: (a) the establishment by the collaborating bodies of a joint committee of those bodies for the purposes of discharging any functions in pursuance of collaboration arrangements made by them ('a joint committee')<sup>7</sup>; (b) the appointment of persons to serve on a joint committee, including provision as to the restrictions or other requirements relating to any such appointments, and their removal from office<sup>8</sup>; (c) the appointment of a clerk to a joint committee, including provision as to the restrictions or other requirements relating to any such appointment, and his removal from office<sup>9</sup>; (d) the appointment by a joint committee of one of their number to act as clerk for the purposes of a meeting where the clerk fails to attend<sup>10</sup>; (e) rights of persons to attend meetings of a joint committee<sup>11</sup>; (f) restrictions on persons taking part in proceedings of a joint committee<sup>12</sup>; (g) other matters relating to the constitution or procedure of a joint committee<sup>13</sup>. Regulations may make provision as to: (i) the functions of collaborating bodies which may or may not be discharged jointly, or by a joint committee, in pursuance of collaboration arrangements<sup>14</sup>; (ii) the manner in which such functions are to be discharged jointly, or by a joint committee, in pursuance of collaboration arrangements<sup>15</sup>; (iii) any other matters which are relevant to the discharge of functions by the collaborating bodies jointly, or as the case may be, by a joint committee in pursuance of such arrangements<sup>16</sup>. Regulations may provide that any enactment relating to the functions of the collaborating bodies which are to be discharged in pursuance of collaboration arrangements, or the governing bodies, or as the case may be the further education bodies, by which those functions are to be discharged, is to have effect subject to all necessary modifications in its application in relation to those functions and the bodies by whom they are to be discharged<sup>17</sup>.

1 'Regulations' means regulations made by the Secretary of State, in relation to England, or the National Assembly for Wales, in relation to Wales: Education and Inspections Act 2006 s 166(6). As to regulations made under s 166 see the Collaboration Arrangements (Maintained Schools and Further Education Bodies) (England) Regulations 2007, SI 2007/1321; and the Collaboration Arrangements (Maintained Schools and Further Education Bodies) (Wales) Regulations 2008, SI 2008/3082.

2 'Maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: 2006 Act s 166(6). As to such schools see PARA 94 et seq. For the meaning of 'school' see PARA 81; definition applied by virtue of s 187(2), (3).

3 'Collaboration arrangements' are arrangements for any of the functions of any of the bodies who make the arrangements ('the collaborating bodies') to be discharged jointly or by a joint committee of those bodies: *ibid* s 166(3).

4 *Ibid* s 166(1)(a). 'Further education body' means (1) a further education corporation (as defined by the Further and Higher Education Act 1992 s 17(1) (see PARA 579)); or (2) the governing body of a designated

institution (as defined by s 28(4) (see PARA 599)) which is a body incorporated by virtue of the Learning and Skills Act 2000 s 143(4) (see PARA 604); 2006 Act s 166(6).

- 5 Ibid s 166(1)(b).
- 6 Ibid s 166(1)(c).
- 7 Ibid s 166(3)(a).
- 8 Ibid s 166(3)(b).
- 9 Ibid s 166(3)(c).
- 10 Ibid s 166(3)(d).
- 11 Ibid s 166(3)(e).
- 12 Ibid s 166(3)(f).
- 13 Ibid s 166(3)(g).
- 14 Ibid s 166(4)(a).
- 15 Ibid s 166(4)(b).
- 16 Ibid s 166(4)(c).
- 17 Ibid s 166(5).

## **UPDATE**

### **596-597 Powers of Further Education Corporations**

A further education body may enter into collaboration arrangements with maintained schools or other further education bodies: see the Education and Inspections Act 2006 s 166; and PARA 597A.

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## ***D. DISSOLUTION***

### **598. Dissolution of further education corporations.**

The Secretary of State<sup>1</sup> may by order provide for the dissolution of any further education corporation<sup>2</sup> and the transfer of property, rights and liabilities<sup>3</sup> of the corporation<sup>4</sup> to:

- 1161 (1) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description<sup>5</sup>;
- 1162 (2) any body corporate established for purposes which include the provision of such facilities or services<sup>6</sup>;
- 1163 (3) a learning and skills council<sup>7</sup>; or
- 1164 (4) a Higher Education Funding Council<sup>8</sup>.

A transfer under head (1) or head (2) above requires the consent of the person or body in question<sup>9</sup>.

Where the recipient of a transfer under any such order is not a charity<sup>10</sup> established for charitable purposes<sup>11</sup> which are exclusively educational purposes, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes<sup>12</sup>.

Before making an order in respect of a further education corporation, the Secretary of State must consult: (a) the corporation<sup>13</sup>; and (b) the appropriate learning and skills council<sup>14</sup>, unless the order was made for the purpose of giving effect to a proposal of that council<sup>15</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

3 As to references to the transfer of rights or liabilities see PARA 586 note 9 ante. As to the meaning of 'liability' see PARA 586 note 7 ante.

4 Further and Higher Education Act 1992 s 27(1). An order under s 27 may apply the provisions of s 26 (as amended) (transfer of staff: see PARA 589 ante) with such modifications as the Secretary of State may consider necessary or desirable: s 27(6). Orders under s 27 are local in nature, and are not recorded in this work.

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 27: s 88(1). However, no instrument (other than a statutory instrument) made or executed under or in pursuance of s 27 is to be treated as duly stamped unless it is stamped with the duty to which it would, but for s 88 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the provisions of the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Further and Higher Education Act 1992 s 88(2). A land transaction effected under or by virtue of s 27 is also exempt from charge for the purposes of stamp duty land tax: s 88A(1) (s 88A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 18). Relief under the Further and Higher Education Act 1992 s 88A (as added) must be claimed in a land transaction return or an amendment of such a return: s 88A(2) (as so added). For the meanings of 'land transaction' and 'land transaction return' see PARA 587 note 8 ante.

5 Ibid s 27(2)(a).

6 Ibid s 27(2)(b).

7 Ibid s 27(3)(a). The Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended) refers to a 'council' but for the purposes of that Part, any reference to a council is a reference to a learning and skills council: s 61A(1) (s 61A added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 37). For the purposes of the Further and Higher Education Act 1992, the learning and skills councils are the Learning and Skills Council for England and the National Council for Education and Training for Wales: s 90(2A) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 41). As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post. If, in construing any Act, a dispute arises as to whether any functions are exercisable by one of the learning and skills councils, the dispute must be determined by the Secretary of State after consulting the National Assembly for Wales: Further and Higher Education Act 1992 s 90(2B) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 41).

8 Further and Higher Education Act 1992 s 27(3)(b). As to the Higher Education Funding Councils see PARAS 733-759 post.

9 Ibid s 27(2).

10 'Charity' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 1): Further and Higher Education Act 1992 s 27(5); and see the Interpretation Act 1978 s 17(2)(a).

11 'Charitable purposes' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 2): Further and Higher Education Act 1992 s 27(5); and see the Interpretation Act 1978 s 17(2)(a). As to the charitable status of further education corporations see PARA 595 ante.

12 Further and Higher Education Act 1992 s 27(4).

13 Ibid s 27(7)(a).

14 See note 7 supra. For the purposes of ibid Pt I (as amended), a reference to the 'appropriate council', in relation to any educational institution, is to be construed as follows: (1) if the institution mainly serves the population of England, the reference is to the Learning and Skills Council for England; (2) if the institution mainly serves the population of Wales, the reference is to the National Council for Education and Training for Wales; (3) if the institution receives financial support from the other council, the reference is to that council also: s 61A(2) (as added: see note 7 supra). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

15 Ibid s 27(7)(b).

## UPDATE

### 598 Dissolution of further education corporations

TEXT AND NOTE 7--Now head (3) the Learning and Skills Council for England, in the case of a further education corporation in England: 1992 Act s 27(3)(a) (substituted by SI 2005/3238).

NOTE 7--1992 Act ss 61A(1), 90(2A), (2B) repealed: SI 2005/3238.

NOTES 10, 11--1992 Act s 27(5) amended: Further Education and Training Act 2007 Sch 1 para 8.

TEXT AND NOTES 14, 15--Now head (b) the appropriate body, unless the order was made for the purpose of giving effect to a proposal of that body: 1992 Act s 27(7)(b) (amended by SI 2005/3238). There is no requirement for the National Assembly for Wales to consult itself: 1992 Act s 27(8) (added by SI 2005/3238).



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### **(iii) Designated Institutions**

#### **A. DESIGNATION OF INSTITUTIONS**

##### **599. Designation.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> designate<sup>3</sup> any educational institution principally concerned with the provision of one or both of the following<sup>4</sup>:

- 1165 (1) full-time education suitable to the requirements of persons over compulsory school age<sup>5</sup> who have not attained the age of 19 years<sup>6</sup>; and
- 1166 (2) courses of further or higher education<sup>7</sup>,

if the institution is a voluntary aided school<sup>8</sup> (other than one belonging to a group of schools for which a foundation body acts<sup>9</sup>), an institution which is grant-aided or eligible to receive aid by way of grant<sup>10</sup>, or an institution established for the purpose of being principally concerned with the provision of one or both of the kinds of education specified in head (1) and head (2) above<sup>11</sup>.

The Secretary of State must not make such an order in respect of a voluntary aided school without the consent of the governing body<sup>12</sup> and the local education authority<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante. Orders under the Further and Higher Education Act 1992 s 28 (as amended) are local in nature, and are not recorded in this work. Note that an order under the Education Reform Act 1988 s 129 (as amended) (designation of institutions for the purposes of the higher education sector: see PARA 701 post) in respect of any institution may revoke any order in respect of that institution under the Further and Higher Education Act 1992 s 28 (as amended): s 74(2).

3 I.e. for the purposes of ibid s 28 (as amended).

4 Ibid s 28(1) (amended by the Learning and Skills Act 2000 s 143(1)(a)).

5 As to the meaning of 'compulsory school age' see PARA 15 ante.

6 Further and Higher Education Act 1992 s 28(1)(a).

7 Ibid s 28(1)(b). For the meaning of 'further education' see PARA 18 ante; definition applied by s 90(1) (definition added by the Education Act 1996 s 582(1), Sch 37 Pt I para 115). For the meaning of 'higher education' see PARA 19 ante; definition applied by the Further and Higher Education Act 1992 s 90(1).

8 For the meaning of references to a voluntary aided school see PARA 589 note 5 ante. As to voluntary schools see PARA 102 et seq ante.

9 I.e. under the School Standards and Framework Act 1998 s 21: see PARA 104 ante.

10 For these purposes, an institution is grant-aided or eligible to receive aid by way of grant if it is maintained by persons other than local education authorities who receive any grants under regulations made

under the Education Act 1996 s 485 (see PARA 69 ante) or who are eligible to receive such grants: Further and Higher Education Act 1992 s 28(3) (amended by the Education Act 1996 Sch 37 Pt I para 109).

11 Further and Higher Education Act 1992 s 28(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 38; and the Learning and Skills Act 2000 ss 143(1), 153, Sch 11).

12 As to the governing bodies of maintained schools see PARA 203 et seq ante.

13 Further and Higher Education Act 1992 s 28(3A) (added by the Learning and Skills Act 2000 s 112). As to local education authorities see PARA 20 ante.

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## **600. Transfer of property etc to designated institutions.**

In any case where the order designating an institution<sup>1</sup> so provides<sup>2</sup>, and when designated the institution was a voluntary aided school<sup>3</sup> or an institution (other than a school<sup>4</sup>) assisted by a local education authority<sup>5</sup>, then on the designation date<sup>6</sup> all land<sup>7</sup> or other property which, immediately before that date, was property of a former assisting authority<sup>8</sup> used or held for the purposes of the institution<sup>9</sup>, and all rights and liabilities<sup>10</sup> of that authority subsisting immediately before that date which were acquired or incurred for those purposes<sup>11</sup>, are to be transferred to and, by virtue of the Further and Higher Education Act 1992, vest in the appropriate transferees<sup>12</sup>. However, this does not apply to: (1) any liability of a former assisting authority in respect of the principal of, or interest on, any loan<sup>13</sup>; or (2) any excluded<sup>14</sup> property, rights or liabilities<sup>15</sup>.

If, before the designation date, the appropriate transferees and the former assisting authority have agreed in writing to exclude any land<sup>16</sup>, and the Secretary of State has given his written approval of the agreement<sup>17</sup>, then the land, and any rights or liabilities relating to it, are to be excluded<sup>18</sup>. If, in default of such agreement, the appropriate transferees or the former assisting authority have applied to the Secretary of State to exclude any land<sup>19</sup>, and the Secretary of State has by order directed its exclusion<sup>20</sup>, then the land, and any rights or liabilities relating to it, are to be excluded<sup>21</sup>. An agreement<sup>22</sup> may provide for the land to be used for the purposes of the institution on such terms as may be specified in or determined in accordance with the agreement<sup>23</sup>; and directions<sup>24</sup> may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement<sup>25</sup>, and are to have effect as if contained in such an agreement<sup>26</sup>.

1e an order under the Further and Higher Education Act 1992 s 28 (as amended): see PARA 599 ante. For the meaning of 'designated institution' see PARA 579 note 4 ante.

Ibid s 32(1)(a).

3 For the meaning of references to a voluntary aided school see PARA 589 note 5 ante. As to voluntary schools see PARA 102 et seq ante.

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115; and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46(b)).

5 Further and Higher Education Act 1992 s 32(1)(b). As to assistance by a local education authority see PARA 45 ante. As to local education authorities see PARA 20 ante.

6 For these purposes, 'designation date', in relation to a designated institution, means the date on which the designation takes effect: *ibid* s 32(3). References in Pt I (ss 15-61A) (as amended) to the 'operative date', in relation to a designated institution, are references to the designation date: s 33(4).

7 As to the meaning of 'land' see PARA 1355 note 3 post.

8 For these purposes, 'former assisting authority' means: (1) in relation to an institution which when designated was a voluntary aided school, the local education authority which maintained the school; and (2) in relation to an institution which when designated was an institution (other than a school) assisted by a local education authority, that authority: Further and Higher Education Act 1992 s 32(3).

9 Ibid s 32(2)(a). Where at any time land is used for the purposes of an institution, any interest of a local authority in the land subsisting at that time is to be taken for the purposes of s 32 (as amended) to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used): s 33(3). For the meaning of 'local authority' see PARA 586 note 5 ante.

10 As to the meaning of 'liability' see PARA 586 note 7 ante.

11 Further and Higher Education Act 1992 s 32(2)(b).

12 Ibid s 32(2). For these purposes, 'appropriate transferees' means: (1) in relation to an institution conducted by a company, the company; and (2) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State to be trustees holding property for the purposes of that institution: s 32(3). As to references to the transfer of rights or liabilities see PARA 586 note 9 ante. For general and supplementary provisions relating to transfers see s 36 (as amended), s 87, Sch 5, Sch 7 (Schs 5, 7 as amended); and PARAS 1397-1398 post. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

Subject to s 36(2) (see PARA 1397 post), where persons appearing to the Secretary of State to be trustees holding property for the purposes of the institution are the appropriate transferee, any land or other property or rights transferred to them under s 32 (as amended) must be held on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be specified in the order designating the institution or, if no such trust deed is so specified, on trust for the general purposes of the institution: s 33(1). Where persons so appearing to the Secretary of State are the appropriate transferee, they incur no personal liability by virtue of any liability so transferred but may apply any property held by them on trust for the purposes of the institution in meeting any such liability: s 33(2). As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46). As to the disposal by trustees of land transferred to them under the Further and Higher Education Act 1992 s 32 (as amended) see the Learning and Skills Act 2000 s 144; and PARA 1377 post.

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of the Further and Higher Education Act 1992 s 32 (as amended): s 88(1). However, no instrument (other than a statutory instrument) made or executed under or in pursuance of s 32 (as amended) is to be treated as duly stamped unless it is stamped with the duty to which it would, but for s 88 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the provisions of the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Further and Higher Education Act 1992 s 88(2). A land transaction effected under or by virtue of s 32 (as amended) is also exempt from charge for the purposes of stamp duty land tax: s 88A(1) (s 88A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 18). Relief under the Further and Higher Education Act 1992 s 88A (as added) must be claimed in a land transaction return or an amendment of such a return: s 88A(2) (as so added). For the meanings of 'land transaction' and 'land transaction return' see PARA 587 note 8 ante.

13 Ibid s 32(4)(a).

14 Ie excluded under ibid s 32(5) (see the text and notes 16-18 infra) or s 32(6) (see the text and notes 19-21 infra).

15 Ibid s 32(4)(b).

16 Ibid s 32(5)(a). References in s 32(5) and s 32(6) (see the text and notes 19-21 infra) to anything done, other than the making of an order, include anything done before 6 March 1992 (ie the date of the passing of the Further and Higher Education Act 1992): s 32(8).

17 Ibid s 32(5)(b). See note 16 supra.

18 Ibid s 32(5). See note 16 supra.

19 Ibid s 32(6)(a). See note 16 supra.

20 Ibid s 32(6)(b). See note 16 supra.

21 Ibid s 32(6). See note 16 supra.

22 Ie under ibid s 32(5): see the text and notes 16-18 supra.

- 23 Ibid s 32(7).
- 24 le under ibid s 32(6): see the text and notes 19-21 supra.
- 25 Ibid s 32(7)(a).
- 26 Ibid s 32(7)(b).

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## ***B. CONSTITUTION AND GOVERNANCE***

### **601. Requirement for instruments of government and articles of government.**

For each designated institution<sup>1</sup>, other than an institution conducted by a company<sup>2</sup> or an institution conducted by an unincorporated association if the order designating the institution provides for its exemption<sup>3</sup>, there must be:

- 1167 (1) an instrument providing for the constitution of a governing body<sup>4</sup> of the institution (the 'instrument of government')<sup>5</sup>; and
- 1168 (2) an instrument in accordance with which the institution is to be conducted (the 'articles of government')<sup>6</sup>.

Each of the instruments must meet the following requirements<sup>7</sup>, namely that:

- 1169 (a) the instrument was in force when the designation took effect and is approved for these purposes by the Secretary of State<sup>8</sup>;
- 1170 (b) the instrument is made in pursuance of a power under a regulatory instrument<sup>9</sup>, or is made by the governing body of the institution<sup>10</sup>, and is approved for these purposes by the Secretary of State<sup>11</sup>; or
- 1171 (c) the instrument is made<sup>12</sup> by the Secretary of State<sup>13</sup>.

If an instrument approved by the Secretary of State for these purposes falls within head (a) above or was made in pursuance of a power under a regulatory instrument and there is no power<sup>14</sup> to modify it, or was made by the governing body of the institution, then the instrument may be modified by the governing body<sup>15</sup>. The Secretary of State may by order modify, replace or revoke either of the instruments referred to in heads (1) and (2) above<sup>16</sup>. No instrument approved by him for these purposes may be modified, replaced or revoked by any other person without the Secretary of State's consent<sup>17</sup>.

Notwithstanding anything in the provisions described above, the instrument of government of a designated institution which, when designated, was a voluntary aided school<sup>18</sup> and the instrument of government of an institution specified, or falling within a class specified, by the Secretary of State by order<sup>19</sup> must provide: (i) for the governing body of the institution to include persons appointed for the purpose of securing so far as practicable that the established character of the institution<sup>20</sup> at the time of its designation is preserved and developed and, in particular, that the institution is conducted in accordance with any trust deed relating to it<sup>21</sup>; and (ii) for the majority of members of the governing body to be such governors<sup>22</sup>.

1 For the meaning of 'designated institution' see PARA 579 note 4 ante.

2 Further and Higher Education Act 1992 s 29(1)(a), (2). As to designated institutions conducted by companies see PARA 602 post.

3 Ibid s 29(1)(b), (2).

4 For the meaning of 'governing body' see PARA 584 note 5 ante.

5 Further and Higher Education Act 1992 s 29(2)(a). Provision made by the instrument in relation to the appointment of members of the governing body is to take into account the members who may be appointed by the Learning and Skills Council for England under the Learning and Skills Act 2000 s 11 (see PARA 593 ante) or by the National Council for Education and Training for Wales under the Learning and Skills Act 2000 s 39 (see PARA 593 ante); Further and Higher Education Act 1992 s 29(2), (7A) (s 29(2) amended, and s 29(7A) added, by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 24). As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post.

6 Further and Higher Education Act 1992 s 29(2)(b). See note 5 supra.

7 Ibid s 29(2) (as amended: see note 5 supra).

8 Ibid s 29(3)(a). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 For the purposes of ibid s 29 (as amended), 'regulatory instrument', in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution: s 29(4).

10 Ie under ibid s 29(5). Where there is no such power as is mentioned in head (b) in the text to make the instrument, it may be made by the governing body of the institution: s 29(5). Such an instrument made by the governing body may replace wholly or partly any existing regulatory instrument: s 29(5).

11 Ibid s 29(3)(b).

12 Ie under ibid s 29(6). The Secretary of State may by order make either of the instruments referred to in heads (1) and (2) in the text: s 29(6). As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante. Any such instrument made by him may replace wholly or partly any existing regulatory instrument: s 29(6).

Before exercising any power under s 29(6) or s 29(8) (see the text and note 16 infra) in relation to any instrument, the Secretary of State must, so far as it appears to him to be practicable to do so, consult: (1) the governing body of the institution; and (2) where there is such a power as is mentioned in head (b) in the text to make or, as the case may be, modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power: s 29(9).

Orders under s 29(6), (8) and s 30(2)(b) (as substituted) (see the text and note 19 infra) are not made by statutory instrument: see s 89(2) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 40).

13 Further and Higher Education Act 1992 s 29(3)(c).

14 Ie apart from ibid s 29 (as amended).

15 Ibid s 29(7).

16 Ibid s 29(8) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 24). See note 12 supra.

17 Further and Higher Education Act 1992 s 29(8) (as amended: see note 16 supra).

18 Ibid s 30(1), (2)(a) (s 30 substituted by the Learning and Skills Act 2000 s 143(2)). For the meaning of references in the Further and Higher Education Act 1992 to a voluntary aided school see PARA 589 note 5 ante. As to voluntary schools see PARA 102 et seq ante.

19 Ibid s 30(1), (2)(b) (as substituted: see note 18 supra). The Secretary of State may specify an institution or a class of institutions only if the institution or each member of the class is principally concerned with the provision of the education specified in s 28(1)(a) (see PARA 599 ante): s 30(3) (as so substituted). See note 12 supra.

20 The reference in ibid s 30(1)(a) (as substituted) to the established character of an institution is, in relation to an institution established shortly before or at the same time as being designated, a reference to the character which the institution is intended to have on its establishment: s 30(4) (as substituted: see note 18 supra).

21 Ibid s 30(1)(a) (as substituted: see note 18 supra). As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46).

22 Further and Higher Education Act 1992 s 30(1)(b) (as substituted: see note 18 supra).

## **UPDATE**

### **601 Requirement for instruments of government and articles of government**

NOTE 5--For 'National Council for Education and Training for Wales' read 'National Assembly for Wales' and for 'Learning and Skills Council for England under the Learning and Skills Act 2000 s 11' read 'Chief Executive of Skills Funding under the Further and Higher Education Act 1992 s 56AA': 1992 Act s 29(7A) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238; Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 4).



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## **602. Designated institutions conducted by companies.**

Where a designated institution<sup>1</sup> is conducted by a company, the articles of association of the company<sup>2</sup> must incorporate<sup>3</sup>:

- 1172 (1) provision with respect to the constitution of a governing body<sup>4</sup> of the institution (the 'instrument of government of the institution')<sup>5</sup>; and
- 1173 (2) provision with respect to the conduct of the institution (the 'articles of government of the institution')<sup>6</sup>.

The Secretary of State<sup>7</sup> may give to the persons who appear to him to have effective control over the company such directions as he thinks fit for securing that:

- 1174 (a) the memorandum or articles of association of the company<sup>8</sup>; or
- 1175 (b) any rules or byelaws made in pursuance of any power conferred by the articles of association of the company<sup>9</sup>,

are amended in such manner as he may specify in the direction<sup>10</sup>. Before giving any such directions the Secretary of State must consult the persons who appear to him to have effective control over the company<sup>11</sup>.

No amendment of the memorandum or articles of association of the company (other than one required under head (a) above) may take effect until it has been submitted to the Secretary of State for his approval and he has notified his approval to the company<sup>12</sup>.

1 For the meaning of 'designated institution' see PARA 579 note 4 ante.

2 As to the articles of association of a company see COMPANIES vol 14 (2009) PARA 243 et seq.

3 Further and Higher Education Act 1992 s 31(1), (2).

4 For the meaning of 'governing body' see PARA 584 note 5 ante.

5 Further and Higher Education Act 1992 s 31(2)(a). Provision made by the articles of association of the company in relation to the appointment of members of the governing body must take into account the members who may be appointed by the Learning and Skills Council for England under the Learning and Skills Act 2000 s 11 (see PARA 593 ante) or by the National Council for Education and Training for Wales under s 39 (see PARA 593 ante): Further and Higher Education Act 1992 s 31(2A) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 25). As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post.

6 Further and Higher Education Act 1992 s 31(2)(b).

7 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 Further and Higher Education Act 1992 s 31(3)(a). As to the memorandum of association of a company see COMPANIES vol 14 (2009) PARA 243 et seq.

9 Ibid s 31(3)(b).

10 Ibid s 31(3).

11 Ibid s 31(5).

12 Ibid s 31(4).

## **UPDATE**

### **602 Designated institutions conducted by companies**

NOTE 5--Reference to the National Council for Education and Training for Wales is now to the National Assembly for Wales and reference to the Learning and Skills Council for England under the Learning and Skills Act 2000 s 11 is now to the Chief Executive of Skills Funding under the Further and Higher Education Act 1992 s 56AA: 1992 Act s 31(2A) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238; Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 5).

TEXT AND NOTES 7-10--Further and Higher Education Act 1992 s 31(3)(a) amended: SI 2009/1941.

TEXT AND NOTE 12--Further and Higher Education Act 1992 s 31(4) amended: SI 2009/1941.

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### **603. Appointment of governors.**

The Learning and Skills Council for England<sup>1</sup> may appoint a person to be a member of the governing body of an institution which falls within the further education sector<sup>2</sup> and which mainly serves the population of England<sup>3</sup>. The National Council for Education and Training for Wales<sup>4</sup> may appoint a person to be a member of the governing body of an institution which falls within the further education sector<sup>5</sup> and which mainly serves the population of Wales<sup>6</sup>.

However, no more than two members of the governing body of a given institution may at any given time have been so appointed<sup>7</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq post.

2 Ie within the meaning given by the Further and Higher Education Act 1992 s 91(3) (see PARA 579 ante): Learning and Skills Act 2000 s 11(1).

3 Ibid s 11(1). For the meaning of 'England' see PARA 52 note 11 ante.

4 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

5 Ie within the meaning given by the Further and Higher Education Act 1992 s 91(3) (see PARA 579 ante): Learning and Skills Act 2000 s 39(1).

6 Ibid s 39(1). For the meaning of 'Wales' see PARA 52 note 13 ante.

7 Ibid ss 11(2), 39(2).

### **UPDATE**

#### **603 Appointment of governors**

TEXT AND NOTES 1-3, 7--2000 Act s 11 repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 26, Sch 16 Pt 2.

TEXT AND NOTE 4--Reference to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act s 39(1) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

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#### **604. Orders incorporating governing bodies.**

The Secretary of State<sup>1</sup> may make an order providing for the constitution as a body corporate of the governing body<sup>2</sup> of an institution in England which is designated under the Further and Higher Education Act 1992<sup>3</sup>, and the National Assembly for Wales<sup>4</sup> may make an order providing for the constitution as a body corporate of the governing body of an institution in Wales which is so designated<sup>5</sup>. Such an order may:

- 1176 (1) make provision similar to certain provisions of the Further and Higher Education Act 1992<sup>6</sup> relating to the powers of further education corporations<sup>7</sup>;
- 1177 (2) make provision for the continuity of the body corporate<sup>8</sup>;
- 1178 (3) make provision expressed to have effect subject to the institution's instrument or articles of government<sup>9</sup>;
- 1179 (4) make provision which confers exempt charitable status for the purposes of the Charities Act 1993<sup>10</sup>, and which relates to the governing body or to an institution administered by or established for the purposes of that body<sup>11</sup>;
- 1180 (5) make provision about the discontinuance of the institution<sup>12</sup>;
- 1181 (6) make provision about the dissolution of the body corporate, including provision about the treatment of property, rights and liabilities<sup>13</sup>.

Before making such an order in relation to an institution the Secretary of State or the National Assembly for Wales must consult the governing body of the institution<sup>14</sup>, and the trustees of any trust relating to the institution<sup>15</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'governing body' in relation to an institution under the Further and Higher Education Act 1992 see PARA 584 note 5 ante.

3 Learning and Skills Act 2000 s 143(4). The reference in the text to an institution designated under the Further and Higher Education Act 1992 is a reference to an institution designated under s 28 (as amended): see PARA 599 ante. For the meaning of 'designated institution' under the Further and Higher Education Act 1992 see PARA 579 note 4 ante. A statutory instrument containing an order under the Learning and Skills Act 2000 s 143(4) is excluded from the general provision under which statutory instruments containing an order made by the Secretary of State are subject to annulment in pursuance of a resolution of either House of Parliament: see s 152(2); and PARA 972 note 7 post.

4 As to the National Assembly for Wales see PARA 53 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Learning and Skills Act 2000 s 143(5).

6 Ie any provision of the Further and Higher Education Act 1992 s 18 (as amended) (see PARA 596 ante) or s 19 (as amended) (see PARA 597 ante).

7 Learning and Skills Act 2000 s 143(6)(a).

8 Ibid s 143(6)(b). This includes provision for the continuation of anything done under the Further and Higher Education Act 1992 s 29 (as amended) (government and conduct of designated institutions: see PARA 601 ante).

9 Learning and Skills Act 2000 s 143(6)(c). As to an institution's instrument and articles of government see PARA 602 ante.

10 As to exempt charities for the purposes of the Charities Act 1993 see CHARITIES vol 8 (2010) PARA 315 et seq.

11 Learning and Skills Act 2000 s 143(6)(d).

12 Ibid s 143(6)(e).

13 Ibid s 143(6)(f).

14 Ibid s 143(7)(a).

15 Ibid s 143(7)(b).

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### **605. Liability.**

Where a member of a body corporate<sup>1</sup> is found liable in civil legal proceedings in respect of something which he did or omitted to do in the course of carrying out his duties as a member of the body<sup>2</sup>, a court<sup>3</sup> may make an order extinguishing, reducing or varying the liability<sup>4</sup> if the member applies to the court for such an order<sup>5</sup> and the court considers that the action or omission which gives rise to the member's liability was honest and reasonable<sup>6</sup>. Where a member of such a body applies to a court for such an order, the court may make any order which: (1) relates to liability in civil legal proceedings which may come to be incurred by the member in respect of a specified course of action<sup>7</sup>; and (2) is of a kind which the court could have made if the liability had already been incurred<sup>8</sup>.

1    Is established by virtue of the Learning and Skills Act 2000 s 143(4) or (5) (see PARA 604 ante).

2    Ibid s 145(1), (3)(b).

3    For these purposes, 'a court' means the High Court or a county court: *ibid* s 145(5). However, s 145(5) is subject to any order under the Courts and Legal Services Act 1990 s 1 (allocation of business between High Court and county courts: see COURTS vol 10 (Reissue) PARA 579): Learning and Skills Act 2000 s 145(5).

4    Ibid s 145(2).

5    Ibid s 145(2)(a).

6    Ibid s 145(2)(b).

7    Ibid s 145(4)(a).

8    Ibid s 145(4)(b).

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## **(2) OTHER INSTITUTIONS PROVIDING FURTHER EDUCATION**

### **606. Provision of further education by other institutions.**

Further education<sup>1</sup> may be provided by institutions outside the further education sector<sup>2</sup>, such as schools<sup>3</sup> and institutions within the higher education sector<sup>4</sup>. An institution not within the further education sector may be maintained by a local education authority<sup>5</sup> in the exercise of its further education functions<sup>6</sup>.

1 For the meaning of 'further education' see PARA 18 ante.

2 As to references to institutions outside the further education sector see PARA 579 ante.

3 As to schools see PARA 81 et seq ante.

4 As to references to institutions within the higher education sector see PARA 646 post.

5 As to local education authorities see PARA 20 ante.

6 See PARA 608 post.

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### **607. Provision of further education by a maintained school.**

The governing body of any maintained school<sup>1</sup> is responsible for determining whether or not to provide:

- 1182 (1) part-time education suitable to the requirements of persons of any age over compulsory school age<sup>2</sup>; or
- 1183 (2) full-time education suitable to the requirements of persons who have attained the age of 19<sup>3</sup>.

However, the governing body of a community or foundation special school<sup>4</sup> may not determine to provide, or to cease to provide, such education without the consent of the local education authority<sup>5</sup>.

It is the duty of the governing body of any such school which provides such education to secure that, except in such circumstances as may be prescribed<sup>6</sup>, such education is not provided at any time in a room where pupils<sup>7</sup> are at that time being taught<sup>8</sup>.

1 For the meaning of 'maintained school' see PARA 94 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 School Standards and Framework Act 1998 s 80(1)(a). As to the meaning of 'compulsory school age' see PARA 15 ante. Section 80 does not apply to part-time education provided under a partnership arrangement to which the Further and Higher Education Act 1992 s 60A (repealed) (partnership arrangements to secure provision of certain further education in Wales) applied: School Standards and Framework Act 1998 s 80(3). Section 80 does not apply to any course of training provided under the Education Act 2005 s 95: see PARA 793 post.

3 School Standards and Framework Act 1998 s 80(1)(b).

4 For the meaning of 'community or foundation special school' see PARA 94 note 2 ante. As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

5 School Standards and Framework Act 1998 s 80(1). Any function of a local education authority in England which is conferred by or under s 80 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (u). For the meaning of 'England' see PARA 52 note 11 ante. As to local education authorities see PARA 20 ante.

6 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations generally under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. As to the regulations that have been made under s 80 see the Education (Further Education in Schools) Regulations 1999, SI 1999/1867.

7 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ibid s 80(2).



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**608. Government of institutions maintained by local education authorities in the exercise of further education functions.**

A local education authority<sup>1</sup> may, in relation to any institution not within the further education sector<sup>2</sup> or the higher education sector<sup>3</sup> which is maintained by it in the exercise of its further or higher education functions<sup>4</sup>:

1184 (1) make such provision as it thinks fit in respect of the government of the institution<sup>5</sup>; and

1185 (2) delegate to the governing body<sup>6</sup> of the institution such functions relating to the management of the finances of the institution, and such other functions relating to the management of the institution (including the appointment and dismissal of staff), as the authority may determine<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to references to institutions within the further education sector see PARA 579 ante.

3 As to references to institutions within the higher education sector see PARA 646 post.

4 Further and Higher Education Act 1992 s 85(2), (3).

5 Ibid s 85(3)(a). The power under s 85(3)(a) includes power to replace any instrument of government or articles of government made under the Education Reform Act 1988 Pt II Ch III (ss 139-155) (repealed) or s 156 (repealed in relation to designated institutions): Further and Higher Education Act 1992 s 85(1), (3)(a).

6 As to the meaning of 'governing body' see PARA 584 note 5 ante.

7 Further and Higher Education Act 1992 s 85(3)(b).

**UPDATE**

**608 Government of institutions maintained by local education authorities in the exercise of further education functions**

NOTE 5--Education Reform Act 1988 s 156 amended: SI 2009/1941.

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### **609. Minimum age for governors.**

No person is qualified for membership of the governing body<sup>1</sup> of any institution which is maintained by a local education authority<sup>2</sup> and which provides higher education<sup>3</sup> or further education<sup>4</sup> (or both) unless he is a student of the institution or is aged 18 or over at the date of his election or appointment<sup>5</sup>. The Secretary of State<sup>6</sup> may by regulations<sup>7</sup> make provision restricting:

- 1186 (1) in relation to such matters or classes of matter as may be prescribed<sup>8</sup>;
- 1187 (2) in such circumstances as may be prescribed<sup>9</sup>; and
- 1188 (3) to such extent, as may be prescribed<sup>10</sup>,

the participation of any student of such an institution who is a member of its governing body in the proceedings of that body<sup>11</sup>. The instrument of government for any such institution may make such provision in relation to restricting the participation of any such student in the proceedings of its governing body (in addition to that made by the regulations) as the regulations may authorise<sup>12</sup>.

1 In the Education (No 2) Act 1986, except where otherwise provided, 'governing body' does not include a temporary governing body or any member of such a body: s 65(2). As to temporary governing bodies in relation to England see PARA 212 ante; and as to temporary governing bodies in relation to Wales see PARA 263 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 66).

4 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (as amended: see note 3 supra).

5 Ibid s 61(1) (amended by the Education Reform Act 1988 s 237(1), Sch 12 Pt III para 104).

6 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Any power of the Secretary of State to make orders or regulations under the Education (No 2) Act 1986 must be exercised by statutory instrument: s 63(1) (amended by the Education Act 1996 s 582(2), Sch 38 Pt I). Any such statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament: Education (No 2) Act 1986 s 63(2). Regulations and orders under the Education (No 2) Act 1986 may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental or transitional provisions as the Secretary of State thinks fit: s 63(3) (amended by the Education Act 1993 s 307(1), Sch 19 para 107(a)). At the date at which this volume states the law, no regulations had been made under the Education (No 2) Act 1986 s 61 (as amended).

8 Ibid s 61(2)(a). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State (see note 7 supra): Education Act 1996 s 579(1); definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (as amended: see note 3 supra).

9 Ibid s 61(2)(b).

10 Ibid s 61(2)(c).

11 Ibid s 61(2).

12 Ibid s 61(3).

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## **610. Determination of disputes.**

The provisions of the Education Act 1996 relating to the determination of disputes by the Secretary of State<sup>1</sup> apply in relation to the governing body of any institution which is maintained by a local education authority<sup>2</sup> and which provides higher education<sup>3</sup> or further education<sup>4</sup> (or both) as they apply in relation to the governing body of a school<sup>5</sup>.

1 In the Education Act 1996 s 495(1): see PARA 59 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'higher education' see PARA 19 ante.

4 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81).

5 Education Reform Act 1988 s 219(1), (2) (s 219 substituted by the Education Act 1996 s 582(1), Sch 37 Pt I para 77). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 4 supra).

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### **611. Power of intervention by central government.**

The provisions of the Education Act 1996 relating to:

- 1189 (1) the power of the Secretary of State<sup>1</sup> to prevent the unreasonable exercise of certain powers and duties by a local education authority or governing body<sup>2</sup>; and
- 1190 (2) his general power to declare a local education authority or governing body in default of its duty<sup>3</sup>,

have effect as if the bodies to which they apply included the governing body of any institution which is maintained by a local education authority<sup>4</sup> and which provides higher education<sup>5</sup> or further education<sup>6</sup> (or both)<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 I.e. the Education Act 1996 s 496 (as amended): see PARA 57 ante.

3 I.e. *ibid* s 497 (as amended): see PARA 58 ante.

4 As to local education authorities see PARA 20 ante.

5 For the meaning of 'higher education' see PARA 19 ante.

6 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81).

7 Education Reform Act 1988 s 219(1), (3) (s 219 substituted by the Education Act 1996 s 582(1), Sch 37 Pt I para 77).

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**612. Powers of central government where there is no properly constituted governing body.**

The provisions of the Education Act 1996 relating to the powers of the Secretary of State<sup>1</sup> where there is no properly constituted governing body in relation to certain schools have effect as if the schools to which they apply included an institution which is maintained by a local education authority<sup>2</sup> and which provides higher education<sup>3</sup> or further education<sup>4</sup> (or both)<sup>5</sup>.

1 In the Education Act 1996 s 498 (as amended): see PARA 262 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'higher education' see PARA 19 ante.

4 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81).

5 Education Reform Act 1988 s 219(1), (4) (s 219 substituted by the Education Act 1996 s 582(1), Sch 37 Pt I para 77).

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### **613. Institutions ceasing to be maintained by local education authority.**

Where an institution which provides full-time education and is maintained by a local education authority<sup>1</sup> in exercise of the authority's further or higher education functions<sup>2</sup> ceases to be maintained by a local education authority or (as the case may be) by the authority in question, any provision of any instrument relating to any land<sup>3</sup> or other property held for the purposes of the institution<sup>4</sup> which:

1191 (1) confers on any person an option to acquire an interest in that land<sup>5</sup> or other property<sup>6</sup>; or

1192 (2) provides (in whatever terms) for the determination or forfeiture of any such interest<sup>7</sup>,

has effect, if the institution becomes an institution within the further education sector<sup>8</sup> or an institution within the higher education sector<sup>9</sup> or a grant-aided institution<sup>10</sup>, as if the event referred to were the institution's ceasing to be a publicly funded institution<sup>11</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Reform Act 1988 s 157(5)(a). References in Pt II (ss 120-161) (as amended) to the further or higher education functions of a local education authority are references to the functions of the authority (except in so far as they relate to secondary education) under the Education Act 1996 s 15A (as added and amended) (see PARA 27 ante), s 15B (as added) (see PARA 28 ante), and the Education Reform Act 1988 s 120 (as amended) (see PARA 708 post): s 161(1)(b) (substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 17).

3 As to the meaning of 'land' see PARA 1381 note 5 post.

4 Education Reform Act 1988 s 157(4) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 39(a)(i), Sch 9).

5 As to references to an interest in land see PARA 1381 note 5 post.

6 Education Reform Act 1988 s 157(4)(a).

7 Ibid s 157(4)(b).

8 As to references to institutions within the further education sector see PARA 579 ante.

9 As to references to institutions within the higher education sector see PARA 646 post.

10 In the Education Reform Act 1988 references to an institution which is or was grant-aided at any time are references to an institution maintained by persons who have received any grants under regulations made under the Education Act 1944 s 100(1)(b) (repealed) or the Education Act 1996 s 485 (see PARA 69 ante) in respect of expenditure incurred or to be incurred for any academic year of that institution current at the time in question: Education Reform Act 1988 s 235(2)(c) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(1), (3)). References to an institution which is eligible to receive aid by way of grant are references to an institution maintained by persons other than local education authorities who for the time being satisfy any requirements of regulations so made with respect to the eligibility of such persons to receive grants under those regulations: Education Reform Act 1988 s 235(2)(d).

11 Ibid s 157(4) (amended by the Further and Higher Education Act 1992 Sch 8 paras 27, 39(a)(ii), (iii)). 'Publicly funded institution' means an institution which is an institution of any one or more of the following

descriptions, that is to say: (1) an institution maintained or assisted by a local education authority (Education Reform Act 1988 s 157(6)(a)); (2) an institution within the further education sector or an institution within the higher education sector (s 157(6)(b) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 39(c))); and (3) a grant-aided institution (Education Reform Act 1988 s 157(6)(c)).



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### **(3) RIGHTS AND LIABILITIES**

#### **(i) Property**

##### **614. Transfers.**

Property transfers may be made when a further education corporation<sup>1</sup> is established to conduct an institution<sup>2</sup> or when an institution is designated as a further education institution<sup>3</sup>. Provisions relating to transfers on the incorporation of institutions<sup>4</sup> as further education corporations or on the designation of institutions<sup>5</sup> are dealt with elsewhere in this work<sup>6</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 As to the establishment of further education corporations see PARA 583 et seq ante.

3 As to designated institutions see PARA 599 et seq ante.

4 See PARA 586 et seq ante.

5 See PARA 600 ante.

6 As to the attribution of surpluses and deficits where an educational institution becomes an institution within the further education sector see PARA 644 post. As to payments in respect of loan liabilities excepted from a transfer see PARA 645 post.

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## (ii) Trust Deeds

### 615. Variation of trust deeds.

The Secretary of State<sup>1</sup> may by order<sup>2</sup> make such modifications as he thinks fit in any trust deed<sup>3</sup> or other instrument<sup>4</sup>: (1) relating to or regulating an institution within the further education sector<sup>5</sup>; or (2) relating to any land<sup>6</sup> or other property held by any person for the purposes of such an institution<sup>7</sup>. Before making any such modifications of any trust deed or other instrument, the Secretary of State must, so far as it appears to him to be practicable to do so, consult:

- 1193 (a) the governing body<sup>8</sup> of the institution<sup>9</sup>;
- 1194 (b) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any other persons to modify or replace that deed or instrument, those persons<sup>10</sup>; and
- 1195 (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in heads (a) and (b) above, the trustees<sup>11</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante. Orders under s 46 are not made by statutory instrument: see s 89(2).

3 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of *ibid* s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46).

4 Further and Higher Education Act 1992 s 46(1).

5 *Ibid* s 46(1)(a). As to references to institutions within the further education sector see PARA 579 ante.

6 As to the meaning of 'land' see PARA 1355 note 3 post.

7 Further and Higher Education Act 1992 s 46(1)(b).

8 For the meaning of 'governing body' see PARA 584 note 5 ante.

9 Further and Higher Education Act 1992 s 46(2)(a).

10 *Ibid* s 46(2)(b).

11 *Ibid* s 46(2)(c).

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### **(iii) Employees**

#### **616. Transfer of employees where local authority property is made available for use by an institution within the further education sector.**

Where an order is made<sup>1</sup> for the purpose of making any property of a local authority<sup>2</sup> available for use for the purposes of an institution within the further education sector<sup>3</sup>, and:

- 1196 (1) at any time on or after such date as may be specified by the order a person employed by the local authority ceases to be so employed and is subsequently employed by the governing body<sup>4</sup> of the institution<sup>5</sup>; and
- 1197 (2) that subsequent employment precludes<sup>6</sup> his receiving any redundancy payment under Part XI of the Employment Rights Act 1996<sup>7</sup>,

the provisions relating to computation of the period of employment<sup>8</sup> for the purposes of that Act have effect in relation to that person as if the period of employment of that person with the local authority counted as a period of employment with the governing body<sup>9</sup>, and the change of employer does not break the continuity of the period of employment<sup>10</sup>. Similarly, the period of that person's employment with the local authority counts as a period of employment with the governing body for the purposes of any provision of his contract of employment with the governing body which depends on his length of service with that employer<sup>11</sup>.

1    Ie under the Further and Higher Education Act 1992 s 34 (as amended): see PARA 1355 post.

2    For the meaning of 'local authority' see PARA 586 note 5 ante.

3    Further and Higher Education Act 1992 s 35(1)(a). As to references to institutions within the further education sector see PARA 579 ante.

4    For the meaning of 'governing body' see PARA 584 note 5 ante.

5    Further and Higher Education Act 1992 s 35(1)(b).

6    Ie by virtue of the Employment Rights Act 1996 s 138 (treatment of dismissal in cases of renewal of contract or re-engagement: see EMPLOYMENT vol 40 (2009) PARA 820).

7    Further and Higher Education Act 1992 s 35(1)(c) (amended by the Employment Rights Act 1996 s 240, Sch 1 para 52). As to redundancy payments under the Employment Rights Act 1996 Pt XI (ss 135-181) (as amended) see EMPLOYMENT vol 40 (2009) PARA 790 et seq.

8    Ie *ibid* Pt XIV Ch I (ss 210-219) (as amended): see EMPLOYMENT vol 39 (2009) PARA 105 et seq.

9    Further and Higher Education Act 1992 s 35(2)(a) (s 35(2) amended by the Employment Rights Act 1996 Sch 1 para 52).

10   Further and Higher Education Act 1992 s 35(2)(b) (as amended: see note 9 supra).

11   *Ibid* s 35(3).

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### **617. Remuneration of employees.**

Where, in consequence of a determination by the local education authority<sup>1</sup> or any other person of the rate of remuneration of any employees<sup>2</sup>, the rate of remuneration of any relevant employees<sup>3</sup> would be increased<sup>4</sup> as from a date (the 'proposed date of increase') falling after 1 September 1992<sup>5</sup>, the authority:

1198 (1) must notify the Secretary of State<sup>6</sup> in writing of the determination and the proposed date of increase<sup>7</sup>; and

1199 (2) must not pay any relevant employee at the new rate unless the increase is authorised by the Secretary of State<sup>8</sup>.

Where the Secretary of State receives a notification under head (1) above, he must, before the end of the period of four weeks beginning with the day on which he received the notification, either: (a) authorise the increase resulting from the determination so far as it relates to relevant employees<sup>9</sup>; or (b) afford to the authority, and to such persons appearing to him to be representative of relevant employees affected by the determination as he considers appropriate, an opportunity of making representations to him in respect of the determination<sup>10</sup>. After considering any representations made to him under head (b) above, the Secretary of State must authorise the increase resulting from the determination<sup>11</sup> or refuse to authorise the increase<sup>12</sup>,

so far as it relates to relevant employees<sup>13</sup>. The Secretary of State must give written notification of any decision<sup>14</sup> to the local education authority and to any other persons who made representations<sup>15</sup> to him<sup>16</sup>.

Where a relevant employee is not paid at the new rate on the proposed date of increase<sup>17</sup>, but the Secretary of State authorises the increase after that date<sup>18</sup>, then the employee concerned is to be regarded<sup>19</sup> as having been entitled under his contract of employment<sup>20</sup> to be paid by the local education authority at the new rate as from the proposed date of increase<sup>21</sup>.

The provisions described above do not apply to remuneration determined in accordance with the scales and other provisions set out or referred to in a pay and conditions order<sup>22</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the meaning of 'employee' see PARA 589 note 6 ante.

3 For these purposes, 'relevant employees' means persons who were employed at institutions which were relevant institutions by virtue of the Further and Higher Education Act 1992 s 39(2)(a) (repealed) or s 39(2)(b) (repealed): s 43(2).

4 Ie apart from ibid s 43.

5 Ibid s 43(1).

6 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Further and Higher Education Act 1992 s 43(1)(a).

8 Ibid s 43(1)(b).

- 9 Ibid s 43(4)(a).
- 10 Ibid s 43(4)(b).
- 11 Ibid s 43(5)(a).
- 12 Ibid s 43(5)(b).
- 13 Ibid s 43(5).
- 14 Ie under ibid s 43(4)(a) (see the text and note 9 supra) or s 43(5) (see the text and notes 11-13 supra).
- 15 Ie under ibid s 43(4)(b) (see the text and note 10 supra).
- 16 Ibid s 43(6).
- 17 Ibid s 43(7)(a).
- 18 Ibid s 43(7)(b).
- 19 Ie for the purpose of determining the terms of any contract affected by ibid s 26 (as amended) (transfer of staff: see PARA 589 ante).
- 20 For the meaning of 'contract of employment' see PARA 586 note 9 ante.
- 21 Further and Higher Education Act 1992 s 43(8).
- 22 Ibid s 43(3) (substituted by the Education Act 2002 s 215(1), Sch 21 para 17). The text refers to remuneration determined in accordance with the Education Act 2002 s 122: see PARA 864 post.

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**618. Avoidance of certain terms in a contract made with an employee.**

Any contract made between the governing body<sup>1</sup> of an institution within the further education sector<sup>2</sup> and any person employed by it, not being a contract made in contemplation of the employee's<sup>3</sup> pending dismissal by reason of redundancy<sup>4</sup>, is void and of no effect<sup>5</sup> in so far as it provides that the employee<sup>6</sup>: (1) is not to be dismissed by reason of redundancy<sup>7</sup>; or (2) if he is so dismissed, is to be paid a sum in excess of the sum which the employer<sup>8</sup> is liable<sup>9</sup> to pay to him<sup>10</sup>.

1 For the meaning of 'governing body' see PARA 584 note 5 ante.

2 As to references to institutions within the further education sector see PARA 579 ante.

3 As to the meaning of 'employee' see PARA 589 note 6 ante.

4 Further and Higher Education Act 1992 s 49(1). As to dismissal by reason of redundancy see EMPLOYMENT vol 40 (2009) PARA 790 et seq.

5 As to void contracts see CONTRACT vol 9(1) (Reissue) PARAS 836 et seq, 867, 876 et seq.

6 Further and Higher Education Act 1992 s 49(2).

7 Ibid s 49(2)(a).

8 As to the meaning of 'employer' see PARA 589 note 13 ante.

9 Ie under the Employment Rights Act 1996 Pt XI (ss 135-181) (as amended) see EMPLOYMENT vol 40 (2009) PARA 790 et seq.

10 Further and Higher Education Act 1992 s 49(2)(b) (amended by the Employment Rights Act 1996 s 240, Sch 1 para 52).

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#### **(4) POWERS AND DUTIES**

##### **(i) Powers and Duties in relation to the Provision of Education**

###### **619. Powers of further education corporations.**

The principal powers of a further education corporation<sup>1</sup>, which relate to the provision of education, are dealt with elsewhere in this work<sup>2</sup>. A further education corporation also has supplementary powers, which enable it to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of its principal powers<sup>3</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 See PARA 596 ante.

3 See PARA 597 ante.

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## **620. Duty to safeguard pupils receiving secondary education.**

Where secondary education<sup>1</sup> is provided to persons of compulsory school age<sup>2</sup>:

- 1200 (1) by a further education corporation<sup>3</sup>; or
- 1201 (2) by a designated institution<sup>4</sup> in pursuance of arrangements made by a local education authority<sup>5</sup>, or by the governing body<sup>6</sup> of a school<sup>7</sup> on behalf of such an authority<sup>8</sup>,

the governing body of the corporation or institution must secure that, except in such circumstances as may be prescribed by regulations<sup>9</sup>, no education is provided to a person who has attained the age of 19 years in a room in which any persons of compulsory school age are for the time being receiving secondary education<sup>10</sup>.

1 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 46(b)).

2 Further and Higher Education Act 1992 s 52A(1) (s 52A added by the School Standards and Framework Act 1998 s 113(2); and the Further and Higher Education Act 1992 s 52A(1) amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 30; and by the Education Act 2002 s 215(1), Sch 21 para 19(1), (2)(a)). As to the meaning of 'compulsory school age' see PARA 15 ante.

3 Further and Higher Education Act 1992 s 52A(1)(a) (as added (see note 2 supra); and amended by the Education Act 2002 Sch 21 para 19(1), (2)(b)). The text refers to a further education corporation providing secondary education in pursuance of arrangements falling within the Further and Higher Education Act 1992 s 18(1)(aa) (as added, substituted and amended) or s 18(1)(ab) (as added): see PARA 596 ante. For the meaning of 'further education corporation' see PARA 579 note 3 ante.

4 For the meaning of 'designated institution' see PARA 579 note 4 ante.

5 Further and Higher Education Act 1992 s 52A(1)(b)(i) (as added: see note 2 supra). As to local education authorities see PARA 20 ante.

6 For the meaning of 'governing body' see PARA 584 note 5 ante.

7 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115; and the School Standards and Framework Act 1998 Sch 30 paras 33, 46(b)).

8 Further and Higher Education Act 1992 s 52A(1)(b)(ii) (as added: see note 2 supra).

9 For the purposes of ibid Pt I (ss 15-61A) (as amended), 'regulations' means regulations made by the Secretary of State: s 61(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Further and Higher Education Act 1992 see PARA 585 note 6 ante. The prescribed circumstances are that a teacher must be present in the room: see the Education (Secondary Education in Further Education Institutions) Regulations 1999, SI 1999/954, reg 2.

10 Further and Higher Education Act 1992 s 52A(2) (as added (see note 2 supra); and amended by the Education Act 2002 Sch 21 para 19(1), (3)).

## **UPDATE**



## **620 Duty to safeguard pupils receiving secondary education**

TEXT AND NOTES 1-8--The duty also applies where secondary education is provided to persons of compulsory school age by a sixth form college corporation by virtue of the 1992 Act s 33E(1)(b) or (c) (see PARA 579A): Further and Higher Education Act 1992 s 52A(1)(aa) (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 5).

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### **621. Duties of governing body in relation to the welfare of children.**

The governing body<sup>1</sup> of an institution within the further education sector<sup>2</sup> must make arrangements for ensuring that its functions<sup>3</sup> relating to the conduct of the institution are exercised with a view to safeguarding and promoting the welfare of children<sup>4</sup> receiving education or training at the institution<sup>5</sup>. Such a body must, in considering what arrangements are required to be made by it, have regard to any ministerial guidance given from time to time<sup>6</sup>.

1 For the meaning of 'governing body' see PARA 584 note 5 ante; definition applied by virtue of the Education Act 2002 s 175(5).

Section 175 is brought into force as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 June 2004 (see the Education Act 2002 (Commencement No 8) Order 2004, SI 2004/1318, art 2) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to references to institutions within the further education sector see PARA 579 ante. For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3).

4 For this purpose, 'child' means a person under the age of 18: ibid s 175(5). See note 1 supra.

5 Ibid s 175(3). See note 1 supra.

6 Ibid s 175(4). See note 1 supra. The guidance referred to in the text is guidance given by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales). As to the publication of such guidance see PARA 54 ante; applied by virtue of s 212(2), (3). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante.

### **UPDATE**

### **621 Duties of governing body in relation to the welfare of children**

NOTE 1--Day now appointed in relation to Wales: SI 2006/172.

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## **622. Duty to provide for named individuals.**

Where an institution within the further education sector<sup>1</sup> provides education suitable to the requirements of persons over compulsory school age<sup>2</sup> who have not attained the age of 19 years<sup>3</sup>, the Learning and Skills Council for England<sup>4</sup> (in relation to England<sup>5</sup>) or the National Council for Education and Training for Wales<sup>6</sup> (in relation to Wales<sup>7</sup>) may by notice given to the governing body<sup>8</sup> of the institution<sup>9</sup>:

- 1202 (1) require it to provide for such individuals as may be specified in the notice such education<sup>10</sup> as is appropriate to their abilities and aptitudes<sup>11</sup>; or
- 1203 (2) withdraw such a requirement<sup>12</sup>.

The governing body of such an institution must, for any academic year in respect of which it receives financial support from a learning and skills council, secure compliance with any requirement in respect of any individual who has not attained the age of 19 years which is or has been imposed by that council<sup>13</sup> and has not been withdrawn<sup>14</sup>.

1 As to references to institutions within the further education sector see PARA 579 ante.

2 As to the meaning of 'compulsory school age' see PARA 15 ante.

3 Further and Higher Education Act 1992 s 52(1) (amended by the Learning and Skills Act 2000 ss 149, 153, Sch 9 paras 1, 29, Sch 11).

4 As to the Learning and Skills Council for England see PARA 1072 et seq post. See also PARA 598 note 7 ante.

5 For the meaning of 'England' see PARA 52 note 11 ante.

6 As to the National Council for Education and Training for Wales see PARA 1113 et seq post. See also PARA 598 note 7 ante.

7 For the meaning of 'Wales' see PARA 52 note 13 ante.

8 For the meaning of 'governing body' see PARA 584 note 5 ante.

9 Further and Higher Education Act 1992 s 52(2). Part I (ss 15-61A) (as amended) refers to a 'council' but for the purposes of that Part, any reference to a council is a reference to a learning and skills council: s 61A(1) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 37).

10 Ie falling within the Further and Higher Education Act 1992 s 52(1) (as amended): see the text and notes 1-3 supra.

11 Ibid s 52(2)(a).

12 Ibid s 52(2)(b).

13 Ie under ibid s 52(2): see the text and notes 4-12 supra.

14 Ibid s 52(3).

## **UPDATE**

**622 Duty to provide for named individuals**

TEXT AND NOTES--1992 Act s 52 now applies only to institutions in Wales: Further and Higher Education Act 1992 s 52(1) (further amended by Apprenticeships, Skills, Children and Learning Act 2009 s 44(2)). As to the duty to provide for named individuals in England see Further and Higher Education Act 1992 s 51A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 44(1)).

TEXT AND NOTE 6--For 'National Council for Education and Training for Wales' read 'National Assembly for Wales': 1992 Act s 52(2) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 9--1992 Act s 61A(1) repealed: SI 2005/3238.

TEXT AND NOTES 13, 14--For 'a learning and skills council' read 'the Learning and Skills Council for England or the National Assembly'; and for 'imposed by that council' read 'imposed by the council or, as the case may be, the Assembly': 1992 Act s 52(3) (amended by SI 2005/3238).

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### **623. Collective worship.**

In relation to any institution within the further education sector<sup>1</sup> which is principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age<sup>2</sup> who have not attained the age of 19 years<sup>3</sup>, the governing body<sup>4</sup> must ensure that at an appropriate time on at least one day in each week during which the institution is open an act of collective worship is held at the institution which persons receiving education at the institution may attend<sup>5</sup>.

In an institution of voluntary origin<sup>6</sup> the act of collective worship must be in such forms as to comply with the provisions of any trust deed<sup>7</sup> affecting the institution<sup>8</sup>, and must reflect the religious traditions and practices of the institution before it joined the further education sector<sup>9</sup>. In all other institutions, the act of collective worship must be wholly or mainly of a broadly Christian character in that it must reflect the broad traditions of Christian belief but need not be distinctive of any particular Christian denomination<sup>10</sup>.

If the governing body of an institution considers it appropriate to do so, it may also provide for acts of worship<sup>11</sup> which reflect the practices of some or all of the other religious traditions represented in Great Britain<sup>12</sup>.

1 As to references to institutions within the further education sector see PARA 579 ante.

2 As to the meaning of 'compulsory school age' see PARA 15 ante.

3 Further and Higher Education Act 1992 s 44(1) (substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 27). The Further and Higher Education Act 1992 s 44 (as amended) came into force at different times according to the nature and history of the institution concerned: see the Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831 (in respect of institutions which before they became institutions within the further education sector were schools maintained by a local education authority or grant-maintained schools); and the Learning and Skills Act 2000 (Commencement No 2 and Savings) Order 2000, SI 2000/2559 (in relation to England and for the purposes of any institution which became an institution within the further education sector, within the meaning of the Further and Higher Education Act 1992 s 91(3) (see PARA 579 ante), on or after 1 October 2000, or was an institution within that sector before 1 October 2000 and before it became an institution within that sector was a school maintained by a local education authority). See also the Learning and Skills Act 2000 (Commencement No 3 and Transitional Provisions) (Wales) Order 2001, SI 2001/1274 (repeal of the Further and Higher Education Act 1992 s 44(6) in relation to Wales).

4 For the meaning of 'governing body' see PARA 584 note 5 ante.

5 Further and Higher Education Act 1992 s 44(2A) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 27).

6 An institution is of voluntary origin for these purposes if:

54 (1) immediately before it joined the further education sector it was a voluntary school (within the meaning of the Education Act 1996: see PARA 102 note 14 ante) (Further and Higher Education Act 1992 s 44(2)(a) (s 44(2) substituted by the Learning and Skills Act 2000 Sch 9 paras 1, 27));

55 (2) immediately before it joined the further education sector it was a foundation or voluntary school (within the meaning of the School Standards and Framework Act 1998: see PARA 102 ante) having a foundation established otherwise than under that Act (Further and Higher Education Act 1992 s 44(2)(b) (as so substituted));

56 (3) it is designated for these purposes by order of the Secretary of State (s 44(2)(c) (as so substituted)); or

57 (4) it is formed by or for the purpose of merging two institutions both of which were within heads (1)-(3) supra (s 44(2)(d) (as so substituted)).

As to foundation schools and voluntary schools see PARA 102 et seq ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. Orders under s 44(2)(c) (as substituted) (see head (3) supra) are not made by statutory instrument: see s 89(2) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 40).

7 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46).

8 Further and Higher Education Act 1992 s 44(3)(a).

9 Ibid s 44(3)(b) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 27). In the application of the Further and Higher Education Act 1992 s 44 (as amended) to an institution which is of voluntary origin by virtue of s 44(2)(d) (as substituted) (see note 6 head (4) supra), s 44(3)(b) (as amended) is to be taken as referring to the religious traditions and practices of the two institutions mentioned in s 44(2)(d) (as substituted): s 44(7) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 27).

10 Further and Higher Education Act 1992 s 44(4) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 27).

11 In addition to the act of collective worship referred to in the Further and Higher Education Act 1992 s 44(3) (as amended) (see the text and notes 6-9 supra) or s 44(4) (as amended) (see the text and note 10 supra).

12 Ibid s 44(5) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 27). For the meaning of 'Great Britain' see PARA 63 note 3 ante.

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#### **624. Religious education.**

In relation to any institution within the further education sector<sup>1</sup> which is principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age<sup>2</sup> who have not attained the age of 19 years<sup>3</sup>, the governing body<sup>4</sup> must ensure that religious education is provided at the institution for all persons attending the institution who wish to receive it<sup>5</sup>. The governing body is deemed to be fulfilling this duty if religious education is provided at a time or times at which it is convenient for the majority of full-time students to attend<sup>6</sup>.

For these purposes, religious education may take the form of a course of lectures or classes or of single lectures or classes provided on a regular basis and may include a course of study leading to an examination or the award of a qualification<sup>7</sup>. The form and content of religious education provided is to be determined from time to time by the governing body of the institution<sup>8</sup>. In the case of an institution of voluntary origin<sup>9</sup>, the form and content of religious education must be in accordance with the provisions of any trust deed affecting the institution<sup>10</sup>, and must not be contrary to the religious traditions of the institution before it joined the further education sector<sup>11</sup>. In the case of all other institutions, the form and content of religious education must reflect the fact that religious traditions in Great Britain<sup>12</sup> are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain<sup>13</sup>.

1 As to references to institutions within the further education sector see PARA 579 ante.

2 As to the meaning of 'compulsory school age' see PARA 15 ante.

3 Further and Higher Education Act 1992 s 44(1) (substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 27); applied by the Further and Higher Education Act 1992 s 45(1) (substituted by the Learning and Skills Act 2000 Sch 9 paras 1, 28).

4 For the meaning of 'governing body' see PARA 584 note 5 ante.

5 Further and Higher Education Act 1992 s 45(2A) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 28). The Further and Higher Education Act 1992 s 45 (as amended) came into force at different times according to the nature and history of the institution concerned: see the Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831 (in respect of institutions which before they became institutions within the further education sector were schools maintained by a local education authority or grant-maintained schools); and the Learning and Skills Act 2000 (Commencement No 2 and Savings) Order 2000, SI 2000/2559 (in relation to England and for the purposes of any institution which became an institution within the further education sector, within the meaning of the Further and Higher Education Act 1992 s 91(3) (see PARA 579 ante), on or after 1 October 2000, or was an institution within that sector before 1 October 2000 and before it became an institution within that sector was a school maintained by a local education authority). See also the Learning and Skills Act 2000 (Commencement No 3 and Transitional Provisions) (Wales) Order 2001, SI 2001/1274 (repeal of the Further and Higher Education Act 1992 s 45(6) in relation to Wales).

6 Further and Higher Education Act 1992 s 45(3) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 28).

7 Further and Higher Education Act 1992 s 45(4).

8 Ibid s 45(5) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 28).

9 An institution is of voluntary origin for these purposes if it is of voluntary origin for the purposes of the Further and Higher Education Act 1992 s 44 (as amended) (see PARA 623 note 6 ante): s 45(2) (substituted by the Learning and Skills Act 2000 Sch 9 paras 1, 28).

10 Further and Higher Education Act 1992 s 45(5)(a)(i).

11 Ibid s 45(5)(a)(ii) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 28). In the application of the Further and Higher Education Act 1992 s 45 (as amended) to an institution which is an institution of voluntary origin by virtue of s 44(2)(d) (as substituted) (see PARA 623 note 6 ante), s 45(5)(a)(ii) (as amended) is to be taken as referring to the religious traditions and practices of the two institutions mentioned in s 44(2)(d) (as substituted): s 45(7) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 28).

12 For the meaning of 'Great Britain' see PARA 63 note 3 ante.

13 Further and Higher Education Act 1992 s 45(5)(b) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 28).



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### **625. Provision of transport.**

In certain circumstances, a local education authority<sup>1</sup> must make arrangements for the provision of transport for the purpose of facilitating the attendance of persons receiving education at any institution maintained or assisted by the authority which provides further education<sup>2</sup> or at any institution within the further education sector<sup>3</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'further education' see PARA 18 ante.

3 See the Education Act 1996 s 509(1) (as amended); and PARA 534 ante. As to references to institutions within the further education sector see PARA 579 ante.

### **UPDATE**

### **625 Provision of transport**

TEXT AND NOTES--Education Act 1996 s 509 repealed: Learner Travel (Wales) Measure 2008 Sch 2, Apprenticeships, Skills, Children and Learning Act 2009 s 57(4), Sch 16 Pt 1.

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**626. Provision of clothing.**

A local education authority<sup>1</sup> may provide such articles of clothing as it may determine suitable for the physical training provided at an institution maintained by the authority which provides further education<sup>2</sup> or at an institution within the further education sector<sup>3</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'further education' see PARA 18 ante.

3 See the Education Act 1996 s 510(4) (as amended); and PARA 538 ante. As to references to institutions within the further education sector see PARA 579 ante.

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### **627. Approval for the use of certain materials and apparatus.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> require the governing body<sup>3</sup> of a further education institution<sup>4</sup> in England to prevent the use in the institution of specified equipment or specified materials without the approval of the Secretary of State<sup>5</sup>. The Secretary of State may specify equipment or materials in this way only if he thinks the equipment or materials might endanger a person's health or safety<sup>6</sup>.

The National Assembly for Wales<sup>7</sup> may by regulations<sup>8</sup> require the governing body of a further education institution in Wales to prevent the use in the institution of specified equipment or specified materials without the approval of the Assembly<sup>9</sup>. The Assembly may specify equipment or materials in this way only if it thinks the equipment or materials might endanger a person's health or safety<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For these purposes, 'regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England): s 212(1). For the meaning of 'England' see PARA 52 note 11 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 203 in relation to England see the Education (Hazardous Equipment and Materials) (England) Regulations 2004, SI 2004/571.

3 For the meaning of 'governing body' in relation to an institution under the Further and Higher Education Act 1992 see PARA 584 note 5 ante.

4 For the purposes of the Education Act 2002 s 203, 'further education institution' means an institution within the further education sector: s 203(5). As to references to institutions within the further education sector see PARA 579 ante.

5 Ibid s 203(1). As to the repeal of the Education Reform Act 1988 s 218(1)(e) (as amended) in relation to England see note 9 infra.

6 Education Act 2002 s 203(2).

7 As to the National Assembly for Wales see PARA 53 ante.

8 For these purposes, 'regulations' means regulations made under the Education Act 2002 by the National Assembly for Wales (in relation to Wales): s 212(1). For the meaning of 'Wales' see PARA 52 note 13 ante. The Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to Wales, by SI 2001/3708) were made under the Education Reform Act 1988 s 218(1)(e) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 9 infra), but, by virtue of the Interpretation Act 1978 s 17(2)(b), they have effect in relation to Wales as if made under the Education Act 2002 s 203.

9 Ibid s 203(3). The Education Reform Act 1988 s 218(1)(e) (amended by the Education Act 1996 s 582, Sch 37 Pt I para 76, Sch 38 Pt I) makes substantially the same provision as the Education Act 2002 s 203, and as from a day to be appointed is repealed by ss 146, 215(2), Sch 22 Pt 3. In relation to England, the appointed day is 1 August 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

10 Education Act 2002 s 203(4).

### **UPDATE**

**627 Approval for the use of certain materials and apparatus**

NOTE 8--SI 1989/351 revoked in relation to England: SI 2008/1701.

NOTE 9--Day now appointed in relation to Wales: SI 2007/3611.

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## **628. Power of the Secretary of State to make regulations relating to premises in England.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In relation to institutions which provide higher education<sup>2</sup> or further education<sup>3</sup> (or both) and which either are maintained by local education authorities<sup>4</sup> or are within the further education sector<sup>5</sup>, the Secretary of State<sup>6</sup> may by regulations make provision requiring his approval to be obtained for the provision of new premises for, or the alteration of the premises of, any such institution or any boarding hostel provided by a local education authority for persons receiving education at any such institution, and for the inspection of any such hostel<sup>7</sup>.

1 As from a day to be appointed, the provisions of the Education Reform Act 1988 s 218(7), (10) (as amended) are repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3. In relation to Wales, the appointed day for the repeal of the Education Reform Act 1988 s 218(7) (as amended) is 31 March 2003 (see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 5, Schedule Pt II) but, at the date at which this volume states the law, no such day had been appointed in relation to England.

2 For the meaning of 'higher education' see PARA 19 ante.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582, Sch 37 Pt I para 81).

4 As to local education authorities see PARA 20 ante.

5 Education Reform Act 1988 s 218(10) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 49, Sch 9). See note 1 supra. As to references to institutions within the further education sector see PARA 579 ante.

6 As to the Secretary of State see PARA 52 ante.

7 Education Reform Act 1988 s 218(7) (amended by the Further and Higher Education Act 1992 Sch 8 Pt I paras 27, 49; the Education Act 1993 s 307(1), Sch 19 paras 112, 136; and the Education Act 1996 Sch 37 Pt I para 76, Sch 38 Pt I). See note 1 supra. As to the regulations that have been made under the Education Reform Act 1988 s 218(7) (as amended) see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to England, by SI 2001/692; SI 2004/571).

### **UPDATE**

## **628 Power of the Secretary of State to make regulations relating to premises in England**

NOTE 1--Day now appointed in relation to England: SI 2006/2895.

NOTE 7--SI 1989/351 revoked in relation to England: SI 2008/1701.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/3. FURTHER EDUCATION/(4) POWERS AND DUTIES/(i) Powers and Duties in relation to the Provision of Education/629. Provision of courses of higher education at certain institutions in Wales.

### **629. Provision of courses of higher education at certain institutions in Wales.**

The National Assembly for Wales<sup>1</sup> may by regulations<sup>2</sup>: (1) prohibit the provision by an institution in Wales, which provides further or higher education and is within the further education sector, of a course of higher education without the approval of the Assembly<sup>3</sup>; (2) enable the Assembly to determine the number of persons who may undertake a course of higher education at such an institution<sup>4</sup>; (3) enable the Assembly to determine the number of persons in different categories who may undertake a course of higher education at such an institution<sup>5</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 For these purposes, 'regulations' means regulations made under the Education Act 2002 by the National Assembly for Wales (in relation to Wales): s 212(1). For the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 139. However, the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended by SI 2001/692; SI 2001/3708; SI 2004/571), made under the Education Reform Act 1988 s 218(9) (as amended; prospectively repealed), have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 139.

Regulations under s 139 may provide that a specified provision of the regulations will not apply where a specified condition, which may refer to the opinion of a specified person, is satisfied (s 140(1)); and such regulations may impose a function on a local education authority, or the governing body of a further or higher education institution (s 140(2)). For these purposes, 'further education institution' means an institution which: (1) provides further education and is maintained by a local education authority; or (2) is within the further education sector: s 140(3). For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'institution within the further education sector' see PARA 579 ante; definition applied by virtue of s 212(2), (3). As to local education authorities see PARA 20 ante. For these purposes, 'higher education institution' means an institution which: (a) is within the higher education sector; and (b) receives financial support under the Further and Higher Education Act 1992 s 65 (as amended) (administration of funds by higher education funding councils: see PARA 746 post): Education Act 2002 s 140(3). For the meaning of 'institution within the higher education sector' see PARA 646 post; definition applied by virtue of s 212(2), (3).

The Education Reform Act 1988 s 218(9)(d) (see PARA 724 post), which makes substantially the same provision as the Education Act 2002 s 139, is repealed as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed.

3 Ibid s 139(1)(a), (2). See note 2 supra.

4 Ibid s 139(1)(b), (2). See note 2 supra.

5 Ibid s 139(1)(c), (2). See note 2 supra.

### **UPDATE**

### **629 Provision of courses of higher education at certain institutions in Wales**

NOTE 2--Repeal of Education Reform Act 1988 s 218(9)(d) now in force in relation to England: SI 2006/2895.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/3. FURTHER EDUCATION/(4) POWERS AND DUTIES/(ii) Records and Information/630. Power to make regulations relating to records.

## **(ii) Records and Information**

### **630. Power to make regulations relating to records.**

Regulations<sup>1</sup> may make provision about the compilation, retention and disclosure of educational records of further education institutions<sup>2</sup>. The regulations may, in particular, impose a function on a local education authority<sup>3</sup> or the governing body of a further education institution<sup>4</sup>, and make a duty to provide a copy of a record conditional on the payment of a charge which does not exceed the cost of providing the copy<sup>5</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no such regulations had been made under s 202. However, by virtue of the Interpretation Act 1978 s 17(2) (b), the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to England, by SI 2001/692; SI 2004/571; and amended, in relation to Wales, by SI 2001/3708), which were made under the Education Reform Act 1988 s 218(1)(f) (repealed in relation to England; prospectively repealed in relation to Wales) (see note 2 infra), have effect as if made under the Education Act 2002 s 202.

2 Ibid s 202(1). For the meaning of 'further education institution' see PARA 772 note 1 post; definition applied by virtue of s 202(4).

The provisions of the Education Reform Act 1988 s 218(1)(f) (amended by the Further and Higher Education Act 1992 Sch 8 Pt I paras 27, 49; and the Education Act 1996 Sch 37 Pt I para 76, Sch 38 Pt I) and the Education Reform Act 1988 s 218(4), which make substantially the same provision as the Education Act 2002 s 202, are repealed by ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed. In relation to England, the appointed day is 1 August 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 Education Act 2002 s 202(2)(a). As to local education authorities see PARA 20 ante.

4 Ibid s 202(2)(b).

5 Ibid s 202(3).

## **UPDATE**

### **630 Power to make regulations relating to records**

NOTE 1--SI 1989/351 revoked in relation to England: SI 2008/1701.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/3. FURTHER EDUCATION/(4) POWERS AND DUTIES/(ii) Records and Information/631. Duty to give information to the Learning and Skills Council for England or the National Council for Education and Training for Wales.

**631. Duty to give information to the Learning and Skills Council for England or the National Council for Education and Training for Wales.**

The Learning and Skills Council for England<sup>1</sup> (in relation to England<sup>2</sup>) or the National Council for Education and Training for Wales<sup>3</sup> (in relation to Wales<sup>4</sup>) must be given such information as it may require for the purposes of the exercise of any of its functions under any enactment by each of the following<sup>5</sup>, namely: (1) a local education authority<sup>6</sup>; (2) the governing body<sup>7</sup> of any institution maintained by a local education authority, city technology college, city college for the technology of the arts, or academy<sup>8</sup>; (3) the governing body of any institution within the further education sector<sup>9</sup> or the higher education sector<sup>10</sup>; and (4) the governing body of any institution which is receiving or has received certain financial support<sup>11</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq post. See also PARA 598 note 7 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Council for Education and Training for Wales see PARA 1113 et seq post. See also PARA 598 note 7 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 Further and Higher Education Act 1992 s 54(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 20).

6 Further and Higher Education Act 1992 s 54(1)(a). As to local education authorities see PARA 20 ante.

7 For the meaning of 'governing body' see PARA 584 note 5 ante.

8 Further and Higher Education Act 1992 s 54(1)(b) (amended by the School Standards and Framework Act 1998 s 140(3), Sch 31; the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 31; and the Education Act 2002 Sch 7 Pt 2 para 4). As to city colleges and academies see PARAS 496 ante, 1010 post.

9 As to references to institutions within the further education sector see PARA 579 ante.

10 Further and Higher Education Act 1992 s 54(1)(c). As to references to institutions within the higher education sector see PARA 646 post.

11 Ibid s 54(1)(d). The financial support referred to in the text is financial support under s 5 (repealed), which provided for financial support from the Further Education Funding Councils. However, by virtue of the Interpretation Act 1978 s 17(2)(a), the reference should be construed now as a reference either to the Learning and Skills Act 2000 s 5 (as amended) (provision of financial resources by the Learning and Skills Council for England: see PARA 1092 post) or to s 34 (provision of financial resources by the National Council for Education and Training for Wales: see PARA 1132 post), as the case may be. As to the dissolution of the Further Education Funding Council for England see PARA 1072 post; and as to the dissolution of the Further Education Funding Council for Wales see PARA 1113 post.

**UPDATE**

**631 Duty to give information to the [Chief Executive of Skills Funding] or the [National Assembly for Wales]**



TEXT AND NOTE 1--For 'Learning and Skills Council for England' read 'Chief Executive of Skills Funding': 1992 Act s 54(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 6).

TEXT AND NOTE 3--For 'National Council for Education and Training for Wales' read 'National Assembly for Wales': 1992 Act s 54(1) (amended by SI 2005/3238).

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### **632. Reports and returns.**

The governing body<sup>1</sup> of any institution providing full-time education which is maintained by a local education authority<sup>2</sup> in exercise of its further or higher education functions<sup>3</sup> must make such reports and returns, and give such information, to the Secretary of State<sup>4</sup> as he may require for the purposes of the exercise of any of his functions in relation to education<sup>5</sup>.

1 As to the meaning of 'governing body' see PARA 704 note 4 post.

2 As to local education authorities see PARA 20 ante.

3 As to the further or higher education functions of a local education authority see PARA 613 note 2 ante.

4 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 Education Reform Act 1988 s 158(1), (2)(a) (s 158(2)(a) amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I para 40, Sch 9).

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### **633. Publication of information by institutions within the further education sector.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> require the governing body<sup>3</sup> of any institution within the further education sector<sup>4</sup> to publish such information as may be prescribed<sup>5</sup> about:

- 1204 (1) the educational provision made or proposed to be made for its students<sup>6</sup>;
- 1205 (2) the educational achievements of its students on entry to the institution and the educational achievements of its students while at the institution (including in each case the results of examinations, tests and other assessments)<sup>7</sup>;
- 1206 (3) the financial and other resources of the institution and the effectiveness of the use made of such resources<sup>8</sup>; and
- 1207 (4) the careers of its students after completing any course or leaving the institution<sup>9</sup>.

The information must be published in such form and manner and at such times as may be prescribed<sup>10</sup>. The published information must not name any student to whom it relates<sup>11</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the purposes of the Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended), 'regulations' means regulations made by the Secretary of State: s 61(1). As to the making of regulations generally under the Further and Higher Education Act 1992 see PARA 585 note 6 ante. As to the regulations that have been made under s 50 see the Education (Further Education Institutions Information) (Wales) Regulations 1993, SI 1993/2169 (amended by SI 1994/1321); and the Education (Distribution by Schools of Information about Further Education Institutions) (Wales) Regulations 1994, SI 1994/1321. The Education (Further Education Institutions Information) (England) Regulations 1995, SI 1995/2065, have been revoked by the Education (Further Education Institutions Information) (England) (Revocation) Regulations 2003, SI 2003/51.

3 For the meaning of 'governing body' see PARA 584 note 5 ante.

4 As to references to institutions within the further education sector see PARA 579 ante.

5 For these purposes, 'prescribed' means prescribed by regulations: Further and Higher Education Act 1992 s 50(5). See note 2 supra.

6 Ibid s 50(1)(a).

7 Ibid s 50(1)(b).

8 Ibid s 50(1)(c).

9 Ibid s 50(1)(d). For these purposes, a person's career includes any education, training, employment or occupation: s 50(2). The regulations may in particular require the published information to show: (1) the numbers of students not undertaking any career; and (2) the persons providing students with education, training or employment: s 50(2).

10 Ibid s 50(3).

11 Ibid s 50(4).

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#### **634. Publication of information by local education authorities.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> requiring every local education authority<sup>3</sup> to publish, in relation to each relevant institution<sup>4</sup> maintained or assisted by the authority, such information with respect to the matters mentioned below as may be prescribed<sup>5</sup>. Those matters are:

- 1208 (1) the educational provision made by the institution for students at the institution<sup>6</sup>; and
- 1209 (2) the educational achievements of students at the institution, including the results of examinations, tests and other assessments of those students<sup>7</sup>.

The information must be published in such form and manner and at such times as may be prescribed<sup>8</sup>. The regulations may provide for a local education authority to make arrangements with the governing body<sup>9</sup> of any relevant institution for the publication by that governing body of the information required to be published in accordance with the regulations in the case of that institution<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. At the date at which this volume states the law, no regulations had been made under the Education Reform Act 1988 s 159 (as amended).

3 As to local education authorities see PARA 20 ante.

4 For these purposes, an institution is a relevant institution in relation to a local education authority if it is an institution providing full-time education which is maintained by that authority in exercise of its further or higher education functions: Education Reform Act 1988 s 159(2) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I para 41, Sch 9). As to the further and higher education functions of a local education authority see PARA 613 note 2 ante.

5 Education Reform Act 1988 s 159(1). 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 2 supra). See note 2 supra.

6 Ibid s 159(3)(a).

7 Ibid s 159(3)(b).

8 Ibid s 159(4).

9 As to the meaning of 'governing body' see PARA 704 note 4 post.

10 Education Reform Act 1988 s 159(4).

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**635. Access to documents and information relating to meetings and proceedings of governing bodies.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> requiring the governing body<sup>3</sup> of every institution which is maintained by a local education authority<sup>4</sup> and which provides higher education<sup>5</sup> or further education<sup>6</sup> (or both)<sup>7</sup> to make available, to such persons or classes of person as may be prescribed<sup>8</sup>, such documents and information relating to the meetings and proceedings of the governing body as may be prescribed<sup>9</sup>. Documents and information required by regulations to be made available must be made available in such form and manner, and at such times, as may be prescribed<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 66). As to the making of regulations under the Education (No 2) Act 1986 generally see PARA 609 note 7 ante. At the date at which this volume states the law, no regulations had been made under s 62 (as amended) in relation to higher education or further education institutions.

3 As to the meaning of 'governing body' see PARA 12 note 8 ante.

4 As to local education authorities see PARA 20 ante.

5 For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (as amended: see note 2 supra).

6 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of *ibid* s 67(3) (as amended: see note 2 supra).

7 *Ie* institutions of a kind mentioned in *ibid* s 61 (as amended): see PARA 712 post.

8 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1); definition applied by virtue of the Education (No 2) Act 1986 s 67(3) (as amended: see note 2 supra). See note 2 supra.

9 *Ibid* s 62(1) (amended by the Education Act 1996 s 582(2), Sch 38 Pt I).

10 Education (No 2) Act 1986 s 62(2).

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## **(5) FINANCIAL PROVISION**

### **(i) In general**

#### **636. Financial provision for institutions providing further education.**

Institutions providing further education<sup>1</sup> receive their funding from a variety of sources, including fees<sup>2</sup> and grants<sup>3</sup>. In addition, the Learning and Skills Council for England<sup>4</sup> (in relation to England<sup>5</sup>) or the National Council for Education and Training for Wales<sup>6</sup> (in relation to Wales<sup>7</sup>) may secure the provision of financial resources to certain persons providing post-16 education or training<sup>8</sup>.

1 For the meaning of 'further education' under the Education Act 1996 see PARA 18 ante.

2 See PARAS 637-638 post.

3 See PARAS 640-642 post.

4 As to the Learning and Skills Council for England see PARA 1072 et seq post.

5 For the meaning of 'England' see PARA 52 note 11 ante.

6 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

7 For the meaning of 'Wales' see PARA 52 note 13 ante.

8 See PARAS 1092 et seq, 1132 et seq post. As to the meanings of 'post-16 education' and 'post-16 training' see PARAS 1086 note 12, 1127 note 12 post.

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## **(ii) Fees**

### **637. Power to make regulations relating to fees.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision with respect to the fees to be charged for courses of further education<sup>3</sup> at: (1) institutions which provide higher education<sup>4</sup> or further education (or both) and which either are maintained by local education authorities<sup>5</sup> or are within the further education sector<sup>6</sup>; or (2) institutions within the higher education sector<sup>7</sup> in receipt of financial support<sup>8</sup> from a Higher Education Funding Council<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81(1), (4)). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. At the date at which this volume states the law, no regulations had been made under s 218(9) (a) in relation to fees.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of *ibid* s 235(7) (as amended: see note 2 *supra*).

4 For the meaning of 'higher education' see PARA 19 ante.

5 As to local education authorities see PARA 20 ante.

6 Education Reform Act 1988 s 218(9)(a), (10) (s 218(10) amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 49, Sch 9). As to references to institutions within the further education sector see PARA 579 ante.

The Education Reform Act 1988 s 218 (as amended) is repealed as from a day to be appointed under the Education Act 2002 s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to the provisions of the Education Reform Act 1988 s 218(9)(a), (10) (as amended).

7 As to references to institutions within the higher education sector see PARA 646 post.

8 *Ie* under the Further and Higher Education Act 1992 s 65 (as amended): see PARA 746 post.

9 Education Reform Act 1988 s 218(9)(a), (11) (s 218(11) amended by the Further and Higher Education Act 1992 Sch 8 Pt I paras 27, 49). See note 2 *supra*. As to fees see also PARA 638 post. As to the Higher Education Funding Councils see PARAS 733-759 post.

## **UPDATE**

### **637 Power to make regulations relating to fees**

NOTE 6--Day now appointed in relation to England: SI 2006/2895.

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**638. Power to make regulations relating to fees for students not connected with the United Kingdom.**

In respect of certain institutions<sup>1</sup>, the Secretary of State<sup>2</sup> may make regulations<sup>3</sup> requiring or authorising the charging of fees<sup>4</sup> which are higher in the case of students not having such connection with the United Kingdom<sup>5</sup> or any part of it as may be specified in the regulations than in the case of students having such a connection<sup>6</sup>. The regulations may provide for exceptions and make different provision for different cases or purposes<sup>7</sup>.

1 The Education (Fees and Awards) Act 1983 s 1 (as amended) applies to the following further education institutions:

- 58 (1) any institution which provides higher education or further education (or both) and is either: (a) maintained by a local education authority; or (b) is substantially dependent for its maintenance on public funds and either is specified in the regulations made under s 1 (as amended) or is of a class or description so specified (s 1(3)(c), (3A) (s 1(3)(c) substituted, and s 1(3A) added, by the Education Reform Act 1988 s 237(1), Sch 12 Pt III para 91));
- 59 (2) any institution within the further education sector (Education (Fees and Awards) Act 1983 s 1(3)(ca) (added by the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt I para 19));
- 60 (3) any training provider, within the meaning of the Education Act 2005 Pt 3 (ss 74-100) (see PARA 795 note 5 post) who is receiving financial support under s 78 (see PARA 795 post) from the Training and Development Agency for Schools (Education (Fees and Awards) Act 1983 s 1(3)(e) (added by the Education Act 1994 s 24, Sch 2 para 7; and substituted by the Education Act 2005 s 98, Sch 14 para 9));
- 61 (4) any institution which receives funding from the Learning and Skills Council for England (whatever proportion that funding represents of the institution's total funding) and which is specified in, or is of a class or description specified in, the regulations (Education (Fees and Awards) Act 1983 s 1(3)(f) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 11));
- 62 (5) any institution which receives funding from the National Council for Education and Training for Wales (whatever proportion that funding represents of the institution's total funding) and which is specified in, or is of a class or description specified in, the regulations (Education (Fees and Awards) Act 1983 s 1(3)(g) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 11)).

The Education (Fees and Awards) Act 1983 s 1 (as amended) also applies to certain higher education institutions: see PARA 1056 post. As to the regulations made under s 1 (as amended) see note 3 *infra*. For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of s 1(4) (definition amended by the Education Reform Act 1988 Sch 12 Pt III para 91; and the Education Act 1996 s 582(1), Sch 37 Pt I para 57). For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education (Fees and Awards) Act 1983 s 1(4) (definition as so amended). As to local education authorities see PARA 20 ante. For the purposes of s 1 (as amended), 'public funds' means assistance from a local authority or grants under the Education Act 1996 s 485 (see PARA 69 ante); see the Education (Fees and Awards) Act 1983 s 1(4) (definition amended by the Education Act 1996 Sch 37 Pt I para 57). As to references to institutions within the further education sector see PARA 579 ante. As to the Learning and Skills Council for England see PARA 1072 et seq post; and as to the National Council for Education and Training for Wales see PARA 1113 et seq post. As to the Training and Development Agency for Schools see PARA 784 et seq post.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 The power to make regulations under the Education (Fees and Awards) Act 1983 s 1 (as amended) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of



Parliament: s 1(5). As to the regulations made under s 1 (as amended) see the Education (Fees and Awards) Regulations 1997, SI 1997/1972 (amended by SI 1998/1965; SI 1999/229; SI 2000/2192; SI 2000/2945; SI 2003/3280; SI 2005/2114). See also *R (on the application of Mitchell) v Coventry University and the Secretary of State for Education and Employment* [2001] EWHC Admin 167, [2001] ELR 594, where it was held that, as the purpose behind the regulations was a reasonable and objective justification for the discrimination which resulted, there was no conflict with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 14, or with the First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 (see PARA 3 ante).

4 For these purposes, 'fees' includes charges however described (including charges for board and lodging): Education (Fees and Awards) Act 1983 s 1(4).

5 For these purposes, references to the United Kingdom include references to the Channel Islands and the Isle of Man, but the Education (Fees and Awards) Act 1983 does not extend to Northern Ireland: see s 3. For the meaning of 'United Kingdom' generally see PARA 63 note 3 ante.

6 Ibid s 1(1). The Education (Fees and Awards) Act 1983 s 1 (as amended) is without prejudice to the Education Reform Act 1988 s 218(9) (as amended; prospectively repealed) (see PARAS 629, 637 ante, 646, 724-725, 778 post): Education (Fees and Awards) Act 1983 s 1(6) (amended by the Teaching and Higher Education Act 1998 s 44(1), Sch 3 para 5). The Education (Fees and Awards) Act 1983 s 1(6) (as amended) is repealed as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed.

7 Education (Fees and Awards) Act 1983 s 1(2). See note 6 supra.

## UPDATE

### **638 Power to make regulations relating to fees for students not connected with the United Kingdom**

TEXT AND NOTES--The functions of the Secretary of State under the Education (Fees and Awards) Act 1983 s 1 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(a), 3.

NOTE 1--In head (5) for 'National Council for Education and Training for Wales' read 'National Assembly for Wales': 1983 Act s 1(3)(g) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 3--SI 1997/1972 replaced: Education (Fees and Awards) (England) Regulations 2007, SI 2007/779 (amended by SI 2007/2263); Education (Fees and Awards) (Wales) Regulations 2007, SI 2007/2310 (amended by SI 2008/1259).

NOTE 6--Day now appointed in relation to England: SI 2006/2895.

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### **(iii) Grants to Institutions**

#### **639. General grant-making powers.**

The Secretary of State<sup>1</sup> (in relation to England<sup>2</sup>) or the National Assembly for Wales<sup>3</sup> (in relation to Wales<sup>4</sup>) may give, or make arrangements<sup>5</sup> for the giving of, financial assistance<sup>6</sup> enabling any person to undertake any course of education, or any course of higher education<sup>7</sup> provided by an institution within the further education sector<sup>12</sup> and providing for a person's maintenance while he undertakes such a course<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Assembly for Wales see PARA 53 ante. See note 6 infra.

4 For the meaning of 'Wales' see PARA 52 note 13 ante. See note 6 infra.

5 As to the arrangements for financial assistance made under the Education Act 2002 see PARA 65 ante.

6 Ibid s 14(1). The power given in s 14 supersedes the following specific powers (among others) which were conferred on the Secretary of State or the National Assembly for Wales and are repealed, as from a day to be appointed under s 216(4), by s 18: (1) the Education Reform Act 1988 s 210 (as amended) (grants to further education institutions for education of travellers and displaced persons: see PARA 641 post) (Education Act 2002 s 18(1)(d)); and (2) the Education Reform Act 1988 s 211 (as amended) (grants in respect of special provision for immigrants in Wales: see PARA 642 post) (Education Act 2002 s 18(1)(e)). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

7 For the meaning of 'higher education' see PARA 19 ante.

8 Education Act 2002 s 14(2)(c). See note 6 supra. As to references to institutions within the further education sector see PARA 579 ante.

9 Ibid s 14(2)(d). See note 6 supra.

#### **UPDATE**

#### **639 General grant-making powers**

NOTE 6--Day now appointed in relation to Wales: SI 2007/3611.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/3. FURTHER EDUCATION/(5) FINANCIAL PROVISION/(iii) Grants to Institutions/640. Grants to institutions providing further education.

**640. Grants to institutions providing further education.**

There are various specific grants that may be paid to educational institutions, which are dealt with elsewhere in this work<sup>1</sup>. In addition, institutions within the further education sector<sup>2</sup> may receive grants for the education of travellers and displaced persons in Wales<sup>3</sup>, and in respect of special provision for immigrants in Wales<sup>4</sup>.

1 See PARAS 68-75 ante.

2 As to references to institutions within the further education sector see PARA 579 ante.

3 See PARA 641 post.

4 See PARA 642 post.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/3. FURTHER EDUCATION/(5) FINANCIAL PROVISION/(iii) Grants to Institutions/641. Grants for the education of travellers and displaced persons in Wales.

#### **641. Grants for the education of travellers and displaced persons in Wales.**

The National Assembly for Wales<sup>1</sup> may by regulations<sup>2</sup> provide for the payment to institutions within the further education sector<sup>3</sup> of grants in respect of expenditure incurred or to be incurred by them in making provision the purpose (or main purpose) of which is to promote and facilitate the education of certain persons<sup>4</sup>. This applies to a person if:

- 1210 (1) by reason of his way of life or, in the case of a child<sup>5</sup>, his parent's<sup>6</sup> way of life, he either has no fixed abode or leaves his main abode to live elsewhere for significant periods in each year<sup>7</sup>;
- 1211 (2) he fell within head (1) above within a prescribed<sup>8</sup> period immediately preceding the making of the provision in question<sup>9</sup>; or
- 1212 (3) he is for the time being resident in a camp or other accommodation or establishment provided for refugees or for displaced or similar persons<sup>10</sup>.

The regulations may:

- 1213 (a) prescribe classes or descriptions of expenditure in respect of which grants are payable under the regulations<sup>11</sup>;
- 1214 (b) provide for the determination of the amount of any grant so payable<sup>12</sup>;
- 1215 (c) provide for the payment of any such grant to be dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations<sup>13</sup>; and
- 1216 (d) provide for requiring institutions within the further education sector to whom payments have been made under the regulations to comply with such requirements as may be so determined<sup>14</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the regulations that have been made under s 210 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) see the Education (Grants) (Travellers and Displaced Persons) Regulations 1993, SI 1993/569 (amended by SI 1995/543; SI 2005/761).

3 As to references to institutions within the further education sector see PARA 579 ante.

4 Education Reform Act 1988 s 210(1) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt I paras 27, 46; and the Education Act 1996 s 582(2), Sch 38 Pt I). As to grants for the education of travellers and displaced persons paid to local education authorities see the Education Act 1996 s 488 (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 73 ante.

The Education Reform Act 1988 s 210 (as amended) is repealed by the Education Act 2002 ss 18(1)(d), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4): see PARAS 65 note 6, 639 note 6 ante. In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The Education Reform Act 1988 s 210 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) is superseded by the Education Act 2002 s 14 (not yet in force in relation to Wales): see PARA 639 ante.

5 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81(1), (4)).

6 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 5 supra).

7 Ibid s 210(2)(a). See note 4 supra.

8 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 5 supra). See note 2 supra.

9 Ibid s 210(2)(b). See note 4 supra.

10 Ibid s 210(2)(c). See note 4 supra.

11 Ibid s 210(3)(a). See note 4 supra.

12 Ibid s 210(3)(b). See note 4 supra.

13 Ibid s 210(3)(c). See note 4 supra.

14 Ibid s 210(3)(d) (amended by the Further and Higher Education Act 1992 Sch 8 Pt I paras 27, 46; and the Education Act 1996 Sch 38 Pt I). See note 4 supra.

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#### **642. Grants in respect of special provision for immigrants in Wales.**

The power to make grants conferred by the Local Government Act 1966<sup>1</sup> applies in relation to the payment of grants by the National Assembly for Wales<sup>2</sup> to the governing body of an institution within the further education sector<sup>3</sup> which, in its opinion, makes special provision in consequence of the presence within the institution's locality of substantial numbers of immigrants<sup>4</sup>.

1    le the power conferred by the Local Government Act 1966 s 11 (as substituted and amended).

2    As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3    As to references to institutions within the further education sector see PARA 579 ante.

4    Education Reform Act 1988 s 211 (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 47, Sch 9; and the Education Act 1996 s 582(2), Sch 38 Pt I). The immigrants referred to in the text are such immigrants as are described in the Local Government Act 1966 s 11 (as substituted and amended) as it applies in relation to the payment of grants to a local authority which is required to make such provision in exercise of any of its functions, in consequence of the presence within its area of substantial numbers of such immigrants: see the Education Reform Act 1988 s 211 (as so amended). As to immigration generally see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM. For the meaning of 'local authority' see PARA 1388 note 12 post.

The Education Reform Act 1988 s 211 (as amended) is repealed by the Education Act 2002 ss 18(1)(e), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4): see PARAS 65 note 6, 639 note 6 ante. In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The Education Reform Act 1988 s 211 (as amended; repealed in relation to England; prospectively repealed in relation to Wales) is superseded by the Education Act 2002 s 14 (not yet in force in relation to Wales): see PARA 639 ante.

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## **(iv) Recoupment**

### **643. Recoupment.**

Such information relating to the provision which has been made by a local education authority in respect of any pupil<sup>1</sup> at an institution as the authority may require for the purposes of claiming any amount in respect of the pupil from another authority<sup>2</sup> must, where the institution becomes an institution within the further education sector<sup>3</sup>, be provided to the authority by the governing body<sup>4</sup> of the institution<sup>5</sup>.

1 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46).

2 ie under regulations made under the Education Act 1996 s 493 (as amended) (see PARA 332 ante).

3 As to references to institutions within the further education sector see PARA 579 ante.

4 For the meaning of 'governing body' see PARA 584 note 5 ante.

5 Further and Higher Education Act 1992 s 54(2) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 111).

Regulations may provide also for amounts to be payable by one authority to another to reflect costs incurred by local education authorities in the provision of education (whether in England and Wales as a whole or in any particular area or areas): see the Education Act 2002 s 207(3) (applied by the Education Act 1996 s 493(2) (as substituted)); and PARA 332 ante.

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## **(v) Surpluses, Deficits and Loan Liabilities**

### **644. Attribution of surpluses and deficits where an educational institution becomes an institution within the further education sector.**

Where, immediately before the date on which any educational institution becomes an institution within the further education sector<sup>1</sup>: (1) it is maintained by a local education authority<sup>2</sup>; or (2) it is a designated assisted institution<sup>3</sup> dependent on assistance from a local education authority<sup>4</sup>, and in the financial year ending immediately before that date (the 'relevant financial year') the institution was covered by an applicable scheme<sup>5</sup>, then:

1217 (a) if the net expenditure<sup>6</sup> of the institution for the relevant financial year is less than the net budget share<sup>7</sup> of the institution for that year, the assisting authority<sup>8</sup> must pay to the new governing body of the institution a sum equal to the shortfall<sup>9</sup>;

1218 (b) if the net expenditure of the institution for the relevant financial year is greater than the net budget share of the institution for that year, the new governing body of the institution must pay to the assisting authority a sum equal to the excess<sup>10</sup>.

Any sum payable under the provisions described above must be paid in accordance with regulations, and the regulations may provide for sums to be payable by prescribed instalments and for sums to carry prescribed interest<sup>11</sup>.

1 As to references to institutions within the further education sector see PARA 579 ante.

2 Further and Higher Education Act 1992 s 37(1)(a) As to local education authorities see PARA 20 ante.

3 For these purposes, references to a designated assisted institution are references to an institution designated by or under regulations made, or having effect as if made, under the Education Reform Act 1988 s 218(10)(b) (repealed) as an institution substantially dependent for its maintenance on assistance from local education authorities: Further and Higher Education Act 1992 s 37(8)(a). As to assistance by a local education authority see PARA 45 ante. The Further and Higher Education Act 1992 s 37(8)(a) is repealed as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed.

4 Further and Higher Education Act 1992 s 37(1)(b). For these purposes, a designated assisted institution is to be regarded as dependent on assistance from a local education authority if it is assisted by that authority and either: (1) it is not assisted by any other local education authority; or (2) that authority provides a larger proportion than any other local education authority by whom the institution is assisted of the aggregate amount of the sums received by the governing body of the institution during any financial year by way of assistance from such authorities in respect of the expenses of maintaining the institution: s 37(9). For the meaning of 'governing body' see PARA 584 note 5 ante. For the meaning of 'financial year' see PARA 68 note 9 ante; definition applied by s 37(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 110(3)).

The Further and Higher Education Act 1992 s 37(1)(b), (9) is repealed as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed.

5 Further and Higher Education Act 1992 s 37(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 40). The scheme referred to in the text is a scheme under the School Standards and Framework Act 1998 s 48 (as amended): see PARA 318 ante.



6 For these purposes, in respect of any financial year of the institution, 'net expenditure' means any expenditure, less such amount as may be prescribed in respect of earned income: Further and Higher Education Act 1992 s 37(4). 'Expenditure' means such expenditure for the purposes of the institution incurred in the relevant financial year by the former governing body or the assisting authority as may be prescribed: s 37(7). 'Earned income' means any sums, other than sums appropriated for the purposes of the institution by the assisting authority, received by the institution in respect of the relevant financial year which the institution is authorised under the applicable scheme to retain: s 37(7). 'Former governing body' means the governing body of the institution immediately before the operative date; and 'new governing body' means the governing body of the institution on or after that date: s 37(7). For the meaning of 'operative date' see PARAS 583 note 4, 584 note 10 ante. 'Prescribed' means prescribed by regulations: s 37(8)(b). As to the regulations that have been made under s 37 (as amended) see the Further Education (Attribution of Surpluses and Deficits) Regulations 1993, SI 1993/609. Other regulations made under the Further and Higher Education Act 1992 s 37 (as amended) are local in nature, and are not recorded in this work.

7 For these purposes, in respect of any financial year of the institution, 'net budget share' means the budget share less such amount as may be prescribed in respect of any earned income, and plus such amount as may be prescribed in respect of any surplus: *ibid* s 37(4). 'Budget share' means the amount which is that institution's budget share for the relevant financial year for the purposes of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended): Further and Higher Education Act 1992 s 37(7) (definition amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 40). 'Surplus' means the amount of any surplus which the institution is authorised under the applicable scheme to carry forward to the relevant financial year: Further and Higher Education Act 1992 s 37(7).

8 *Ie* the authority concerned: see *ibid* s 37(1) (as amended) (see the text and notes 1-5 *supra*).

9 *Ibid* s 37(2).

10 *Ibid* s 37(3).

11 *Ibid* s 37(5). Regulations may, in the case of any institution where the operative date falls within a financial year in which the institution was covered by such a scheme as is referred to in s 37(1) (as amended) (see the text and notes 1-5 *supra*), make provision for applying s 37 (as amended) with modifications relating to the amounts that are to be taken for the purposes of s 37 (as amended) to be the net budget share and the net expenditure of the institution for that year: s 37(6). As to the regulations that have been made see note 6 *supra*.

## UPDATE

### **644 Attribution of surpluses and deficits where an educational institution becomes an institution within the further education sector**

NOTES 3, 4--Day now appointed in relation to England: SI 2006/2895.

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#### **645. Payments in respect of loan liabilities excepted from a transfer.**

Provision is made for the payment of loan liabilities which are excepted from the transfer of property to further education institutions<sup>1</sup>. The Learning and Skills Council for England (in relation to England)<sup>2</sup> or the National Council for Education and Training for Wales (in relation to Wales)<sup>3</sup> may make payments, on such terms and conditions as it may determine, to a local authority<sup>4</sup> in respect of the principal of, and any interest on, any excepted loan liability<sup>5</sup> of that authority<sup>6</sup>.

No such payment may be made in respect of any excepted loan liability where the class or classes of excepted loan liabilities in respect of which payments may be made are for the time being prescribed by an order of the Secretary of State or the Assembly (as the case may be)<sup>7</sup>, unless the liability falls within a prescribed class<sup>8</sup>.

The Secretary of State or the Assembly (as the case may be) may by order provide for determining: (1) the amounts that may be paid in respect of the principal of, and any interest on, any excepted loan liability<sup>9</sup>; (2) the instalments by which any amounts may be paid<sup>10</sup>; and (3) the rate at which interest may be paid on any outstanding amounts<sup>11</sup>. In the case of any payment to which such an order applies, no amount may be paid<sup>12</sup> in excess of any amount determined in accordance with the order<sup>13</sup>.

1 The text refers to provision made under the Further and Higher Education Act 1992 s 38: see the text and notes 2-13 infra. As to the transfer of property to further education institutions see PARAS 586, 600 ante, 1355 post.

2 As to the Learning and Skills Council for England see PARA 1072 et seq post. See also PARA 598 note 7 ante. For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Council for Education and Training for Wales see PARA 1113 et seq post. See also PARA 598 note 7 ante. For the meaning of 'Wales' see PARA 52 note 13 ante.

4 For the meaning of 'local authority' see PARA 586 note 5 ante.

5 'Excepted loan liability' means any liability of a local authority which: (1) in the case of a transfer by virtue of the Further and Higher Education Act 1992 s 23 (as amended), would have been transferred but for s 23(3) (a) (see PARA 586 ante); (2) in the case of a transfer by virtue of s 32 (as amended), would have been transferred but for s 32(4)(a) (see PARA 600 ante); or (3) in the case of a transfer by virtue of s 34(4)(a), could have been transferred but for s 34(5) (see PARA 1355 post): s 38(1).

6 Ibid s 38(2).

7 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 Further and Higher Education Act 1992 s 38(3). Orders under s 38 are not made by statutory instrument: see s 89(2).

9 Ibid s 38(4)(a).

10 Ibid s 38(4)(b).

11 Ibid s 38(4)(c).

12 Ie under ibid s 38.

13 Ibid s 38(4).

## **UPDATE**

### **645 Payments in respect of loan liabilities excepted from a transfer**

TEXT AND NOTE 3--Reference to National Council for Education and Training for Wales omitted: 1992 Act s 38(2) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

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## **4. HIGHER EDUCATION**

### **(1) INSTITUTIONS WITHIN THE HIGHER EDUCATION SECTOR**

#### **(i) The Institutions**

##### **646. Institutions.**

Higher education<sup>1</sup> is provided at various institutions, including universities which have been established by charter<sup>2</sup>, institutions conducted by higher education corporations<sup>3</sup>, designated institutions<sup>4</sup>, certain institutions conducted by further education corporations which have been transferred to the higher education sector<sup>5</sup>, and certain institutions maintained by local education authorities<sup>6</sup>.

For the purposes of the Education Acts<sup>7</sup>, references to institutions within the higher education sector are references to universities<sup>8</sup> receiving financial support under the Further and Higher Education Act 1992<sup>9</sup>, institutions conducted by higher education corporations<sup>10</sup>, and designated institutions for the purposes of Part II of the Further and Higher Education Act 1992<sup>11</sup>. References to institutions outside the higher education sector are to be read accordingly<sup>12</sup>.

Certain institutions within the higher education sector may also provide further education<sup>13</sup>.

1 For the meaning of 'higher education' see PARA 19 ante; definition applied by the Further and Higher Education Act 1992 s 90(1).

2 As to universities established by charter see PARAS 651-671 post.

3 'Higher education corporation' means a body corporate established under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 post) or s 122 (as amended) (see PARA 674 post), including those provisions as applied by s 227(4) (repealed), or a body corporate which has become a higher education corporation by virtue of s 122A (as added) (see PARA 647 post): Further and Higher Education Act 1992 s 90(1).

4 See PARA 701 et seq post.

5 As to further education corporations see PARA 579 note 3 ante; and see PARA 647 post.

6 As to such institutions see PARA 710 post.

7 For the meaning of the 'Education Acts' see PARA 1 note 14 ante.

8 'University', except where the context otherwise requires, includes a university college and any college, or institution in the nature of a college, in a university; but where a college or institution would not, apart from the Further and Higher Education Act 1992 s 90(3), fall to be treated separately it must not be so treated for the purpose of determining whether any institution is in England or in Wales: s 90(3) (amended by the Teaching and Higher Education Act 1998 s 44(1), Sch 3 para 8). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to universities generally see PARA 648 et seq post.

9 Further and Higher Education Act 1992 s 91(1), (5)(a); and see the Education Act 1996 s 4(4)(a). Financial support is given under the Further and Higher Education Act 1992 s 65 (as amended): see PARA 746 post.

10 Ibid s 91(1), (5)(b); and see the Education Act 1996 s 4(4)(b).

11 Further and Higher Education Act 1992 s 91(1), (5)(c); and see the Education Act 1996 s 4(4)(c). For the purposes of the Further and Higher Education Act 1992 Pt II (ss 62-81) (as amended), 'designated institution'

means an institution in relation to which a designation made, or having effect as if made, under the Education Reform Act 1988 s 129 (as amended) (see PARA 701 post) has effect: Further and Higher Education Act 1992 s 72(3). In s 82 (as amended) (see PARA 756 post), references to institutions within the higher education sector include institutions within the higher education sector within the meaning of the Further and Higher Education (Scotland) Act 1992 Pt II: Further and Higher Education Act 1992 s 82(3)(b). In relation to any time before 1 April 1993 (ie the commencement of s 65 (as amended): see PARA 746 post), references in Pt I (ss 15-61A) (as amended) (and, so far as relating to Pt I (as amended), Pt III (ss 82-94) (as amended)) to institutions within the higher education sector are references to universities, to institutions within the PCFC funding sector and to higher education institutions which receive, or are maintained by persons who receive, grants under regulations made under the Education Act 1944 s 100(1)(b) (repealed: see now the Education Act 1996 s 485; and PARA 69 ante); Further and Higher Education Act 1992 s 61(3)(a); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. References to 'institutions within the PCFC funding sector' are to be construed in accordance with the Education Reform Act 1988 s 132(6) (repealed): Further and Higher Education Act 1992 s 90(4).

12 Ibid s 91(1), (5); and see the Education Act 1996 s 4(4).

13 See eg para 694 post. The Secretary of State may by regulations make provision with respect to the fees to be charged for courses of further education at institutions within the higher education sector in receipt of financial support from a Higher Education Funding Council under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 post): Education Reform Act 1988 s 218(9)(a), (11) (s 218(11) amended by the Further and Higher Education Act 1992 Sch 8 Pt I paras 27, 49). 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81(1), (4)). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the regulations that been made under the Education Reform Act 1988 s 218(9)(a) (prospectively repealed) see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to England, by SI 2001/692; SI 2004/571; and amended, in relation to Wales, by SI 2001/3708). For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (as so amended). As to references to the Higher Education Funding Councils see PARA 733 note 1 post. As to fees see also PARA 760 et seq post.

The Education Reform Act 1988 s 218 (as amended) is repealed as from a day to be appointed under the Education Act 2002 s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to the Education Reform Act 1988 s 218(9)(a), (11) (as amended).

## UPDATE

### 646 Institutions

NOTE 13--SI 1989/351 revoked in relation to England: SI 2008/1701.

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#### **647. Orders transferring further education corporations to higher education sector.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the transfer of a further education corporation<sup>3</sup> to the higher education sector if it appears to him that the full-time equivalent enrolment number<sup>4</sup> of the institution conducted by the corporation for courses of higher education<sup>5</sup> exceeds 55 per cent of its total full-time equivalent enrolment number<sup>6</sup>. On such date as may be specified in the order the corporation ceases to be a further education corporation and becomes a higher education corporation<sup>7</sup> and any member of the further education corporation who is not re-appointed by the Secretary of State<sup>8</sup> ceases to hold office<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. Orders under the Education Reform Act 1988 s 122A (as added) are local in nature, and are not recorded in this work.

3 As to further education corporations see PARA 579 note 3 ante.

4 For the meaning of 'full-time equivalent enrolment number' see PARA 678 post.

5 For the meaning of 'courses of higher education' see PARA 726 post.

6 Education Reform Act 1988 s 122A(1) (s 122A added by the Further and Higher Education Act 1992 s 74(1)). As to the calculation of full-time equivalent enrolment numbers see PARA 678 post. As to the meaning of 'total full-time equivalent enrolment number' see PARA 673 note 4 post.

7 For the meaning of 'higher education corporation' see PARA 672 post.

8 I.e. in pursuance of the Education Reform Act 1988 s 122A(2)(b) (as added): see note 9 infra.

9 Ibid s 122A(4) (as added: see note 6 supra). Where an order under s 122A (as added) is made in respect of a further education corporation, s 124A (as added) (constitution and conduct of corporations: see PARA 687 post) and s 125 (as amended) (articles of government: see PARA 697 post) have effect as if: (1) on the date the order has effect, the corporation were established as a higher education corporation (s 122A(2)(a) (as so added)); and (2) the Secretary of State were the appointing authority in relation to the first members of the higher education corporation (s 122A(2)(b) (as so added)). In determining in pursuance of s 122A(2)(b) (as added) the number of members to appoint within each variable category of members, the Secretary of State must secure that at least half of all the members of the higher education corporation as first constituted are independent members: s 122A(3) (as so added). For the meaning of 'independent members' see PARA 689 note 6 post; definition applied by s 122A(3) (as so added). As to the meaning of 'variable category of members' see PARA 690 note 4 post: definition applied by s 122A(3) (as so added).

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## **(ii) Meaning and Use of the Term 'University'**

### **648. Meaning of 'university'.**

'University' is not a term of art, and although the institutions to which it refers are readily identifiable, precise and accurate definition is difficult<sup>1</sup>. It has been described as the whole body of teachers and scholars engaged, at a particular place, in giving and receiving instruction in the higher branches of learning; such persons associated together as a society or corporate body, with definite organisation and acknowledged powers and privileges (especially that of conferring degrees), and forming an institution for the promotion of education in the higher or more important branches of learning; also, the colleges, buildings and other property belonging to such a body<sup>2</sup>. Until the enactment of the Further and Higher Education Act 1992, which made new provision for the powers of higher education institutions to award degrees and to style themselves as universities<sup>3</sup>, the essential feature of a university seems to have been that it was incorporated<sup>4</sup> as such by the sovereign power.

Other attributes of a university appear to be the admission of students from all parts of the world, a plurality of masters, the teaching of one at least of the higher faculties, namely theology, law or philosophy (which in some definitions are regarded as identical) and medicine, provision for residence, and the right to confer degrees; but possession of these attributes will not make an institution a university in the absence of any express intention of the sovereign power to make it one<sup>5</sup>.

The Privy Council may, in some circumstances, confer the title 'university' on an institution not currently in possession of it<sup>6</sup>.

A university involves the relation of tutor and pupil; it is charged with the supervision and upbringing of the pupil under tuition<sup>7</sup>.

1 *St David's College, Lampeter v Ministry of Education* [1951] 1 All ER 559.

2 See in the Oxford English Dictionary. 'In our modern languages the Roman term ['universitas'] that most nearly answered to our corporation stands for the corporations of one small class, the learned corporations that were founded in the twelfth and thirteenth centuries and others that in later days were fashioned after their likeness. These were in the Middle Ages the corporations by pre-eminence, and if the universities of Oxford and Cambridge cared to assert that they are the oldest of English corporations something might be said in favour of their claim': Pollock and Maitland *History of English Law before the time of Edward I* (2nd Edn) (1898, reissued 1968) 495.

3 See the Further and Higher Education Act 1992 s 76 (see PARA 727 post), s 77 (as amended) (see PARA 649 post). That Act also provides a statutory definition of the term (see PARA 646 note 8 ante) which is also applied, without the provisos, in the Education (No 2) Act 1986 s 43(6) (see PARA 12 note 1 ante) and the Education Reform Act 1988 s 235(1) (see PARA 658 note 4 post).

4 1 Bl Com (14th Edn) 371.

5 *St David's College, Lampeter v Ministry of Education* [1951] 1 All ER 559.

6 See PARA 649 post.

7 *Glynn v Keele University* [1971] 2 All ER 89 at 95, [1971] 1 WLR 487 at 494 per Pennycuik VC.





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#### **649. Use of 'university' in title of institution.**

Where power is conferred by any enactment or instrument to change the name of any educational institution or any body corporate<sup>1</sup> carrying on such an institution, and the institution is within the higher education sector<sup>2</sup>, then, if the said power is exercisable with the consent of the Privy Council, it may be exercised with the consent of the Privy Council so as to include the word 'university' in the name of the institution and, if it is carried on by a body corporate, in the name of the body<sup>3</sup>. Any educational institution whose name includes the word 'university' by virtue of the exercise of any such power<sup>4</sup> is treated as a university for all purposes, unless in that name that word is immediately followed by the word 'college' or 'collegiate'<sup>5</sup>.

In exercising any such power<sup>6</sup> to consent to a change in any name the Privy Council must have regard to the need to avoid names which are or may be confusing<sup>7</sup>.

1 The reference to a power to change the name of an institution or body includes any power (however expressed and whether or not subject to any conditions or restrictions) in the exercise of which the name of the institution or body may be changed; but the power as extended by the Further and Higher Education Act 1992 s 77(1) has effect subject to any such conditions or restrictions: s 77(2). For the powers to change the name of an institution or body see PARAS 673 note 10, 674 note 7, 688 post.

2 As to references to institutions within the higher education sector see PARA 646 ante.

3 Further and Higher Education Act 1992 s 77(1). The power contained in s 77(1) is exercisable whether or not the institution would apart from s 77 (as amended) be a university: s 77(1). As to the meaning of 'university' see PARA 646 note 8 ante; and see also PARA 648 ante. As to the unauthorised use of the word 'university' in the title of an educational institution see PARA 650 post.

4 I.e. any power as extended by *ibid* s 77(1): see the text and notes 1-3 supra.

5 *Ibid* s 77(4) (amended by the Teaching and Higher Education Act 1998 s 40).

6 I.e. any power exercisable by virtue of the Further and Higher Education Act 1992 s 77 (as amended).

7 *Ibid* s 77(3). As to the application of the Business Names Act 1985 (see COMPANIES vol 14 (2009) PARA 223 et seq) to universities see *London College of Science and Technology Ltd v Islington London Borough Council* [1997] ELR 162.

#### **UPDATE**

#### **649 Use of 'university' in title of institution**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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#### **650. Unauthorised use of 'university' in title of institution.**

An institution within the higher education sector<sup>1</sup> in England<sup>2</sup> or Wales<sup>3</sup> must not, when making available (or offering to make available)<sup>4</sup> educational services, do so under a name which includes the word 'university' unless the inclusion of that word in that name is authorised by or by virtue of any Act or Royal Charter<sup>5</sup>, or is approved by the Privy Council<sup>6</sup>. A person carrying on such an institution must not, when making available (or offering to make available) educational services through the institution, use with reference either to himself or the institution a name which includes the word 'university', unless the inclusion of that word in that name is so authorised or approved<sup>7</sup>.

In approving the inclusion of the word 'university' in any name<sup>8</sup> the Privy Council must have regard to the need to avoid names which are or may be confusing<sup>9</sup>.

1 As to references to institutions within the higher education sector see PARA 646 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 For the meaning of 'Wales' see PARA 52 note 13 ante.

4 The provisions of the Teaching and Higher Education Act 1998 s 39(1), (2) apply where the educational services are made available, or (as the case may be) the offer to make such services available is made, in any part of the United Kingdom: s 39(3). For the meaning of 'United Kingdom' see PARA 63 note 3 ante.

5 Ibid s 39(1)(a). For the purposes of s 39(1) or s 39(2) (see the text and note 7 infra), the inclusion of the word 'university' in any name must not be taken to be authorised by or by virtue of a Royal Charter relating to a university by reason of any provision of the Royal Charter with respect to the affiliation or association of other institutions to the university (s 39(4)(a)), or the accreditation by the university of educational services provided by other institutions (s 39(4)(b)). As to the meaning of 'university' in the context of the reference in s 39(4) to a Royal Charter relating to a university see PARA 646 note 8 ante (definition applied by s 39(7)); and see also PARA 648 ante.

6 Ibid s 39(1)(b). See also notes 4-5 supra. The Privy Council's power of approval is approval for the purposes of s 39: s 39(1)(b). The Privy Council's power of approval under s 39(1) or s 39(2) (see the text and note 7 infra) is not exercisable in a case where the inclusion of the word 'university' in the name in question may be authorised by virtue of any other Act or any Royal Charter: s 39(6). See also *R (on the application of Liverpool Hope University College) v Secretary of State for Education and Employment* [2001] EWCA Civ 362, [2001] ELR 552.

7 Teaching and Higher Education Act 1998 s 39(2). See also notes 4-5 supra.

8 *Ibid* for the purposes of *ibid* s 39.

9 *Ibid* s 39(5).

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### **(iii) Universities Established by Charter**

#### **A. INCORPORATION AND GOVERNANCE**

##### **651. Incorporation.**

Incorporation of a university was anciently effected by papal grant<sup>1</sup> or charter<sup>2</sup>, and later by Royal Charter or Act of Parliament<sup>3</sup>. The practice subsequently adopted in the case of the more recent foundations was to incorporate the university by Royal Charter, to which there was annexed a schedule containing the original statutes of the university, and thereafter to obtain the passing of a local Act of Parliament vesting in the university the property and liabilities of any institution which it replaces and making other necessary provisions<sup>4</sup>. Modern universities are incorporated by way of the establishment of a higher education corporation<sup>5</sup> or the designation of a higher education institution<sup>6</sup>.

A copy of any application for a charter for the foundation of any college or university which is referred by the Queen in Council for the report of a committee of the Privy Council must be laid before Parliament, together with a copy of the draft charter, not less than 30 days before the committee reports upon it<sup>7</sup>.

1 See CORPORATIONS vol 9(2) (2006 Reissue) PARA 1130.

2 The charter was sometimes confirmed by Act of Parliament. As to Oxford and Cambridge see the Oxford and Cambridge Act 1571, passed with the intent that the ancient privileges, liberties and franchises of either of those universities 'here before granted, ratified and confirmed' by the Sovereign and her progenitors may be had in greater estimation and be of greater force and strength (see the preamble to the Act). See also 4 Co Inst 227.

3 Cf 1 Bl Com (14th Edn) 472.

4 See PARA 653 post.

5 See PARAS 673-674 post.

6 See PARA 701 post.

7 See the College Charter Act 1871 s 2 (amended by the Statute Law Revision (No 2) Act 1893; and the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 4). As to the laying of documents before Parliament see STATUTES vol 44(2) (Reissue) PARA 1514 et seq.

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## **652. Constitution.**

The constitution, functions and privileges of universities are governed by the terms of their instruments of foundation, or by Acts of Parliament. In so far as there can be said to be any general law relating to universities or their colleges, it belongs, strictly speaking, either to the law of charities or to that of corporations<sup>1</sup>.

A university usually consists of a chancellor, a vice-chancellor<sup>2</sup>, a body of graduates and students. Its government is usually provided for by the creation of a council or senate, which acts as the executive, and has an initiative in such legislation as the university is empowered to carry out, sometimes subject to the Queen in Council, sometimes with the further assent of Parliament<sup>3</sup>.

1 The chartered corporation is an artificial person whose legal capacities are limited by its charter or by any statutes regulating it; cf the statutory corporation whose powers are limited by the statute which created it: see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1230 et seq. As an exempt charity, it is unlikely that the existence of a chartered corporation can be challenged in court unless its assets are misapplied: see CHARITIES vol 8 (2010) PARAS 510-537, 583.

The universities of Oxford, Cambridge, London, Durham and Newcastle, the colleges and halls in the universities of Oxford, Cambridge, Durham and Newcastle, and Queen Mary and Westfield College in the University of London (see PARA 653 post), so far as they are charities, are designated as exempt charities within the meaning of the Charities Act 1993: see s 3(5)(a), Sch 2 para (b); and CHARITIES vol 8 (2010) PARA 315. Any university, university college, or institution connected with a university or university college, which Her Majesty declares by Order in Council to be an exempt charity is also an exempt charity for the purposes of the Charities Act 1993: see Sch 2 para (c); and CHARITIES vol 8 (2010) PARA 315. Orders made under Sch 2 para (c) are local in nature, and are not recorded in this work. For the meaning of 'charity' see s 96(1), (2) (as amended) (definition applied by the Education Reform Act 1988 s 125A(3) (as so added)); and CHARITIES vol 8 (2010) PARAS 1-2.

2 The powers of a vice-chancellor to suspend and exclude are so fundamental to the position of a student in the university that he must be considered as acting in a quasi-judicial capacity when he exercises them and he must observe the rules of natural justice; the powers should not be treated as merely matters of internal discipline: *Glynn v Keele University* [1971] 2 All ER 89, [1971] 1 WLR 487. As to the appropriate test to be applied on an application for judicial review of a vice-chancellor's decision involving the question of fitness of practice see *R (on the application of Higham) v University of Plymouth* [2005] EWHC 1492 (Admin), [2005] ELR 547; affd [2005] All ER (D) 398 (Nov), CA (vice-chancellor confirming a decision of the medical school's professional behaviour committee). As to the requirements of natural justice generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 630.

3 Local Acts of Parliament and Orders in Council approving statutes of universities are notified in the London Gazette: see eg the issue dated 3 July 1951, at 3629 (University of Oxford and Emmanuel College, Cambridge).

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### **653. Governance of particular universities.**

The executive government of the University of Oxford<sup>1</sup> is for the most part vested in a hebdomadal council possessing an initiative in legislation, which is first submitted to congregation or the resident body of masters of arts, and finally to convocation or the entire body of masters<sup>2</sup>.

The legislative body of the University of Cambridge<sup>3</sup> is the senate. The council of the senate offers to the senate proposals for confirmation or rejection<sup>4</sup>.

The University of London<sup>5</sup> has a senate consisting of the chancellor and 54 members and five advisory committees.

The constitution of Durham University includes a chancellor, a senate, a council and convocation. The council of the Durham colleges, itself incorporated, provides for the teaching, residence, maintenance and discipline of students in Durham<sup>6</sup>.

Universities have been founded by charter<sup>7</sup> as follows: Manchester<sup>8</sup>, Birmingham<sup>9</sup>, Liverpool<sup>10</sup>, Leeds<sup>11</sup>, Sheffield<sup>12</sup>, Bristol<sup>13</sup>, Reading<sup>14</sup>, Nottingham<sup>15</sup>, Southampton<sup>16</sup>, Hull<sup>17</sup>, Exeter<sup>18</sup>, Leicester<sup>19</sup>, Sussex<sup>20</sup>, Keele<sup>21</sup>, East Anglia<sup>22</sup>, Newcastle upon Tyne<sup>23</sup>, York<sup>24</sup>, Lancaster<sup>25</sup>, Kent at Canterbury<sup>26</sup>, Essex<sup>27</sup>, Warwick<sup>28</sup>, The City University<sup>29</sup>, Loughborough University of Technology<sup>30</sup>, Aston in Birmingham<sup>31</sup>, Brunel<sup>32</sup>, Surrey<sup>33</sup>, Bradford<sup>34</sup>, Bath<sup>35</sup>, Salford<sup>36</sup>, the Open University<sup>37</sup>, and Buckingham<sup>38</sup>. Under their respective Royal Charters, the Royal College of Art and Cranfield Institute of Technology grant degrees. These universities have varying constitutions but usually have a large court as the official governing body and a smaller council to perform executive government. Generally, the nominal head is the chancellor, the principal executive is the vice-chancellor, and the senate has the general control and regulation of instruction and education.

The federal University of Wales, also founded by charter<sup>39</sup>, has a similar constitution, but differs from the other modern universities in that teaching for initial degrees is entrusted to the five constituent university colleges, namely, University College of Wales at Aberystwyth<sup>40</sup>, University College Cardiff<sup>41</sup>, University College of North Wales at Bangor<sup>42</sup>, University College of Swansea<sup>43</sup>, and the University of Wales Institute of Science and Technology at Cardiff<sup>44</sup>, together with St David's University College, Lampeter<sup>45</sup>, and the University of Wales College of Medicine<sup>46</sup>.

1 The University of Oxford, founded in the 12th century, was incorporated by charter in the fourteenth century. The incorporation was confirmed by the Oxford and Cambridge Act 1571.

2 See the Oxford University Act 1854. For other statutes as to the University of Oxford see the Oxford University Act 1857; the Oxford University Act 1860; the Oxford University Act 1862; the Oxford University, Vinerian Foundation, Act 1865; the Universities Tests Act 1871; the Universities of Oxford and Cambridge Act 1877; the Universities of Oxford and Cambridge Act 1923; the Universities and College Estates Acts 1925 and 1964 (see PARA 1379 post); and the Universities and Colleges (Trusts) Act 1943 (see PARA 665 post).

3 The University of Cambridge was founded early in the thirteenth century. Its incorporation by charter was confirmed by the Oxford and Cambridge Act 1571.

4 See the Cambridge University Act 1856. For other statutes as to Cambridge University see the Universities Tests Act 1871; the Universities of Oxford and Cambridge Act 1877; the Universities of Oxford and Cambridge Act 1923; the Universities and College Estates Acts 1925 and 1964 (see PARA 1379 post); and the Universities and Colleges (Trusts) Act 1943 (see PARA 665 post).

5 Charters dated 28 November 1836 constituted the university and university college. Developed by various other charters in 1850, 1858, 1863, 1867 and 1878, the university was reconstituted by the University of London Act 1898 (repealed).

6 The University of Durham was founded by private Act (2 & 3 Will 4 c xix (1832)), and by charter dated 1 June 1837, and was reconstituted by the University of Durham Act 1908 (repealed). It was reorganised in 1937 and 1963. See also the Universities and College Estates Acts 1925 and 1964 (see [PARA 1379](#) post); the University of Durham Act 1935 (repealed); and the Universities of Durham and Newcastle upon Tyne Act 1963.

7 For private Acts relating to universities and colleges see the current index to Local and Personal Acts and the annual indexes to Local and Personal Acts.

8 Founded as Owens College in 1851, the Victoria University (see notes 10-11 *infra*) was created by charter dated 20 April 1880 and the Victoria University of Manchester by charter dated 15 July 1903: see the Victoria University of Manchester Act 1904. The charter of 1903 was revoked and replaced by a supplemental charter dated 12 February 1973.

9 Formed from Mason College, it became the University of Birmingham by charter dated 24 March 1900: see the Birmingham University Act 1900.

10 University College, Liverpool, was founded by charter dated 18 October 1881. Together with the Royal Infirmary Medical School, established in 1844, it became a constituent college of the Victoria University in 1884 (see note 8 *supra*). It became incorporated as the University of Liverpool by charter dated 15 July 1903 (see the Liverpool University Act 1903), and was reconstituted by a supplemental charter dated 1 August 1961 (amended August 1969).

11 The Yorkshire College of Science, founded in 1874, became a constituent college of the Victoria University in 1887 (see note 8 *supra*), and was reconstituted as the University of Leeds by charter dated 25 April 1904: see the University of Leeds Act 1904. See also the University of Leeds Act 1965.

12 Firth College, founded in 1879, was merged with a medical school and a technical school in 1897 to form a university college which, by charter dated 31 May 1905, became the University of Sheffield: see the University of Sheffield Act 1905.

13 Founded originally as a university college in 1876, the University of Bristol was created by charter dated 21 May 1909: see the University of Bristol Act 1909. See also the University of Bristol Acts 1960 and 1974.

14 A university extension college, associated with the University of Oxford, was founded at Reading in 1892. It became a university college in 1902, and the University of Reading by charter dated 17 March 1926: see the University of Reading Act 1926.

15 Founded as a university college in 1881, and incorporated in 1903, the University of Nottingham was granted its charter on 20 August 1948: see the University of Nottingham Act 1949.

16 The Hartley Institute, founded at Southampton in 1862, became a university college in 1902 and the University of Southampton was created by charter dated 29 April 1952: see the University of Southampton Act 1953.

17 A university college was incorporated at Hull on 7 October 1927. It became the University of Hull by charter dated 6 September 1954: see the University of Hull Act 1955.

18 The Exeter Technical and University Extension College was founded in 1893. Renamed the Royal Albert Memorial College in 1899, it was reorganised as a university college in 1901. It became the University College of the South West of England in 1922 and the University of Exeter by charter dated 21 December 1955: see the University of Exeter Act 1957.

19 The Leicester, Leicestershire and Rutland College, founded in 1918, changed its name to University College, Leicester in 1927, was incorporated by charter dated 4 December 1950, and became the University of Leicester by charter dated 1 May 1957: see the University of Leicester Act 1958.

20 The University of Sussex was founded at Brighton by charter dated 16 August 1961: see the University of Sussex Act 1962.

21 The University College of North Staffordshire, incorporated by charter dated 11 August 1949, became the University of Keele by charter dated 26 January 1962: see the University of Keele Act 1962.

22 The University of East Anglia was founded at Norwich by charter dated 7 January 1963.

23 A medical school at Newcastle upon Tyne, founded in 1934, became the medical school of the University of Durham in 1852, and joined with a college of physical science, later Armstrong College, founded in 1871, to become King's College in 1937. It was the Newcastle division of the University of Durham, but by charter dated 1 August 1963 became the University of Newcastle upon Tyne: see the Universities of Durham and Newcastle upon Tyne Act 1963.

24 The University of York, which is organised on a collegiate basis, was founded by charter dated 1 October 1963.

25 The University of Lancaster, which is organised on a collegiate basis, was founded by charter dated 14 September 1964.

26 The University of Kent at Canterbury, which is organised on a collegiate basis, was founded by charter dated 4 January 1965.

27 The University of Essex was founded at Colchester and incorporated as a limited company on 21 September 1962. It was granted a charter on 11 January 1965.

28 The University of Warwick was incorporated at Coventry by charter in 1965.

29 The Northampton Polytechnic Institute was founded in the City of London on 1 June 1907. It became a college of advanced technology in 1956, and was incorporated as The City University by charter dated 6 April 1966: see The City University Act 1967.

30 Loughborough Technical Institute was founded in 1909, and became Loughborough College in 1918. Part of it became a college of advanced technology in 1956 and was constituted as Loughborough University of Technology by charter dated 19 April 1966: see the Loughborough University of Technology Act 1966.

31 The Birmingham Municipal Technical School was founded in 1895. In 1927 it became the Central Technical School, in 1951 the College of Technology, and in 1956 the first designated college of advanced technology. It was constituted as the University of Aston in Birmingham by charter dated 22 April 1966: see the University of Aston in Birmingham Act 1967.

32 Acton Technical College was founded in 1928. The section dealing with higher education became Brunel College in 1956, and in 1962 was designated a college of advanced technology. It moved to Uxbridge, and was constituted Brunel University by charter dated 6 July 1966: see the Brunel University Act 1967.

33 The Battersea Polytechnic Institute, founded on 23 June 1891, became a college of advanced technology in 1956, and was reconstituted at Guildford as the University of Surrey by charter dated 9 September 1966: see the University of Surrey Act 1966.

34 The Bradford Mechanics Institute was founded in 1882. It became a college of advanced technology in 1957 and by charter dated 18 October 1966 was constituted as the University of Bradford: see the University of Bradford Act 1967.

35 The Bristol Trade School, founded in 1856, came under the patronage of the Society of Merchant Venturers in 1880, and in 1894 became the Merchant Venturers' Technical College. Control passed to the Bristol education authority in 1949, and it was designated as a college of advanced technology in 1960. It became independent in 1962 and was granted a charter as the Bath University of Technology on 25 October 1966, when it moved to a new site at Claverton Down, Bath: see the Bath University of Technology Act 1967. The charter was amended in March 1971 when the university became the University of Bath.

36 The Royal Technical Institute, later the Royal Technical College, was founded at Salford in 1896, and became a college of advanced technology in 1956. It was reconstituted as the University of Salford by charter dated 4 April 1967: see the University of Salford Act 1968.

37 The Open University, originally the University of the Air (see the Command Paper *University of The Air* (1965-66; Cmnd 2922)), was created by charter dated 30 May 1969, since when it has received grant in aid: see Treasury Minute dated 5 November 1970.

38 The University of Buckingham, founded in 1973, was incorporated by charter in 1983.

39 The original charter of the University of Wales was dated 30 November 1893, and was supplemented by a charter dated 11 December 1967, revoking earlier supplemental charters granted in 1906, 1920, 1931 and 1960.

40 The University College of Aberystwyth was founded in 1872 and was incorporated by charter granted in 1889. It became a constituent part of the University of Wales in 1903.

41 The University College of Cardiff was founded in 1883 and was incorporated by charter granted in 1884. It became a constituent part of the University of Wales in 1903.

42 The University College of Bangor was founded in 1884 and was incorporated by charter granted in 1885. It became a constituent part of the University of Wales in 1903.

43 The University College of Swansea was founded in 1920 and was incorporated by charter granted in 1920, when it became a constituent part of the University of Wales.

44 The University of Wales Institute of Science and Technology was incorporated at Cardiff by charter granted in 1967, when it became a constituent part of the University of Wales: see the University of Wales Institute of Science and Technology Act 1968.

45 St David's College, Lampeter, was founded in 1822, and was granted charters in 1828, 1852, 1865 and 1971. It became a constituent part of the University of Wales in 1971.

46 The University of Wales College of Medicine at Cardiff was incorporated by charter granted in 1931, when it became an independent constituent institution of the University of Wales. It adopted its present name in 1984.



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#### **654. Foundation and governance of university colleges and colleges of universities.**

University colleges, like universities, are corporate bodies<sup>1</sup>, constituted and managed according to the terms of their charters, their founders' statutes or their other instruments of foundation.

Universities may contain colleges which are independent corporations founded in a similar way to universities themselves<sup>2</sup>.

The older colleges within the universities of Oxford and Cambridge are governed by statutes which were made by commissioners appointed for that purpose<sup>3</sup>. These relate not merely to the internal organisation and government of the colleges, but to their contributions to various university purposes and in so far as they affect the university may not be altered without the consent of the university<sup>4</sup>.

1 As to colleges 'in reputation' and not incorporated see *Adams' Case* (1602) 4 Co Rep 104b at 106b, 107b; cf *Gilford's Case* (1585) 4 Leon 156 at 160.

2 Cf the College Charter Act 1871 s 2 (as amended), which applies to any institution in the nature of a college or university (s 3), as well as to colleges and universities; and cf the University of London Act 1926 s 7 (repealed), as regards the incorporation of schools and colleges of the university.

3 See the Universities of Oxford and Cambridge Act 1923 ss 1, 6. The powers of the commissioners were to continue in force until the end of the year 1925 and no longer, but the powers of the Oxford University Commissioners were extended until 31 December 1926 (see the Order in Council under the Universities of Oxford and Cambridge Act 1923 continuing the powers of the University of Oxford Commissioners until December 31, 1926, SR & O 1925/607). The powers of the Cambridge University Commissioners were extended until 31 December 1927 (see the Order in Council under the Universities of Oxford and Cambridge Act 1923 continuing the powers of the University of Cambridge Commissioners until December 31, 1927, SR & O 1925/630). Since the cesser of the powers of the commissioners a statute for a college made by the commissioners, and any statute, ordinance or regulation relating to a college made under any authority other than the Universities of Oxford and Cambridge Act 1923, is subject to alteration by the university under that Act, but if and so far as any such statute (not being a statute prescribing the scale or basis of assessment of the contributions to be made by the colleges to university purposes) affects a college, it cannot be altered without the consent of the college: Universities of Oxford and Cambridge Act 1923 s 7(1) (amended by the Statute Law (Repeals) Act 1998). Statutes must be approved by Order in Council and laid before Parliament: see the Universities of Oxford and Cambridge Act 1923 s 7(3), Schedule, (incorporating the Universities of Oxford and Cambridge Act 1877 s 49).

4 Universities of Oxford and Cambridge Act 1923 s 7(2)(b).

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### **655. Inspection of accounts.**

The accounts of any university<sup>1</sup> are open to the inspection of the Comptroller and Auditor General<sup>2</sup>.

1 As to the meaning of 'university' see PARA 658 note 4 post.

2 Education Reform Act 1988 s 135(1)(a). The power conferred by the Education Reform Act 1988 s 135(1) (as amended) is exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the governing body of the university in respect of which financial support has been given under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 post): Education Reform Act 1988 s 135(2)(a) (s 135(2) amended by the Further and Higher Education Act 1992 Sch 8 paras 27, 36(b)). As to the meaning of 'governing body' see PARA 704 note 4 post. 'Financial year' means a period of 12 months ending with 31 March: Education Reform Act 1988 s 235(1). The powers under the National Audit Act 1983 s 6 (as amended), s 8 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 717) conferred on the Comptroller and Auditor General by virtue of s 6(3)(c) are correspondingly restricted: see the Education Reform Act 1988 s 135(2)(b) (as so amended). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

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## **B. ADMINISTRATION OF INTERNAL LAWS**

### **656. Jurisdiction of visitors.**

The universities of Oxford and Cambridge, being civil and lay corporations<sup>1</sup> have, it seems, no visitor<sup>2</sup>. The colleges of Oxford and Cambridge, unlike the universities themselves, are eleemosynary corporations<sup>3</sup> and subject to visitation<sup>4</sup>. Other universities are likewise visitable, the Crown usually being the visitor in the case of those incorporated by modern charter. Where the university's charter provides for the appointment of a visitor by the Crown but no visitor has been appointed under the power, the Crown as founder of the university is the visitor<sup>5</sup>. The visitor's power to investigate and right wrongs arising from the application of the statutes or other internal laws of the institution is limited by statute<sup>6</sup>. However, where a visitor has jurisdiction then, subject to the supervisory jurisdiction of the High Court<sup>7</sup>, the jurisdiction of the court in the first instance is ousted<sup>8</sup>.

1 As to the visitation of corporations see CHARITIES vol 8 (2010) PARAS 510-528; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1186.

2 As to the resolution of academic disputes, in the absence of a visitor, at the universities of Oxford and Cambridge see *R v University of Cambridge, ex p Persaud* [2001] EWCA Civ 534, [2001] ELR 480, CA; *R (on the application of Ahmed) v University of Oxford* (7 November 2000, unreported); *R v Cambridge University, ex p Beg* [1999] ELR 404; *R v University of Cambridge, ex p Evans (No 2)* [1999] Ed CR 556; *R v University of Cambridge, ex p Evans* [1998] ELR 515. In certain cases an order of mandamus (now known as a mandatory order: see JUDICIAL REVIEW vol 61 (2010) PARA 703et seq) has been issued in the domestic matters of these universities: *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647; *Dr Walker's Case* (1735) Lee temp Hard 212; *R v Cambridge University* (1723) 8 Mod Rep 148 (mandamus to restore to a degree); cf *R v Patrick* (1667) 2 Keb 164; *R v Askew* (1768) 4 Burr 2186 at 2189 per Lord Mansfield. But see *R v Cambridge University Chancellor etc* (1794) 6 Term Rep 89 at 104, 107. In *R v Vice-Chancellor of Oxford* (1872) LR 7 QB 471, a decision of the hebdomadal court was reviewed by mandamus. As to a writ of prohibition see *Re Chancellor of Oxford University and Taylor* (1841) 1 QB 952.

3 See CHARITIES vol 8 (2010) PARAS 224-225; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1104. See also 1 BI Com (14th Edn) 470-471.

4 See CHARITIES vol 8 (2010) PARAS 510, 523.

5 *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL; *Patel v University of Bradford Senate* [1978] 3 All ER 841, [1978] 1 WLR 1488 (affd [1979] 2 All ER 582, [1979] 1 WLR 1066, CA); *A-G v Dedham School* (1857) 23 Beav 350.

6 See PARAS 657, 1040 post.

7 Any decision of the university visitor may be amenable to judicial review: *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL. See also *R v Visitor of the University of East Anglia, ex p Hanuman* [1999] Ed CR 781, CA; *Jemchi v Visitor of Brunel University* [2002] EWHC 2126 (Admin), [2002] ELR 125 (application for judicial review of visitor's decision on basis, inter alia, that the common law requirement of fairness had required the visitor to hold an oral hearing before changing his mind on a provisional decision); *Ferguson v Visitor of University of Leicester* [2003] EWCA Civ 1082, [2003] ELR 562. As to judicial review see generally JUDICIAL REVIEW vol 61 (2010) PARA 601 et seq.

8 *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL; *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; *M v London Guildhall University* [1998] ELR 149, CA; *Hines v Birkbeck College* [1986] Ch 524, [1985] 3 All ER 156 (affd [1987] Ch 457n, [1987] 3 All ER 1040n, CA); *Hines v Birkbeck College (No 2)* [1992] Ch 33, [1991] 4 All ER 450,

CA; *Patel v University of Bradford* [1978] 3 All ER 841, [1978] 1 WLR 1488 (affd [1979] 2 All ER 582, [1979] 1 WLR 1066, CA); *Herring v Templeman* [1973] 2 All ER 581 (affd [1973] 3 All ER 569, CA); *Thorne v University of London* [1966] 2 QB 237, [1966] 2 All ER 338, CA; *R v Dunsheath, ex p Meredith* [1951] 1 KB 127, [1950] 2 All ER 741, DC; *R v Hertford College, Oxford* (1878) 3 QBD 693, CA; *R v Dean and Chapter of Chester* (1850) 15 QB 513; *St John's College, Cambridge v Todington* (1757) 1 Burr 158; *A-G v Talbot* (1747) 3 Atk 662, 1 Ves Sen 78; *Philips v Bury* (1694) Skin 447, (1694) 1 Ld Raym 5. But see *R v University College London, ex p Idriss* (24 April 1998) Lexis. As to the power of the visitor see *R v HM the Queen in Council, ex p Vijayatunga* [1990] 2 QB 444, sub nom *R v University of London Visitor, ex p Vijayatunga* [1989] 2 All ER 843, CA. The courts' jurisdiction over contractual disputes may not be precluded: see eg *Nottingham University v Fishel* [2000] ELR 385, [2000] ICR 1462 (university sued reader in respect of outside consultancy work generating profits); see also *University of Nottingham v Eyett (No 1)* [1999] 2 All ER 437, [1999] ELR 141. It may be appropriate for a visitor to appoint a judge as his commissary because, although he cannot delegate his decision-making powers, he has a very wide discretion in adopting an appropriate procedure: *R (on application of Varma) v HRH The Duke of Kent* [2004] EWHC 1705 (Admin), [2004] ACD 320.

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**657. Exclusion of visitor's jurisdiction in relation to certain matters.**

The visitor of a qualifying institution<sup>1</sup> has no jurisdiction in respect of:

- 1219 (1) any dispute relating to a member of staff which concerns his appointment or employment or the termination of his appointment or employment<sup>2</sup>;
- 1220 (2) any other dispute between a member of staff and the qualifying institution in respect of which proceedings could be brought before any court or tribunal<sup>3</sup>; or
- 1221 (3) any dispute as to the application of the statutes or other internal laws of the institution in relation to a matter falling within head (1) or head (2) above<sup>4</sup>.

The visitor's jurisdiction is also excluded in relation to student complaints<sup>5</sup>.

<sup>1</sup> For the meaning of 'qualifying institution' see PARA 1040 note 2 post; definition applied by virtue of the Higher Education Act 2004 s 46(2). As to the jurisdiction of visitors see PARA 656 ante.

<sup>2</sup> Ibid s 46(1)(a).

<sup>3</sup> Ibid s 46(1)(b). In determining whether a dispute falls within s 46(1)(b), it is to be assumed that the visitor does not have jurisdiction to determine the dispute: s 46(3).

<sup>4</sup> Ibid s 46(1)(c).

<sup>5</sup> See ibid s 20; and PARA 1040 post.

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### **658. The University Commissioners.**

The University Commissioners were established<sup>1</sup> in order to make such modifications<sup>2</sup> of the statutes<sup>3</sup> of any qualifying institution<sup>4</sup> as they considered necessary or expedient<sup>5</sup> for the purpose of securing that such statutes included:

- 1222 (1) provision enabling an appropriate<sup>6</sup> body, or any delegate of such a body, to dismiss<sup>7</sup> any member of the academic staff<sup>8</sup> by reason of redundancy<sup>9</sup>;
- 1223 (2) provision enabling an appropriate officer, or any delegate of such an officer, acting in accordance with procedures determined by the Commissioners, to dismiss any member of the academic staff for good cause<sup>10</sup>;
- 1224 (3) provision establishing disciplinary procedures determined by the Commissioners for dealing with any complaints made against any member of the academic staff relating to his appointment or employment<sup>11</sup>;
- 1225 (4) provision establishing procedures determined by the Commissioners for hearing and determining appeals by any members of the academic staff who are dismissed or under notice of dismissal (whether or not in pursuance of such provision as is mentioned in head (1) or head (2) above) or who were otherwise disciplined<sup>12</sup>; and
- 1226 (5) provision establishing procedures determined by the Commissioners for affording to any member of the academic staff opportunities for seeking redress for any grievances relating to his appointment or employment<sup>13</sup>.

In exercising their functions, the Commissioners were required to have regard to the need:

- 1227 (a) to ensure that academic staff had freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of losing their jobs or privileges they may have at their institutions<sup>14</sup>;
- 1228 (b) to enable qualifying institutions to provide education, promote learning and engage in research efficiently and economically<sup>15</sup>; and
- 1229 (c) to apply the principles of justice and fairness<sup>16</sup>.

The Commissioners' powers and duties were due to cease on 29 July 1991<sup>17</sup> unless continued for a longer period specified by order of the Secretary of State<sup>18</sup>. The last of a series of such orders provided that the Commissioners' powers and duties ceased on 1 April 1996<sup>19</sup>.

1 Provision for the appointment, tenure and duration of office, powers, remuneration, staff, expenses and proceedings of the Commissioners was made by the Education Reform Act 1988 s 202(4), Sch 11. See, however, the text and notes 17-18 *infra*.

2 For these purposes, 'modifications' includes additions, alterations and omissions; and 'modify' must be construed accordingly: *ibid* s 235(1).

3 'Statutes', in relation to an institution, includes any regulations, ordinances or other instruments which, in the opinion of the Commissioners, serve as statutes for the purposes of that institution and are designated as such by the Commissioners: *ibid* s 203(8).

4 For the purposes of *ibid* ss 202-205 (as amended), 'qualifying institution' means:

- 63 (1) any university or other institution to which, during the period of three years beginning 1 August 1987, grants in aid were or were to have been made by the Universities Funding Council, or by the Secretary of State acting on the advice of the University Grants Committee (s 202(3)(a));
- 64 (2) any constituent college, school or hall or other institution of a university falling within head (1) *supra* (s 202(3)(b)); and
- 65 (3) any institution not falling within head (1) *supra* which was authorised by charter to grant degrees and to which, during the period of three years beginning 1 August 1987, grants were or were to have been made by the Secretary of State (s 202(3)(c)).

The University Grants Committee (a non-statutory body) was replaced by the Universities Funding Council established under s 131(1) (repealed), which was itself replaced by the Higher Education Funding Council for England (see the Further and Higher Education Act 1992 s 63; and *PARAS* 733-759 *post*). For these purposes, 'university' includes a university college and any college, or institution in the nature of a college, in a university: Education Reform Act 1988 s 235(1); and see also *PARA* 648 *ante*. As to the Secretary of State see *PARA* 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see *PARA* 53 *ante*.

5 *Ibid* s 204(1). Proposed modifications to the statutes of qualifying institutions were required to be submitted to the Privy Council for approval or remission and reconsideration before the modifications were put into effect (whatever the requirements in this regard contained in the statutes themselves): see ss 203(3), 204(9), 205(1), (3)-(5). Prior to submission to the Privy Council the proposed modifications were required to be sent to the affected bodies and other appropriate bodies and organisations for the purposes of making representations: s 205(1), (2) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 45(a)). The Commissioners' powers under the Education Reform Act 1988 s 204 included power to make such incidental, supplementary and transitional provision as they considered necessary or expedient: s 204(8). Incidental, consequential or supplementary provision in connection with the Commissioners' powers or the exercise of those powers could be made by Order in Council: see s 207(1)(a), (b), (2). No such orders were made. Provision for Northern Ireland corresponding to the provisions of ss 202-207 (as amended) and Sch 11 could be made under s 208.

6 'Appropriate', in relation to a body or officer of a qualifying institution, means appearing to the Commissioners to be appropriate having regard to the nature and circumstances of the institution: *ibid* s 203(7).

7 'Dismiss' and 'dismissal' include 'remove' or, as the case may be, 'removal from office' (*ibid* s 203(7)(a)); and, in relation to employment under a contract, must be construed in accordance with the Employment Rights Act 1996 Pt X (ss 94-134A) (as amended) (see *EMPLOYMENT* vol 40 (2009) *PARA* 714 *et seq*): Education Reform Act 1988 s 203(7)(b) (amended by the Employment Rights Act 1996 s 240, Sch 1 para 37(1), (3)). 'Contract of employment' means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing: Employment Rights Act 1996 s 230(1); definition applied by the Education Reform Act 1988 s 235(1) (definition amended by the Employment Rights Act 1996 s 240, Sch 1 para 37(1)). See *EMPLOYMENT* vol 39 (2009) *PARA* 2.

8 A reference to academic staff includes a reference to persons whose terms of appointment or contracts of employment are, in the opinion of the Commissioners, so similar to those of academic staff as to justify their being treated as academic staff for the purposes of the Education Reform Act 1988 s 203: s 203(4).

9 *Ibid* s 203(1)(a). The dismissal of a member of staff was to be taken to be a dismissal by reason of redundancy if it was attributable wholly or mainly to: (1) the fact that the institution had ceased, or intended to cease, to carry on the activity for the purposes of which he was appointed or employed by the institution, or had ceased, or intended to cease, to carry on that activity in the place in which he carried out his work (s 203(5)(a)); or (2) the fact that the requirements of that activity for members of staff to carry out work of a particular kind, or for members of staff to carry out work of a particular kind in that place, had ceased or diminished or were expected to cease or diminish (s 203(5)(b)). No provision such as is mentioned in s 203(1)(a) or (b) (see the text and note 10 *infra*) which was included in the statutes of a qualifying institution was to enable any member of the academic staff to be dismissed unless the reason for his dismissal could, in the circumstances (including the size and administrative resources of the institution), reasonably be treated as a sufficient reason for dismissing him: s 203(2). Provision as to the persons in relation to whom the proposed modifications were to apply was made by s 204(2)-(6). For the meaning of 'employed' see *PARA* 776 note 3 *post*.

10 *Ibid* s 203(1)(b). 'Good cause', in relation to a member of the academic staff of a qualifying institution, means a reason which is related to his conduct or to his capability or qualifications for performing work of the

kind which he was appointed or employed to do: s 203(6). In relation to such a member 'capability' means capability assessed by reference to skill, aptitude, health or any other physical or mental quality (s 203(6)(a)); and 'qualifications' means any degree, diploma or other academic, technical or professional qualification relevant to the office or position held by him (s 203(6)(b)). Provision as to the application of modifications made for the purpose of complying with the requirements of s 203(1)(b) was made by s 204(7), (9). See also note 9 *supra*.

11 Ibid s 203(1)(c). As to the meaning of 'employment' see PARA 776 note 3 *post*.

12 Ibid s 203(1)(d).

13 Ibid s 203(1)(e).

14 Ibid s 202(2)(a).

15 Ibid s 202(2)(b).

16 Ibid s 202(2)(c).

17 Ie the end of the period of three years beginning with 29 July 1988 (ie the date on which the Education Reform Act 1988 received Royal Assent and on which, by virtue of s 236(1) (repealed), s 202 was brought into force).

18 Ibid Sch 11 para 3(1), (2)(b).

19 The Education (University Commissioners) Order 1991, SI 1991/1427, extended the Commissioners' powers and duties until 31 December 1992; the Education (University Commissioners) Order 1992, SI 1992/3064, extended the Commissioners' powers and duties until 1 January 1994; the Education (University Commissioners) Order 1993, SI 1993/3056, extended the Commissioners' powers and duties until 1 January 1995; the Education (University Commissioners) Order 1994, SI 1994/3106, extended the Commissioners' powers and duties until 1 April 1995; and the Education (University Commissioners) Order 1995, SI 1995/604, extended the Commissioners' powers and duties until 1 April 1996. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 *ante*.



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**659. Admission of women not to be precluded under university statutes or charter.**

Nothing in the statutes or charter of any university may be deemed to preclude the authorities of such university from making such provision as they think fit for the admission of women to membership of the university, or to any of its degrees, rights, or privileges<sup>1</sup>. Any enactment, Order in Council, Royal Charter, or provision, so far as inconsistent with this requirement, ceases to have effect<sup>2</sup>.

<sup>1</sup> See the Sex Disqualification (Removal) Act 1919 s 3. As to sex discrimination in education see further PARA 6 ante. As to sex discrimination generally see DISCRIMINATION vol 13 (2007 Reissue) PARAS 337-418.

<sup>2</sup> Ibid s 4(2) (amended by the Statute Law Revision Act 1927; and the Criminal Justice Act 1972 s 64(2), Sch 6 Pt I).

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### ***C. ELECTIONS AND FELLOWSHIPS***

#### **660. Regulation of elections.**

Questions relating to college elections generally are determined by the visitor<sup>1</sup> in accordance with the statutes which govern such institutions, but these elections are regulated to a certain extent by Act of Parliament<sup>2</sup>.

Neither the court<sup>3</sup> nor the visitor<sup>4</sup> can compel the election of any particular candidate, if the college is by its statutes given absolute discretion in the matter, except where the discretion is exercised corruptly<sup>5</sup>.

1 As to the jurisdiction of visitors see PARAS 656-657 ante; and see CHARITIES vol 8 (2010) PARAS 510-528; CORPORATIONS vol 9(2) (2006 Reissue) PARA 1186. As to the conduct of elections generally see ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) PARA 469 et seq.

2 See eg the Universities Tests Act 1871 s 3, under which no religious qualification may be imposed: see PARA 671 post.

3 *R v Hertford College* (1878) 3 QBD 693 at 705, CA, per Lord Coleridge CJ. See also CHARITIES vol 8 (2010) PARA 527.

4 *Ex p Wrangham* (1795) 2 Ves 609 at 625. See also CHARITIES vol 8 (2010) PARA 513.

5 *R v Hertford College* (1878) 3 QBD 693 at 701, CA, per Lord Coleridge CJ.

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#### **661. Powers of majority.**

Elections by the dean, warden, provost, master, president or other head of any college, by whatsoever name it may be incorporated or founded, with the consent of the majority of the fellows or brethren of the corporation who have power to consent, are as valid as if made by all the members of the corporation<sup>1</sup>.

Where college statutes direct fellows to be elected by the head of the college and the majority of the fellows, the concurrence of the head is necessary<sup>2</sup>.

<sup>1</sup> This is the rule at common law: see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1208.

<sup>2</sup> *Case of Catherine Hall* (1802) 5 Russ 85n; *Re Queen's College, Cambridge* (1828) 5 Russ 64. The contrary was formerly held: see *Case of Clare Hall* (1788) 5 Russ 73n; *Case of Gonville and Caius College* (1617) 5 Russ 76n. As to the removal of fellows by visitors see CHARITIES vol 8 (2010) PARA 520.

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## **662. Corrupt elections.**

Elections of fellows, scholars, officers and other persons as members of colleges, schools, halls or societies, if made corruptly or for any money consideration, direct or indirect, are void<sup>1</sup>.

Any fellow, officer or scholar receiving a bribe for resigning his office or place<sup>2</sup> is liable on summary conviction to a fine<sup>3</sup> in addition to any non-pecuniary forfeiture to which he would have been liable<sup>4</sup>, and the person giving the bribe is disqualified for the office 'for that tyme or turne'<sup>5</sup>.

1 See the Simony Act 1588 s 1 (amended by the Statute Law Revision Act 1948). By the Common Informers Act 1951 s 1, Schedule (both as amended) no proceedings for a penalty or forfeiture under the Simony Act 1588 may be brought save where no part of the penalty is payable to a common informer.

2 See the Simony Act 1588 s 2 (amended by the Statute Law Revision Act 1888).

3 ie a fine not exceeding level 3 on the standard scale. As to the standard scale see PARA 481 note 4 ante.

4 Common Informers Act 1951 s 1(3) (amended by the Criminal Justice Act 1982 ss 37, 38, 46).

5 See the Simony Act 1588 s 2 (as amended: see note 2 supra).

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### **663. Qualification of candidates.**

The passing of an examination may be a condition precedent to election to a fellowship, but it does not follow that superiority in the examination gives an absolute and unqualified title to be elected, unless there are words to this effect in the college statutes<sup>1</sup>.

If there is only one candidate for a close fellowship, he must nonetheless pass the usual fellowship examination; but in such a case the standard of ability required of the candidate must be decided on general grounds without reference to the standard of ability of any particular individuals who do not satisfy the conditions of the close fellowship<sup>2</sup>.

Where by the endowment deed of a college the person to be elected to a fellowship is directed to be a native of a particular town if any such shall be found able within the university, a person not having the requisite birth qualification but being eligible as regards capacity may be elected, if the persons who are qualified by birth do not attain to the fellowship standard of ability<sup>3</sup>.

When the possession of real estate is a necessary qualification for certain college offices, the modern doctrines of equity are not strictly applied, and an interest in land which in equity would be considered personal estate may be sufficient<sup>4</sup>.

If a qualification for a fellowship is that a candidate must be 'in sacerdotio constitutus'<sup>5</sup>, an admission to deacon's orders is enough<sup>6</sup>.

1 *R v Hertford College* (1878) 3 QBD 693 at 698-699, 701, CA, per Lord Coleridge CJ. As to the construction of college statutes with respect to fellowship examinations see also *Downing College Case* (1837) 2 My & Cr 642; *Watson and Freemantle v Warden etc of All Souls' College, Oxford* (1864) 11 LT 166.

2 *Re Catherine Hall, ex p Inge* (1831) 2 Russ & M 590.

3 *Re St John's College, Cambridge* (1831) 2 Russ & M 603. In open fellowships the principle is 'detur digniori' (let it be given to him who most deserves it), in proprieties, 'detur, sed digno' (let it be given if deserved): *Re St John's College, Cambridge* supra at 605.

4 *Case of Queen's College, Cambridge* (1821) Jac 1 at 37-38.

5 *Id* in priest's orders.

6 *Re University College, Oxford* (1848) 17 LJ Ch 298. See also *Glasgow College v A-G* (1848) 1 HL Cas 800; *Re St Catherine's Hall, Cambridge* (1849) 1 Mac & G 473.

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#### **664. Forfeiture of fellowship.**

The acceptance of a professorship may under college statutes cause the professor to forfeit his fellowship<sup>1</sup>.

Where a condition, for example that a certain portion of the fellowship term should be spent abroad, is attached to a fellowship, and the fellow, after receiving the emoluments for some years at home, resigns the fellowship without going abroad, acceptance by the trustees of the fellow's resignation dispenses, it seems, with the condition, and consequently the money received by the fellow need not be refunded; but in such circumstances the trustees might refuse to accept the resignation and compel the fellow either to comply with the condition or to refund<sup>2</sup>.

Where the question is whether a fellowship has been forfeited under the college statutes, the expression 'a collegii emolumentis recedere' means absolute forfeiture, not merely temporary suspension, and the word 'discedere' as applied to a fellow vacating his fellowship is not confined to a vacancy created by death<sup>3</sup>.

1 *Re Trinity College, Cambridge, ex p Edleston* (1854) 3 De GM & G 742.

2 *A-G v Stephens* (1737) 1 Atk 358. It is not certain whether it would be the trustees' duty to refuse to accept the resignation.

3 *Re St Catherine's Hall, Cambridge* (1849) 1 Mac & G 473.

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## ***D. INCOME, LAND AND PROPERTY ETC***

### **665. Unification of trusts.**

A university or college to which the Universities and Colleges (Trusts) Act 1943 applies<sup>1</sup> may make schemes providing for the aggregation and administration as a single fund of all property, with such exceptions as may be specified, held upon trusts of any particular class or classes which are administered by the university or college or administered by other trustees for purposes connected with the university or college<sup>2</sup>. Such a scheme may provide for the transfer to the college or university of certain property held on any trust to which the scheme relates<sup>3</sup>, for valuing the fund and determining the shares of the various trusts therein<sup>4</sup>, for distributing the income in accordance with those shares and enabling advances to be made out of the capital<sup>5</sup>, for authorising part of the income to be placed to reserve<sup>6</sup>, for conferring powers of investment including power to invest in land<sup>7</sup>, for the extension of the scheme to trusts subsequently created (unless the trust expressly provides to the contrary or, in the case of trusts not administered by the university or college, the trustees withhold consent)<sup>8</sup>, and for incidental, consequential and supplementary matters<sup>9</sup>. Any power to purchase land conferred by a scheme may, subject to certain exceptions, only be exercised with the consent of the Secretary of State<sup>10</sup>. A scheme cannot lawfully affect a variation of the trusts of the fund if the variation adversely affects another person or body who has not acquiesced in the variation<sup>11</sup>.

If a college in a university is required by a statute of the university to make contributions for university purposes in respect of income arising from any property held on trust by or on behalf of the college or for purposes connected with it, the amount of the contributions may be charged on the property<sup>12</sup>.

1 The Universities and Colleges (Trusts) Act 1943 applies to the Universities of Oxford and Cambridge, to the colleges in those universities, and to the College of St Mary of Winchester, near Winchester; and the expressions 'university' and 'college' are to be construed accordingly: s 1(1). For these purposes, the Cathedral or House of Christ Church in Oxford, Keble College, St Peter's Hall, Somerville College, Lady Margaret Hall, St Hugh's College and St Hilda's College are deemed to be colleges in the University of Oxford, and Selwyn College, Girton College and Newnham College are deemed to be colleges in the University of Cambridge: s 1(2).

2 See *ibid* s 2(1)(a)-(c). Different schemes may be made in relation to different classes of trusts: s 2(4). Schemes must be submitted to the Queen in Council for approval by Order in Council (s 3(1)), having first been laid before Parliament for 40 days (see s 3(2), (3)). On approval a scheme has effect notwithstanding any instrument (including an Act) relating to any trust to which the scheme applies (s 3(4)), but a scheme may be varied or revoked by a subsequent scheme (s 3(5)). Property may be included in a scheme only with the trustees' consent: s 2(1)(a).

3 See *ibid* s 2(1)(d) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554).

4 Universities and Colleges (Trusts) Act 1943 s 2(1)(e).

5 See *ibid* s 2(1)(f).

6 See *ibid* s 2(1)(g).

7 See *ibid* s 2(1)(h).

8 See *ibid* s 2(1)(i).

9 See *ibid* s 2(1)(k).

10 See *ibid* s 2(2), (5) (s 2(2) amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554; and the Universities and Colleges (Trusts) Act 1943 s 2(5) added by the Universities and Colleges Estates Act 1964 s 4(1), Sch 3 Pt I); and the Secretaries of State for Transport, Local Government and the Regions and for Environment, Food and Rural Affairs Order 2001, SI 2001/2568.

11 *Re Freeston's Charity, Sylvester v Master and Fellows of University College, Oxford* [1979] 1 All ER 51, [1978] 1 WLR 741, CA.

12 Universities and Colleges (Trusts) Act 1943 s 4.



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#### **666. Rights of patronage.**

Subject to the general restrictions on the transfer of rights of patronage<sup>1</sup>, the Universities of Oxford, Cambridge and Durham, and any of their colleges, may purchase and sell advowsons<sup>2</sup> and annex to them land in lieu of annual rents<sup>3</sup>, and they may transfer gratuitously to a bishop, dean and chapter or other ecclesiastical corporation willing to accept it any right of patronage<sup>4</sup>.

1 See ECCLESIASTICAL LAW vol 14 para 802.

2 See ECCLESIASTICAL LAW vol 14 para 776.

3 See the Universities and College Estates Act 1925 ss 33-35 (s 33 amended by the Statute Law (Repeals) Act 1986); and ECCLESIASTICAL LAW vol 14 para 791. See also the Oxford University Act 1857 s 3.

4 Universities and College Estates Act 1925 s 37. As to the severance of benefices from headships of colleges see s 36; and ECCLESIASTICAL LAW vol 14 para 791.

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### **667. Financial provisions.**

The income of universities, university colleges and colleges of universities is derived in part from endowments and in part from fees and dues from members<sup>1</sup>. Universities and university colleges also receive grants out of money provided by Parliament through the medium of the Higher Education Funding Council<sup>2</sup>. In addition, universities, university colleges and colleges of universities may receive grants from the Secretary of State under his power to make grants to persons other than local education authorities in respect of expenditure on educational services or educational research<sup>3</sup>.

1 As to the power of colleges of the Universities of Oxford and Cambridge to charge certain contributions for university purposes or trust funds see PARA 665 ante. As to fees see also PARAS 760 et seq, 1056 post.

2 Ie in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England; and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see PARAS 733-759 post.

3 See the Education Act 1996 s 485; and PARA 69 ante.

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### ***E. RIGHTS AND PRIVILEGES***

#### **668. Privileges of jurisdiction.**

Oxford and Cambridge universities have special privileges of jurisdiction over their members<sup>1</sup>.

<sup>1</sup> See further PARAS 669-671 post.

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**669. Privileges regarding publications.**

The libraries of the universities of Oxford and Cambridge have certain rights under the Copyright Acts<sup>1</sup>, and their presses have rights as regards their imprints<sup>2</sup>.

<sup>1</sup> See COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 6. The same right is enjoyed by their colleges, by the universities of Aberdeen, Edinburgh, Glasgow and St Andrews, and by the colleges of Eton, Westminster and Winchester. The Bodleian Library, Oxford, and the University Library, Cambridge, are among the libraries which may demand from the publisher a copy of any book published in the United Kingdom (and therefore often termed 'copyright libraries'): see COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) PARA 15.

<sup>2</sup> See the Newspapers, Printers and Reading Rooms Repeal Act 1869 s 1 (as amended), Sch 2 (re-enacting the Printers and Publishers Act 1839 s 3); and see PRESS, PRINTING AND PUBLISHING vol 36(2) (Reissue) PARA 412.

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#### **670. Graduate privileges.**

The general privileges of graduates of the universities of Oxford, Cambridge and London in respect of offices open, or exemption granted, to them by any Act of Parliament or regulation of a public authority have been extended to graduates of other universities in England and Wales<sup>1</sup>.

<sup>1</sup> See the Victoria University Act 1888 s 1 (repealed); the University of Wales Act 1902 s 1 (repealed); the University of Liverpool Act 1904 s 1 (repealed); the Leeds University Act 1904 s 1 (repealed); and the Sheffield University Act 1914 s 1 (repealed). As to graduates of other universities see the several local Acts of Parliament regulating those universities, many of which are cited in PARA 653 ante.

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## **671. Religion.**

No religious qualification is required for a person taking a degree (other than a degree in divinity<sup>1</sup>) at the Universities of Oxford, Cambridge or Durham, or to enable a person to hold office in any of those universities or such of their colleges as existed before 16 June 1871<sup>2</sup>, except where such office is, either by Act of Parliament or by university or college statute in force at that date, restricted to persons in holy orders, or is confined to members of the Church of England by reason of a degree in divinity being a qualification for holding that office<sup>3</sup>. There is no objection, however, to new colleges being created subsequent to 1871 with endowments limited to members of particular religious communities<sup>4</sup>.

Where the University of Oxford Commissioners or the University of Cambridge Commissioners<sup>5</sup> by any statute made by them<sup>6</sup> erected or endowed an office, other than a headship or fellowship of a college, and declared that the holder of it must have a theological qualification, the provisions described above regarding religious qualification take effect with reference to that office as if the statute made by the Commissioners had been made before 16 June 1871<sup>7</sup>.

The abolition of religious qualifications does not interfere with the lawfully established system of religious instruction, worship and discipline in the universities of Oxford, Cambridge and Durham and their colleges<sup>8</sup>. Colleges subsisting on 16 June 1871 must provide sufficient religious instruction for undergraduates belonging to the Church of England<sup>9</sup>, and morning and evening prayer according to the Book of Common Prayer<sup>10</sup>. No one must be required to attend any college or university lecture to which he (or, if he is under full age, his parent or guardian) objects on religious grounds<sup>11</sup>.

1 University statutes have modified this restriction: see the Statute passed by Convocation of the University of Oxford on 25 November 1925 (candidates for the degrees of BD and DD need not be ordained clergymen of the Church of England); and Statute 42 of the University of Durham (no religious test required of any student, except for candidates for the licence in theology, which has not been awarded for many years).

2 Ie the date on which the Universities Tests Act 1871 was passed (ie received Royal Assent): see ECCLESIASTICAL LAW vol 14 para 1392.

3 See *ibid* s 3. For a case predating the Universities Tests Act 1871 see *Case of Queen's College, Cambridge* (1821) Jac 1.

4 *R v Hertford College* (1878) 3 QBD 693 at 707, CA, per Lord Coleridge CJ.

5 The University of Oxford Commissioners and the University of Cambridge Commissioners were established under the Universities of Oxford and Cambridge Act 1877 s 3 (repealed). By s 7 (repealed) the powers of the Commissioners could not continue beyond the end of 1881. As to the jurisdiction of the Commissioners to alter conditions of eligibility for any emolument or office connected with a college see *Re Pauncefort, Sons of Clergy Corp'n v Christ Church, Oxford* (1889) 42 ChD 624.

6 Ie under the Universities of Oxford and Cambridge Act 1877.

7 See *ibid* s 58.

8 See the Universities Tests Act 1871 s 4.

9 *Ibid* s 5.

10 Ibid s 6 (amended by the Church of England (Worship and Doctrine) Measure 1974 s 6 (3), Sch 2). At the request of the governing body the visitor may permit the use of shortened forms of morning and evening prayer: Universities Tests Act 1871 s 6 (amended by the Church of England (Worship and Doctrine) Measure 1974 Sch 2). As to the power of a bishop to license a clergyman to perform offices and services in a college chapel see ECCLESIASTICAL LAW vol 14 para 731.

11 Universities Tests Act 1871 s 7.

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#### **(iv) Higher Education Corporations**

##### ***A. INCORPORATION***

##### **672. Meaning of 'higher education corporation'.**

References in the Education Reform Act 1988 to a higher education corporation are references to a body corporate established under that Act<sup>1</sup> or which has become a higher education corporation by virtue of that Act<sup>2</sup>.

<sup>1</sup>     le established under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 post) or s 122 (as amended) (see PARA 674 post).

<sup>2</sup>     Ibid s 123(1) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(a)). Bodies corporate may become higher education corporations by virtue of the Education Reform Act 1988 s 122A (as added) (see PARA 647 ante).



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### **673. Incorporation of specified higher education institutions.**

The Secretary of State<sup>1</sup> was required, before 21 November 1988<sup>2</sup> (or, in one case, 1 February 1989<sup>3</sup>) by order to specify certain institutions<sup>4</sup> maintained by local education authorities<sup>5</sup>, and on that date<sup>6</sup> a number of bodies corporate were established for the purpose of conducting each specified institution as from 1 April 1989<sup>7</sup>. A higher education corporation so established<sup>8</sup> before 6 May 1992<sup>9</sup> was required to be established initially under the name given as the name of that institution in the order specifying that institution<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 I.e. the date appointed for the purposes of the Education Reform Act 1988 s 121 (as amended) in relation to all institutions falling within s 121(2) (repealed) other than the Southampton Institute of Higher Education: s 121(1) (repealed by the Statute Law (Repeals) Act 2004); Education Reform Act 1988 (Commencement No 2) Order 1988, SI 1988/1794, art 2.

3 I.e. the date appointed for the purposes of the Education Reform Act 1988 s 121 (as amended) in relation to the Southampton Institute of Higher Education: s 121(1) (repealed: see note 2 supra); Education Reform Act 1988 (Commencement No 4) Order 1988, SI 1988/2271, art 2.

4 The institutions required to be specified under the Education Reform Act 1988 s 121(1) (repealed) were those appearing to the Secretary of State to fall within s 121(2) (repealed): s 121(1) (repealed: see note 2 supra). An institution fell within s 121(2) (repealed) if on 1 November 1985 either its full-time equivalent enrolment number for courses of advanced further education exceeded 350 and also exceeded 55% of its total full-time equivalent enrolment number or its full-time equivalent enrolment number for such courses exceeded 2,500: s 121(2) (repealed by the Statute Law (Repeals) Act 2004). As to the determination of full-time equivalent enrolment numbers see PARA 678 post. Orders under the Education Reform Act 1988 s 121 (as amended), other than so far as determining the dates referred to in the text, are local in nature, and are not recorded in this work. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante.

Where an institution maintained by a local education authority had been established since 1 November 1985 by a merger of two or more institutions existing on that date, the institution was to be treated as falling within s 121(2) (repealed) if it would have done so if the merger had taken place before that date: s 121(3) (repealed by the Statute Law (Repeals) Act 2004).

In the Education Reform Act 1988 Pt II (ss 120-161) (as amended), references to courses of advanced further education are references to courses designated by the Education (Schools and Further Education) Regulations 1981, SI 1981/1086, Sch 2 (revoked) as courses of advanced further education: Education Reform Act 1988 ss 121(4), 161(1)(a). References to the total full-time equivalent enrolment number of any institution at any time are references to the aggregate of the institution's full-time equivalent enrolment numbers at that time for courses of all descriptions then offered by that institution: s 161(2), (3). As to the calculation of full-time equivalent enrolment numbers see PARA 678 post.

5 As to local education authorities see PARA 20 ante.

6 I.e. either 21 November 1988 or 1 February 1989: see the text and notes 2-3 supra.

7 I.e. the transfer date applicable in relation to bodies corporate established under the Education Reform Act 1988 s 121 (as amended); that is, the date appointed under s 126 (see PARAS 675-676 post) in relation to the transfer under s 126 of property, rights and liabilities to the corporation: s 121(1) (repealed), s 123(2); Education (Higher Education Corporations) Order 1988, SI 1988/1799, art 4; Education (Higher Education Corporations) (No 5) Order 1989, SI 1989/17, art 3. 'Liability' includes obligation: Education Reform Act 1988 s 235(1).

8 I.e. established under *ibid* s 121 (as amended) for the purpose of conducting any institution.

9     le the appointed day: *ibid* s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see *PARAS 687-693 post*.

10    Education Reform Act 1988 s 123(3), Sch 7 para 1(1) (s 123(3) as substituted: see note 9 *supra*). This requirement applies unless an instrument of government for the corporation made under s 124A (as added) (see *PARA 687 post*) has effect: s 123(3) (as so substituted). A corporation may change its name with the consent of the Privy Council: Sch 7 para 1(4) (substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 59(a)). See further *PARA 649 ante*. The power under the Education Reform Act 1988 Sch 7 para 1(4) (as substituted) is not exercisable by statutory instrument: s 232(1), (2) (amended by the Education Act 1996 s 582(1), Sch 37 para 80(a)).

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#### **674. Further incorporations.**

If at any time it appears to the Secretary of State<sup>1</sup>, in the case of any institution maintained by a local education authority<sup>2</sup>, that its full-time equivalent enrolment number<sup>3</sup> for courses of higher education<sup>4</sup> exceeds 55 per cent of its total full-time equivalent enrolment number<sup>5</sup>, he may by order make provision for the establishment of a body corporate for the purpose of conducting that institution as from the transfer date<sup>6</sup>. A higher education corporation so established must be established initially under the name given as the name of that institution in the order specifying that institution<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 As to the determination of full-time equivalent enrolment numbers see PARA 678 post.

4 For the meaning of 'courses of higher education' see PARA 726 post.

5 As to the meaning of 'total full-time equivalent enrolment number' see PARA 673 note 4 ante.

6 Education Reform Act 1988 s 122(1), (6). 'Transfer date' means the transfer date applicable in relation to specific bodies corporate established under s 122 (as amended); that is, the date appointed under s 126 (see PARAS 675-676 post) in relation to the transfer thereunder of property, rights and liabilities to the corporation: ss 122(6), 123(2). Orders establishing corporations under s 122 (as amended) are local in nature, and are not recorded in this work. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the meaning of 'liability' see PARA 673 note 7 ante.

A higher education corporation established under s 122 (as amended) is established initially under the name given in the order establishing the corporation: s 123(3) (substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 Sch 7 para 1(2).

7 Ibid s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Education Reform Act 1988 Sch 7 para 1(1); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. This requirement applies unless an instrument of government for the corporation made under the Education Reform Act 1988 s 124A (as added) (see PARA 687 post) has effect: s 123(3) (as so substituted). A corporation may change its name with the consent of the Privy Council: Sch 7 para 1(4) (substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 59(a)). See further PARA 649 ante.

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Transfer of staff.

### **675. Transfer of staff.**

Where a higher education corporation<sup>1</sup> is established<sup>2</sup>, the contract of employment<sup>3</sup> between:

- 1230 (1) any person who, immediately before the transfer date<sup>4</sup>, is employed by the transferor authority<sup>5</sup> to work solely at the institution the corporation is established to conduct<sup>6</sup> or is employed by that authority to work at that institution and is designated<sup>7</sup> by an order made by the Secretary of State<sup>8</sup>; and
- 1231 (2) the transferor authority,

has effect from the transfer date as if originally made between him and the corporation<sup>9</sup>.

Without prejudice to this requirement<sup>10</sup>:

- 1232 (a) all the transferor authority's rights, powers, duties and liabilities<sup>11</sup> under or in connection with an applicable contract<sup>12</sup> must<sup>13</sup> be transferred to the corporation on the transfer date<sup>14</sup>; and
- 1233 (b) anything done before that date by or in relation to the transferor authority in respect of that contract or the employee is deemed from that date to have been done by or in relation to the corporation<sup>15</sup>.

These requirements<sup>16</sup> are without prejudice to any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer as described above<sup>17</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

3 As to the meaning of 'employment' and related expressions see PARA 776 note 3 post.

4 The transfer date in relation to corporations established under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) is 1 April 1989; that is, the date appointed under s 126 in relation to the corporations so established: ss 123(2), 126(1); Education (Higher Education Corporations) Order 1988, SI 1988/1799, art 4; Education (Higher Education Corporations) (No 5) Order 1989, SI 1989/17, art 3. The transfer date applicable in relation to corporations established under the Education Reform Act 1988 s 122 (as amended) (see PARA 674 ante) is such date as the Secretary of State may by order appoint in relation to that corporation: s 126(2). Orders establishing corporations under s 122 (as amended) are local in nature, and are not recorded in this work. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 References in *ibid* s 127, in relation to a higher education corporation, to the transferor authority are references to the local education authority by whom the institution that corporation is established to conduct is maintained immediately before the transfer date: s 127(6). As to local education authorities see PARA 20 ante.

6 *Ibid* s 127(1)(a).

7     le designated for the purposes of *ibid* s 127.

8     *Ibid* s 127(1)(b). An order under s 127 may designate a person either individually or as a member of a class or description of employees: s 127(5). Orders under s 127 are local in nature, and are not recorded in this work.

9     *Ibid* s 127(2).

10    le the requirement of *ibid* s 127(2): see the text and notes 1-9 *supra*.

11    As to the meaning of 'liability' see *PARA* 673 note 7 *ante*.

12    le a contract to which the Education Reform Act 1988 s 127(2) (see the text and notes 1-9 *supra*) applies.

13    le by virtue of *ibid* s 127.

14    *Ibid* s 127(3)(a).

15    *Ibid* s 127(3)(b).

16    le *ibid* s 127(2), (3) (see the text and notes 1-15 *supra*).

17    *Ibid* s 127(4).

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## **676. Transfer of property, rights and liabilities.**

Where a higher education corporation<sup>1</sup> is established<sup>2</sup>, specified property, rights and liabilities<sup>3</sup> must be transferred to, and by virtue of the Education Reform Act 1988 vested in, that corporation<sup>4</sup>. The property, rights and liabilities in question are all land<sup>5</sup> or other property which, immediately before the transfer date<sup>6</sup>, was property of any local education authority<sup>7</sup> used or held for the purposes of the transferred institution<sup>8</sup>, and all rights and liabilities of any such authority subsisting immediately before that date which were acquired or incurred<sup>9</sup> for those purposes<sup>10</sup>. Such transfers of property, rights and liabilities take place on the transfer date<sup>11</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

3 As to the meaning of 'liability' see PARA 673 note 7 ante.

4 Education Reform Act 1988 s 126(3). Section 126(3) is subject to s 198 (as amended) (land and property transfers: see PARA 1387 et seq post); and does not apply to: (1) rights and liabilities under any contract of employment (s 126(5)(a)); (2) any liability of a local education authority in respect of the principal of, or any interest on, any loan (s 126(5)(b)); or (3) any liability of any such authority in respect of compensation for premature retirement of any person formerly employed by it (s 126(5)(c)). As to liabilities of a local education authority in respect of loans see PARA 677 post. As to the meaning of 'employment', and for the meaning of 'contract of employment', see PARA 776 note 3 post.

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 126 (taken with Sch 10 (as amended)): s 230(1) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(a), Sch 21 Pt I; the Education Act 1996 s 582(2), Sch 38 Pt I; the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 55, Sch 9; and the Statute Law (Repeals) Act 2004). This is subject to the requirement that no instrument (other than a statutory instrument) made or executed under or in pursuance of the Education Reform Act 1988 s 126 may be treated as duly stamped unless it is stamped with the duty to which it would, but for s 230 (as amended) (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Education Reform Act 1988 s 230(4) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(b), Sch 21 Pt I).

5 As to the meaning of 'land' see PARA 1381 note 5 post. Where at any time land is used for the purposes of an institution to which the Education Reform Act 1988 s 126(4)(a) applies, any interest of a local education authority in that land subsisting at that time must be taken for the purposes of s 126(4)(a) to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used): s 138(1) (a), (2).

6 The transfer date in relation to corporations established under *ibid* s 121 (as amended) (see PARA 673 ante) is 1 April 1989; that is, the date appointed under s 126 in relation to the corporations so established: ss 123(2), 126(1); Education (Higher Education Corporations) Order 1988, SI 1988/1799, art 4; Education (Higher Education Corporations) (No 5) Order 1989, SI 1989/17, art 3. The transfer date applicable in relation to corporations established under the Education Reform Act 1988 s 122 (as amended) (see PARA 674 ante) is such date as the Secretary of State may by order appoint in relation to that corporation: s 126(2). Orders establishing corporations under s 122 (as amended) are local in nature, and are not recorded in this work. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 As to local education authorities see PARA 20 ante.

8 Education Reform Act 1988 s 126(4)(a). 'The transferred institution' means, in relation to any higher education corporation, the institution the corporation is established to conduct: s 126(6). Where (apart from the Further and Higher Education Act 1992 s 84) any land or other property of a local authority would on any date ('the date of transfer') be transferred under the Education Reform Act 1988 Pt II (ss 120-161) (as amended) to the governing body of an institution within the higher education sector, and at any time before that date the authority, the governing body of the institution and the governing body of any other institution which will on that date be an institution within the higher education sector have agreed in writing that the land or property should be transferred on that or a subsequent date to the governing body of that other institution, then, if the Secretary of State has approved the agreement at any time before the date of transfer, Pt II has effect as if it required the property to be transferred in accordance with the agreement: Further and Higher Education Act 1992 s 84(1), (2). References to anything done include anything done before 6 March 1992 (ie the date on which the Education Reform Act 1988 was passed (ie received Royal Assent)): Further and Higher Education Act 1992 s 84(3). As to the meaning of 'land' see PARA 1355 note 3 post. For the meaning of 'local authority' see PARA 586 note 5 ante. As to the meaning of 'governing body' see PARAS 584 note 5 ante, 704 note 4 post. As to references to institutions within the higher education sector see PARA 646 ante.

9 Any reference in the Education Reform Act 1988 s 126 to liabilities incurred by a local education authority are not to be read as including liabilities of such an authority to make payments to or in respect of any person in pursuance of any duty imposed on the authority under any statutory provision: s 235(5) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 139(c), Sch 21 Pt I). 'Statutory provision' means a provision of an enactment or a statutory instrument: Education Reform Act 1988 s 235(1).

10 Ibid s 126(4)(b).

11 See ibid s 126(3).

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### **677. Loan liabilities excepted from transfer.**

For the purposes of the provisions enabling certain liabilities of local education authorities<sup>1</sup> to be excepted from transfer<sup>2</sup> to a higher education corporation on the establishment of that corporation<sup>3</sup>, a liability is an excepted liability if it would have been transferred by virtue of the establishment of the corporation but for the statutory exclusion of any such transfer<sup>4</sup>. The amount of any liability of a local education authority in respect of the principal of any loan which is an excepted liability in relation to an institution conducted by a higher education corporation<sup>5</sup> is to be treated on and after the date on which that liability would have been transferred<sup>6</sup> as having been borrowed from that authority by the body of persons to whom the liability would have been transferred<sup>7</sup> on such terms as to repayment and the payment of interest as may be agreed<sup>8</sup> or determined by the Secretary of State<sup>9</sup>.

There is a duty to arrive, so far as practicable, at such written agreements as may be necessary for determining the amount of any excepted liability and the terms to apply in relation to the liability imposed<sup>10</sup> on the default transferee by reference to that liability<sup>11</sup>.

Notwithstanding any terms so agreed or determined, any liability in respect of any sum treated<sup>12</sup> as having been borrowed from a local education authority may at any time be discharged by a single payment of a sum equal to the aggregate of the amount of the principal of the loan outstanding at the time of the payment and the amount of any interest accrued before that time<sup>13</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie under the Education Reform Act 1988 s 126(3): see PARA 676 ante.

3 Ie for the purposes of ibid s 199 (as amended): see the text and notes 4-13 infra. For the meaning of 'higher education corporation' see PARA 672 ante. Higher education corporations may be established under s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

4 Ibid s 199(2)(a). The statutory exclusion is contained in s 126(5)(b): see PARA 676 note 4 ante.

5 Ibid s 199(1), (2).

6 This date is referred to in ibid s 199 (as amended) as 'the operative date': s 199(2)(b).

7 This body is referred to in ibid s 199 (as amended) as 'the default transferee': s 199(2)(b).

8 The Act originally referred to agreement made between the Education Assets Board and the authority. The Education Assets Board was renamed the Education Transfer Council by the School Standards and Framework Act 1998 s 136(1) and, by virtue of s 136(2), all statutory references to the Education Assets Board are to be construed as references to the Education Transfer Council. However, the Education Transfer Council has now been wound up. See further PARA 1380 post.

9 Education Reform Act 1988 s 199(1) (amended by the School Standards and Framework Act 1998 s 136(2)). The reference to a determination of the Secretary of State is a reference to a determination under the Education Reform Act s 199 (as amended). As to the giving of assistance and advice to the Secretary of State for the purpose of determining any matter under s 199 (as amended) see s 199(8). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

10 Ie under ibid s 199 (as amended).



11 Ibid s 199(3). An agreement made under s 199(3) must be delivered to the default transferee: s 199(9). Any such agreement must be treated as made between the authority and the default transferee: s 199(10).

The Secretary of State must be notified if it appears that it is unlikely in the case of any matter on which agreement is required to be reached under s 199(3) that such an agreement will be reached: s 199(5). Where the Secretary of State has received such a notification he may, whether before or after the operative date, give a direction determining the matter, and may include in the direction any provision which might have been included in an agreement under s 199(3): s 199(6). The Secretary of State must consult the authority before giving a direction under s 199 (as amended): s 199(7).

12 le by virtue of ibid s 199(1) (as amended).

13 Ibid s 199(4).

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### **678. Determination of full-time equivalent enrolment numbers.**

The full-time equivalent enrolment number at any time of any educational institution for courses of any description is the aggregate of:

- 1234 (1) the number of full-time students<sup>1</sup> enrolled at that institution at that time to follow courses of that description<sup>2</sup>; and
- 1235 (2) the numbers for each mode of attendance at specified courses<sup>3</sup> arrived at by multiplying by the appropriate multiplier<sup>4</sup> the number of students enrolled at the institution at the time in question to follow such courses by that mode of attendance<sup>5</sup>.

For the purpose of determining<sup>6</sup> the full-time equivalent enrolment number at any time of any educational institution for courses of any description, any student enrolled at the institution whose ordinary place of residence then was or is in a country or territory other than a member state<sup>7</sup> must be disregarded<sup>8</sup>.

1 A student is a full-time student in relation to a course of any description if all his studies for the purposes of that course are full-time studies: Education Reform Act 1988 s 161(3), Sch 9 para 3(1). The Secretary of State may by order amend Sch 9 paras 1-3 except so far as they apply for determining an institution's full-time equivalent enrolment number for any courses or (as the case may be) an institution's total full-time equivalent enrolment number on 1 November 1985: Sch 9 para 4. Such orders are not statutory instruments (s 232(1), (2)) and are not recorded in this work. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Ibid s 161(3), Sch 9 para 1(1)(a). See also note 1 supra.

3 Ie the courses specified in note 4 infra.

4 The appropriate multipliers, in relation to a mode of attendance so specified, are:

- 66 (1) in relation to a mode of attendance by way of a sandwich course, 0.9 (in the case of courses of advanced further education or courses of higher education), or 0.75 (in any other case) (Education Reform Act 1988 Sch 9 paras 1(3), 2, Table);
- 67 (2) in relation to a mode of attendance by way of block release or day release, 0.4 (in the case of courses of advanced further education or courses of higher education), or 0.3 (in any other case) (Sch 9 paras 1(3), 2, Table);
- 68 (3) in relation to a mode of attendance which is part-time (other than day release but including some day-time study), 0.4 (in the case of courses of advanced further education or courses of higher education), or 0.125 (in any other case) (Sch 9 paras 1(3), 2, Table);
- 69 (4) in relation to a mode of attendance which is part-time (evening only study) or by way of open or distance learning, 0.2 (in the case of courses of advanced further education or courses of higher education), or 0.075 (in any other case) (Sch 9 paras 1(3), 2, Table).

A student's mode of attendance at a course of any description is by way of a sandwich course if in following that course, he engages in periods of full-time study for the purposes of the course alternating with periods of full-time work experience which form part of that course, and his average period of full-time study for the purposes of the course for each academic year included in the course is 19 weeks or more: Sch 9 para 3(2)(a).

A student's mode of attendance at a course of any description is by way of block release if the course involves a period of full-time study interrupted by a period of industrial training or employment (whether or not it also includes study on one or two days a week during any other period), and his average period of full-time study for the purposes of the course for each academic year included in the course is less than 19 weeks: Sch 9 para 3(2)(b). As to the meaning of 'employment' and related expressions see PARA 776 note 3 post.

A student's mode of attendance at a course of any description is by way of day release if he is in employment and he is released by his employer to follow that course during any part of the working week: Sch 9 para 3(2)(c).

A student's mode of attendance at a course of any description is by way of open or distance learning if he is provided for the purposes of the course with learning material for private study, and his written work for the purposes of the course is subject to a marking and comment service provided for students following the course by private study (whether or not any additional advisory or teaching services are also provided for such students as part of the course): Sch 9 para 3(2)(d).

For the meaning of 'courses of higher education' see PARA 726 post. See also note 1 supra.

5 Ibid Sch 9 para 1(1)(b), (2). See also note 1 supra.

6 Ie under ibid Sch 9 paras 1-3.

7 Ie a state which is a member of the European Communities: European Communities Act 1972 s 1(2), Sch 1, Pt II; applied by the Interpretation Act 1978 s 5, Sch 1.

8 Education Reform Act 1988 Sch 9 para 5.

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## **B. CONSTITUTION AND GOVERNANCE**

### **(A) CORPORATIONS ESTABLISHED BEFORE 6 MAY 1992**

#### **679. Initial constitution.**

A higher education corporation<sup>1</sup> established<sup>2</sup> before 6 May 1992<sup>3</sup> was required to consist of not less than 12 and not more than 24 members<sup>4</sup> and the person who was for the time being the principal of the institution<sup>5</sup>, unless he chose not to be a member<sup>6</sup>. Of the appointed members:

- 1236 (1) up to 13 had to be persons appearing to the appointing authority<sup>7</sup> to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession<sup>8</sup>;
- 1237 (2) not less than four and not more than eight had to be persons nominated<sup>9</sup> otherwise than by other members of the corporation<sup>10</sup>; and
- 1238 (3) at least one and not more than four had to be persons nominated<sup>11</sup> by the members of the corporation who were either independent members or initial nominee members and the principal of the institution (if he was a member)<sup>12</sup>.

It was for the appointing authority to determine any question as to whether any person was qualified<sup>13</sup> for appointment as a member of a corporation of any description or category<sup>14</sup>.

The provisions described above<sup>15</sup> are subject to the provisions relating to the subsequent determination of membership numbers<sup>16</sup>. The provisions relating to the constitution of higher education corporations<sup>17</sup> do not have effect in relation to a higher education corporation established before 6 May 1992 if an instrument of government<sup>18</sup> for the corporation has effect<sup>19</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

3 Ie the appointed day: *ibid* s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see PARAS 687-693 post.

4 Ie appointed in accordance with the provisions of the Education Reform Act 1988 s 123(3) (as substituted), Sch 7 paras 3-18 (as amended) (see the text and notes 5-19 *infra*; and PARAS 680-686 post).

5 References, in relation to a corporation, to the institution are references: (1) in relation to any time before the transfer date applicable in relation to the corporation, to the institution the corporation is established to conduct (*ibid* Sch 7 para 1(3)(b)(i)); and (2) in relation to any later time, to any institution for the time being conducted by the corporation in exercise of its powers under the Education Reform Act 1988 (Sch 7 para 1(3)(b)(ii)). For the meaning of 'the transfer date' see PARAS 673 note 7, 674 note 6 ante.

6 *Ibid* Sch 7 paras 1(3)(a), 3(1). The members of the corporation for the time being were known as the board of governors of the institution: Sch 7 para 3(3).

7 The Secretary of State was the appointing authority for the purposes of *ibid* Sch 7 (as amended) in relation to the appointment of the first members of a corporation: Sch 7 para 5(1). As to the Secretary of State see *PARA 52 ante*.

8 *Ibid* Sch 7 para 3(2)(a). These members are known as 'the independent members'. In the case of any corporation, a person who was employed at the institution (whether or not as a teacher), a full-time student at the institution, or an elected member of any local authority, was not eligible for appointment as an independent member or as an additional nominee member (see the text and notes 11-12 *infra*) of the corporation: Sch 7 para 4(4). For these purposes, a person who was not for the time being enrolled as a student at an institution was to be treated as such a student during any period when he was granted leave of absence from the institution for the purposes of study or travel or for carrying out the duties of any office held by him in the student union at the institution: Sch 7 para 4(5). For the meaning of 'local authority' see *PARA 1388 note 12 post*.

In determining the number of members to appoint within each variable category of members (ie independent members, initial nominee members and additional nominee members), the Secretary of State was required to secure that at least half of all the members of the corporation as first constituted were independent members: Sch 7 paras 2(2), 5(2).

9 *Ie* in accordance with *ibid* Sch 7 (as amended).

10 *Ibid* Sch 7 para 3(2)(b). These members, known as 'the initial nominee members', were to consist of at least one and not more than three local authority nominees, one teacher nominee, one general staff nominee, and one student nominee, and could include up to two academic nominees: Sch 7 paras 3(2)(b), 4(1). 'Local authority nominee' means a person, other than a person employed at the institution (whether or not as a teacher) or a student at the institution, nominated by a local authority specified in relation to the corporation in an order made by the Secretary of State; 'teacher nominee' means a teacher at the institution nominated by the teachers at the institution; 'general staff nominee' means a person employed at the institution otherwise than as a teacher and nominated by the persons so employed; 'student nominee' means a student at the institution nominated by the students at the institution; and 'academic nominee' means a teacher at the institution nominated by the academic board: Sch 7 para 4(2). For the meaning of 'employed' see *PARA 776 note 3 post*. Before making an order specifying local authorities in relation to any corporation for the purposes of Sch 7 para 4(1)(a), the Secretary of State was required to consult such associations of local authorities as appeared to him to be concerned: Sch 7 para 4(7). Such orders are local in nature, and are not recorded in this work.

11 *Ie* in accordance with *ibid* Sch 7 (as amended). See note 8 *supra*.

12 *Ibid* Sch 7 para 3(2)(c). These members are known as 'the additional nominee members', and of those members, the one required by Sch 7 para 3(2)(c) had to be a person who had experience in the provision of education, and the three others permitted by that provision were one person who had such experience and two persons who did not need not to have such experience: Sch 7 paras 3(2)(c), 4(3). See also note 8 *supra*.

13 *Ie* in accordance with *ibid* Sch 7 para 4(1)-(5) (see the text and notes 8, 10, 12 *supra*).

14 *Ibid* Sch 7 para 4(6).

15 *Ie* the provisions of *ibid* Sch 7 paras 3-4 (see the text and notes 1-14 *supra*).

16 *Ibid* Sch 7 para 2(1). The provisions mentioned in the text, relating to the subsequent determination of membership numbers, are contained in Sch 7 para 6 (see *PARA 680 post*).

17 *Ie* *ibid* Sch 7 (as amended).

18 *Ie* an instrument of government made under *ibid* s 124A (as added) (see *PARA 687 post*).

19 See *ibid* s 123(3) (as substituted: see note 3 *supra*). As to the power to make instruments of government see *PARA 686 post*; and as to instruments of government generally see *PARA 687 et seq post*.

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## **680. Membership.**

Following the appointment by the Secretary of State<sup>1</sup> of the first members of a higher education corporation<sup>2</sup> established<sup>3</sup> before 6 May 1992<sup>4</sup>, the corporation was required to make a determination<sup>5</sup> with respect to its membership numbers<sup>6</sup>. Such a determination had to fix the number of members of each variable category<sup>7</sup> of which the corporation was to consist, subject to the applicable limits<sup>8</sup>. In making a determination, the corporation was required to secure that at least half of all the members of the corporation, when constituted in accordance with the determination, would be independent members<sup>9</sup>. A determination could not have effect so as to terminate the appointment of any person who was a member of the corporation at the time when it took effect<sup>10</sup>, and could be varied by a subsequent determination<sup>11</sup>.

These provisions<sup>12</sup> do not have effect in relation to a higher education corporation established before 6 May 1992 if an instrument of government<sup>13</sup> for the corporation has effect<sup>14</sup>.

1    Ie under the Education Reform Act 1988 s 123(3) (as substituted), Sch 7 paras 3-4 (see PARA 679 ante). As to the Secretary of State see PARA 52 ante.

2    For the meaning of 'higher education corporation' see PARA 672 ante.

3    Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

4    Ie the appointed day: *ibid* s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see PARAS 687-693 post.

5    Ie under the Education Reform Act 1988 s 123(3) (as substituted), Sch 7 para 6.

6    *Ibid* Sch 7 para 6(1). No member could be appointed to the corporation at any time after the appointment by the Secretary of State of the first members before the first determination of the corporation under Sch 7 para 6 took effect: Sch 7 para 7(1), (2).

7    For the meaning of 'variable category of members' see PARA 679 note 8 ante.

8    Education Reform Act 1988 Sch 7 para 6(2). The applicable limits are those set out in Sch 7 paras 3-4 (see PARA 679 ante).

9    *Ibid* Sch 7 para 6(3). As to the independent members of a corporation see PARA 679 note 8 ante. Where an appointment of an additional independent member of the corporation fell to be made in consequence of a determination under Sch 7 para 6, the appointing authority for the purposes of Sch 7 (as amended) in relation to the appointment was required to be the corporation if the appointment was made within the period of three months beginning with the date of the determination (Sch 7 para 7(4)(a)) or, if the appointment was not made within that period, was required to be the current independent members of the corporation (Sch 7 para 7(4)(b)). No appointment of an independent member of the corporation by the corporation under Sch 7 para 7(4)(a) could be made unless the appointment had been approved by the current independent members of the corporation: Sch 7 para 7(7).

10   *Ibid* Sch 7 para 6(4).

11   *Ibid* Sch 7 para 6(5). The subsequent determination referred to in the text is a determination under Sch 7 para 6.

12     le *ibid* Sch 7 (as amended).

13     le an instrument of government made under *ibid* s 124A (as added) (see PARA 687 post).

14     *Ibid* s 123(3) (as substituted: see note 4 *supra*). As to the power to make instruments of government see PARA 686 post; and as to instruments of government generally see PARA 687 *et seq* post.

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### **681. Qualifications of members and tenure of office.**

A member of a higher education corporation<sup>1</sup> established<sup>2</sup> before 6 May 1992<sup>3</sup> is to hold and vacate office in accordance with the terms of his appointment<sup>4</sup>. On ceasing to be a member, he is eligible for re-appointment<sup>5</sup>. He may at any time by notice in writing to the corporation resign his office<sup>6</sup>. Where a member of a corporation appointed as a teacher nominee<sup>7</sup>, an academic nominee<sup>8</sup>, a general staff nominee<sup>9</sup> or a student nominee<sup>10</sup> ceases before the end of his term of office to be qualified<sup>11</sup> for appointment as a nominee of the description in question, his office becomes vacant<sup>12</sup>.

A person is not qualified for appointment as a member of a corporation at any time when he is under the age of 18 or over the age of 70<sup>13</sup>.

The corporation may, by notice in writing to the member concerned, remove from office any member who, to the satisfaction of the corporation, has been absent from meetings of the corporation for a period longer than 12 consecutive months without the permission of the corporation, or who is unable or unfit to discharge the functions<sup>14</sup> of a member<sup>15</sup>.

A corporation has power to pay to its members such travelling, subsistence or other allowances as it may determine<sup>16</sup>.

These provisions<sup>17</sup> do not have effect in relation to a higher education corporation established before 6 May 1992 if an instrument of government<sup>18</sup> for the corporation has effect<sup>19</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

3 Ie the appointed day: *ibid* s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see PARAS 687-693 post.

4 Education Reform Act 1988 s 123(3) (as substituted: see note 3 supra), Sch 7 para 8(1). As to the appointing authority see PARA 682 post. Where a vacancy in the office of an independent member of a corporation arises on any existing independent member ceasing to hold office on the expiry of his term of office: (1) his successor must not be appointed more than six months before the expiry of that term; and (2) the appointing authority for the purposes of Sch 7 (as amended) in relation to the appointment of his successor must be the corporation if the appointment is made not less than three months before the expiry of that term or, if the appointment is not so made, must be the current independent members of the corporation: Sch 7 para 7(5). Where a vacancy in the office of an independent member of the corporation arises on the death of any such member, the appointing authority for these purposes in relation to the appointment of his successor must be the corporation if the appointment is made within the period of three months beginning with the date of death (Sch 7 para 7(6)(a)) or, if the appointment is not made within that period, must be the current independent members of the corporation (Sch 7 para 7(6)(b)). No appointment of an independent member of the corporation by the corporation under Sch 7 para 7(5)(a) or Sch 7 para 7(6)(a) may be made unless the appointment has been approved by the current independent members of the corporation: Sch 7 para 7(7). As to the independent members of a corporation see PARA 679 note 8 ante.

5 *Ibid* Sch 7 para 8(1).



6 Ibid Sch 7 para 8(2). Where a vacancy in the office of an independent member of the corporation arises on any such member ceasing to hold office under Sch 7 para 8(2), the appointing authority for the purposes of Sch 7 (as amended) in relation to the appointment of his successor must be the corporation if the appointment is made within the period of three months beginning with the date of the notice under Sch 7 para 8(2) (Sch 7 para 7(6)(a)), or, if the appointment is not made within that period, must be the current independent members of the corporation (Sch 7 para 7(6)(b)). No appointment of an independent member of the corporation by the corporation under Sch 7 para 7(6)(a) may be made unless the appointment has been approved by the current independent members of the corporation: Sch 7 para 7(7).

7 For the meaning of 'teacher nominee' see PARA 679 note 10 ante.

8 For the meaning of 'academic nominee' see PARA 679 note 10 ante.

9 For the meaning of 'general staff nominee' see PARA 679 note 10 ante.

10 For the meaning of 'student nominee' see PARA 679 note 10 ante.

11 Ie in accordance with the Education Reform Act 1988 Sch 7 para 4 (see PARA 679 ante).

12 Ibid Sch 7 para 8(3).

13 Ibid Sch 7 para 9(1). However, a person over the age of 70 cannot by virtue of Sch 7 para 9(1) be disqualified for appointment as a member of the corporation where the appointing authority in relation to the appointment is the Secretary of State or where the appointing authority in relation to the appointment determines to make the appointment by a vote representing an absolute majority of all the members of that authority (whether or not taking part in the vote): Sch 7 para 9(2). It is for the appointing authority in relation to the appointment in question to determine any question arising under Sch 7 para 9(1) with respect to a person's qualification for appointment as a member of the corporation: Sch 7 para 9(3). As to the appointing authority see PARA 682 post. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

14 'Functions' includes powers and duties: ibid s 235(1).

15 Ibid Sch 7 para 10. Where a vacancy in the office of an independent member of the corporation arises on any such member ceasing to hold office under Sch 7 para 10, the appointing authority for the purposes of Sch 7 (as amended) in relation to the appointment of his successor must be the corporation if the appointment is made within the period of three months beginning with the date of the notice under Sch 7 para 10 (Sch 7 para 7(6)(a)), or, if the appointment is not made within that period, must be the current independent members of the corporation (Sch 7 para 7(6)(b)). No appointment of an independent member of the corporation by the corporation under Sch 7 para 7(6)(a) may be made unless the appointment has been approved by the current independent members of the corporation: Sch 7 para 7(7).

16 Ibid Sch 7 para 11.

17 Ie ibid Sch 7 (as amended).

18 Ie an instrument of government made under ibid s 124A (as added) (see PARA 687 post).

19 Ibid s 123(3) (as substituted: see note 3 supra). As to the power to make instruments of government see PARA 686 post; and as to instruments of government generally see PARA 687 et seq post.

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## **682. The appointing authority.**

The appointing authority in relation to the appointment of any member (other than an independent member<sup>1</sup>) of a higher education corporation<sup>2</sup> established<sup>3</sup> before 6 May 1992<sup>4</sup>, at any time after the appointment by the Secretary of State of the first members<sup>5</sup>, is the corporation<sup>6</sup>.

These provisions<sup>7</sup> do not have effect in relation to a higher education corporation established before 6 May 1992 if an instrument of government<sup>8</sup> for the corporation has effect<sup>9</sup>.

1 As to the independent members of a corporation see PARA 679 note 8 ante. Special provision is made as to the appointing authority for the appointment of independent members in the following circumstances:

- 70 (1) where an appointment of an additional independent member falls to be made in consequence of a determination under the Education Reform Act 1988 s 123(3) (as substituted), Sch 7 para 6 (see Sch 7 para 7(4), (7); and PARA 680 note 9 ante);
- 71 (2) where a vacancy in the office of an independent member arises on the death of any such member (see Sch 7 para 7(6), (7); and PARA 681 note 4 ante);
- 72 (3) where a vacancy in the office of an independent member arises on any existing independent member ceasing to hold office on the expiry of his term of office (see Sch 7 para 7(5), (7); and PARA 681 note 4 ante);
- 73 (4) where a vacancy in the office of an independent member arises on any such member resigning his office (see Sch 7 para 7(6), (7); and PARA 681 note 6 ante); and
- 74 (5) where a vacancy in the office of an independent member arises on any such member being removed from office by the corporation (see Sch 7 para 7(6); and PARA 681 note 15 ante).

Additionally, if the number of independent members of the corporation falls below the number needed in accordance with its articles of government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum: Sch 7 para 7(8) (added by the Further and Higher Education Act 1992 s 71(3)(a)). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'higher education corporation' see PARA 672 ante.

3 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

4 Ie the appointed day: *ibid* s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see PARAS 687-693 post.

5 Ie under the Education Reform Act 1988 s 123(3), Sch 7 paras 3-4 (s 123(3) as substituted) (see PARA 679 ante).

6 *Ibid* Sch 7 para 7(1), (3).

7 Ie *ibid* Sch 7 (as amended).

8     le an instrument of government made under *ibid* s 124A (as added) (see PARA 687 post).

9     *Ibid* s 123(3) (as substituted: see note 4 *supra*). As to the power to make instruments of government see PARA 686 post; and as to instruments of government generally see PARA 687 *et seq* post.

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### **683. Election of chairman.**

The members of a higher education corporation<sup>1</sup> established<sup>2</sup> before 6 May 1992<sup>3</sup> must elect from among their number a chairman<sup>4</sup> who is to hold office for such period as the corporation may determine<sup>5</sup>. A member of a corporation who is employed<sup>6</sup> at the institution<sup>7</sup> or a student at the institution is not eligible for election as chairman of the corporation<sup>8</sup>.

These provisions<sup>9</sup> do not have effect in relation to a higher education corporation established before 6 May 1992 if an instrument of government<sup>10</sup> for the corporation has effect<sup>11</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

3 Ie the appointed day: ibid s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see PARAS 687-693 post.

4 Education Reform Act 1988 s 123(3) (as substituted: see note 3 supra), Sch 7 para 12(1).

5 Ibid Sch 7 para 12(2).

6 For the meaning of 'employed' see PARA 776 note 3 post.

7 As to the meaning of 'institution' see PARA 679 note 5 ante.

8 Education Reform Act 1988 Sch 7 para 12(3).

9 Ie ibid Sch 7 (as amended).

10 Ie an instrument of government made under ibid s 124A (as added) (see PARA 687 post).

11 Ibid s 123(3) (as substituted: see note 3 supra). As to the power to make instruments of government see PARA 686 post; and as to instruments of government generally see PARA 687 et seq post.

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#### **684. Committees and proceedings.**

A higher education corporation<sup>1</sup> established<sup>2</sup> before 6 May 1992<sup>3</sup> may establish a committee for any purpose<sup>4</sup>. The number of members of a committee so established, which may include persons who are not members of the corporation, and the terms on which they are to hold and vacate office, must be fixed by the corporation<sup>5</sup>.

The validity of any proceedings of a corporation or of any committee of a corporation is not affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member<sup>6</sup>. In the event of an equality of votes at any meeting of a corporation the chairman of the corporation<sup>7</sup> has a second or casting vote<sup>8</sup>.

These provisions<sup>9</sup> do not have effect in relation to a higher education corporation established before 6 May 1992 if an instrument of government<sup>10</sup> for the corporation has effect<sup>11</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

3 Ie the appointed day: *ibid* s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see PARAS 687-693 post.

4 Education Reform Act 1988 s 123(3) (as substituted: see note 3 supra), Sch 7 para 13(1).

5 *Ibid* Sch 7 para 13(2), (3).

6 *Ibid* Sch 7 para 14.

7 As to the election of the chairman see PARA 683 ante.

8 Education Reform Act 1988 Sch 7 para 15.

9 Ie *ibid* Sch 7 (as amended).

10 Ie an instrument of government made under *ibid* s 124A (as added) (see PARA 687 post).

11 *Ibid* s 123(3) (as substituted: see note 3 supra). As to the power to make instruments of government see PARA 686 post; and as to instruments of government generally see PARA 687 et seq post.

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### **685. Application of seal and proof of instruments.**

The application of the seal of a higher education corporation<sup>1</sup> established<sup>2</sup> before 6 May 1992<sup>3</sup> must be authenticated by the signature of the chairman<sup>4</sup> of the corporation or of some other member authorised either generally or specially by the corporation to act for that purpose together with that of any other member<sup>5</sup>. Every document purporting to be an instrument made or issued by or on behalf of a corporation and to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, is to be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown<sup>6</sup>.

These provisions<sup>7</sup> do not have effect in relation to a higher education corporation established before 6 May 1992 if an instrument of government<sup>8</sup> for the corporation has effect<sup>9</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

3 Ie the appointed day: *ibid* s 123(3), (4) (s 123(3) substituted, and s 123(4) added, by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(10) (added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. As to the constitution and government of higher education corporations established after 6 May 1992 see PARAS 687-693 post.

4 As to the election of the chairman see PARA 683 ante.

5 Education Reform Act 1988 s 123(3) (as substituted: see note 3 *supra*), Sch 7 para 16.

6 *Ibid* Sch 7 para 17. As to the rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

7 Ie *ibid* Sch 7 (as amended).

8 Ie an instrument of government made under *ibid* s 124A (as added) (see PARA 687 post).

9 *Ibid* s 123(3) (as substituted: see note 3 *supra*). As to the power to make instruments of government see PARA 686 post; and as to instruments of government generally see PARA 687 et seq post.

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#### **686. Power to make instruments of government.**

An instrument of government<sup>1</sup> may be made<sup>2</sup> for any higher education corporation<sup>3</sup> established<sup>4</sup> before 6 May 1992<sup>5</sup>. Such an instrument applies as if the persons who, immediately before its coming into effect, were the members of the corporation had been appointed in accordance with the instrument for the residue of the term of their then subsisting appointment<sup>6</sup>, subject to the requirement that any local authority nominee<sup>7</sup>, teacher nominee<sup>8</sup>, general staff nominee<sup>9</sup> or student nominee<sup>10</sup> must cease to hold office<sup>11</sup>.

1    Ie an instrument providing for the constitution of the corporation: see the Education Reform Act 1988 s 124A(1) (ss 124A, 124C both added by the Further and Higher Education Act 1992 s 71(1)). See PARAS 687-693 post.

2    Ie by an order of the Privy Council: Education Reform Act 1988 s 124A(3) (as added: see note 1 supra). As to the exercise of the powers of the Privy Council under Pt II (ss 120-161) (as amended) see PARA 687 note 6 post.

3    For the meaning of 'higher education corporation' see PARA 672 ante.

4    Ie under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante).

5    Ibid s 123(3) (substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)); Education Reform Act 1988 s 124A(3)(a), (10) (as added: see note 1 supra); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. An instrument of government made under the Education Reform Act 1988 s 124A(3) (as added) may be modified by an order of the Privy Council: s 124A(3)(b) (as so added). As to the meaning of 'modified' see PARA 658 note 2 ante.

6    Ibid s 124C(3), (4) (as added: see note 1 supra).

7    For the meaning of 'local authority nominee' see PARA 679 note 10 ante; definition applied by ibid s 124C(5) (as added: see note 1 supra). For the meaning of 'local authority' see PARA 1388 note 12 post.

8    For the meaning of 'teacher nominee' see PARA 679 note 10 ante; definition applied by ibid s 124C(5) (as added: see note 1 supra).

9    For the meaning of 'general staff nominee' see PARA 679 note 10 ante; definition applied by ibid s 124C(5) (as added: see note 1 supra).

10   For the meaning of 'student nominee' see PARA 679 note 10 ante; definition applied by ibid s 124C(5) (as added: see note 1 supra).

11   Ibid s 124C(3)-(5) (as added: see note 1 supra).

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## (B) CORPORATIONS ESTABLISHED AFTER 6 MAY 1992 AND OTHER CORPORATIONS CONSTITUTED BY INSTRUMENTS OF GOVERNMENT

### 687. Instruments of government.

For each higher education corporation<sup>1</sup> established<sup>2</sup> on or after 6 May 1992<sup>3</sup>, and for each corporation established before that date for which provision has been made<sup>4</sup>, there must be an instrument (known as the 'instrument of government') providing for the constitution of the corporation and making such other provision as is required<sup>5</sup>. The initial instrument of government of a higher education corporation so established must be such as is prescribed by an order of the Privy Council<sup>6</sup> and may be replaced by a new instrument so made<sup>7</sup>.

An instrument of government must comply with specified requirements<sup>8</sup> and may make any authorised provision<sup>9</sup> and such other provision as may be necessary or desirable<sup>10</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 122 (as amended) (see PARA 674 ante).

3 Ie the appointed day: *ibid* s 124A(10) (s 124A added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831.

4 Ie any corporation established under the Education Reform Act 1988 s 121 (as amended) (see PARA 673 ante) or s 122 (as amended) (see PARA 674 ante) for which provision has been made in pursuance of s 123(3) (as substituted) (see PARA 686 ante).

5 *Ibid* s 124A(1) (as added: see note 3 supra). The provision referred to is that required under s 124A (as so added).

6 *Ibid* s 124A(2) (as added: see note 3 supra). An order under s 124A(2) or (3) (as added) may make such provision as appears to the Privy Council necessary or desirable to secure continuity in the government of the institution or institutions to which it relates: s 124A(5) (as so added). At the date at which this volume states the law, no such orders had been made.

A power vested in the Privy Council under Pt II (ss 120-161) (as amended) may be exercised by any two or more of the Lords and others of the Council: s 124D(1), (2) (s 124D added by the Further and Higher Education Act 1992 s 71(1)). An act of the Privy Council is sufficiently signified by an instrument signed by the clerk of the Council: Education Reform Act 1988 s 124D(3) (as so added). An order or act signified by an instrument purporting to be signed by the clerk of the Council is deemed to have been duly made or done by the Privy Council: s 124D(4) (as so added). An instrument so signed is to be received in evidence in all courts and proceedings without proof of the authority or signature of the clerk of the Council or other proof: s 124D(5) (as so added). As to the rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

7 *Ibid* s 124A(3)(a) (as added: see note 3 supra). A new instrument of government made under s 124A(3) (as added) may be modified by an order of the Privy Council: s 124A(3)(b) (as so added). See note 6 supra.

8 Ie the requirements of *ibid* s 124A(4)(a), Sch 7A (as added) (see PARAS 688-692 post).

9 Ie any provision authorised by *ibid* Sch 7A (as added) (see PARAS 688-692 post).

10 *Ibid* s 124A(4) (as added: see note 3 supra).





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**688. Power to provide for change of name.**

The instrument of government<sup>1</sup> of a higher education corporation<sup>2</sup> must empower the corporation to change its name with the consent of the Privy Council<sup>3</sup>.

<sup>1</sup> As to the higher education corporations for which instruments of government may have effect see PARAS 686-687 ante.

<sup>2</sup> For the meaning of 'higher education corporation' see PARA 672 ante.

<sup>3</sup> Education Reform Act 1988 s 124A(4)(a) (s 124A added by the Further and Higher Education Act 1992 s 71(1)); Education Reform Act 1988 Sch 7A para 1 (Sch 7A added by the Further and Higher Education Act 1992 s 71(4), Sch 6)). See further PARA 649 ante.

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### **689. Membership of the corporation.**

The instrument of government<sup>1</sup> of a higher education corporation<sup>2</sup> must make provision for the membership of the corporation whereby the corporation is to consist of not less than 12 and not more than 24 members<sup>3</sup> and the person who is for the time being the principal of the institution, unless he chooses not to be a member<sup>4</sup>. Of the appointed members:

- 1239 (1) up to 13 must be persons appearing to the appointing authority<sup>5</sup> to have experience of, and to have shown capacity in, industrial, commercial or employment matters or the practice of any profession<sup>6</sup>;
- 1240 (2) up to two may be teachers at the institution nominated by the academic board and up to two may be students at the institution nominated by the students<sup>7</sup> at the institution<sup>8</sup>; and
- 1241 (3) at least one and not more than nine must be persons nominated by the members of the corporation who are not co-opted members<sup>9</sup>.

A person<sup>10</sup> is not eligible for appointment as a member of the corporation, otherwise than as a co-opted member, if he is employed<sup>11</sup> at the institution (whether or not as a teacher), or is a full-time student at the institution, or is an elected member of any local authority<sup>12</sup>. It is for the appointing authority to determine any question as to whether any person is qualified<sup>13</sup> for appointment as a member of the corporation of any description or category<sup>14</sup>.

1 As to the higher education corporations for which instruments of government may have effect see PARAS 686-687 ante.

2 For the meaning of 'higher education corporation' see PARA 672 ante.

3 He appointed in accordance with the Education Reform Act 1988 s 124A(4)(a), Sch 7A para 3 (as added). The Secretary of State may by order amend or repeal Sch 7A para 3 (as added): s 124A(9) (s 124A added by the Further and Higher Education Act 1992 s 71(1)). At the date at which this volume states the law, no such order had been made. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 Ibid Sch 7A paras 2, 3(1) (Sch 7A added by the Further and Higher Education Act 1992 s 71(4), Sch 6).

5 As to the appointing authority see PARA 691 post.

6 Education Reform Act 1988 Sch 7A paras 2, 3(2)(a) (as added: see note 4 supra). Such members are known as 'the independent members'.

7 A person who is not for the time being enrolled as a student at the institution must be treated as such a student during any period when he has been granted leave of absence from the institution for the purposes of study or travel or for carrying out the duties of any office held by him in the student union at the institution: ibid Sch 7A paras 2, 3(5) (as added: see note 4 supra).

8 Ibid Sch 7A paras 2, 3(2)(b) (as added: see note 4 supra).

9 Ibid Sch 7A paras 2, 3(2)(c) (as added: see note 4 supra). Such members are known as 'the co-opted members'. The co-opted member required by Sch 7A para 3(2)(c) (as added) must be a person who has experience in the provision of education: Sch 7A paras 2, 3(3) (as so added).

10    Ie other than a person appointed in pursuance of *ibid* Sch 7A paras 3(2)(b) (as added) (see the text and notes 7-8 *supra*).

11    As to the meaning of 'employed' see *PARA 776* note 3 *post*.

12    Education Reform Act 1988 Sch 7A paras 2, 3(4) (as added: see note 4 *supra*). For the meaning of 'local authority' see *PARA 1388* note 12 *post*.

13    Ie in accordance with *ibid* Sch 7A para 3(1)-(5) (as added): see the text and notes 1-12 *supra*.

14    *Ibid* Sch 7A paras 2, 3(6) (as added: see note 4 *supra*).

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## **690. Membership numbers and appointments.**

The instrument of government<sup>1</sup> of a higher education corporation<sup>2</sup> must make provision for the membership of the corporation whereby the corporation must make a determination with respect to its membership numbers<sup>3</sup>. Such a determination must fix the number of members of each variable category<sup>4</sup> of which the corporation is to consist, subject to the applicable limits<sup>5</sup>. In making such a determination, the corporation must secure that at least half of all the members of the corporation, when constituted in accordance with the determination, will be independent members<sup>6</sup>. Such a determination does not have effect so as to terminate the appointment of any person who is a member of the corporation at the time when it takes effect<sup>7</sup>, and may be varied by a subsequent determination<sup>8</sup>.

The instrument of government of corporation must make provision for the membership of the corporation whereby no appointment of members may be made before the first determination of the corporation<sup>9</sup> takes effect<sup>10</sup>.

<sup>1</sup> As to the higher education corporations for which instruments of government may have effect see PARAS 686-687 ante.

<sup>2</sup> For the meaning of 'higher education corporation' see PARA 672 ante.

<sup>3</sup> Education Reform Act 1988 s 124A(4)(a) (s 124A added by the Further and Higher Education Act 1992 s 71(1)); Education Reform Act 1988 Sch 7A paras 2, 4(1) (Sch 7A added by the Further and Higher Education Act 1992 s 71(4), Sch 6). The Secretary of State may by order amend or repeal the Education Reform Act 1988 Sch 7A paras 4, 5, 11 (as added): s 124A(9) (as so added). At the date at which this volume states the law, no such order had been made. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>4</sup> References in *ibid* Sch 7A (as added), in relation to a corporation, to a variable category of members are references to any category of members in relation to which the number applicable in accordance with Sch 7A para 3 (as added) (see PARA 689 ante) is subject to variation: Sch 7A para 11 (as added: see note 3 *supra*).

<sup>5</sup> *Ibid* Sch 7A paras 2, 4(2) (as added: see note 3 *supra*). The applicable limits are those set out in Sch 7A para 3 (as added) (see PARA 689 ante).

<sup>6</sup> *Ibid* Sch 7A paras 2, 4(3) (as added: see note 3 *supra*). As to the independent members of a corporation see PARA 689 note 6 ante.

<sup>7</sup> *Ibid* Sch 7A paras 2, 4(4) (as added: see note 3 *supra*).

<sup>8</sup> *Ibid* Sch 7A paras 2, 4(5) (as added: see note 3 *supra*).

<sup>9</sup> *Ie* under *ibid* Sch 7A para 4 (as added): see the text and notes 1-8 *supra*.

<sup>10</sup> *Ibid* Sch 7A paras 2, 5(1) (as added: see note 3 *supra*). This requirement is stated to be subject to s 124C (as added) (see PARA 691 post).

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### **691. The appointing authority.**

The appointing authority in relation to the appointment of the first members of a higher education corporation<sup>1</sup> established<sup>2</sup> on or after 6 May 1992<sup>3</sup> is the Secretary of State<sup>4</sup> and, in determining the number of members to appoint within each variable category of members<sup>5</sup>, he must secure that at least half of all the members of the corporation as first constituted are independent members<sup>6</sup>.

The instrument of government<sup>7</sup> of a higher education corporation must make provision for the membership of the corporation whereby the appointing authority in relation to the appointment of any member (other than an independent member<sup>8</sup>) of the corporation is the corporation<sup>9</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Ie under the Education Reform Act 1988 s 122 (as amended) (see PARA 674 ante).

3 Ie the appointed day: *ibid* s 124A(10) (ss 124A, 124C both added by the Further and Higher Education Act 1992 s 71(1)); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831.

4 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 As to the meaning of 'variable category of members' see PARA 690 note 4 ante; definition applied by the Education Reform Act 1988 s 124C(2) (as added: see note 3 *supra*).

6 *Ibid* s 124C(1) (as added: see note 3 *supra*). For the meaning of 'independent members' see PARA 689 note 6 ante; definition applied by s 124C(2) (as so added).

7 As to the higher education corporations for which instruments of government may have effect see PARAS 686-687 ante.

8 Special provision is made as to the appointing authority for the appointment of independent members in the following circumstances:

75 (1) where an appointment of an additional independent member falls to be made in consequence of a determination under the Education Reform Act 1988 s 124A(4)(a) (as added), Sch 7A para 4 (as added) (see PARA 690 ante), the appointing authority in relation to the appointment must, if the appointment is made within the period of three months beginning with the date of the determination, be the corporation (Sch 7A paras 2, 5(3)(a) (Sch 7A added by the Further and Higher Education Act 1992 s 71(4), Sch 6)), or, if the appointment is not made within that period, be the current independent members of the corporation (Education Reform Act 1988 Sch 7A paras 2, 5(3)(b) (as so added));

76 (2) where a vacancy in the office of an independent member arises on any existing independent member ceasing to hold office on the expiry of his term of office, the appointing authority in relation to the appointment of the member's successor must, if the appointment is made not less than three months before the expiry of that term, be the corporation (Sch 7A paras 2, 5(4)(b)(i) (as so added)) or, if the appointment is not so made, be the current independent members of the corporation (Sch 7A paras 2, 5(4)(b)(ii) (as so added)); and in these circumstances the member's successor must not be appointed more than six months before the expiry of that term (Sch 7A paras 2, 5(4)(a) (as so added));

- 77 (3) where a vacancy in the office of an independent member arises on the death of any such member or on any such member ceasing to hold office in accordance with the instrument of government, the appointing authority in relation to the appointment of the member's successor must, if the appointment is made within the period of three months beginning with the date of death or the date on which the office becomes vacant (as the case may be), be the corporation (Sch 7A paras 2, 5(5)(a) (as so added)), or, if the appointment is not made within that period, be the current independent members of the corporation (Sch 7A paras 2, 5(5)(b) (as so added)).

No appointment of an independent member by the corporation in accordance with Sch 7A paras 5(3)(a), (4)(b) (i) or (5)(a) (as added) may be made unless the appointment has been approved by the current independent members of the corporation: Sch 7A paras 2, 5(6) (as so added)).

Additionally, if the number of independent members of the corporation falls below the number needed in accordance with its articles of government for a quorum, the Secretary of State is the appointing authority in relation to the appointment of such number of independent members as is required for a quorum: Sch 7A para 5(7) (as so added).

9 Ibid s 124A(4) (as added: see note 3 supra), Sch 7A paras 2, 5(2) (as added: see note 8 supra). This is stated to be subject to s 124C (as added) (see the text and notes 1-6 supra). The Secretary of State may by order amend or repeal Sch 7A para 5 (as added): s 124A(9) (as so added). At the date at which this volume states the law, no such order had been made. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante.

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## **692. Procedural requirements.**

The instrument of government<sup>1</sup> of a higher education corporation<sup>2</sup> may provide for the eligibility of persons for membership of the corporation and must provide for their period of office and the circumstances in which they are to cease to hold office<sup>3</sup>. The instrument must provide for one or more officers to be chosen from among the members<sup>4</sup> and may provide for the corporation to establish committees and permit such committees to include persons who are not members of the corporation<sup>5</sup>. The instrument may also provide for the corporation to pay allowances to its members<sup>6</sup>. It must provide for the authentication of the application of the seal of the corporation<sup>7</sup>.

<sup>1</sup> As to the higher education corporations for which instruments of government may have effect see PARAS 686-687 ante.

<sup>2</sup> For the meaning of 'higher education corporation' see PARA 672 ante.

<sup>3</sup> Education Reform Act 1988 s 124A(4)(a) (s 124A added by the Further and Higher Education Act 1992 s 71(1)); Education Reform Act 1988 Sch 7A para 6 (Sch 7A added by the Further and Higher Education Act 1992 s 71(4), Sch 6). The Education Reform Act 1988 Sch 7A para 6 (as added) is stated to be subject to any other requirements of that Act.

<sup>4</sup> Ibid Sch 7A para 7 (as added: see note 3 supra).

<sup>5</sup> Ibid Sch 7A para 8 (as added: see note 3 supra).

<sup>6</sup> Ibid Sch 7A para 9 (as added: see note 3 supra).

<sup>7</sup> Ibid Sch 7A para 10 (as added: see note 3 supra).



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### **693. Proof of documents and validity of proceedings.**

The validity of any proceedings of a higher education corporation<sup>1</sup> for which an instrument of government has effect<sup>2</sup>, or of any committee of such a corporation, is not affected by a vacancy amongst the members or by any defect in the appointment or nomination of a member<sup>3</sup>. Every document purporting to be an instrument made or issued by or on behalf of a higher education corporation for which an instrument of government has effect and purporting to be duly executed under the seal of the corporation, or to be signed or executed by a person authorised by the corporation to act in that behalf, must be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown<sup>4</sup>. In relation to a higher education corporation for which an instrument of government has effect, the members of the corporation for the time being are known as the board of governors of the institution conducted by the corporation<sup>5</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 As to the higher education corporations for which instruments of government may have effect see PARAS 686-687 ante.

3 Education Reform Act 1988 s 124A(6) (s 124A added by the Further and Higher Education Act 1992 s 71(1)).

4 Education Reform Act 1988 s 124A(7) (as added: see note 3 supra). As to the rules of civil evidence see CIVIL PROCEDURE VOL 11 (2009) PARA 749 et seq.

5 Ibid s 124A(8) (as added: see note 3 supra).

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### ***C. POWERS AND DUTIES***

#### **694. Powers of a higher education corporation.**

A higher education corporation<sup>1</sup> may:

- 1242 (1) provide higher education<sup>2</sup>;
- 1243 (2) provide further education<sup>3</sup>;
- 1244 (3) provide secondary education<sup>4</sup> suitable to the requirements of persons who have attained the age of 14 years<sup>7</sup>;
- 1245 (4) provide education which is secondary education by virtue of the Education Act 1996<sup>8</sup>;
- 1246 (5) participate in the provision of secondary education at a school<sup>9</sup>; and
- 1247 (6) carry out research and publish the results of the research or any other material arising out of or connected with it in such manner as it thinks fit<sup>10</sup>.

A higher education corporation may also do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of any of the powers so conferred<sup>11</sup>, including in particular:

- 1248 (a) conducting an educational institution for the purpose of carrying on activities undertaken in exercise of any of those powers and, in particular, assuming the conduct as from the transfer date<sup>12</sup> applicable in relation to the corporation of the institution in respect of which the corporation is established and for that purpose to receive any property, rights and liabilities<sup>13</sup> transferred<sup>14</sup> to the corporation<sup>15</sup>;
- 1249 (b) providing facilities of any description appearing to the corporation to be necessary or expedient for the purposes of or in connection with carrying on any such activities (including boarding accommodation and recreational facilities for students and staff and facilities to meet the needs of students having learning difficulties)<sup>16</sup>;
- 1250 (c) supplying goods and services<sup>17</sup>;
- 1251 (d) acquiring and disposing of land<sup>18</sup> and other property<sup>19</sup>;
- 1252 (e) entering into contracts, including in particular contracts for the employment<sup>20</sup> of teachers and other staff for the purposes of or in connection with carrying on any such activities and contracts with respect to the carrying on by the corporation of any such activities<sup>21</sup>;
- 1253 (f) subscribing for or otherwise acquiring shares in or securities of a company for the purpose of carrying on such activities<sup>22</sup>;
- 1254 (g) borrowing such sums as it thinks fit for the purposes of carrying on any activities it has power to carry on or meeting any liability transferred to it<sup>23</sup> and, in connection with such borrowing, granting any mortgage, charge or other security in respect of any land or other property of the corporation<sup>24</sup>;
- 1255 (h) investing any sums not immediately required for any of those purposes<sup>25</sup>;
- 1256 (i) accepting gifts of money, land or other property and applying it, or holding and administering it on trust for, any of those purposes<sup>26</sup>; and

1257 (j) doing anything incidental to the conduct of an educational institution providing higher or further education<sup>27</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Education Reform Act 1988 s 124(1)(a). For the meaning of 'higher education' see PARA 19 ante.

3 Ibid s 124(1)(b). For the meaning of 'further education' see PARA 18 ante; definition applied by s 235(7), (8) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(1), (4)).

4 For the meaning of 'secondary education' see PARA 17 ante; definition applied by the Education Reform Act 1988 s 235(7) (as amended: see note 3 supra).

7 Ibid s 124(1)(ba) (s 124(1)(ba), (bb), (bc) added by the Learning and Skills Act 2000 s 142(2)(a); and the Education Reform Act 1988 s 124(1)(ba) amended by the Education Act 2002 s 215(1), Sch 21 para 8). A higher education corporation may not provide education of a kind specified in the Education Reform Act 1988 s 124(1)(ba) (as added) unless it has consulted such local education authorities as it considers appropriate: s 124(1A) (added by the Learning and Skills Act 2000 s 142(2)(b)). As to local education authorities see PARA 20 ante.

8 Education Reform Act 1988 s 124(1)(bb) (as added: see note 7 supra). The reference to secondary education in the text is a reference to education which is secondary education by virtue of the Education Act 1996 s 2(2B) (as added and amended) (see PARA 17 ante). A higher education corporation may not provide education of a kind specified in the Education Reform Act 1988 s 124(1)(bb) (as added) unless it has consulted such local education authorities as it considers appropriate: s 124(1A) (as added: see note 7 supra).

9 Ibid s 124(1)(bc) (as added: see note 7 supra). For the meaning of 'school' see PARA 81 ante; definition applied by s 235(7) (as amended: see note 3 supra).

10 Ibid s 124(1)(c).

11 Ie conferred on the corporation by ibid s 124(1) (as amended) (see the text and notes 1-10 supra).

12 For the meaning of 'the transfer date' see PARAS 673 note 7, 674 note 6 ante.

13 As to the meaning of 'liability' see PARA 673 note 7 ante.

14 Ie under the Education Reform Act 1988 s 126 (see PARAS 675-676 ante).

15 Ibid s 124(2)(a).

16 Ibid s 124(2)(b) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 33(a); and the Learning and Skills Act 2000 ss 149, 153, Sch 9 paras 1, 15(a), Sch 11). For the purposes of the Education Reform Act 1988 s 124(2)(b) (as amended) a person has a learning difficulty if he has a significantly greater difficulty in learning than the majority of persons of his age, or he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions within the higher education sector for persons of his age: s 124(5) (added by the Learning and Skills Act 2000 ss 149, 153, Sch 9 paras 1, 15(a)). However, a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home: Education Reform Act 1988 s 124(6) (added by the Learning and Skills Act 2000 ss 149, 153, Sch 9 paras 1, 15(a)). As to the institutions within the higher education sector see PARA 646 ante.

17 Education Reform Act 1988 s 124(2)(c).

18 As to the meaning of 'land' see PARA 1381 note 5 post.

19 Education Reform Act 1988 s 124(2)(d).

20 As to references to 'employment', and for the meaning of 'contract of employment', see PARA 776 note 3 post.

21 Education Reform Act 1988 s 124(2)(e).

22 Ibid s 124(2)(f) (substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 15(c)).

23 Ie under the Education Reform Act 1988 s 126 (see PARAS 675-676 ante).

24 Ibid s 124(2)(g).

25 Ibid s 124(2)(h). The purposes referred to in the text are those mentioned in s 124(2)(g) (see the text and notes 23-24 supra).

26 Ibid s 124(2)(i). The purposes referred to in the text are those mentioned in s 124(2)(g) (see the text and notes 23-24 supra).

27 Ibid s 124(2)(j). The power under s 124(2)(j) includes in particular power to found scholarships or exhibitions and to make grants and give prizes: s 124(3).

## **UPDATE**

### **694 Powers of a higher education corporation**

TEXT AND NOTE 22--Now head (f)(i) form, participate in forming or invest in a company for the purpose of carrying on any such activities, or (ii) form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of the Charities Act 1993 s 69A) for the purpose of carrying on any such activities: 1988 Act s 124(2)(f), (fa) (s 124(2)(f) substituted, s 124(2)(fa) added by the Further Education and Training Act 2007 s 26(2)). The reference to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise: 1988 Act s 19(7) (added by the 2007 Act s 26(3)). See also s 26(4).

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### **695. Duty to maintain accounts.**

Each higher education corporation<sup>1</sup> must keep proper accounts and proper records in relation to them<sup>2</sup> and must prepare in respect of each financial year<sup>3</sup> of the corporation a statement of accounts<sup>4</sup>. The statement must give a true and fair account of the state of the corporation's affairs at the end of the financial year and of the corporation's income and expenditure in the financial year<sup>5</sup> and must also comply with any directions given by the Higher Education Funding Council<sup>6</sup> as to the information to be contained in the statement, the manner in which the information is to be presented or the methods and principles according to which the statement is to be prepared<sup>7</sup>. The accounts (including any statement<sup>8</sup>) must be audited by persons appointed in respect of each financial year by the corporation<sup>9</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Education Reform Act 1988 s 124B(1)(a) (s 124B added by the Further and Higher Education Act 1992 s 71(1)); Education Reform Act 1988 s 123(3), Sch 7 para 18(1)(a) (s 123(3) substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 32(b)).

3 In relation to a corporation, 'the first financial year' means the period commencing with the date on which the corporation is established and ending with the second 31 March following that date; and 'financial year' means that period and each successive period of 12 months: Education Reform Act 1988 s 124B(7) (as added: see note 2 supra), Sch 7 para 18(6). Section 124B(7) (as added) and Sch 7 para 18 have effect subject to the Further and Higher Education Act 1992 s 78 (see PARA 696 post): s 78(2). As to the date on which a corporation is established see PARAS 673-674 ante.

4 Education Reform Act 1988 s 124B(1)(b) (as added: see note 2 supra), Sch 7 para 18(1)(b). The corporation must supply a copy of the statement to any person who asks for it and, if the corporation so requires, pays a fee of such amount not exceeding the cost of supply as the corporation thinks fit: s 124B(3) (as added: see note 2 supra), Sch 7 para 18(2A) (added by the Further and Higher Education Act 1992 s 71(3)(b)).

5 Education Reform Act 1988 s 124B(2)(a) (as added: see note 2 supra), Sch 7 para 18(2)(a).

6 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 et seq post.

7 Education Reform Act 1988 s 124B(2)(b) (as added: see note 2 supra), Sch 7 para 18(2)(b) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 59(b)(i)).

8 In any statement prepared under the Education Reform Act 1988 s 124B (as added) or Sch 7 para 18 (as amended).

9 Ibid s 124B(4) (as added: see note 2 supra), Sch 7 para 18(3). A corporation must consult, and take into account any advice given by, the Audit Commission before appointing any auditor under s 124B(4) (as added) or Sch 7 para 18(3) in respect of its first financial year: s 124B(5) (as so added; and amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 para 9(1), (2)); Education Reform Act 1988 Sch 7 para 18(4). A corporation in Wales must consult, and take into account any advice given by, the Auditor General for Wales before appointing any auditor under s 124B(4) (as added) in respect of its first financial year: s 124B(5A) (s 124B as so added; s 124B(5A) added by the Public Audit (Wales) Act 2004 Sch 2 para 9(1), (3)). No person is qualified to be appointed auditor under the Education Reform Act 1988 s 124B(4) (as added) or Sch 7 para 18(3) except an individual, or firm, eligible for appointment as a company auditor under the Companies Act 1989 s 25 (see COMPANIES vol 15 (2009) PARA 969), a member of the Chartered Institute of Public Finance and Accountancy, or a firm each of the members of which is a member of that institute: Education Reform Act 1988 s 124B(6) (as so

added), Sch 7 para 18(5) (substituted by the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 59(b) (ii)). As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq. As to the Auditor General for Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 796 et seq.

## **UPDATE**

### **695 Duty to maintain accounts**

NOTE 9--1988 Act s 124B(5) further amended: Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)(f), Sch 18 Pt 9.

1988 Act s 124B(6), Sch 7 para 18(5) both amended: SI 2008/948.

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#### **696. Inspection of accounts.**

The accounts of any higher education corporation<sup>1</sup> are open to the inspection of the Comptroller and Auditor General<sup>2</sup>.

<sup>1</sup> For the meaning of 'higher education corporation' see PARA 672 ante.

<sup>2</sup> Education Reform Act 1988 s 135(1)(b). The power conferred by s 135(1) (as amended) is exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation in respect of which financial support has been given to it under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 post): Education Reform Act 1988 s 135(2)(a) (s 135(2) amended by the Further and Higher Education Act 1992 Sch 8 paras 27, 36(b)). As to the meaning of 'governing body' see PARA 704 note 4 post. 'Financial year' means a period of 12 months ending with 31 March: Education Reform Act 1988 s 235(1). If the Secretary of State directs that any financial year specified in the direction of the higher education corporations, and subsequent financial years, are to begin with a date specified in the direction, then: (1) the financial year of the corporations immediately preceding the year specified in the direction must end immediately before the date specified in the direction; and (2) the financial year specified in the direction and subsequent financial years must be each successive period of 12 months: Further and Higher Education Act 1992 s 78(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The powers under the National Audit Act 1983 s 6 (as amended), s 8 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 717) conferred on the Comptroller and Auditor General by virtue of s 6(3)(c) are correspondingly restricted: see the Education Reform Act 1988 s 135(2)(b) (as so amended). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

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#### **697. Conduct of institutions in accordance with articles of government.**

Any institution conducted by a higher education corporation<sup>1</sup> must be conducted in accordance with articles of government, to be made by the corporation with the approval of the Privy Council<sup>2</sup>. The articles of government:

- 1258 (1) must determine the functions<sup>3</sup> to be exercised in relation to the institution by the board of governors<sup>4</sup> of the institution, the principal of the institution and the academic board of the institution<sup>5</sup>; and
- 1259 (2) may regulate the constitution and functions of committees of the corporation and of the academic board of the institution and provide for the delegation of functions of the board of governors and the academic board to such committees, to the chairman of the corporation or to the principal<sup>6</sup>.

The articles of government must also make provision with respect to the procedure for meetings of the board of governors, of the academic board and of committees of the corporation and the procedure in relation to the appointment of members of the corporation (including in either case quorum and proxies)<sup>7</sup>; and may make provision with respect to:

- 1260 (a) procedures for the appointment, promotion, suspension and dismissal of staff<sup>8</sup>;
- 1261 (b) procedures for the admission, suspension and expulsion of students<sup>9</sup>; and
- 1262 (c) the appointment and functions of a clerk to the board of governors<sup>10</sup>.

The articles of government may also make provision authorising the board of governors to make rules or byelaws for the government and conduct of the institution<sup>11</sup>, including in particular rules or byelaws with respect to the conduct of students and staff (or either of them)<sup>12</sup> and any procedures mentioned in head (a) or head (b) above<sup>13</sup>.

The Privy Council may<sup>14</sup> require higher education corporations, any class of such corporations specified in the direction, or any particular higher education corporation so specified, to amend their articles of government, or to secure that any rules or byelaws made in pursuance of their articles of government are amended by the board of governors, in any manner so specified<sup>15</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Education Reform Act 1988 s 125(1) (s 125(1), (5)-(7) amended by the Further and Higher Education Act 1992 s 71(2)). As to the powers of the Privy Council in relation to instruments of government see PARA 687 note 6 ante. Articles of government made under the Education Reform Act 1988 s 125 (as amended) may be varied or revoked by subsequent articles made by the corporation with the approval of the Privy Council: s 125(5) (as so amended).

3 As to the meaning of 'functions' see PARA 681 note 14 ante.

4 As to the board of governors of an institution see PARAS 679 note 6, 693 ante.

5 Education Reform Act 1988 s 125(2)(a).

6 Ibid s 125(2)(b).



7 Ibid s 125(3).

8 Ibid s 125(3)(a).

9 Ibid s 125(3)(b).

10 Ibid s 125(3)(c).

11 Ibid s 125(4).

12 Ibid s 125(4)(a).

13 Ibid s 125(4)(b).

14 le by a direction under ibid s 125 (as amended). Before giving such a direction, the Privy Council must consult the board of governors of the higher education corporation or (as the case may be) of each higher education corporation to which the direction applies: s 125(7) (as amended: see note 2 supra).

15 Ibid s 125(6) (as amended: see note 2 supra).

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## ***D. CHARITABLE STATUS***

### **698. Higher education corporations and institutions as exempt charities.**

A higher education corporation<sup>1</sup> is an exempt charity<sup>2</sup>.

So far as it is a charity, any institution<sup>3</sup> which is administered by or on behalf of any higher education corporation and is established for the general purposes of, or for any special purpose of or in connection with, that corporation, is also an exempt charity<sup>4</sup>.

1 For the meaning of 'higher education corporation' see PARA 672 ante.

2 Education Reform Act 1988 s 125A(1) (s 125A added by the Teaching and Higher Education Act 1998 s 41(1)). The reference in the text to an exempt charity is a reference to a charity which is an exempt charity for the purposes of the Charities Act 1993 (see s 3(5)(a), Sch 2 (as amended); and CHARITIES vol 8 (2010) PARA 315). For the meaning of 'charity' see s 96(1), (2) (as amended); and CHARITIES vol 8 (2010) PARA 1 (definition applied by the Education Reform Act 1988 s 125A(3) (as so added)).

3 'Institution' includes any trust or undertaking: Charities Act 1993 s 97(1); definition applied by the Education Reform Act 1988 s 125A(3) (as added: see note 2 supra).

4 Ibid s 125A(2) (as added: see note 2 supra).

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## ***E. MODIFICATION OF TRUST DEEDS***

### **699. Power of Privy Council to modify trust deeds.**

An order of the Privy Council may modify<sup>1</sup> any trust deed<sup>2</sup> or other instrument<sup>3</sup>:

- 1263 (1) relating to or regulating any institution conducted by a higher education corporation<sup>4</sup>; or
- 1264 (2) relating to any land<sup>5</sup> or other property held by any person for the purposes of any such institution<sup>6</sup>.

Before making any such modifications of any trust deed or other instrument, the Privy Council must, so far as it appears to it to be practicable to do so, consult<sup>7</sup>:

- 1265 (a) the governing body<sup>8</sup> of the institution<sup>9</sup>;
- 1266 (b) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any other persons to modify or replace that deed or instrument, those persons<sup>10</sup>; and
- 1267 (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in head (a) or head (b) above, the trustees<sup>11</sup>.

1 As to the meaning of 'modify' see PARA 658 note 2 ante. As to the exercise of the powers of the Privy Council under the Education Reform Act 1988 Pt II (ss 120-161) (as amended) see PARA 687 note 6 ante. Orders under s 157 (as amended) are not made by statutory instrument (s 232(1), (2) (amended by the Education Act 1996 s 582(1), Sch 37 para 80(a))) and are not recorded in this work.

Nothing in any provision of the Education Reform Act 1988 or any order made under that Act relating to the trusts subject to which any land or other property or rights transferred thereunder are to be held by the transferee is to be taken as prejudicing any modification of those trusts after that transfer under any provision of the Act or otherwise: s 235(6).

2 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by *ibid* s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(1), (4)).

3 Education Reform Act 1988 s 157(1) (s 157(1)-(3) substituted by the Further and Higher Education Act 1992 s 75).

4 Education Reform Act 1988 s 157(1)(a), (2)(a) (as substituted: see note 3 *supra*). For the meaning of 'higher education corporation' see PARA 672 ante.

5 As to the meaning of 'land' see PARA 1381 note 5 post.

6 Education Reform Act 1988 s 157(1)(b) (as substituted: see note 3 *supra*).

7 *Ibid* s 157(3) (as substituted: see note 3 *supra*).

8 As to the meaning of 'governing body' see PARA 704 note 4 post.

9 Education Reform Act 1988 s 157(3)(a) (as substituted: see note 3 *supra*).

10 *Ibid* s 157(3)(b) (as substituted: see note 3 *supra*).

11 Ibid s 157(3)(c) (as substituted: see note 3 supra).

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## **F. DISSOLUTION**

### **700. Dissolution of higher education corporations.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for the dissolution of any higher education corporation<sup>3</sup> and for the transfer of property, rights and liabilities<sup>4</sup> of the corporation to<sup>5</sup>:

- 1268 (1) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description<sup>6</sup>;
- 1269 (2) any body corporate established for purposes which include the provision of such facilities or services<sup>7</sup>;
- 1270 (3) a Higher Education Funding Council<sup>8</sup>; or
- 1271 (4) the Learning and Skills Council for England<sup>9</sup> or the National Council for Education and Training for Wales<sup>10</sup>.

Before making such an order the Secretary of State must consult the corporation and the Higher Education Funding Council<sup>11</sup>. The order may apply the statutory provisions relating to the transfer of staff to higher education corporations<sup>12</sup> with such modifications<sup>13</sup> as the Secretary of State may consider necessary or desirable<sup>14</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Orders under the Education Reform Act 1988 s 128 (as amended) are local in nature, and are not recorded in this work. As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante.

3 Ibid s 128(1)(a). For the meaning of 'higher education corporation' see PARA 672 ante.

4 As to the meaning of 'liability' see PARA 673 note 7 ante.

5 Education Reform Act 1988 s 128(1)(b). Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 128(1)(b): s 230(1) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(a), Sch 21 Pt I; the Education Act 1996 s 582(2), Sch 38 Pt I; the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 55, Sch 9; and the Statute Law (Repeals) Act 2004). This is subject to the requirement that no instrument (other than a statutory instrument) made or executed under or in pursuance of the Education Reform Act 1988 s 128(1)(b) may be treated as duly stamped unless it is stamped with the duty to which it would, but for s 230 (as amended) (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Education Reform Act 1988 s 230(4) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(b), Sch 21 Pt I).

6 Education Reform Act 1988 s 128(1)(b)(i). An order under s 128(1)(b)(i) or (ii) must not provide for transferring the property, rights or liabilities of a higher education corporation to any person or body without the consent of that person or body; and, where the recipient of a transfer under any order under s 128(1)(b) (as amended) is not an educational charity, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes: s 128(2). For these purposes, a charity is an educational charity if the charitable purposes for which it is established are exclusively educational purposes: s 128(3). For the meanings of 'charity' and 'charitable purposes' see the Charities Act 1993 ss 96(1), (2), 97(1); and CHARITIES vol 8 (2010) PARAS 1, 2 (definitions applied by the Education Reform Act 1988 s 128(5) (amended by the Charities Act 1993 s 98(1), Sch 6 para 30)).

7 Education Reform Act 1988 s 128(1)(b)(ii). See note 6 *supra*.

8 *Ibid* s 128(1)(b)(iii) (substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 34(a)(i)). In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council referred to is the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council referred to is the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 *et seq post*.

9 As to the Learning and Skills Council for England see PARA 1072 *et seq post*.

10 Education Reform Act 1988 s 128(1)(b)(v) (added by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 34(a)(ii); and substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 16). As to the National Council for Education and Training for Wales see PARA 1113 *et seq post*.

11 Education Reform Act 1988 s 128(4) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 34(b)).

12 *Ie* the Education Reform Act 1988 s 127 (see PARA 675 *ante*).

13 As to the meaning of 'modifications' see PARA 658 note 2 *ante*.

14 Education Reform Act 1988 s 128(6) (added by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 34(c)).

## **UPDATE**

### **700 Dissolution of higher education corporations**

TEXT AND NOTE 10--For 'National Council for Education and Training for Wales' read 'National Assembly for Wales': 1988 Act s 128(1)(b)(v) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

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## **(v) Designated Institutions**

### **701. Designation of institutions.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> designate as an institution eligible to receive support from funds administered by a Higher Education Funding Council<sup>3</sup>:

- 1272 (1) any institution which appears to him to be an institution whose full-time equivalent enrolment number<sup>4</sup> for courses of higher education<sup>5</sup> exceeds 55 per cent of its total full-time equivalent enrolment number<sup>6</sup>; and
- 1273 (2) any institution which is, or is to be, conducted by a successor company to a higher education corporation<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. Orders under s 129(1) (as substituted) are local in nature, and are not recorded in this work.

An order under s 129 (as amended) in respect of any institution may revoke any order in respect of that institution under the Further and Higher Education Act 1992 s 28 (as amended) (see PARA 599 ante): s 74(2). An order in force immediately before 6 May 1992 (ie the date on which s 72(1) was brought into force by the Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831) designating an institution as falling within the Education Reform Act 1988 s 129(3) (repealed) has effect as if made under s 129 as amended by the Further and Higher Education Act 1992 s 72(1): s 72(2). An institution fell within the Education Reform Act 1988 s 129(3) (repealed) if its full-time equivalent enrolment number for courses of advanced further education on 1 November 1985 exceeded 55% of its total full-time equivalent enrolment number on that date and it was on that date either an institution assisted by a local education authority or a grant-aided institution: s 129(3) (repealed). References to courses of advanced further education are references to courses designated by the Education (Schools and Further Education) Regulations 1981, SI 1981/1086 (as amended). As to grants in aid of educational services or research to persons other than local education authorities see PARA 69 ante.

3 Ie in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 et seq post.

4 As to the determination of full-time equivalent enrolment numbers see PARA 678 ante.

5 As to references to courses of higher education see PARA 726 post.

6 Education Reform Act 1988 s 129(1)(a), (2) (s 129(1), (2) substituted by the Further and Higher Education Act 1992 s 72(1)(a)). As to the meaning of 'total full-time equivalent enrolment number' see PARA 673 note 4 ante. As to the government and conduct of designated institutions see PARAS 704-705 post.

7 Education Reform Act 1988 s 129(1)(b) (as substituted: see note 6 supra). As to references to a higher education corporation see PARA 672 ante. For the purposes of s 129(1)(b) (as substituted), a company is a successor company to a higher education corporation if:

78 (1) it is a company limited by a guarantee formed and registered under the Companies Act 1985 (Education Reform Act 1988 s 129(5)(a));

- 79 (2) at the time when it was formed the persons participating in its formation were all members of a higher education corporation and constituted a majority of the members of that corporation (s 129(5)(b));
- 80 (3) its objects are exclusively charitable according to the law of England and Wales and include the conduct of the institution which was at that time conducted by that corporation (s 129(5)(c));
- 81 (4) its memorandum and articles of association have been approved by the Secretary of State (s 129(5)(d)); and
- 82 (5) an order has been made under s 128 (as amended) (see PARA 700 ante) dissolving the corporation and transferring the property, rights and liabilities of the corporation to the company (whether or not that order has taken effect before the order under this provision is made) (s 129(5)(e)).

As to the meaning of 'liability' see PARA 673 note 7 ante. As to companies limited by guarantee see COMPANIES vol 14 (2009) PARA 79 et seq.

## **UPDATE**

### **701 Designation of institutions**

NOTE 7--Head (1). Reference to Companies Act 1985 now to Companies Act 2006: Education Reform Act 1988 s 129(5)(a) (amended by SI 2009/1941). Head (4). Reference to memorandum and articles of association now to articles of association: Education Reform Act 1988 s 129(5)(d) (amended by SI 2009/1941).



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## **702. Transfer of property, rights and liabilities to designated institutions.**

Where an institution is designated<sup>1</sup> and:

- 1274 (1) the order designating the institution so provides<sup>2</sup>; and
- 1275 (2) immediately before the date on which the designation takes effect<sup>3</sup> the institution is an institution assisted by a local education authority<sup>4</sup>,

then, on the designation date in relation to any such institution, specified property, rights and liabilities<sup>5</sup> must be transferred to, and by virtue of the Education Reform Act 1988 vested in, the appropriate transferee<sup>6</sup>, that is:

- 1276 (a) in relation to an institution conducted by a body corporate, that body<sup>7</sup>; and
- 1277 (b) in relation to an institution not so conducted, any persons specified in the order designating the institution as persons appearing to the Secretary of State<sup>8</sup> to be trustees holding property for the purposes of that institution<sup>9</sup>.

The property, rights and liabilities in question are all land or other property which, immediately before the designation date, were property of the former assisting authority used or held for the purposes of that institution<sup>10</sup>, and all rights and liabilities of that authority subsisting immediately before that date which were acquired or incurred for those purposes<sup>11</sup>.

1    Ie by order under the Education Reform Act 1988 s 129 (as amended) (see PARA 701 ante).

2    Ibid s 130(1)(a).

3    This date is referred to in ibid s 130, in relation to a designated institution, as 'the designation date'.

4    Ibid s 130(1)(b). Such a local education authority is referred to as 'the former assisting authority'. As to local education authorities see PARA 20 ante.

5    As to the meaning of 'liability' see PARA 673 note 7 ante.

6    Education Reform Act 1988 s 130(2). Section 130(2) is stated to be subject to s 198 (as amended) (land and property transfers: see PARA 1387 et seq post) and to s 130(4), which provides that s 130(2) does not apply to any liability of the former assisting authority in respect of the principal of, or any interest on, any loan (s 130(4)(a)), or any liability of that authority in respect of compensation for premature retirement of any person formerly employed by them (s 130(4)(b)). As to the meaning of 'employed' see PARA 776 note 3 post. As to liabilities of former assisting authorities in respect of loans see PARA 703 post.

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 130 (taken with Sch 10 (as amended)): s 230(1) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(a), Sch 21 Pt I; the Education Act 1996 s 582(2), Sch 38 Pt I; the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 55, Sch 9; and the Statute Law (Repeals) Act 2004). This is subject to the requirement that no instrument (other than a statutory instrument) made or executed under or in pursuance of the Education Reform Act 1988 s 130 may be treated as duly stamped unless it is stamped with the duty to which it would, but for s 230 (as amended) (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Education

Reform Act 1988 s 230(4) (amended by the Education Act 1993 s 307(1), (3), Sch 19 paras 112, 137(b), Sch 21 Pt I).

7 Education Reform Act 1988 s 130(5)(a). Where any persons so specified are the appropriate transferee for the purposes of s 130(2), any land or other property or rights transferred to them under s 130 must be held by them on the trusts applicable under such trust deed relating to or regulating that institution (if any) as may be so specified or, if no such trust deed is so specified, on trust for the purposes of the institution (s 130(6)(a)), although s 130(6)(a) does not apply in relation to any land or other property or rights which immediately before the designation date in relation to the institution concerned were vested in the former assisting authority as trustees for any particular purposes or (as the case may be) for the general purposes of the institution (s 130(7)); and they are not to incur any personal liability by virtue of any liability so transferred, but may apply any property held by them on trust for the purposes of the institution in meeting any such liability (s 130(6)(b)).

8 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 Education Reform Act 1988 s 130(5)(b). See note 7 supra.

10 Ibid s 130(3)(a). As to the meaning of 'land' see PARA 1381 note 5 post. Where at any time land is used for the purposes of an institution to which s 130(3)(a) applies, any interest of a local education authority in that land subsisting at that time must be taken for the purposes of s 130(3)(a) to be land held for the purposes of that institution (whether or not it is by virtue of that interest that the land is so used): s 138(1)(b), (2).

Where (apart from the Further and Higher Education Act 1992 s 84) any land or other property of a local authority would on any date ('the date of transfer') be transferred under the Education Reform Act 1988 Pt II (ss 120-161) (as amended) to the governing body of an institution within the higher education sector, and at any time before that date the authority, the governing body of the institution and the governing body of any other institution which will on that date be an institution within the higher education sector have agreed in writing that the land or property should be transferred on that or a subsequent date to the governing body of that other institution, then, if the Secretary of State has approved the agreement at any time before the date of transfer, Pt II (as amended) has effect as if it required the property to be transferred in accordance with the agreement: Further and Higher Education Act 1992 s 84(1), (2). References to anything done include anything done before 6 March 1992 (ie the date on which the Education Reform Act 1988 was passed (ie received Royal Assent)): Further and Higher Education Act 1992 s 84(3). As to the meaning of 'land' see PARA 1355 note 3 post. For the meaning of 'local authority' see PARA 586 note 5 ante. For the meaning of 'governing body' see PARA 584 note 5 ante. As to references to institutions within the higher education sector see PARA 646 ante.

11 Education Reform Act 1988 s 130(3)(b).

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### **703. Loan liabilities excepted from transfer.**

For the purposes of the provisions enabling certain liabilities of local education authorities<sup>1</sup> to be excepted from transfer<sup>2</sup> to a designated institution on the designation of that institution<sup>3</sup>, a liability is an excepted liability if it would have been transferred by virtue of the designation but for the statutory exclusion of any such transfer<sup>4</sup>. The amount of any liability of a local education authority in respect of the principal of any loan which is an excepted liability in relation to a designated institution<sup>5</sup> is to be treated on and after the date on which that liability would have been transferred<sup>6</sup> as having been borrowed from that authority by the body of persons to whom the liability would have been transferred<sup>7</sup> on such terms as to repayment and the payment of interest as may be agreed<sup>8</sup> or determined by the Secretary of State<sup>9</sup>.

There is a duty to arrive, so far as practicable, at such written agreements as may be necessary for determining the amount of any excepted liability and the terms to apply in relation to the liability imposed<sup>10</sup> on the default transferee by reference to that liability<sup>11</sup>.

Notwithstanding any terms so agreed or determined, any liability in respect of any sum treated<sup>12</sup> as having been borrowed from a local education authority may at any time be discharged by a single payment of a sum equal to the aggregate of the amount of the principal of the loan outstanding at the time of the payment and the amount of any interest accrued before that time<sup>13</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie under the Education Reform Act 1988 s 130(2) (see PARA 702 ante) by virtue of the designation of an institution under s 129 (as amended) (see PARA 701 ante).

3 Ie for the purposes of ibid s 199 (as amended).

4 Ibid s 199(2)(a). The statutory exclusion is contained in s 130(4)(a): see PARA 702 note 6 ante.

5 Ibid s 199(1), (2).

6 This date is referred to in ibid s 199 (as amended) as 'the operative date': s 199(2)(b).

7 This body is referred to in ibid s 199 (as amended) as 'the default transferee': s 199(2)(b).

8 The Act originally referred to agreement made between the Education Assets Board and the authority. The Education Assets Board was renamed the Education Transfer Council by the School Standards and Framework Act 1998 s 136(1) and, by virtue of s 136(2), all statutory references to the Education Assets Board are to be construed as references to the Education Transfer Council. However, the Education Transfer Council has now been wound up. See further PARA 1380 post.

9 Education Reform Act 1988 s 199(1) (amended by the School Standards and Framework Act 1998 s 136(2)). The reference to a determination of the Secretary of State is a reference to a determination under the Education Reform Act s 199 (as amended). As to the giving of assistance and advice to the Secretary of State for the purpose of determining any matter under s 199 (as amended) see s 199(8). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

10 Ie under ibid s 199 (as amended).

11 Ibid s 199(3). An agreement made under s 199(3) must be delivered to the default transferee: s 199(9). Any such agreement must be treated as made between the authority and the default transferee: s 199(10).

The Secretary of State must be notified if it appears that it is unlikely in the case of any matter on which agreement is required to be reached under s 199(3) that such an agreement will be reached: s 199(5). Where the Secretary of State has received such a notification he may, whether before or after the operative date, give a direction determining the matter, and may include in the direction any provision which might have been included in an agreement under s 199(3): s 199(6). The Secretary of State must consult the authority before giving a direction under s 199 (as amended): s 199(7).

12     Ie by virtue of *ibid* s 199(1) (as amended).

13     *Ibid* s 199(4).

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#### **704. Government and conduct of designated institutions.**

For each designated institution<sup>1</sup>, other than an institution conducted by a company<sup>2</sup>, there must be an instrument of government and articles of government<sup>3</sup>. The instrument of government is an instrument providing for the constitution of a governing body<sup>4</sup> of the institution<sup>5</sup>, and the articles of government are the instrument in accordance with which the institution is to be conducted<sup>6</sup>. Each such instrument is required to have been either in force when the designation took effect<sup>7</sup> or made in pursuance of a power under a regulatory instrument<sup>8</sup> or, where no such power exists, made by the body of persons responsible for the management of the institution<sup>9</sup>, and must be as approved by the Privy Council<sup>10</sup>.

1 For the purposes of the Education Reform Act 1988 ss 129A, 129B (both as added), 'designated institution' means an institution in relation to which a designation made, or having effect as if made, under s 129 (as amended) (see PARA 701 ante) has effect but does not include any institution established by Royal Charter (see PARA 651 et seq ante): s 129A(10) (ss 129A, 129B added by the Further and Higher Education Act 1992 s 73(1)).

2 Education Reform Act 1988 s 129A(1) (as added: see note 1 supra). As to the government of institutions conducted by a company see PARA 705 post.

3 See *ibid* s 129A(2) (as added: see note 1 supra).

4 For the purposes of *ibid* Pt II (ss 120-161) (as added), except where the context otherwise requires, 'governing body' includes, in relation to any institution, a board of governors of the institution or any persons responsible for the management of the institution (but not formally constituted as such a body or board): s 161(1)(d).

5 *Ibid* s 129A(2)(a) (as added: see note 1 supra). Either of the instruments referred to in s 129A(2) (as added) may be modified by order of the Privy Council and no instrument approved by the Privy Council for the purposes of s 129A (as added) may be modified by any other person without the Privy Council's consent: s 129A(7) (as so added). Before exercising any power under s 129A(7) (as added) in relation to any instrument the Privy Council must, so far as it appears to it to be practicable to do so, consult the governing body of the institution, and, where there is such a power as is mentioned in s 129A(3)(b) (as added) (see the text and notes 7-8 *infra*) to modify the instrument and the persons having that power are different from the governing body of the institution, the persons having the power: s 129A(8) (as so added). As to the exercise of the powers of the Privy Council under Pt II (as amended) see PARA 687 note 6 ante.

6 *Ibid* s 129A(2)(b) (as added: see note 1 supra).

7 *Ibid* s 129A(3)(a) (as added: see note 1 supra). If an instrument approved by the Privy Council for the purposes of s 129A (as added) falls within s 129A(3)(a) (as added) and there is no other power to modify it, the instrument may be modified by the body of persons responsible for the management of the institution: s 129A(6)(a) (as so added). As to the meaning of 'modify' see PARA 658 note 2 ante.

8 'Regulatory instrument', in relation to an institution, means any instrument of government or articles of government and any other instrument relating to or regulating the institution: *ibid* s 129A(4) (as added: see note 1 supra). If an instrument approved by the Privy Council for the purposes of s 129A (as added) was made in pursuance of a power under a regulatory instrument and there is no other power to modify it, the instrument may be modified by the body of persons responsible for the management of the institution: s 129A(6)(a) (as so added).

9 *Ibid* s 129A(3)(b), (5) (as added: see note 1 supra). An instrument made by the body of persons responsible for the management of the institution under s 129A(5) (as added) may replace wholly or partly any existing regulatory instrument: s 129A(5) (as so added). If an instrument approved by the Privy Council for the purposes of s 129A (as added) was made by the body of persons responsible for the management of the institution, the instrument may be modified by those persons: s 129A(6)(b) (as so added).

10 Ibid s 129A(3) (as added: see note 1 supra). The approval referred to in the text is approval for the purposes of s 129A (as added). Nothing in s 129A (as added) requires further approval for any instrument approved by the Secretary of State for the purposes of s 156 (repealed in relation to designated institutions), and references in s 129A (as added) to instruments approved by the Privy Council for the purposes of s 129A (as added) include instruments so approved by the Secretary of State: s 129A(9) (as so added). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

## **UPDATE**

### **704 Government and conduct of designated institutions**

NOTE 10--Education Reform Act 1988 s 156 amended: SI 2009/1941.

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### **705. Instruments of government of designated institutions conducted by companies.**

The articles of association of a company which conducts any designated institution<sup>1</sup> must incorporate provision with respect to the constitution of a governing body<sup>2</sup> of the institution (known as the instrument of government of the institution) and provision with respect to the conduct of the institution (known as the articles of government of the institution)<sup>3</sup>.

The Privy Council may give to the persons who appear to it to have effective control over the company such directions<sup>4</sup> as it thinks fit for securing that:

- 1278 (1) the memorandum or articles of association of the company<sup>5</sup>; or
- 1279 (2) any rules or byelaws made in pursuance of any power conferred by the articles of association of the company<sup>6</sup>,

are amended in such manner as it may specify in the direction<sup>7</sup>.

No amendment of the memorandum or articles of association of the company (other than one required under head (1) above) is to take effect until it has been submitted to the Privy Council for its approval and it has notified its approval to the company<sup>8</sup>.

1 For the meaning of 'designated institution' see PARA 704 note 1 ante.

2 As to the meaning of 'governing body' see PARA 704 note 4 ante.

3 Education Reform Act 1988 s 129B(1), (2) (s 129B added by the Further and Higher Education Act 1992 s 73(1)).

4 Before giving any such directions the Privy Council must consult the persons who appear to it to have effective control over the company: Education Reform Act 1988 s 129B(5) (as added: see note 3 supra). As to the exercise of the powers of the Privy Council under Pt II (ss 120-161) (as amended) see PARA 687 note 6 ante.

5 Ibid s 129B(3)(a) (as added: see note 3 supra).

6 Ibid s 129B(3)(b) (as added: see note 3 supra).

7 Ibid s 129B(3) (as added: see note 3 supra).

8 Ibid s 129B(4) (as added: see note 3 supra).

### **UPDATE**

### **705 Instruments of government of designated institutions conducted by companies**

TEXT AND NOTES 4-7--Education Reform Act 1988 s 129B(3)(a) amended: SI 2009/1941.

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## **706. Power of Privy Council to modify trust deeds.**

An order of the Privy Council may modify<sup>1</sup> any trust deed<sup>2</sup> or other instrument<sup>3</sup>:

- 1280 (1) relating to or regulating any designated institution<sup>4</sup> other than an institution established by Royal Charter<sup>5</sup>; or
- 1281 (2) relating to any land<sup>6</sup> or other property held by any person for the purposes of any such institution<sup>7</sup>.

Before making any such modifications of any trust deed or other instrument, the Privy Council must, so far as it appears to it to be practicable to do so, consult<sup>8</sup>:

- 1282 (a) the governing body<sup>9</sup> of the institution<sup>10</sup>;
- 1283 (b) where that deed or instrument, or any other instrument relating to or regulating the institution concerned, confers power on any other persons to modify or replace that deed or instrument, those persons<sup>11</sup>; and
- 1284 (c) where the instrument to be modified is a trust deed and the trustees are different from the persons mentioned in head (a) or head (b) above, the trustees<sup>12</sup>.

1 As to the meaning of 'modify' see PARA 658 note 2 ante. As to the exercise of the powers of the Privy Council under the Education Reform Act 1988 Pt II (ss 120-161) (as amended) see PARA 687 note 6 ante. Orders under s 157 (as amended) are not made by statutory instrument (s 232(1), (2) (amended by the Education Act 1996 s 582(1), Sch 37 para 80(a))) and are not recorded in this work.

Nothing in any provision of the Education Reform Act 1988 or any order made under that Act relating to the trusts subject to which any land or other property or rights transferred thereunder are to be held by the transferee is to be taken as prejudicing any modification of those trusts after that transfer under any provision of the Act or otherwise: s 235(6).

2 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by ibid s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(1), (4)).

3 Education Reform Act 1988 s 157(1) (s 157(1)-(3) substituted by the Further and Higher Education Act 1992 s 75).

4 I.e. any institution in relation to which a designation made, or having effect as if made, under the Education Reform Act 1988 s 129 (as amended) (see PARA 701 ante) has effect.

5 Ibid s 157(1)(a), (2)(b) (as substituted: see note 3 supra). As to institutions established by Royal Charter see PARA 651 et seq ante.

6 As to the meaning of 'land' see PARA 1381 note 5 post.

7 Education Reform Act 1988 s 157(1)(b) (as substituted: see note 3 supra).

8 Ibid s 157(3) (as substituted: see note 3 supra).

9 As to the meaning of 'governing body' see PARA 704 note 4 ante.

10 Education Reform Act 1988 s 157(3)(a) (as substituted: see note 3 supra).

11 Ibid s 157(3)(b) (as substituted: see note 3 supra).



12 Ibid s 157(3)(c) (as substituted: see note 3 supra).

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### **707. Inspection of accounts.**

The accounts of any designated institution<sup>1</sup> are open to the inspection of the Comptroller and Auditor General<sup>2</sup>.

<sup>1</sup> ie within the meaning of the Education Reform Act 1988 s 129A (as added) (see PARA 704 note 1 ante).

<sup>2</sup> Ibid s 135(1)(c) (substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 36(a)). The power conferred by the Education Reform Act 1988 s 135(1) (as amended) is exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the governing body of the institution in question in respect of which financial support has been given under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 post): Education Reform Act 1988 s 135(2)(a) (s 135(2) amended by the Further and Higher Education Act 1992 Sch 8 paras 27, 36(b)). As to the meaning of 'governing body' see PARA 704 note 4 ante. As to the meaning of 'financial year' see PARA 655 note 2 ante. The powers under the National Audit Act 1983 s 6 (as amended), s 8 (examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 717) conferred on the Comptroller and Auditor General by virtue of s 6(3)(c) are correspondingly restricted: see the Education Reform Act 1988 s 135(2)(b) (as so amended). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

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## **(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION**

### **708. Functions of local education authorities with respect to higher education.**

A local education authority<sup>1</sup> is no longer under a duty to secure the provision for its area of facilities for higher education<sup>2</sup>. However, a local education authority may<sup>3</sup>:

- 1285 (1) secure the provision for its area of such facilities for higher education as appear to it to be appropriate for meeting the needs of the population of its area<sup>4</sup>;
- 1286 (2) secure the provision of higher education for persons from other areas<sup>5</sup>; and
- 1287 (3) do anything which appears to it to be necessary or expedient for the purposes of or in connection with such provision<sup>6</sup>.

In exercising its power under head (1) above a local education authority must have regard to any facilities for higher education provided by institutions within the higher education sector<sup>7</sup> or the further education sector<sup>8</sup> and other bodies which are provided for, or available for use by persons living in, its area<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Reform Act 1988 s 120(1). For the meaning of 'higher education' see PARA 19 ante.

3 Ibid s 120(3).

4 Ibid s 120(3)(a).

5 Ibid s 120(3)(b) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 30(b)).

6 Education Reform Act 1988 s 120(3)(c).

7 As to references to institutions within the higher education sector see PARA 646 ante.

8 As to references to institutions within the further education sector see PARA 579 ante.

9 Education Reform Act 1988 s 120(4) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 30(c)).

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### **709. Power of governing body of maintained school to provide higher education.**

Under the Education Act 2002<sup>1</sup>, the governing body of a maintained school<sup>2</sup> has the power to arrange the provision to pupils<sup>3</sup> at the school, whether by teachers at the school or other persons, of: (1) courses in preparation for professional examinations at a higher level<sup>4</sup>; or (2) courses providing education at a higher level (whether or not in preparation for an examination)<sup>5</sup>. A governing body may exercise this power in relation to a particular pupil only if it is satisfied that the provision to that pupil of the course in question will not to any significant extent interfere with the other education with which he is being provided at the school<sup>6</sup>.

This power to provide higher education<sup>7</sup> has effect notwithstanding the fact that nothing in the Education Act 1996 confers any functions with respect to higher education<sup>8</sup>.

1 The Education Act 2002 s 28A (as added) is brought into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b). In relation to England, the appointed day for these purposes is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained school' see PARA 98 note 3 ante. For the meaning of 'school' see PARA 81 ante; definition applied by the Education Act 2002 s 212(2), (3).

3 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 212(2), (3).

4 I.e. courses falling within the Education Reform Act 1988 s 120(1), Sch 6 para 1(g) (see PARAS 19 ante, 726 post).

5 Education Act 2002 s 28A(1) (s 28A added by the Education Act 2005 s 105). See note 1 supra. The courses providing education at a higher level mentioned in the text are courses falling within the Education Reform Act 1988 Sch 6 para 1(h) (see PARAS 19 ante, 726 post).

6 Education Act 2002 s 28A(2) (as added: see note 5 supra). See also note 1 supra.

7 I.e. under ibid s 28A (as added) For the meaning of 'higher education' see PARA 19 ante.

8 Ibid s 28A(5) (as added: see note 5 supra). See note 1 supra. As to the Education Act 1996 and higher education see s 1(4); and PARA 14 ante.

### **UPDATE**

### **709 Power of governing body of maintained school to provide higher education**

NOTE 1--Day now appointed in relation to Wales: SI 2006/1338.

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### **710. Government of institutions maintained in pursuance of higher education functions.**

A local education authority<sup>1</sup> may, in relation to any institution not within the further education sector<sup>2</sup> or the higher education sector<sup>3</sup> which is maintained by it in the exercise of its further or higher education functions<sup>4</sup>:

1288 (1) make such provision as it thinks fit in respect of the government of the institution<sup>5</sup>; and

1289 (2) delegate to the governing body<sup>6</sup> of the institution such functions relating to the management of the finances of the institution, and such other functions relating to the management of the institution (including the appointment and dismissal of staff), as the authority may determine<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to references to institutions within the higher education sector see PARA 646 ante.

3 As to references to institutions within the further education sector see PARA 579 ante.

4 Further and Higher Education Act 1992 s 85(2).

5 Ibid s 85(3)(a). The power under s 85(3)(a) includes power to replace any instrument of government or articles of government of an institution made under the Education Reform Act 1988 Pt II Ch III (ss 139-155) (repealed) or s 156 (repealed in relation to designated institutions): s 85(3)(a). As to the government of institutions see also PARA 712 post.

6 As to the meaning of 'governing body' see PARA 584 note 5 ante.

7 Further and Higher Education Act 1992 s 85(3)(b).

### **UPDATE**

### **710 Government of institutions maintained in pursuance of higher education functions**

NOTE 5--Education Reform Act 1988 s 156 amended: SI 2009/1941.

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**711. Information with respect to educational provision in institutions providing higher education.**

The Secretary of State<sup>1</sup> may make regulations<sup>2</sup> requiring every local education authority<sup>3</sup> to publish, in relation to each institution providing full-time education which is maintained by that authority in exercise of its higher education functions<sup>4</sup>, such information as may be prescribed with respect to<sup>5</sup>:

1290 (1) the educational provision made by the institution for students at the institution<sup>6</sup>; and

1291 (2) the educational achievements of students at the institution (including the results of examinations, tests and other assessments of those students)<sup>7</sup>.

The information must be published in such form and manner and at such times as may be prescribed, and the regulations may provide for a local education authority to make arrangements with the governing body<sup>8</sup> of any such institution for the publication by that governing body of the information required to be published in accordance with the regulations in the case of that institution<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

3 As to local education authorities see PARA 20 ante.

4 As to the further and higher education functions of a local education authority see PARA 720 note 2 post. As to the meaning of 'functions' see PARA 681 note 14 ante.

5 Education Reform Act 1988 s 159(1), (2)(a).

6 Ibid s 159(3)(a).

7 Ibid s 159(3)(b).

8 As to the meaning of 'governing body' see PARA 704 note 4 ante.

9 Education Reform Act 1988 s 159(4).

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## **712. Minimum age for governors.**

No person is qualified for membership of the governing body<sup>1</sup> of any institution which is maintained by a local education authority<sup>2</sup> and which provides higher education<sup>3</sup> or further education<sup>4</sup> (or both) unless he is a student of the institution or is aged 18 or over at the date of his election or appointment<sup>5</sup>. The Secretary of State<sup>6</sup> may by regulations make provision restricting, in relation to such matters or classes of matter, in such circumstances, and to such extent, as may be prescribed<sup>7</sup>, the participation of any student of such an institution who is a member of its governing body in the proceedings of that body<sup>8</sup>. The instrument of government for any such institution may make such provision in relation to restricting the participation of any such student in the proceedings of its governing body (in addition to that made by the regulations) as the regulations may authorise<sup>9</sup>.

1 As to the meaning of 'governing body' see PARA 609 note 1 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'higher education' see PARA 19 ante; definition applied by the Education (No 2) Act 1986 s 67(3) (amended by the Education Act 1996 s 582(1), Sch 37 para 66(3), (4)).

4 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education (No 2) Act 1986 s 67(3) (as amended: see note 3 supra).

5 Ibid s 61(1) (amended by the Education Reform Act 1988 s 237(1), Sch 12 para 104).

6 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1); definition applied by the Education (No 2) Act 1986 s 67(3) (as amended: see note 3 supra). As to the making of regulations under the Education (No 2) Act 1986 generally see PARA 609 note 7 ante. At the date at which this volume states the law, no regulations had been made under s 61 (as amended).

8 Ibid s 61(2).

9 Ibid s 61(3).

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### **713. Access to documents and information.**

The Secretary of State<sup>1</sup> may make regulations requiring the governing body<sup>2</sup> of every institution which is maintained by a local education authority<sup>3</sup> and which provides higher education<sup>4</sup> or further education<sup>5</sup> (or both)<sup>6</sup> to make available, to such persons or classes of person as may be prescribed<sup>7</sup>, such documents and information relating to the meetings and proceedings of the governing body as may be prescribed<sup>8</sup>. Documents and information required by the regulations to be made available must be made available in such form and manner, and at such times, as may be prescribed<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the meaning of 'governing body' see PARA 609 note 1 ante.

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'higher education' see PARA 19 ante; definition applied by the Education (No 2) Act 1986 s 67(3) (amended by the Education Act 1996 s 582(1), Sch 37 para 66(1), (3)).

5 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education (No 2) Act 1986 s 67(3) (as amended: see note 4 supra).

6 Ie every institution of a kind mentioned in *ibid* s 61 (as amended) (see PARA 712 ante).

7 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1); definition applied by the Education (No 2) Act 1986 s 67(3) (as amended: see note 4 supra). As to the making of regulations under the Education (No 2) Act 1986 generally see PARA 609 note 7 ante. At the date at which this volume states the law, no regulations had been made under s 62 (as amended) in relation to higher education or further education institutions.

8 *Ibid* s 62(1) (amended by the Education Act 1996 s 582(2), Sch 38 Pt I).

9 Education (No 2) Act 1986 s 62(2).



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#### **714. Reports and returns.**

The governing body<sup>1</sup> of any institution providing full-time education which is maintained by a local education authority<sup>2</sup> in exercise of its higher education functions<sup>3</sup> must make such reports and returns, and give such information, to the Secretary of State<sup>4</sup> as he may require for the purposes of the exercise of any of his functions in relation to education<sup>5</sup>.

1 As to the meaning of 'governing body' see PARA 704 note 4 ante.

2 As to local education authorities see PARA 20 ante.

3 As to the higher education functions of a local education authority see PARA 720 note 2 post. As to the meaning of 'functions' see PARA 681 note 14 ante.

4 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 Education Reform Act 1988 s 158(1), (2)(a)(ii).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION/715. Determination of disputes.

## **715. Determination of disputes.**

The provisions of the Education Act 1996 relating to the determination of disputes by the Secretary of State<sup>1</sup> apply in relation to the governing body<sup>2</sup> of any institution which is maintained by a local education authority<sup>3</sup> and which provides higher education<sup>4</sup> or further education<sup>5</sup> (or both) as they apply in relation to the governing body of a school<sup>6</sup>.

1 In the Education Act 1996 s 495(1): see PARA 59 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the meaning of 'governing body' see PARA 704 note 4 ante.

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'higher education' see PARA 19 ante.

5 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81).

6 Education Reform Act 1988 s 219(1), (2) (s 219 substituted by the Education Act 1996 s 582(1), Sch 37 Pt I para 77). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 5 supra).

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## **716. Power of intervention by central government.**

The provisions of the Education Act 1996 relating to:

- 1292 (1) the power of the Secretary of State<sup>1</sup> to prevent the unreasonable exercise of certain powers and duties by a local education authority or governing body<sup>2</sup>; and
- 1293 (2) his general power to declare a local education authority or governing body in default of its duty<sup>3</sup>,

have effect as if the bodies to which they apply included the governing body<sup>4</sup> of any institution which is maintained by a local education authority<sup>5</sup> and which provides higher education<sup>6</sup> or further education<sup>7</sup> (or both)<sup>8</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 I.e. the Education Act 1996 s 496 (as amended): see PARA 57 ante.

3 I.e. ibid s 497 (as amended): see PARA 58 ante.

4 As to the meaning of 'governing body' see PARA 704 note 4 ante.

5 As to local education authorities see PARA 20 ante.

6 For the meaning of 'higher education' see PARA 19 ante.

7 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81).

8 Education Reform Act 1988 s 219(1), (3) (s 219 substituted by the Education Act 1996 s 582(1), Sch 37 Pt I para 77).

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**717. Powers of central government where there is no properly constituted governing body.**

The provisions of the Education Act 1996 relating to the powers of the Secretary of State<sup>1</sup> where there is no properly constituted governing body in relation to certain schools have effect as if the schools to which they apply included an institution which is maintained by a local education authority<sup>2</sup> and which provides higher education<sup>3</sup> or further education<sup>4</sup> (or both)<sup>5</sup>.

1 In the Education Act 1996 s 498 (as amended): see PARA 262 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'higher education' see PARA 19 ante.

4 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81).

5 Education Reform Act 1988 s 219(1), (4) (s 219 substituted by the Education Act 1996 Sch 37 Pt I para 77).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION/718. Provision of transport.

### **718. Provision of transport.**

In certain circumstances, a local education authority<sup>1</sup> must make arrangements for the provision of transport for the purpose of facilitating the attendance of persons receiving education at any institution maintained or assisted by the authority which provides higher education<sup>2</sup>.

<sup>1</sup> As to local education authorities see PARA 20 ante.

<sup>2</sup> See the Education Act 1996 s 509 (as amended); and PARA 534 ante. For the meaning of 'higher education' see PARA 19 ante.

### **UPDATE**

### **718 Provision of transport**

TEXT AND NOTES--Education Act 1996 s 509 repealed: Learner Travel (Wales) Measure 2008 Sch 2, Apprenticeships, Skills, Children and Learning Act 2009 s 57(4), Sch 16 Pt 1.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION/719. Provision of clothing.

**719. Provision of clothing.**

A local education authority<sup>1</sup> may provide such articles of clothing as it may determine suitable for the physical training provided at an institution maintained by the authority which provides higher education<sup>2</sup>.

1 As to local education authorities see PARA 20 ante.

2 See the Education Act 1996 s 510(4) (as amended); and PARA 538 ante. For the meaning of 'higher education' see PARA 19 ante.

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## **720. Institutions ceasing to be maintained by local education authority.**

Where an institution which provides full-time education and is maintained by a local education authority<sup>1</sup> in exercise of the authority's further or higher education functions<sup>2</sup> ceases to be maintained by a local education authority or (as the case may be) by the authority in question, any provision of any instrument relating to any land<sup>3</sup> or other property held for the purposes of the institution<sup>4</sup> which:

1294 (1) confers on any person an option to acquire an interest in that land<sup>5</sup> or other property<sup>6</sup>; or

1295 (2) provides (in whatever terms) for the determination or forfeiture of any such interest<sup>7</sup>,

has effect, if the institution becomes an institution within the further education sector<sup>8</sup> or an institution within the higher education sector<sup>9</sup> or a grant-aided institution<sup>10</sup>, as if the event referred to were the institution's ceasing to be a publicly funded institution<sup>11</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Reform Act 1988 s 157(5)(a). References in Pt II (ss 120-161) (as amended) to the further or higher education functions of a local education authority are references to the functions of the authority (except in so far as they relate to secondary education) under the Education Act 1996 s 15A (as added and amended) (see PARA 27 ante), s 15B (as added) (see PARA 28 ante), and the Education Reform Act 1988 s 120 (as amended) (see PARA 708 ante): s 161(1)(b) (substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 17).

3 As to the meaning of 'land' see PARA 1381 note 5 post.

4 Education Reform Act 1988 s 157(4) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 paras 27, 39(a)(i), Sch 9).

5 As to references to an interest in land see PARA 1381 note 5 post.

6 Education Reform Act 1988 s 157(4)(a).

7 Ibid s 157(4)(b).

8 As to references to institutions within the further education sector see PARA 579 ante.

9 As to references to institutions within the higher education sector see PARA 646 ante.

10 In the Education Reform Act 1988 references to an institution which is or was grant-aided at any time are references to an institution maintained by persons who have received any grants under regulations made under the Education Act 1944 s 100(1)(b) (repealed) or the Education Act 1996 s 485 (see PARA 69 ante) in respect of expenditure incurred or to be incurred for any academic year of that institution current at the time in question: Education Reform Act 1988 s 235(2)(c) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(1), (3)). References to an institution which is eligible to receive aid by way of grant are references to an institution maintained by persons other than local education authorities who for the time being satisfy any requirements of regulations so made with respect to the eligibility of such persons to receive grants under those regulations: Education Reform Act 1988 s 235(2)(d).

11 Ibid s 157(4) (amended by the Further and Higher Education Act 1992 Sch 8 paras 27, 39(a)(ii), (iii)). 'Publicly funded institution' means an institution which is an institution of any one or more of the following

descriptions, that is to say: (1) an institution maintained or assisted by a local education authority (Education Reform Act 1988 s 157(6)(a)); (2) an institution within the further education sector or an institution within the higher education sector (s 157(6)(b) (amended by the Further and Higher Education Act 1992 Sch 8 paras 27, 39(c))); and (3) a grant-aided institution (Education Reform Act 1988 s 157(6)(c)).



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**721. Power of the National Assembly for Wales to make regulations requiring approval for the use of certain materials and apparatus.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

In relation to institutions which provide higher education<sup>2</sup> or further education<sup>3</sup> (or both) and which either are maintained by local education authorities<sup>4</sup> or are within the further education sector<sup>5</sup>, the National Assembly for Wales<sup>6</sup> may by regulations make provision for requiring its approval to be obtained for the use in such institutions of such materials or apparatus as may be specified in the regulations, being materials or apparatus which could or might involve a serious risk to health<sup>7</sup>.

1 As from a day to be appointed, the Education Reform Act 1988 s 218(1)(e) (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3. In relation to England, the day appointed is 1 August 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

The Education Act 2002 s 203 (see PARA 627 ante) makes substantially the same provision as the Education Reform Act 1988 s 218(1)(e) (as amended), but only in relation to further education institutions.

2 For the meaning of 'higher education' see PARA 19 ante.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582, Sch 37 Pt I para 81).

4 As to local education authorities see PARA 20 ante.

5 Education Reform Act 1988 s 218(10) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 49, Sch 9). See note 1 supra. As to references to institutions within the further education sector see PARA 579 ante.

6 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Education Reform Act 1988 s 218(1)(e) (amended by the Education Act 1996 s 582, Sch 37 Pt I para 76, Sch 38 Pt I). See note 1 supra. As to the regulations that have been made under the Education Reform Act 1988 s 218(1)(e) (as amended) see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to Wales, by SI 2001/3708).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION/722. Power of the Secretary of State to make regulations relating to premises in England.

## **722. Power of the Secretary of State to make regulations relating to premises in England.**

Until a day to be appointed, the following provisions have effect in relation to England<sup>1</sup>.

In relation to institutions which provide higher education<sup>2</sup> or further education<sup>3</sup> (or both) and which either are maintained by local education authorities<sup>4</sup> or are within the further education sector<sup>5</sup>, the Secretary of State<sup>6</sup> may by regulations make provision requiring his approval to be obtained for the provision of new premises for, or the alteration of the premises of, any such institution or any boarding hostel provided by a local education authority for persons receiving education at any such institution, and for the inspection of any such hostel<sup>7</sup>.

1 As from a day to be appointed, the provisions of the Education Reform Act 1988 s 218(7), (10) (as amended) are repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3. In relation to Wales, the appointed day is 31 March 2003 (see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 5, Schedule Pt II) but, at the date at which this volume states the law, no such day had been appointed in relation to England. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'higher education' see PARA 19 ante.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582, Sch 37 Pt I para 81).

4 As to local education authorities see PARA 20 ante.

5 Education Reform Act 1988 s 218(10) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 49, Sch 9). See note 1 supra. As to references to institutions within the further education sector see PARA 579 ante.

6 As to the Secretary of State see PARA 52 ante.

7 Education Reform Act 1988 s 218(7) (amended by the Further and Higher Education Act 1992 Sch 8 Pt I paras 27, 49; the Education Act 1993 s 307(1), Sch 19 paras 112, 136; and the Education Act 1996 Sch 37 Pt I para 76, Sch 38 Pt I). See note 1 supra. As to the regulations that have been made under the Education Reform Act 1988 s 218(7) (as amended) see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to England, by SI 2001/692; SI 2004/571).

### **UPDATE**

## **722 Power of the Secretary of State to make regulations relating to premises in England**

TEXT AND NOTE 1--Day now appointed in relation to England: SI 2006/2895.

NOTE 7--SI 1989/351 revoked in relation to England: SI 2008/1701.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION/723. Power of the National Assembly for Wales to make regulations relating to records.

### **723. Power of the National Assembly for Wales to make regulations relating to records.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

In relation to institutions which provide higher education<sup>2</sup> or further education<sup>3</sup> (or both) and which either are maintained by local education authorities<sup>4</sup> or are within the further education sector<sup>5</sup>, the National Assembly for Wales<sup>6</sup> may by regulations make provision with respect to the keeping, disclosure and transfer of educational records about persons receiving education at such institutions and the supply of copies of such records to such persons, and in such circumstances, as may be determined by or under the regulations<sup>7</sup>.

1 The provisions of the Education Reform Act 1988 s 218(1)(f), (4), (10) (s 218(1)(f), (10) as amended) are repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3. In relation to England, the appointed day is 1 August 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

The Education Act 2002 s 202 (see PARA 630 ante) makes substantially the same provision as the Education Reform Act 1988 s 218(1)(f), (4), (10) (s 218(1)(f), (10) as amended), but only in relation to further education institutions.

2 For the meaning of 'higher education' see PARA 19 ante.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582, Sch 37 Pt I para 81).

4 As to local education authorities see PARA 20 ante.

5 Education Reform Act 1988 s 218(10) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 49, Sch 9). See note 1 supra. As to references to institutions within the further education sector see PARA 579 ante.

6 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Education Reform Act 1988 s 218(1)(f) (amended by the Further and Higher Education Act 1992 Sch 8 paras 27, 49; and the Education Act 1996 Sch 37 para 76, Sch 38 Pt I). Regulations made by virtue of the Education Reform Act 1988 s 218(1)(f) (as amended) may authorise persons who supply copies of records in pursuance of the regulations to charge such fee as they think fit (not exceeding the cost of supply) in respect of each copy so supplied: s 218(4). At the date at which this volume states the law, no regulations had been made under s 218(1)(f) (as amended) in relation to the keeping, disclosure or transfer of educational records. See note 1 supra.

## **UPDATE**

### **723 Power of the National Assembly for Wales to make regulations relating to records**

NOTE 1--Day appointed in relation to England: SI 2006/2895.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION/724. Power to make regulations relating to courses of higher education at certain institutions in Wales.

## **724. Power to make regulations relating to courses of higher education at certain institutions in Wales.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

In relation to institutions in Wales which provide higher education<sup>2</sup> or further education<sup>3</sup> (or both) and which either are maintained by local education authorities<sup>4</sup> or are within the further education sector<sup>5</sup>, the National Assembly for Wales<sup>6</sup> may by regulations<sup>7</sup> make provision: (1) for requiring its approval to be obtained for the provision at such institutions of courses of higher education<sup>8</sup>; and (2) for enabling it to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions<sup>9</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed as from a day to be appointed under the Education Act 2002 s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to the Education Reform Act 1988 s 218(9)(d), (10) (as amended). For the meaning of 'Wales' see PARA 52 note 13 ante.

As to the Education Act 2002 s 139, which makes substantially the same provision as the Education Reform Act 1988 s 218(9)(d), see PARA 629 ante.

2 For the meaning of 'higher education' see PARA 19 ante.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81(1), (4)).

4 As to local education authorities see PARA 20 ante.

5 Education Reform Act 1988 s 218(10) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 49, Sch 9). See note 1 supra. As to references to institutions within the further education sector see PARA 579 ante.

6 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the regulations that have been made under s 218(9)(d) see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351, regs 11-13.

8 Education Reform Act 1988 s 218(9)(d)(i). See note 1 supra.

9 Ibid s 218(9)(d)(ii). See notes 1, 7 supra.

## **UPDATE**

## **724 Power to make regulations relating to courses of higher education at certain institutions in Wales**

NOTE 1--Day appointed in relation to England: SI 2006/2895.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(2) OTHER INSTITUTIONS PROVIDING HIGHER EDUCATION/725. Power to make regulations relating to fees.

## **725. Power to make regulations relating to fees.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The Secretary of State may by regulations<sup>2</sup> make provision with respect to the fees to be charged for courses of further education<sup>3</sup> at: (1) institutions which provide higher education<sup>4</sup> or further education (or both) and which either are maintained by local education authorities<sup>5</sup> or are within the further education sector<sup>6</sup>; or (2) institutions within the higher education sector<sup>7</sup> in receipt of financial support<sup>8</sup> from a Higher Education Funding Council<sup>9</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed as from a day to be appointed under the Education Act 2002 s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to the Education Reform Act 1988 s 218(9)(a), (10), (11) (as amended).

2 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81(1), (4)). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. At the date at which this volume states the law, no regulations had been made under s 218(9) (a) in relation to fees. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of *ibid* s 235(7) (as amended: see note 2 supra).

4 For the meaning of 'higher education' see PARA 19 ante.

5 As to local education authorities see PARA 20 ante.

6 Education Reform Act 1988 s 218(9)(a), (10) (s 218(10) amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt I paras 27, 49, Sch 9). See note 1 supra. As to references to institutions within the further education sector see PARA 579 ante.

7 As to references to institutions within the higher education sector see PARA 646 ante.

8 *Ie* under the Further and Higher Education Act 1992 s 65 (as amended): see PARA 746 post.

9 Education Reform Act 1988 s 218(9)(a), (11) (s 218(11) amended by the Further and Higher Education Act 1992 Sch 8 Pt I paras 27, 49). See notes 1, 2 supra. As to the Higher Education Funding Councils see PARAS 733-759 post.

## **UPDATE**

## **725 Power to make regulations relating to fees**

TEXT AND NOTE 1--Day now appointed in relation to England: SI 2006/2895.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(3) COURSES AND ACADEMIC AWARDS/726. Courses of higher education.

### **(3) COURSES AND ACADEMIC AWARDS**

#### **726. Courses of higher education.**

Each of the following is a course of higher education<sup>1</sup>:

- 1296 (1) a course for the further training of teachers or youth and community workers<sup>2</sup>;
- 1297 (2) a post-graduate course (including a higher degree course)<sup>3</sup>;
- 1298 (3) a first degree course<sup>4</sup>;
- 1299 (4) a course for the Diploma of Higher Education<sup>5</sup>;
- 1300 (5) a course for the Higher National Diploma or Higher National Certificate of the Business and Technician Education Council, or the Diploma in Management Studies<sup>6</sup>;
- 1301 (6) a course for the Certificate in Education<sup>7</sup>;
- 1302 (7) a course in preparation for a professional examination at higher level<sup>8</sup>;
- 1303 (8) a course providing education at a higher level (whether or not in preparation for an examination)<sup>9</sup>.

1 Education Reform Act 1988 s 120 (as amended), s 235(1), Sch 6; Education Act 1996 s 579(1). The Secretary of State may by order amend the Education Reform Act 1988 Sch 6: see s 120(10). At the date at which this volume states the law, no such order had been made.

2 Ibid Sch 6 para 1(a); Education Act 1996 s 579(1).

3 Education Reform Act 1988 Sch 6 para 1(b); Education Act 1996 s 579(1).

4 Education Reform Act 1988 Sch 6 para 1(c); Education Act 1996 s 579(1).

5 Education Reform Act 1988 Sch 6 para 1(d); Education Act 1996 s 579(1).

6 Education Reform Act 1988 Sch 6 para 1(e); Education Act 1996 s 579(1).

7 Education Reform Act 1988 Sch 6 para 1(f); Education Act 1996 s 579(1).

8 Education Reform Act 1988 Sch 6 para 1(g); Education Act 1996 s 579(1). For these purposes, a professional examination is at higher level if its standard is higher than the standard of examinations at advanced level for the General Certificate of Education or the examination for the National Certificate or the National Diploma of the Business and Technician Education Council: Education Reform Act 1988 Sch 6 para 2.

9 Ibid Sch 6 para 1(h); Education Act 1996 s 579(1). For these purposes, a course is to be regarded as providing education at a higher level if its standard is higher than the standard of courses providing education in preparation for any of the examinations mentioned in the Education Reform Act 1988 Sch 6 para 2 (see note 8 supra): Sch 6 para 3.

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## **727. Power to award degrees etc.**

The Privy Council may by order<sup>1</sup> specify any institution which provides higher education<sup>2</sup> as competent to grant<sup>3</sup> either or both of the following: (1) awards<sup>4</sup> granted to persons who complete an appropriate course of study and satisfy an appropriate assessment<sup>5</sup>; and (2) awards granted to persons who complete an appropriate programme of supervised research and satisfy an appropriate assessment<sup>6</sup>. An institution for the time being specified in such an order may grant any such award<sup>7</sup> which it is competent to grant by virtue of the order to persons who complete the appropriate course of study or, as the case may be, programme of supervised research on or after the date specified in the order<sup>8</sup>, and may also grant honorary degrees<sup>9</sup>, and grant degrees to members of the academic and other staff of the institution<sup>10</sup>.

It is for the institution to determine, in accordance with any relevant provisions of the instruments relating to or regulating the institution, the courses of study or programmes of research, and the assessments, which are appropriate for the grant of any award and the terms and conditions on which any of the powers to make awards<sup>11</sup> may be exercised<sup>12</sup>.

1 Orders of the Privy Council are not statutory instruments and are not recorded in this work. The Education Reform Act 1988 s 124D (as added) (see PARA 687 note 6 ante), which regulates the exercise of the Privy Council's powers, applies in relation to orders under the Further and Higher Education Act 1992 s 76(1) as it applies in relation to the exercise of powers for the purposes of the Education Reform Act 1988 Pt II (ss 120-161) (as amended): Further and Higher Education Act 1992 s 76(7).

2 For the meaning of 'higher education' see PARA 19 ante; definition applied by *ibid* s 90(1).

3 *Ie* in pursuance of *ibid* s 76.

4 'Award' means any degree, diploma, certificate or other academic award or distinction: *ibid* s 76(2).

5 *Ibid* s 76(1), (2)(a). 'Assessment' includes examination and test: s 76(2). Any power conferred on an institution to grant awards in pursuance of s 76 includes power to authorise other institutions to do so on behalf of the institution, to do so jointly with another institution, and to deprive any person of any award granted to him by or on behalf of the institution in pursuance of s 76 (or, in the case of an award granted to him by the institution and another institution jointly, to do so jointly with the other institution): s 76(5).

6 *Ibid* s 76(1), (2)(b). See also note 5 *supra*.

7 *Ie* of a kind mentioned in *ibid* s 76(2)(a) (see head (1) in the text) or s 76(2)(b) (see head (2) in the text).

8 *Ibid* s 76(3).

9 *Ibid* s 76(4)(a).

10 *Ibid* s 76(4)(b).

11 *Ie* conferred by *ibid* s 76.

12 *Ibid* s 76(6).

## **UPDATE**

## **727 Power to award degrees etc**

TEXT AND NOTES--Further and Higher Education Act 1992 s 76 amended: Further Education and Training Act 2007 s 19. See also s 20 (report about effect of s 19).



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## **728. Dissolution of the Council for National Academic Awards.**

The Council for National Academic Awards<sup>1</sup> was dissolved by order of the Secretary of State<sup>2</sup> on 20 April 1993<sup>3</sup>, and all the property, rights and liabilities<sup>4</sup> to which the Council was entitled or subject immediately before that date were transferred to and vested in the Secretary of State<sup>5</sup>.

1 The Council was established by Royal Charter in 1964 for the purpose of awarding higher education degrees for bodies without their own powers of awarding (ie those higher education bodies which were not universities).

2 As to the Secretary of State see PARA 52 ante.

3 Further and Higher Education Act 1992 s 80(1)(a) (repealed); Education (Dissolution of the Council for National Academic Awards) Order 1993, SI 1993/924, arts 1, 2. As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante.

4 As to the meaning of 'liability' see PARA 586 note 7 ante.

5 Further and Higher Education Act 1992 s 80(1)(b) (repealed); Education (Dissolution of the Council for National Academic Awards) Order 1993, SI 1993/924, art 3. If the order so provides, the person specified must discharge any duty relating to accounts and records under the statutes of the Council in respect of any period ending before 20 April 1993 which would have fallen to be discharged by the Council after the dissolution or fell to be so discharged before the dissolution but has not been discharged: Further and Higher Education Act 1992 s 80(2) (repealed).

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## **729. Unrecognised degrees.**

Any person who, in the course of business, grants, offers to grant or issues any invitation relating to any award<sup>1</sup> which may reasonably be taken to be an award granted or to be granted by a United Kingdom institution<sup>2</sup>, and which either is described as a degree, or purports to confer on its holder the right to the title of bachelor, master or doctor and may reasonably be taken to be a degree<sup>3</sup>, is guilty of an offence and liable on summary conviction to a penalty<sup>4</sup>. This does not apply as respects anything done in relation to any 'recognised award', that is, any award granted or to be granted by a university<sup>5</sup>, college or other body which is authorised by Royal Charter or by or under Act of Parliament to grant degrees<sup>6</sup>, any award granted or to be granted by any body for the time being permitted by body so authorised to act on its behalf in the granting of degrees<sup>7</sup>, or such other award as the Secretary of State may by order designate as a recognised award for these purposes<sup>8</sup>.

1 The reference to issuing an invitation relating to any award includes, in particular, the issuing of any circular, prospectus or advertisement relating to an award, whether addressed to the public generally, to any section of the public, or to any particular individual or individuals: Education Reform Act 1988 s 214(10)(c).

2 Ibid s 214(1)(a). 'United Kingdom institution' means any institution established in the United Kingdom, other than one which is, or is affiliated to or forms part of, an institution whose principal establishment is situated outside the United Kingdom: s 214(10)(a). For the meaning of 'United Kingdom' see PARA 63 note 3 ante. Where in any proceedings for an offence under s 214 (as amended) it is shown that the defendant granted, offered to grant or issued an invitation relating to an award, and that an address in the United Kingdom was given in any document issued by the defendant certifying the granting of the award or containing the offer or invitation in question, the award must be presumed to fall within s 214(1)(a) unless it is shown that the defendant took reasonable steps to inform the person to whom the award was granted, or any member of the public or particular individual to whom the offer or invitation was addressed that the award was not granted or to be granted by a United Kingdom institution: s 214(4). In any proceedings for an offence under s 214 (as amended), it is a defence for the defendant to show that the award in question was granted or to be granted by virtue of authority conferred on or before 5 July 1988 by a foreign institution (ie any institution other than a United Kingdom institution: s 214(10)(b)) on the body granting the award (s 214(5)(a)) and that the defendant took reasonable steps to inform the person to whom the award was granted or any member of the public or particular individual to whom the offer was addressed that the award was granted or was to be granted by virtue of authority conferred by a foreign institution (s 214(5)(b)). For the purposes of s 214(5), where on or before 5 July 1988 authority was conferred by a foreign institution on a body to grant awards of any description for a period expiring after that date, and new authority is conferred by the institution (whether before or after the expiry of that period) on the body to grant awards of that description, the new authority is to be taken to have been granted on or before that date: s 214(6).

Provision for the application of s 214 (as amended) to Northern Ireland and the Channel Islands is made by s 217. See eg the Education (Unrecognised Degrees) (Guernsey) Order 1990, SI 1990/2146.

3 Education Reform Act 1988 s 214(1)(b).

4 Ibid s 214(1). The penalty is a fine not exceeding level 5 on the standard scale: see s 214(1). As to the standard scale see PARA 481 note 4 ante. As to the enforcement of these provisions see PARA 730 post. Proceedings for an offence under s 214 (as amended) must not, in England and Wales, be instituted except by or on behalf of a local weights and measures authority or the chief officer of police for a police area: s 214(8). Where an offence under s 214 (as amended) which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly: s 214(7). As to local weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20. A local weights and measures authority must, whenever the Secretary of State so directs, make to him a report on the exercise of its functions under s 214 (as amended) in such form and containing such particulars as he may direct: s 215(1).

Nothing in s 214 (as amended) applies in relation to the granting of an award to a candidate who before 12 May 1988 began to undertake a course of education approved by the person granting the award in preparation for an examination to qualify for the award, and whether before or after that date, passes the examination; and for these purposes, 'examination' includes any form of assessment, and the reference to passing an examination is to be construed accordingly: s 214(9).

5 As to the meaning of 'university' see PARA 658 note 4 ante.

6 Education Reform Act 1988 s 214(2)(a) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 paras 27, 48). For the purposes of the Education Reform Act 1988 s 214 (as amended) and s 215 (see PARA 730 post), any body for the time being designated by order made by the Secretary of State as appearing to him to be a body falling within s 214(2)(a) or (b) (a 'recognised body') must be conclusively presumed to be such a body: s 216(1), (4). As to the bodies designated as recognised bodies see the Education (Recognised Bodies) (England) Order 2003, SI 2003/1865 (amended by SI 2005/2957); and the Education (Recognised Bodies) (Wales) Order 2005, SI 2005/3287. The Secretary of State must compile, maintain and publish by order a list including the name of every body which appears to him for the time being to be a body which is not a recognised body and which either provides any course which is in preparation for a degree to be granted by a recognised body and is approved by or on behalf of the recognised body, or is a constituent college, school or hall or other institution of a university which is a recognised body: Education Reform Act 1988 s 216(2), (3). As to the bodies listed see the Education (Listed Bodies) (England) Order 2004, SI 2004/2753 (amended by SI 2005/1382; SI 2005/2956); and the Education (Listed Bodies) (Wales) Order 2004, SI 2004/3095 (amended by SI 2005/1648). A statutory instrument containing an order made under the Education Reform Act 1988 s 216 (as amended) is not subject to annulment in pursuance of a resolution of either House of Parliament: s 232(4)(b) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 para 56(b), (c), Sch 9; the Education Act 1993 s 307(1), (3), Sch 19 para 138(b)(ii), Sch 21 Pt I; and the Education Act 1996 s 582(1), (2), Sch 37 para 80(c), Sch 38 Pt I). As to the making of orders under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

Provision for the application of the Education Reform Act 1988 s 216 to Northern Ireland and the Channel Islands is made by the Education Reform Act 1988 s 217.

7 Ibid s 214(2)(b). See also note 6 supra.

8 Ibid s 214(2)(c). An order under s 214(2)(c) may designate as a recognised award either a specified award granted or to be granted by a person named in the order (s 214(3)(a)) or any award granted or to be granted by such a person (s 214(3)(b)). Specified awards are designated under the Education (Recognised Awards) Order 1988, SI 1988/2035 (amended by SI 1989/598; SI 1990/1085; SI 1993/2828). Awards granted by Richmond College are designated by the Education (Recognised Awards) (Richmond College) (No 2) Order 1996, SI 1996/2564.

## UPDATE

### 729-730 Unrecognised degrees, Enforcement of provisions relating to unrecognised degrees

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 729 Unrecognised degrees

NOTE 6--SI 2004/2753 replaced: Education (Listed Bodies) (England) Order 2007, SI 2007/2687 (amended by SI 2008/2888). SI 2003/1865 replaced: Education (Recognised Bodies) (England) Order 2007, SI 2007/2688 (amended by SI 2008/2889). SI 2004/3095 replaced: Education (Listed Bodies) (Wales) Order 2007, SI 2007/2794 (amended by SI 2009/710). SI 2005/3287 replaced: Education (Recognised Bodies) (Wales) Order 2007, SI 2007/2795 (amended by SI 2009/667).



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### **730. Enforcement of provisions relating to unrecognised degrees.**

It is the duty of every local weights and measures authority<sup>1</sup> to enforce the provisions with regard to unrecognised degrees<sup>2</sup> within its area<sup>3</sup>. A duly authorised officer of a local weights and measures authority may<sup>4</sup>, at all reasonable hours and on production, if required, of his credentials:

- 1304 (1) for the purpose of ascertaining whether any offence has been committed<sup>5</sup>, enter and search any premises<sup>6</sup> which he reasonably believes may be used for or in connection with the carrying on of a business which is concerned with the granting of awards which are not recognised awards<sup>7</sup>;
- 1305 (2) for that purpose, require any person carrying on or employed<sup>8</sup> in connection with any such business to produce any documents or other items<sup>9</sup> relating to the business, and take copies of any such document<sup>10</sup>;
- 1306 (3) require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reason to believe that it may be evidence of the commission of an offence<sup>11</sup>; and
- 1307 (4) seize<sup>12</sup> and detain anything which he has reason to believe may be evidence of the commission of such an offence<sup>13</sup>.

1 As to local weights and measures authorities see **WEIGHTS AND MEASURES** vol 50 (2005 Reissue) PARA 20.

2 Ie the provisions of the Education Reform Act 1988 s 214 (as amended): see PARA 729 ante.

3 Ibid s 215(1). A local weights and measures authority must, whenever the Secretary of State so directs, make to him a report on the exercise of its functions under s 215 in such form and containing such particulars as he may direct: s 215(1). As to the meaning of 'functions' see PARA 681 note 14 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

Provision for the application of s 215 to Northern Ireland and the Channel Islands is made by s 217.

4 The Trade Descriptions Act 1968 s 29 (as amended) (penalty for obstruction of authorised officers: see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 511) applies as respects the obstruction of an officer acting in pursuance of the Education Reform Act 1988 s 215 as it applies as respects the obstruction of an officer acting in pursuance of the Trade Descriptions Act 1968, but with the substitution in s 29(1) (as amended) of a reference to the Education Reform Act 1988 s 215 for the reference to the Trade Descriptions Act 1968 s 28 (as amended) (power to enter premises and inspect and seize goods and documents: see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 509) (Education Reform Act 1988 s 215(7)(a)), and of a reference to the officer's functions under s 215 (see the text and notes 5-13 *infra*) for the reference to his functions under the Trade Descriptions Act 1968 (Education Reform Act 1988 s 215(7)(b)).

5 Ie under *ibid* s 214 (as amended) (see PARA 729 ante).

6 If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground to believe that any documents or other items which a duly authorised officer has power under this provision to inspect are on any premises and that their inspection is likely to disclose evidence of the commission of an offence under *ibid* s 214 (as amended), and is also satisfied either that admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under s 215(4) has been given to the occupier, or that an application for admission, or the giving of such a notice, would defeat the object of the entry or that the premises are unoccupied or that the occupier is temporarily absent and it might defeat the object of the entry to await his return, he may by warrant under his hand, which continues in force for a period

of one month, authorise an officer of a local weights and measures authority to enter the premises, if need be by force: s 215(4).

An officer entering any premises by virtue of s 215 may take with him such other persons and such equipment as may appear to him necessary, and on leaving any premises which he has entered by virtue of a warrant under s 215(4) he must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them: s 215(6).

7 Ibid s 215(2)(a). For the meaning of 'recognised award' see PARA 729 ante; definition applied by s 215(3).

8 For the meaning of 'employed' see PARA 776 note 3 post.

9 Nothing in the Education Reform Act 1988 s 215 may be taken to compel the production by a solicitor of a document or other item containing a privileged communication made by or to him in that capacity or to authorise the taking of possession of any such item which is in his possession: s 215(8). As to privileged communications between solicitor and client see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 453; **LEGAL PROFESSIONS** vol 65 (2008) PARAS 740-741.

10 Ibid s 215(2)(b). See also note 6 supra.

11 Ibid s 215(2)(c). The offence referred to in the text is an offence under s 214 (as amended) (see PARA 729 ante).

12 An officer seizing any documents or other items in the exercise of his powers under this provision must inform the person from whom they are seized: ibid s 215(5). See also note 6 supra.

13 Ibid s 215(2)(d). See also note 6 supra.

## UPDATE

### **729-730 Unrecognised degrees, Enforcement of provisions relating to unrecognised degrees**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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#### **(4) QUALITY AND ASSESSMENT**

##### **731. Assessment of quality of education provided by institutions.**

Each Higher Education Funding Council<sup>1</sup> must:

- 1308 (1) secure that provision is made for assessing the quality of education provided in institutions for whose activities it provides, or is considering providing, financial support<sup>2</sup>; and
- 1309 (2) establish a committee, to be known as the 'Quality Assessment Committee', with the function of giving it advice on the discharge of its duty under head (1) above and such other functions as may be conferred on the committee by the Higher Education Funding Council<sup>3</sup>.

<sup>1</sup> In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 et seq post.

<sup>2</sup> Ibid s 70(1)(a) (amended by the Education Act 1994 s 24, Sch 2 para 10(1), (2)).

<sup>3</sup> Further and Higher Education Act 1992 s 70(1)(b). The majority of the members of the Committee must not be members of the Higher Education Funding Council (s 70(2)(b)) and must be persons appearing to the Council to have experience of, and to have shown capacity in, the provision of higher education in institutions within the higher education sector; and, in appointing such persons, the Council must have regard to the desirability of their being currently engaged in the provision of higher education or in carrying responsibility for such provision (s 70(2)(a), (3)). The number of the members of the Committee, and the terms on which they are to hold and vacate office, are fixed by the Council: s 70(4), Sch 1 para 8(2). The Committee may include persons who are not members of the Council: Sch 1 para 8(3). The Council must keep under review the structure of the Committee and the scope of its activities: Sch 1 para 8(4). The Council must pay to the members of any of the Committee who are not members of the Council such travelling, subsistence and other allowances as the Secretary of State may determine: Sch 1 para 5(3). A representative of the Secretary of State is entitled to attend and take part in any deliberations, but not in decisions, at meetings of the Committee, and the Council must provide the Secretary of State with such copies of any documents distributed to members of the Committee as he may require: Sch 1 para 11. The validity of any proceedings of the Committee is not affected by a vacancy among the members or by any defect in the appointment of a member: Sch 1 para 12. The Council may regulate the Committee's procedure: Sch 1 para 13. For the meaning of 'higher education' see PARA 19 ante; definition applied by s 90(1). As to references to institutions within the higher education sector see PARA 646 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

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### **732. The Quality Assurance Agency for Higher Education.**

The Quality Assurance Agency for Higher Education is an independent, non-statutory<sup>1</sup> body established to provide an integrated quality assurance service for the higher education sector. The Agency's principal role is to review the quality and standards of higher education by auditing the way in which each higher education institution<sup>2</sup> manages the overall quality and standards of its educational provision and by reviewing academic standards and the quality of teaching and learning<sup>3</sup>. It also audits academic partnerships with institutions outside the United Kingdom offering teaching leading to the award of United Kingdom degrees and advises Her Majesty's government on applications from higher education institutions for the grant of degree-awarding powers or university status<sup>4</sup>. The Agency publishes the results of its audits and reviews and also publishes a code of practice setting out guidelines on good practice relating to the management of academic quality and standards.

The Agency shares certain of its responsibilities with the Qualifications and Curriculum Authority and the Qualifications, Curriculum and Assessment Authority for Wales, which have limited responsibilities in relation to higher education<sup>5</sup>.

1 A statutory power exists whereby the Secretary of State may direct higher education funding bodies to make provision for the assessment of matters relating to the arrangements made by institutions within the higher education sector for the maintenance of academic standards: see the Further and Higher Education Act 1992 s 82(2). This power has not been exercised. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to references to institutions within the higher education sector see PARA 646 ante.

3 As to actions following on from such a review see *R (on the application of Interchange Trust) v London Metropolitan* [2005] All ER (D) 133 (Nov) (university's decision to refuse to continue to run a course provided by the applicant charity was justifiable and sensible, having been part of a separate decision-making process from that of the Quality Assurance Agency, whose review of the course had resulted in a negative report).

4 As to university statutes see PARA 651 et seq ante. As to the awarding of degrees see PARA 727 et seq ante.

5 As to the Qualifications and Curriculum Authority and the Qualifications, Curriculum and Assessment Authority for Wales see PARA 874 et seq post.

## **UPDATE**

### **732 The Quality Assurance Agency for Higher Education**

NOTE 1--1992 Act s 82(2) amended: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.



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## **(5) THE HIGHER EDUCATION FUNDING COUNCILS**

### **(i) Establishment and Constitution**

#### **733. The Higher Education Funding Council for England and the Higher Education Funding Council for Wales.**

There are two Higher Education Funding Councils: the Higher Education Funding Council for England and the Higher Education Funding Council for Wales<sup>1</sup>. On 1 April 1993<sup>2</sup> the Universities Funding Council and the Polytechnics and Colleges Funding Council were dissolved, and all property, rights and liabilities<sup>3</sup>, except rights and liabilities under a contract of employment<sup>4</sup>, to which either of the existing councils were entitled or subject immediately before that date became property, rights and liabilities of the Higher Education Funding Council for England<sup>5</sup>.

The Higher Education Funding Council for England is a body corporate which exercises in relation to England the functions conferred on it<sup>6</sup>, and consists of not less than twelve nor more than fifteen members<sup>7</sup>, of whom one must be appointed as chairman<sup>8</sup>. The Higher Education Funding Council for Wales is a body corporate which exercises in relation to Wales the functions conferred on it<sup>9</sup>, and consists of not less than eight nor more than twelve members, of whom one must be appointed as chairman<sup>10</sup>.

In appointing the members of the Council, regard must be had:

- 1310 (1) to the desirability of including persons who appear to have experience of, and to have shown capacity in, the provision of higher education<sup>11</sup> or to have held, and to have shown capacity in, any position carrying responsibility for the provision of higher education and, in appointing such persons, regard must be had to the desirability of their being currently engaged in the provision of higher education or in carrying responsibility for such provision<sup>12</sup>; and
- 1311 (2) to the desirability of including persons who appear to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession<sup>13</sup>.

In exercising its functions, each Council must have regard to the requirements of disabled persons<sup>14</sup>. Any dispute as to whether any functions are exercisable by one of the Councils is to be determined by the Secretary of State<sup>15</sup>.

The Higher Education Funding Councils are not to be regarded as the servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>16</sup>, and the property of the Councils is not to be regarded as property of, or property held on behalf of, the Crown<sup>17</sup>.

1 In the Further and Higher Education Act 1992 Pt II (ss 62-81) (as amended), any reference to a Council is a reference to a Higher Education Funding Council: s 62(5). For the purposes of the Education Acts, references to a Higher Education Funding Council are references to a Council established under the Further and Higher Education Act 1992 s 62 (as amended), subject to s 62(6): s 91(1), (4). In relation to any time before 1 April 1993 (ie the commencement of s 65), references in Pt I (ss 15-61A) (as amended) and (so far as relating to that Part) Pt III (ss 82-94) (as amended) to a Higher Education Funding Council are references to the Universities Funding Council established under the Education Reform Act 1988 s 131 (repealed) (which replaced the

University Grants Committee) and to the Polytechnics and Colleges Funding Council established under s 132 (repealed): Further and Higher Education Act 1992 s 61(3)(b); Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831. See further the text and note 5 *infra*. In the Education Acts, any reference to a Higher Education Funding Council: (1) in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, is to that Council; and (2) in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, is to that Council: Further and Higher Education Act 1992 s 62(6). In Pt II (as amended) references to institutions in England or institutions in Wales are references to institutions whose activities are carried on, or principally carried on, in England or, as the case may be, Wales, but include, in both cases, the Open University: s 62(7). For the meaning of the 'Education Acts' see PARA 1 note 14 *ante*; definition applied by s 90(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 115(1), (2)). For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*.

2    le the day appointed under the Further and Higher Education Act 1992 s 94 (as amended) for the commencement of s 63: see s 63(7); and the Further and Higher Education Act 1992 (Commencement No 1 and Transitional Provisions) Order 1992, SI 1992/831 (amended by SI 1992/2041; SI 1998/2212).

3    As to the meaning of 'liability' see PARA 586 note 7 *ante*.

4    'Contract of employment' has the same meaning as in the Employment Rights Act 1996 (see **EMPLOYMENT** vol 39 (2009) PARA 2): Further and Higher Education Act 1992 s 90(1) (definition amended by the Employment Rights Act 1996 s 240, Sch 1 para 52(1), (4)). As to the transfer of contracts of employment on the dissolution of the Universities Funding Council and the Polytechnics and Colleges Funding Council see the Further and Higher Education Act 1992 s 63(2)-(6).

5    Ibid s 63(1). Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 63: s 88(1). This is subject to the requirement that no instrument (other than a statutory instrument) made or executed under or in pursuance of s 63 may be treated as duly stamped unless it is stamped with the duty to which it would, but for s 88 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the Stamp Act 1891 s 12 (as substituted) (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Further and Higher Education Act 1992 s 88(2).

6    Ibid s 62(1)(a). As to the functions of the Higher Education Funding Council for England see PARA 743 *et seq* *post*.

7    le appointed by the Secretary of State. As to the Secretary of State see PARA 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

8    Further and Higher Education Act 1992 s 62(2).

9    Ibid s 62(1)(b). As to the functions of the Higher Education Funding Council for Wales see PARA 743 *et seq* *post*.

10   Ibid s 62(3).

11   For the meaning of 'higher education' see PARA 19 *ante*; definition applied by *ibid* s 90(1).

12   Ibid s 62(4)(a).

13   Ibid s 62(4)(b).

14   Ibid s 62(7A) (s 62(7A), (7B) added by the Disability Discrimination Act 1995 s 30(1), (5)). For these purposes, 'disabled persons' means persons who are disabled persons for the purposes of the Disability Discrimination Act 1995 (see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 *et seq*): Further and Higher Education Act 1992 s 62(7B) (as so added).

15   Ibid s 62(8). Functions under s 62(8) have not been transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales: see PARA 53 note 13 *ante*.

16   Ibid s 62(9), Sch 1 para 17.

17   Ibid Sch 1 para 17. As to Crown property generally see **CROWN PROPERTY**.

## UPDATE

**733 The Higher Education Funding Council for England and the Higher Education Funding Council for Wales**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(5) THE HIGHER EDUCATION FUNDING COUNCILS/(i) Establishment and Constitution/734. Chief officer.

### **734. Chief officer.**

One of the members of the Higher Education Funding Council<sup>1</sup> must be the chief officer<sup>2</sup>. Each chief officer is to be appointed by the Council with the approval of the Secretary of State<sup>3</sup> on such terms and conditions, including terms with respect to tenure and vacation of office, as the Council may with the approval of the Secretary of State determine<sup>4</sup>. On approval by the Secretary of State of the person to be appointed on any occasion as chief officer of the Council and the terms and conditions of his appointment, the Secretary of State must<sup>5</sup>:

- 1312 (1) if that person is not already a member of the Council, appoint him as a member for the same term as the term of his appointment as chief officer<sup>6</sup>; or
- 1313 (2) if he is already such a member but his term of appointment as such ends before the term of his appointment as chief officer ends, extend his term of appointment as a member so that it ends at the same time as the term of his appointment as chief officer<sup>7</sup>.

<sup>1</sup> In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

<sup>2</sup> Ibid s 62(9), Sch 1 para 2(1).

<sup>3</sup> As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>4</sup> Further and Higher Education Act 1992 Sch 1 para 2(3). The first chief officer was appointed by the Secretary of State: see Sch 1 para 2(2).

<sup>5</sup> Ibid Sch 1 para 2(4).

<sup>6</sup> Ibid Sch 1 para 2(4)(a).

<sup>7</sup> Ibid Sch 1 para 2(4)(b).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(5) THE HIGHER EDUCATION FUNDING COUNCILS/(i) Establishment and Constitution/735. Tenure of members.

### **735. Tenure of members.**

A person must hold and vacate office as a member or as chairman or chief officer of the Higher Education Funding Council<sup>1</sup> in accordance with the terms of his appointment and, on ceasing to be a member, is eligible for re-appointment<sup>2</sup>. A person may at any time by notice in writing to the Secretary of State<sup>3</sup> resign his office as a member or as chairman of the Council<sup>4</sup>. If the Secretary of State is satisfied that a member of the Council has been absent from meetings of the Council for a period longer than six consecutive months without the permission of the Council, or is unable or unfit to discharge the functions of a member, he may by notice in writing to that member remove him from office and thereupon the office becomes vacant<sup>5</sup>.

1    Ie in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2    Ibid s 62(9), Sch 1 para 3(1).

3    As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4    Further and Higher Education Act 1992 Sch 1 para 3(2).

5    Ibid Sch 1 para 4.

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### **736. Salaries, allowances and pensions.**

The Higher Education Funding Council<sup>1</sup> must pay to its members such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State<sup>2</sup> may determine<sup>3</sup>. It must also, as regards any member in whose case the Secretary of State may so determine, pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine<sup>4</sup>. If a person ceases to be a member of the Council and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Council to make to that person a payment of such amount as the Secretary of State may determine<sup>5</sup>. The Council must pay to the members of any of its committees who are not members of the Council such travelling, subsistence and other allowances as the Secretary of State may determine<sup>6</sup>. Any such determination or direction of the Secretary of State requires the approval of the Treasury<sup>7</sup>.

1 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Further and Higher Education Act 1992 s 62(9), Sch 1 para 5(1)(a).

4 Ibid Sch 1 para 5(1)(b).

5 Ibid Sch 1 para 5(2).

6 Ibid Sch 1 para 5(3).

7 Ibid Sch 1 para 5(4). The Treasury approval requirement under Sch 1 para 5(4) continues in effect in relation to Wales so far as it relates to pensions: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(5) THE HIGHER EDUCATION FUNDING COUNCILS/(i) Establishment and Constitution/737. Staff.

### 737. Staff.

The Higher Education Funding Council<sup>1</sup> may appoint such employees<sup>2</sup> as it thinks fit<sup>3</sup>, and pay to its employees such remuneration and allowances as it may determine<sup>4</sup>. The employees must be appointed on such other terms and conditions as the Council may determine<sup>5</sup>. Such a determination requires the approval of the Secretary of State<sup>6</sup> given with the consent of the Treasury<sup>7</sup>.

Employment with the Council is included among the kinds of employment to which a scheme under the Superannuation Act 1972<sup>8</sup> can apply<sup>9</sup>. The Council must pay to the Treasury, at such times as the Treasury may direct, such sums as the Treasury may determine in respect of the increase attributable<sup>10</sup> in the sums payable out of money provided by Parliament under the Superannuation Act 1972<sup>11</sup>. Where an employee of the Council is, by reference to that employment, a participant in such a scheme and is also a member of the Council, the Treasury may determine that his service as such a member is to be treated for the purposes of the scheme as service as an employee of the Council<sup>12</sup>.

1    In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2    'Contract of employment' has the same meaning as in the Employment Rights Act 1996 (see **EMPLOYMENT** vol 39 (2009) PARA 2): Further and Higher Education Act 1992 s 90(1).

3    Ibid s 62(9), Sch 1 para 7(1).

4    Ibid Sch 1 para 7(2).

5    Ibid Sch 1 para 7(3).

6    As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7    Further and Higher Education Act 1992 Sch 1 para 7(4). The Treasury consent requirement under Sch 1 para 7(4) continues in effect in relation to Wales so far as it relates to pensions: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

8    In relation to the Superannuation Act 1972 s 1 (as amended): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 567.

9    Further and Higher Education Act 1992 Sch 1 para 7(5).

10    In relation to the Superannuation Act 1972 s 1 (as amended): see the text and notes 8-9 supra.

11    Ibid Sch 1 para 7(6).

12    Ibid Sch 1 para 7(7). This applies whether or not any benefits are payable to or in respect of him by virtue of Sch 1 para 5 (see PARA 736 ante): Sch 1 para 7(7).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(5) THE HIGHER EDUCATION FUNDING COUNCILS/(i) Establishment and Constitution/738. Committees.

### **738. Committees.**

The Higher Education Funding Council<sup>1</sup> may establish a committee for any purpose<sup>2</sup>. The number of the members of a committee so established, and the terms on which they are to hold and vacate office, are fixed by the Council<sup>3</sup>. Such a committee may include persons who are not members of the Council<sup>4</sup>. The Council must keep under review the structure of committees so established and the scope of each committee's activities<sup>5</sup>.

1 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2 Ibid s 62(9), Sch 1 para 8(1).

3 Ibid Sch 1 para 8(2).

4 Ibid Sch 1 para 8(3).

5 Ibid Sch 1 para 8(4).



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### **739. Delegation of functions.**

The Higher Education Funding Council<sup>1</sup> may authorise the chairman, the chief officer or any committee<sup>2</sup> to exercise such of its functions as it may determine<sup>3</sup>.

1     In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2     Is established under *ibid* Sch 1 para 8: see PARA 738 ante.

3     *Ibid* s 62(9), Sch 1 para 10. As to the functions of the Higher Education Funding Councils see PARA 743 et seq post.

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#### **740. Proceedings.**

Without prejudice to any other rights the Secretary of State<sup>1</sup> may require to be accorded to him as a condition of any grants made<sup>2</sup> to the Higher Education Funding Council<sup>3</sup> under the Further and Higher Education Act 1992<sup>4</sup>:

1314 (1) a representative of the Secretary of State is entitled to attend and take part in any deliberations, but not in decisions, at meetings of the Council or of any committee of the Council<sup>5</sup>; and

1315 (2) the Council must provide the Secretary of State with such copies of any documents distributed to members of the Council or of any such committee as he may require<sup>6</sup>.

The validity of any proceedings of the Council or of any committee of the Council is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>7</sup>. The Council may regulate its own procedure and that of any of its committees<sup>8</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 I.e. under the Further and Higher Education Act 1992 s 68: see PARA 757 post.

3 I.e. in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see *ibid* s 62(5), (6); and PARA 733 ante.

4 *Ibid* s 62(9), Sch 1 para 11.

5 *Ibid* Sch 1 para 11(a).

6 *Ibid* Sch 1 para 11(b).

7 *Ibid* Sch 1 para 12.

8 *Ibid* Sch 1 para 13. This provision is expressed to be subject to Sch 1 paras 1-8, 10-12 (see the text and notes 1-7 *supra*; and PARAS 738-739 ante): Sch 1 para 13.

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#### **741. Application of seal and proof of instruments.**

The application of the seal of the Higher Education Funding Council<sup>1</sup> must be authenticated by the signature of the chairman or of some other person authorised either generally or specially by the Council to act for that purpose, and of one other member<sup>2</sup>. Every document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the seal of the Council, or to be signed or executed by a person authorised by the Council to act in that behalf, is to be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown<sup>3</sup>.

1 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2 Ibid s 62(9), Sch 1 para 14.

3 Ibid Sch 1 para 15. As to the rules of civil evidence see **CIVIL PROCEDURE** vol 11 (2009) PARA 749 et seq.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(5) THE HIGHER EDUCATION FUNDING COUNCILS/(i) Establishment and Constitution/742. Accounts.

## 742. Accounts.

It is the duty of the Higher Education Funding Council<sup>1</sup>: (1) to keep proper accounts and proper records in relation to them<sup>2</sup>; (2) to prepare in respect of each financial year<sup>3</sup> of the Council a statement of accounts<sup>4</sup>; and (3) to send copies of the statement to the Secretary of State<sup>5</sup> and to the Comptroller and Auditor General<sup>6</sup> before the end of the month of August next following the financial year to which the statement relates<sup>7</sup>.

The statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury<sup>8</sup> as to the information to be contained in it, the manner in which the information contained in it is to be presented, or the methods and principles according to which the statement is to be prepared, and it must contain such additional information as the Secretary of State may with the approval of the Treasury require to be provided for the information of Parliament<sup>9</sup>. The Comptroller and Auditor General must examine, certify and report on each statement so received by him and must lay copies of each statement and of his report before each House of Parliament<sup>10</sup>.

1 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2 Ibid s 62(9), Sch 1 para 16(1)(a).

3 For these purposes, 'financial year' means the period beginning with the date on which the Council is established and ending with the second 31 March following that date, and each successive period of 12 months: ibid Sch 1 para 16(4).

4 Ibid Sch 1 para 16(1)(b).

5 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

6 The functions of the Comptroller and Auditor General in the Further and Higher Education Act 1992 Sch 1 para 16 are, in relation to statements of accounts of the Higher Education Funding Council for Wales for financial years beginning in and after 1999, transferred to the Auditor General for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726; and as to the Auditor General for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

7 Further and Higher Education Act 1992 Sch 1 para 16(1)(c).

8 As to the Treasury see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 512-517.

9 Further and Higher Education Act 1992 Sch 1 para 16(2). In relation to Wales, the Treasury approval requirements under Sch 1 para 16(2) continue in effect, and the additional information to be contained in the statement of accounts is such as may be required to be provided for the information of the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

10 Further and Higher Education Act 1992 Sch 1 para 16(3). In relation to Wales, Sch 1 para 16(3) has effect so that, instead of the requirement for the documents to be laid before each House of Parliament, the Auditor General for Wales is required to lay the documents before the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.



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## **(ii) Functions, Powers and Duties**

### **A. IN GENERAL**

#### **743. Functions of Higher Education Funding Councils.**

The functions of the Higher Education Funding Councils<sup>1</sup> are principally to administer funds made available by the Secretary of State<sup>2</sup> for the purpose of providing financial support in connection with the provision of education or carrying out of research by higher education institutions<sup>3</sup> or the provision of higher education by other institutions<sup>4</sup>. The Councils also have certain functions in connection with the funding of teacher training<sup>5</sup>. Additional functions may be imposed<sup>6</sup>.

1    In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2    As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3    I.e. universities, institutions conducted by higher education corporations or designated institutions: see the Further and Higher Education Act 1992 s 65(5). As to universities see PARAS 648-671 ante. As to higher education corporations see PARAS 672-700 ante. As to designated institutions see PARA 701 et seq ante.

4    See *ibid* s 65(1)-(2); and PARA 746 et seq post. As to such other institutions see PARAS 708-725 ante.

5    As to the Higher Education Funding Councils' power to reimburse certain payments to persons formerly employed in teacher training see PARA 750 post; and as to the Higher Education Funding Council for Wales as a funding agency for teacher training see PARA 751 post.

6    As to the power to impose additional functions on Higher Education Funding Councils see PARA 744 post.

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#### **744. Power to impose additional functions on Higher Education Funding Councils.**

The Secretary of State<sup>1</sup> may by order confer or impose on a Higher Education Funding Council<sup>2</sup> such supplementary functions relating to the provision of education as he thinks fit<sup>3</sup>. A function is a supplementary function if it is exercisable for the purposes of: (1) the exercise by the Secretary of State of functions of his under any enactment<sup>4</sup>; or (2) the doing by the Secretary of State of anything he has power to do apart from any enactment<sup>5</sup>, if it relates to, or to the activities of, institutions<sup>6</sup> which are: (a) institutions within the higher education sector<sup>7</sup>; or (b) institutions within the further education sector<sup>8</sup>, or maintained or assisted<sup>9</sup> by local education authorities<sup>10</sup>, at which prescribed<sup>11</sup> courses of higher education are currently provided<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

3 Ibid s 69(5). As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante. In the exercise of the power under s 69(5), the Secretary of State has made the Higher Education Funding Council for England (Supplementary Functions) Order 2001, SI 2001/2891, which confers an additional function on the Higher Education Funding Council for England exercisable in connection with the Education (Grant) (Financial Support for Students) Regulations 2001, SI 2001/2894 (see PARAS 69, 74 ante).

4 Further and Higher Education Act 1992 s 69(6)(a).

5 Ibid s 69(6)(b).

6 Ibid s 69(6).

7 Ibid s 69(7)(a). As to references to institutions within the higher education sector see PARA 646 ante.

8 As to references to institutions within the further education sector see PARA 579 ante.

9 For the meaning of 'assist' see PARA 45 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46(b)).

10 As to local education authorities see PARA 20 ante.

11 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definitions applied by virtue of the Further and Higher Education Act 1992 s 90(5) (as amended: see note 9 supra). As to the making of regulations under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante. At the date at which this volume states the law, no regulations had been made for these purposes.

12 Ibid s 69(7)(b).

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#### **745. Directions.**

In exercising its functions under Part II of the Further and Higher Education Act 1992<sup>1</sup>, the Higher Education Funding Council<sup>2</sup> must comply with any directions<sup>3</sup>, and such directions must be contained in an order made by the Secretary of State<sup>4</sup>. The Secretary of State may give general directions to the Council about the exercise of its functions<sup>5</sup>. If it appears to the Secretary of State that the financial affairs of any institution within the higher education sector<sup>6</sup> have been or are being mismanaged he may, after consulting the Council and the institution, give such directions to the Council about the provision of financial support in respect of the activities carried on by the institution as he considers are necessary or expedient by reason of the mismanagement<sup>7</sup>.

1    Ie the Further and Higher Education Act 1992 Pt II (ss 62-81) (as amended).

2    Ie in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see *ibid* s 62(5), (6); and *PARA* 733 *ante*.

3    Ie directions under *ibid* s 81.

4    *Ibid* s 81(1). As to the Secretary of State see *PARA* 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see *PARA* 53 *ante*. As to the making of orders under the Further and Higher Education Act 1992 generally see *PARA* 585 note 6 *ante*. At the date at which this volume states the law, no such order had been made.

5    *Ibid* s 81(2).

6    As to references to institutions within the higher education sector see *PARA* 646 *ante*.

7    Further and Higher Education Act 1992 s 81(3).



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## ***B. FUNDING OF HIGHER EDUCATION***

### **746. Administration of funds by Higher Education Funding Councils.**

The Higher Education Funding Council<sup>1</sup> is responsible, subject to the provisions of Part II of the Further and Higher Education Act 1992<sup>2</sup>, for administering funds made available to the Council by the Secretary of State<sup>3</sup> and others for the purposes of providing financial support for<sup>4</sup>:

- 1316 (1) the provision of education and the undertaking of research by higher education institutions<sup>5</sup> in the Council's area<sup>6</sup>;
- 1317 (2) the provision of any facilities, and the carrying on of any other activities, by higher education institutions in its area which the governing bodies<sup>7</sup> of those institutions consider it necessary or desirable to provide or carry on for the purpose of or in connection with education or research<sup>8</sup>;
- 1318 (3) the provision by institutions in its area maintained<sup>9</sup> or assisted<sup>10</sup> by local education authorities<sup>11</sup>, or by such institutions in its area as are within the further education sector<sup>12</sup>, of prescribed<sup>13</sup> courses of higher education<sup>14</sup>; and
- 1319 (4) the provision by any person of services for the purposes of, or in connection with, the provision of education or the undertaking of research by institutions within the higher education sector<sup>15</sup>.

The Council may:

- 1320 (a) make grants, loans or other payments to the governing body of any higher education institution in respect of expenditure incurred or to be incurred<sup>16</sup> by it for the purposes of any activities eligible for funding by virtue of head (1) or head (2) above<sup>17</sup>; and
- 1321 (b) make grants, loans or other payments to any persons in respect of expenditure incurred or to be incurred by them for the purposes of the provision as mentioned in head (3) above of prescribed courses of higher education or the provision of services as mentioned in head (4) above<sup>18</sup>,

subject in each case to such terms and conditions as the Council thinks fit<sup>19</sup>.

The Council must keep under review activities eligible for funding under these provisions<sup>20</sup>.

1    Ie in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2    Ie *ibid* Pt II (ss 62-81) (as amended).

3    As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4    Further and Higher Education Act 1992 s 65(1).

5 For the purposes of *ibid* s 65 (as amended) and s 66, 'higher education institution' means a university, an institution conducted by a higher education corporation or a designated institution: s 65(5). As to the meaning of 'university' see PARA 646 note 8 ante. For the meaning of 'higher education corporation' see PARA 672 ante. For the meaning of 'designated institution' see PARA 646 note 11 ante.

6 *Ibid* s 65(1), (2)(a).

7 For the meaning of 'governing body' see PARA 584 note 5 ante.

8 Further and Higher Education Act 1992 s 65(1), (2)(b).

9 As to institutions maintained by local education authorities see PARA 708 et seq ante.

10 For the meaning of 'assist' see PARA 45 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46(b)).

11 As to local education authorities see PARA 20 ante.

12 As to references to institutions within the further education sector see PARA 579 ante.

13 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definitions applied by virtue of the Further and Higher Education Act 1992 s 90(5) (as amended: see note 10 supra). As to the making of regulations under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante. For the courses prescribed under s 65 (as amended) see the Education (Prescribed Courses of Higher Education) Regulations 1993, SI 1993/481 (amended by SI 1998/1970).

14 Further and Higher Education Act 1992 s 65(1), (2)(c). For the meaning of 'higher education corporation' see PARA 646 note 3 ante.

15 *Ibid* s 65(1), (2)(d). As to references to institutions within the higher education sector see PARA 646 ante.

16 In the application of *ibid* s 65(3) to any grants, loans or other payments by a Council, the reference to expenditure incurred or to be incurred by the governing body of a higher education institution as mentioned in head (a) in the text includes a reference to expenditure incurred or to be incurred by any connected institution to which the governing body proposes, with the consent of the Council, to pay the whole or part of any such grants, loans or other payments: s 65(3A) (s 65(3A), (3B) added by the Teaching and Higher Education Act 1998 s 27). 'Connected institution', in relation to a higher education institution, means any college, school, hall or other institution which the Council in question is satisfied has a sufficient connection with that institution for the purposes of the Further and Higher Education Act 1992 s 65(3A) (as added): s 65(3B) (as so added). For the meaning of 'school' see PARA 81 ante; definition applied by s 90(1).

17 *Ibid* s 65(3)(a). Before exercising its discretion under s 65(3)(a) with respect to the terms and conditions (see PARA 747 post) to be imposed in relation to any grants, loans or other payments, a Council must consult: (1) such bodies representing the interests of higher education institutions as appear to the Council to be concerned; and (2) any such governing body of any particular higher education institution which appears to the Council to be concerned, as appear to the Council to be appropriate to consult in the circumstances: s 66(1).

18 *Ibid* s 65(3)(b).

19 *Ibid* s 65(3). As to the terms and conditions of funding see PARA 747 post. As to the duty to give reasons for funding decisions based on an informed exercise of academic judgment see *R v Higher Education Funding Council, ex p Institute of Dental Surgery* [1994] 1 All ER 651, [1994] 1 WLR 242, sub nom *R v The Universities Funding Council, ex p The Institute of Dental Surgery* [1994] ELR 506.

20 Further and Higher Education Act 1992 s 69(2).

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#### **747. Terms and conditions of funding.**

The terms and conditions on which a Higher Education Funding Council<sup>1</sup> may make any grants, loans or other payments<sup>2</sup> may in particular:

- 1322 (1) enable the Council to require the repayment, in whole or in part, of sums paid by the Council if any of the terms and conditions subject to which the sums were paid is not complied with<sup>3</sup>; and
- 1323 (2) require the payment of interest in respect of any period during which a sum due to the Council in accordance with any of the terms and conditions remains unpaid<sup>3</sup>,

but must not relate to the application by the body to whom the grants or other payments are made of any sums derived otherwise than from the Council<sup>5</sup>.

<sup>1</sup> In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

<sup>2</sup> In under *ibid* s 65 (as amended): see PARA 746 ante.

<sup>3</sup> *Ibid* s 65(4)(a).

<sup>4</sup> *Ibid* s 65(4)(b).

<sup>5</sup> *Ibid* s 65(4).

#### **UPDATE**

#### **747 Terms and conditions of funding**

NOTE 3--See *R (on the application of Queen Mary University of London) v Higher Education Funding Council for England* [2008] EWHC 1472 (Admin), [2008] ELR 540, [2008] All ER (D) 363 (Jun).

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**748. Matters to which Higher Education Funding Councils must have regard in providing funding.**

In exercising its functions in relation to the provision of financial support for activities eligible for funding<sup>1</sup> the Higher Education Funding Council<sup>2</sup> must have regard to the desirability of not discouraging any institution for whose activities financial support is provided<sup>3</sup> from maintaining or developing its funding from other sources<sup>4</sup>. In exercising those functions the Council must have regard (so far as it thinks it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining what appears to it to be an appropriate balance in the support given by it as between institutions which are of a denominational character<sup>5</sup> and other institutions<sup>6</sup>, and any distinctive characteristics of any institution within the higher education sector<sup>7</sup> for whose activities financial support is provided<sup>8</sup>.

1    Ie under the Further and Higher Education Act 1992 s 65 (as amended): see PARA 746 ante.

2    Ie in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see *ibid* s 62(5), (6); and PARA 733 ante.

3    Ie under *ibid* s 65 (as amended). As to the institutions for whose activities financial support may be provided under s 65 (as amended) see PARA 746 ante.

4    *Ibid* s 66(2).

5    For the purposes of *ibid* s 66(3), an institution is an institution of a denominational character if it appears to the Council that either: (1) at least one quarter of the members of the governing body of the institution are persons appointed to represent the interests of a religion or religious denomination; (2) any of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned is to be held for, or sold and the proceeds of sale applied for, the benefit of a religion or religious denomination; or (3) any of the property held for the purposes of the institution is held on trust for or in connection with the provision of education, or the conduct of an educational institution, in accordance with the tenets of a religion or religious denomination: s 66(4). For the meaning of 'governing body' see PARA 584 note 5 ante.

6    *Ibid* s 66(3)(a).

7    As to references to institutions within the higher education sector see PARA 646 ante.

8    Further and Higher Education Act 1992 s 66(3)(b).

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#### **749. Payments in respect of persons employed in the provision of higher education.**

The Higher Education Funding Council<sup>1</sup> has power to make payments, subject to such terms and conditions as the Council thinks fit, to any local education authority<sup>2</sup> in its area<sup>3</sup>, the London Pensions Fund Authority<sup>4</sup>, and the governing body<sup>5</sup> of any designated institution<sup>6</sup>, in respect of relevant expenditure<sup>7</sup> incurred or to be incurred by that authority or body of any class or description prescribed<sup>8</sup> for these purposes<sup>9</sup>. Each of those authorities or bodies must give the Council such information as the Council may require for the purposes of the exercise of its power to make payments<sup>10</sup>.

1 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2 As to local education authorities see PARA 20 ante.

3 Education Reform Act 1988 s 133(1)(a) (s 133(1) substituted by the Further and Higher Education Act 1992 s 67(1)).

4 Education Reform Act 1988 s 133(1)(c) (as substituted: see note 3 supra). The London Pensions Fund Authority was established under the London Government Reorganisation (Pensions etc) Order 1989, SI 1989/1815, art 2: see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 225 et seq.

5 As to the meaning of 'governing body' see PARA 704 note 4 ante.

6 Education Reform Act 1988 s 133(1)(d) (as substituted: see note 3 supra). The reference to a designated institution is a reference to an institution designated under s 129 (as originally enacted): see PARA 701 et seq ante.

7 For the purposes of ibid s 133(1) (as substituted), 'relevant expenditure' means:

83 (1) in relation to a local education authority, the London Residuary Body (see note 9 infra) or the London Pensions Fund Authority, expenditure in making payments to or in respect of persons employed or formerly employed at an institution which provides or (in the case of an institution which has ceased to exist since the employment in question came to an end) formerly provided higher education or further education (or both) (s 133(2)(a) (amended by the Further and Higher Education Act 1992 s 67(2))); and

84 (2) in relation to the governing body of any designated institution (see note 6 supra), expenditure in making payments to or in respect of persons employed or formerly employed at the institution (Education Reform Act 1988 s 133(2)(b)).

For the meaning of 'employed' see PARA 776 note 3 post. For the meaning of 'higher education' see also PARA 19 ante. For the meaning of 'further education' see PARA 18 ante; definition applied by s 235(7), (8) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(1), (4)). The reference in the Education Reform Act 1988 s 133(2)(a) to higher education or further education (or both) must be read, in the case of an institution which ceased to exist before 1 April 1989 (ie the date on which s 120 was brought into force by the Education Reform Act 1988 (Commencement No 4) Order 1988, SI 1988/2271 (as amended)), as a reference to further education within the meaning of the Education Act 1944 s 41 (repealed) as it had effect immediately before that date, and in any other case the reference to further education must be read as a reference to further education within the meaning of s 41 (repealed) as it had effect on that date: Education Reform Act 1988 s 133(3) (amended by the Further and Higher Education Act 1992 s 67(3)).

8 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by the Education Reform Act 1988 s 235(7), (8) (as amended: see note 7 supra). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. Classes and descriptions of relevant expenditure are prescribed by the Education (Polytechnics and Colleges Funding Council) (Prescribed Expenditure) Regulations 1991, SI 1991/2307 (amended by SI 1996/1680; SI 2000/1410).

9 Education Reform Act 1988 s 133(1) (as substituted: see note 3 supra). Section 133(1) (as substituted) also provides for payments to be made to the London Residuary Body: s 133(1)(b) (as so substituted). The Residuary Body was established under the Local Government Act 1985 s 57; it was wound up, and all remaining functions, property, rights and liabilities transferred to and vested in the council of the London Borough of Bromley, on 29 March 1996 (see the Education (London Residuary Body) (Transfer of Functions and Property) (No 2) Order 1992, SI 1992/2257 (amended by SI 1994/580; SI 1997/1990; SI 1998/1129; SI 2001/3649); and the London Residuary Body (Winding Up) Order 1996, SI 1996/557). See also **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 5.

10 Education Reform Act 1988 s 133(4) (amended by the Further and Higher Education Act 1992 s 67(4)). The power to make payments is the power exercisable under the Education Reform Act 1988 s 133(1) (as substituted).

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**750. Power to reimburse certain payments to persons formerly employed in teacher training.**

A Higher Education Funding Council<sup>1</sup> may make payments, subject to such terms and conditions as it thinks fit, to a further education corporation<sup>2</sup> or the governing body of any designated institution<sup>3</sup>, in respect of expenditure incurred or to be incurred by that corporation or body in making safeguarded salary payments<sup>4</sup> to a person who in consequence of a direction<sup>5</sup> given by the Secretary of State<sup>6</sup> ceased before 1 April 1989 to be employed in a college for the training of teachers<sup>7</sup>, or in a department for the training of teachers in any other establishment of further education<sup>8</sup>.

A further education corporation or the governing body of any designated institution must give to a Higher Education Funding Council such information as the Council may require for the purposes of the exercise of its power to make such payments<sup>9</sup>.

1 As to the Higher Education Funding Councils see PARA 733 ante.

2 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Act 1994 s 19(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 128). As to further education corporations see PARA 583 et seq ante.

3 I.e. designated under the Further and Higher Education Act 1992 s 28 (as amended); see PARA 599 ante. For the meaning under the Further and Higher Education Act 1992 of the 'governing body' of an institution see PARA 584 note 5 ante.

4 Education Act 1994 s 18(1) (amended by the School Standards and Framework Act 1998 s 140(3), Sch 31). The amount of the safeguarded salary payment is the amount by which, in consequence of the matters mentioned in the Education Act 1994 s 18(2) (see the text to notes 5-8 infra), a person's salary exceeds that which would normally be appropriate to the post held by him: s 18(3).

5 As to the power to make directions under *ibid* Pt I (ss 11A-19) (as amended) see s 8 (repealed).

6 I.e. under the Further Education Regulations 1975, SI 1975/1054, reg 3(2) (now revoked); the Education (Schools and Further Education) Regulations 1981, SI 1981/1086, reg 15 (now revoked), being a direction relating to a course for the training of teachers; or reg 16 (now revoked): Education Act 1994 s 18(2). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 As to the training of teachers see PARA 784 et seq post.

8 Education Act 1994 s 18(2).

9 See *ibid* s 18(4).

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**751. Higher Education Funding Council for Wales as a funding agency for teacher training.**

The Higher Education Funding Council for Wales<sup>1</sup> is responsible for administering funds made available to it by the National Assembly for Wales<sup>2</sup> (and others) for the purpose of funding the provision of teacher training (and related activities) by eligible institutions<sup>3</sup>.

1 As to the Higher Education Funding Council for Wales see PARA 733 et seq ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 As to the Higher Education Funding Council for Wales as a funding agency for teacher training see PARA 803 et seq post. The funding functions mentioned in the text are carried out in relation to England by the Training and Development Agency for Schools: see PARA 795 et seq post.



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### ***C. ANCILLARY POWERS AND DUTIES***

#### **752. Duty to provide information to central government.**

The Higher Education Funding Council<sup>1</sup> must provide the Secretary of State<sup>2</sup> with such information or advice relating to the provision for its area of higher education<sup>3</sup> as he may from time to time require<sup>4</sup>, and may provide the Secretary of State with such information or advice relating to such provision as it thinks fit<sup>5</sup>. Information and advice so provided must be provided in such manner as the Secretary of State may from time to time determine<sup>6</sup>.

1 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'higher education' see PARA 19 ante; definition applied by the Further and Higher Education Act 1992 s 90(1).

4 Ibid s 62(5), 69(1)(a). Provision corresponding to that made by s 69(1)(a) is also made for Northern Ireland: see s 69(3).

5 Ibid s 62(5), 69(1)(b). Provision corresponding to that made by s 69(1)(b) is also made for Northern Ireland: see s 69(3).

6 Ibid s 69(1).

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### **753. General powers.**

The Higher Education Funding Council<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions<sup>2</sup>, including in particular: (1) acquiring and disposing of land<sup>3</sup> and other property<sup>4</sup>; (2) entering into contracts<sup>5</sup>; (3) investing sums not immediately required for the purpose of the discharge of its functions<sup>6</sup>; and (4) and accepting gifts of money, land or other property<sup>7</sup>. However, the Council must not borrow money<sup>8</sup>.

1     In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2     Ibid s 62(9), Sch 1 para 1(1).

3     For the meaning of 'land' see PARA 1355 note 3 post.

4     Further and Higher Education Act 1992 Sch 1 para 1(1)(a).

5     Ibid Sch 1 para 1(1)(b).

6     Ibid Sch 1 para 1(1)(c).

7     Ibid Sch 1 para 1(1)(d).

8     Ibid Sch 1 para 1(2).

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#### **754. Efficiency studies.**

The Higher Education Funding Council<sup>1</sup> may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of an institution within the higher education sector<sup>2</sup>. A person promoting or carrying out such studies at the request of the Council may require the governing body<sup>3</sup> of the institution concerned to furnish him, or any person authorised by him, with such information<sup>4</sup>, and to make its accounts and such other documents available to him, or any person so authorised, for inspection<sup>5</sup>, as he may reasonably require for that purpose<sup>6</sup>.

1    In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2    Ibid s 83(1). As to references to institutions within the higher education sector see PARA 646 ante.

3    For the meaning of 'governing body' see PARA 584 note 5 ante.

4    Further and Higher Education Act 1992 s 83(2)(a).

5    Ibid s 83(2)(b).

6    Ibid s 83(2).

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## ***D. INFORMATION***

### **755. Duty to give information to Higher Education Funding Councils.**

A local education authority<sup>1</sup>, the governing body<sup>2</sup> of any institution within the higher education sector<sup>3</sup>, and the governing body of any institution at which prescribed<sup>4</sup> courses of higher education<sup>5</sup> are currently or have at any time been provided, must give the Higher Education Funding Council<sup>6</sup> such information as it may require for the purposes of the exercise of any of its functions<sup>7</sup> under the Education Acts<sup>8</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'governing body' see PARA 584 note 5 ante.

3 As to references to institutions within the higher education sector see PARA 646 ante.

4 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definitions applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46(b)). As to the making of regulations under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante. At the date at which this volume states the law, no regulations had been made for these purposes. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 For the meaning of 'higher education' see PARA 19 ante; definition applied by *ibid* s 90(1).

6 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see *ibid* s 62(5), (6); and PARA 733 ante.

7 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 90(5) (as amended: see note 4 *supra*).

8 *Ibid* s 79. For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by s 90(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 115(1), (2)(a)).

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## ***E. JOINT EXERCISE OF FUNCTIONS***

### **756. Exercise of functions jointly with other further and higher education bodies.**

Any two or more of the following councils: (1) the Higher Education Funding Council<sup>1</sup>; (2) the Learning and Skills Council for England<sup>2</sup>; (3) the National Council for Education and Training for Wales<sup>3</sup>; or (4) the Scottish Higher Education Funding Council, may exercise jointly any of their functions where it appears to them that to do so will be more efficient, or will enable them more effectively to discharge any of their functions<sup>4</sup>. Any two or more such Councils must, if directed to do so<sup>5</sup>, jointly make provision for the assessment by a person appointed by them of matters relating to the arrangements made by each institution in Great Britain which is within the higher education sector<sup>6</sup> for maintaining academic standards in the institution<sup>7</sup>. The power to give such directions is to be treated, as regards the Scottish Higher Education Funding Council, as exercisable in or as regards Scotland and may be exercised separately<sup>8</sup>.

1 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

2 As to the Learning and Skills Council for England see PARA 1072 et seq post.

3 As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

4 Further and Higher Education Act 1992 ss 82(1), (3)(a) (s 82(3)(a) amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 38); Further and Higher Education Act 1992 s 90(2A) (added by the Learning and Skills Act 2000 Sch 9 para 1, 41). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 115(1), (3); and by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 33, 46(b)).

5 In relation to England, by the Secretary of State or, in relation to Wales, by the National Assembly for Wales. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

6 As to the meaning of 'institution within the higher education sector' see PARA 646 ante. As to references to institutions within the higher education sector in Scotland see the Further and Higher Education Act 1992 s 82(3)(b). For the meaning of 'Great Britain' see PARA 63 note 3 ante.

7 Ibid s 82(2).

8 Ibid s 82(2A) (added by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756, art 2, Schedule para 13).

## **UPDATE**

### **756 Exercise of functions jointly with other further and higher education bodies**

TEXT AND NOTES 1-7--References to councils are now to relevant authorities; reference to National Council for Education and Training for Wales is now to the National Assembly

for Wales to the extent that it is discharging its functions under the Learning and Skills Act 2000 Pt 2 (ss 30-51): 1992 Act s 82 (s 82(1), (2) amended, s 82(3)(a) substituted by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 4--1992 Act s 90(2A) repealed: SI 2005/3238.

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## ***F. GRANTS***

### **757. Grants to Higher Education Funding Councils, subject to terms and conditions.**

The Secretary of State<sup>1</sup> may make grants to the Higher Education Funding Councils<sup>2</sup> of such amounts and subject to such terms and conditions as he may determine<sup>3</sup>. The terms and conditions:

1324 (1) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the Council in respect of activities carried on by the institution<sup>4</sup>; but

1325 (2) must not otherwise relate to the provision of financial support by the Council in respect of activities carried on by any particular institution or institutions<sup>5</sup>.

The terms and conditions may not be framed by reference to particular courses of study or programmes of research (including the contents of such courses or programmes and the manner in which they are taught, supervised or assessed) or to the criteria for the selection and appointment of academic staff and for the admission of students<sup>6</sup>; but they may in particular enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with<sup>7</sup>, and require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid<sup>8</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 I.e. in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

3 Ibid s 68(1).

4 Ibid s 68(2)(a).

5 Ibid s 68(2)(b).

6 Ibid s 68(3).

7 Ibid s 68(4)(a).

8 Ibid s 68(4)(b). As to further conditions which may be imposed in relation to grants paid to funding bodies see PARA 758 post.





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### **758. Further conditions imposed in relation to grants paid to funding bodies.**

In relation to Wales, the following provisions have effect until a day to be appointed<sup>1</sup>. The power of the National Assembly for Wales<sup>2</sup> to impose conditions<sup>3</sup> in relation to grants paid to the Higher Education Funding Council for Wales<sup>4</sup> includes a power to impose a condition requiring the Council to impose a further condition<sup>5</sup>, in relation to any grants, loans or other payments made by that Council<sup>6</sup> to the governing body<sup>7</sup> of a relevant institution<sup>8</sup>. That further condition must:

- 1326 (1) require the governing body of any such institution to secure that, in respect of the relevant academic year<sup>9</sup>, the fees<sup>10</sup> payable to the institution by any prescribed class of persons<sup>11</sup> in connection with their undertaking courses<sup>12</sup> of any prescribed description<sup>13</sup> are equal to the prescribed amount<sup>14</sup>;
- 1327 (2) impose, in the event of a failure by the governing body to comply with the requirement specified in head (1) above, such further financial requirements on that body as may be specified, which may include requirements relating to the repayment, with or without interest, of the whole or part of any sums received by it in respect of the grant, loan or other payment in question<sup>15</sup>.

Where a further condition is imposed under head (1) above in connection with any grants, loans or other payments made to the governing body of a relevant institution<sup>16</sup>, and those payments are to any extent so made in respect of persons undertaking a course which is provided in whole or part by any other institution<sup>17</sup>, then, for these purposes, fees payable by such persons to the other institution must be regarded as fees payable by them to the relevant institution<sup>18</sup>.

In relation to England<sup>19</sup>, a condition must be imposed, when a grant is made to a funding body<sup>20</sup>, requiring that body to impose a condition regarding student fees and fair access to higher education in relation to any grants, loans or other payments made by that body to the governing body<sup>21</sup> of a relevant institution<sup>22</sup>. If a governing body in England fails to comply with that requirement<sup>23</sup>, the Director of Fair Access to Higher Education<sup>24</sup> may direct the Higher Education Funding Council for England to impose specified financial requirements<sup>25</sup> on the governing body<sup>26</sup>. As from a day to be appointed, similar provisions apply in relation to Wales<sup>27</sup>.

<sup>1</sup> The Teaching and Higher Education Act 1998 s 26 (as amended) is repealed by the Higher Education Act 2004 ss 49-50, Sch 6 para 7, Sch 7 as from a day to be appointed under s 52(6). In relation to England, the appointed day is 14 January 2006: see the Higher Education Act 2004 (Commencement No 4) Order 2006, SI 2006/51, art 2. In relation to Wales, the appointed day is 7 July 2005 but only in relation to the repeal of the Teaching and Higher Education Act 1998 s 26(5) (as amended): see the Higher Education Act 2004 (Commencement No 2 and Transitional Provision) (Wales) Order 2005, SI 2005/1833, art 4(e), (f). At the date at which this volume states the law, no such day has been appointed for any other purpose in relation to Wales.

In relation to England, provision is made for grants to the Higher Education Funding Council under the Higher Education Act 2004 Pt 3 (ss 22-41): see the text and notes 19-26 *infra*. See further PARA 760 *et seq post*.

<sup>2</sup> As to the National Assembly for Wales see PARA 53 *ante*.

<sup>3</sup> *Ie* under the Further and Higher Education Act 1992 s 68(1): see PARA 757 *ante*.

<sup>4</sup> As to the Higher Education Funding Council for Wales see PARA 733 *et seq ante*.

5 le under the Teaching and Higher Education Act 1998 s 26(4) (as amended; repealed in relation to England; prospectively repealed in relation to Wales): see the text and notes 9-14 *infra*.

6 le under the Further and Higher Education Act 1992 s 65 (as amended): see PARA 746 *ante*.

7 For the meaning of 'governing body' under the Further and Higher Education Act 1992 see PARA 584 note 5 *ante*.

8 Teaching and Higher Education Act 1998 s 26(3). 'Relevant institution' means a specified institution or an institution of a specified class: s 26(9). 'Specified' means specified by the Secretary of State in a condition imposed by him under s 26(3): s 26(9) (definition amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 74(1), (4)(b)). See note 1 *supra*. See also PARA 1046 note 6 *post*.

9 'The relevant academic year', in relation to a course, means the academic year applicable to the course which begins at the same time as, or during, the period in respect of which the grants, loans or other payments to which the relevant condition under the Teaching and Higher Education Act 1998 s 26(4) relates are made: s 26(9) (definition amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (4)(a)). See note 1 *supra*. As to the meaning of 'course' see note 12 *infra*.

10 For the meaning of 'fees' see PARA 1046 note 18 *post*.

11 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). Classes of persons are prescribed for the purposes of s 26(4) (as amended) by the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 3.

Any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under the Teaching and Higher Education Act 1998 must be exercised by statutory instrument: s 42(1). A statutory instrument containing any regulations under that Act is subject to annulment in pursuance of a resolution of either House of Parliament: see s 42(2). Any order or regulations under that Act may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit: s 42(6). Any order or regulations under that Act may make different provision in relation to England and Wales respectively: s 42(7). Nothing in that Act is to be read as affecting the generality of s 42(6): s 42(8). As to the Secretary of State see PARA 52 *ante*.

12 'Course', where it appears in *ibid* s 26(4) (as amended) or s 26(5) (as amended), does not include any part-time or postgraduate course other than a course of initial teacher training: s 26(9). See note 1 *supra*.

13 The power to prescribe descriptions of courses under *ibid* s 26(4) must not be exercised in such a way as to discriminate between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate: s 26(8)(b). See note 1 *supra*. Descriptions of courses are prescribed for the purposes of s 26(4) (as amended) by the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 4.

14 Teaching and Higher Education Act 1998 s 26(4) (amended by the Learning and Skills Act 2000 s 146(1), (4)). As to the amount prescribed in relation to an academic year that begins on or after 1 September 2006, in relation to Wales, see the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 5.

No further condition under the Teaching and Higher Education Act 1998 s 26(4) (as amended) may apply in relation to any fees which are payable, in accordance with regulations under the Education (Fees and Awards) Act 1983 s 1 (as amended) (fees at universities and further education establishments: see PARA 1056 *post*), by students other than those falling within any class of persons prescribed by such regulations for the purposes of s 1(1) or s 1(2): Teaching and Higher Education Act 1998 s 26(7) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)).

Nothing in the Further and Higher Education Act 1992, so far as it imposes any prohibition or other requirement in relation to the imposition of conditions by the National Assembly for Wales or by the Higher Education Funding Council for Wales, applies to any condition under the Teaching and Higher Education Act 1998 s 26(3) (as amended) (see the text and notes 1-8 *supra*) imposed by the Assembly or any condition under s 26(4) (as amended) imposed by the Council: s 26(11) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3), (5); and the Education Act 2005 s 98, Sch 14 para 19(1), (4)). See note 1 *supra*.

15 Teaching and Higher Education Act 1998 s 26(6) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)). See note 1 *supra*.

16 Teaching and Higher Education Act 1998 s 26(10)(a) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)). See note 1 *supra*.

- 17 Teaching and Higher Education Act 1998 s 26(10)(b) (amended by the Learning and Skills Act 2000 s 146(1), (4)). See note 1 supra.
- 18 Teaching and Higher Education Act 1998 s 26(10). See note 1 supra.
- 19 The Higher Education Act 2004 Pt 3 (ss 22-41) (as amended) has been brought into force in relation to England (see PARA 760 et seq post). However, at the date at which this volume states the law, the relevant substantive provisions, namely ss 27-29 (as amended) (conditions to be imposed by funding agency: see PARA 765 ante), ss 33-36, 38 (as amended) (plans: see PARAS 766-768 ante) and ss 30, 32, 39 (relevant authority: see PARAS 760, 763, 767 ante), had not been brought into force in relation to Wales.
- 20 Ie under the Further and Higher Education Act 1992 s 68 (see PARA 757 ante). In relation to England, 'funding body' means the Higher Education Funding Council for England: see the Higher Education Act 2004 s 23(2) (as amended). As to the Higher Education Funding Council for England see PARA 733 et seq ante.
- 21 As to the meaning of 'governing body' see PARA 764 note 6 post.
- 22 See the Higher Education Act 2004 s 23 (as amended); and PARA 764 post. For the meaning of 'relevant institution' see PARA 764 note 7 post.
- 23 Ie as specified under ibid s 24 (as amended) (see PARA 764 post).
- 24 As to the Director of Fair Access to Higher Education see PARAS 760-762 post.
- 25 Ie under the Higher Education Act 2004 s 24(3) (see PARA 764 post).
- 26 See ibid s 37 (as amended); and PARA 768 post.
- 27 See note 19 supra.

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## ***G. TRANSFER OF FUNCTIONS IN RELATION TO LAND AND PROPERTY***

### **759. Land and property.**

Where any land<sup>1</sup> or other property is or was used or held for the purposes of an institution, and the Secretary of State<sup>2</sup> is entitled to any right or interest in respect of the property, or would be so entitled on the occurrence of any event, then, if the institution is within the higher education sector<sup>3</sup>, the Secretary of State may direct that all or any of his functions in respect of the property are exercisable on his behalf by the Higher Education Funding Council<sup>4</sup>, and the functions must be so exercised in accordance with such directions as he may give from time to time<sup>5</sup>.

1 As to the meaning of 'land' see PARA 1355 note 3 post.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 As to references to institutions within the higher education sector see PARA 646 ante.

4 In relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5), (6); and PARA 733 ante.

5 Ibid s 69(4).

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## **(6) STUDENT FEES AND FAIR ACCESS TO HIGHER EDUCATION**

### **(i) The Director of Fair Access to Higher Education**

#### **760. Functions of the Director of Fair Access to Higher Education.**

A Director of Fair Access to Higher Education is appointed by the Secretary of State<sup>1</sup> and has such functions relating to plans regarding student fees and fair access to higher education<sup>2</sup> as are conferred on him<sup>3</sup>. In addition, the Director may, where he considers it appropriate to do so, identify good practice relating to the promotion of equality of opportunity in connection with access to higher education<sup>4</sup>, whether full-time or part-time<sup>5</sup>, and give advice about such practice to publicly-funded institutions<sup>6</sup>. The Director must perform these functions<sup>7</sup> in such a way as to promote and safeguard fair access to higher education, including part-time higher education in so far as his functions are exercisable in relation to it<sup>8</sup>. In the performance of these functions, the Director has a duty to protect academic freedom, including, in particular, the freedom of institutions to determine the contents of particular courses<sup>9</sup> and the manner in which they are taught, supervised or assessed, and to determine the criteria for the admission of students and apply those criteria in particular cases<sup>10</sup>. The Director must, in the performance of these functions, have regard to any guidance given to him by the Secretary of State<sup>11</sup>.

If so requested by the Director, the Higher Education Funding Council for England and the Training and Development Agency for Schools must provide the Director with any information which is in its possession and is reasonably required by the Director for the purposes of his functions<sup>12</sup>. If so requested by the Higher Education Funding Council for England or the Training and Development Agency for Schools, the Director must provide the Council or the Agency with any information which is in his possession and which is reasonably required by either of those bodies for the purposes of its functions<sup>13</sup>.

1 Higher Education Act 2004 s 31(1), (2). As to the relevant authority in relation to Wales see PARA 763 post. As to the Secretary of State see PARA 52 ante.

2 In *ibid* Pt 3 (ss 22-41) (as amended), any reference to a plan is a reference to a plan complying with s 33 (see PARA 766 post): s 22. Section 22 came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) and is to come into force in relation to Wales as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 *Ibid* s 31(3). Functions relating to plans are conferred on the Director as mentioned in the text by or under Pt 3 (as amended): see PARA 761 et seq post.

4 For the meaning of 'higher education' under the Education Act 1996 see PARA 19 ante.

5 Higher Education Act 2004 s 31(4)(a).

6 *Ibid* s 31(4)(b). For this purpose, 'publicly-funded institution' means any institution receiving grants, loans or other payments from the Higher Education Funding Council for England under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 ante) or from the Training and Development Agency for Schools under the Education Act 2005 s 78 (see PARA 795 post): Higher Education Act 2004 s 31(5) (amended by the Education Act 2005 s 98, Sch 14 para 30). As to the Higher Education Funding Council for England see PARA 733 et seq ante; and as to the Training and Development Agency for Schools see PARA 784 et seq post. For these purposes, 'institution' includes any training provider, whether or not the training provider would otherwise be regarded as an institution: Higher Education Act 2004 s 41(1) (definition added by the Education Act 2005

Sch 14 para 35(1), (2)(b)). For the meaning of 'training provider' see PARA 795 note 5 post; definition applied by virtue of the Higher Education Act 2004 s 41(3) (added by the Education Act 2005 Sch 14 para 35(1), (5)). The Higher Education Act 2004 s 41 (as amended) came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) and is to come into force in relation to Wales as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

7     Ie under *ibid* Pt 3 (as amended).

8     *Ibid* s 32(1). Section 32(1) came into force on the passing of the Act (ie on 1 July 2004: see s 52(1)).

9     For the purposes of *ibid* Pt 3 (as amended), 'course' does not include any part-time or postgraduate course other than a course of initial teacher training: s 41(1). See note 6 *supra*.

10    *Ibid* s 32(2). Section 32(2) comes into force as from a day to be appointed under s 52(3). In relation to England, the appointed day is 1 November 2004 (see the Higher Education Act 2004 (Commencement No 1 and Transitional Provisions) Order 2004, SI 2004/2781, art 2) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

11    Higher Education Act 2004 s 32(3). As to the Secretary of State see PARA 52 *ante*. Section 32(3) comes into force as from a day to be appointed under s 52(6). In relation to England, the appointed day is 1 November 2004 (see the Higher Education Act 2004 (Commencement No 1 and Transitional Provisions) Order 2004, SI 2004/2781, art 2) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

12    Higher Education Act 2004 s 40(1) (amended by the Education Act 2005 Sch 14 para 34).

13    Higher Education Act 2004 s 40(2) (amended by the Education Act 2005 Sch 14 para 34).

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### **761. Status, appointment, staffing and remuneration.**

The Director of Fair Access to Higher Education and his staff are not to be regarded as servants or agents of the Crown<sup>1</sup>.

The Director is to hold and vacate office in accordance with the terms of his appointment<sup>2</sup>, but may not be appointed for a term of more than three years<sup>3</sup>. He may at any time resign by giving written notice to the Secretary of State<sup>4</sup>. The previous appointment of a person as Director does not affect his eligibility for re-appointment<sup>5</sup>. The Director is paid such remuneration and allowances as the Secretary of State may determine<sup>6</sup>.

The Director may appoint such staff as he may determine<sup>7</sup>. The remuneration and other conditions of service of any person so appointed are to be determined by the Director<sup>8</sup>.

The Director and the Higher Education Funding Council for England<sup>9</sup> may enter into arrangements with each other for the provision to the Director by the Council, on such terms as may be agreed, of staff, accommodation or services<sup>10</sup>.

<sup>1</sup> Higher Education Act 2004 s 31(1), (6), Sch 5 para 1. As to the relevant authority in relation to Wales see PARA 763 post.

<sup>2</sup> Ibid Sch 5 para 2(1).

<sup>3</sup> Ibid Sch 5 para 2(1)(a).

<sup>4</sup> Ibid Sch 5 para 2(1)(b). As to the Secretary of State see PARA 52 ante.

<sup>5</sup> Ibid Sch 5 para 2(2).

<sup>6</sup> Ibid Sch 5 para 3.

<sup>7</sup> Ibid Sch 5 para 4(1).

<sup>8</sup> Ibid Sch 5 para 4(2).

<sup>9</sup> As to the Higher Education Funding Council for England see PARA 733 et seq ante.

<sup>10</sup> Higher Education Act 2004 Sch 5 para 5.

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## **762. Finance.**

The Secretary of State<sup>1</sup> may make payments to the Director of Fair Access to Higher Education<sup>2</sup>.

The Director must provide to the Secretary of State, as soon as possible after the end of each financial year<sup>3</sup>, a report on how he has performed his functions during that year<sup>4</sup>. The Secretary of State may by direction require the Director, either in that report or in a special report, to report to him on such matters related to access to higher education<sup>5</sup> as may be specified in the direction<sup>6</sup>. The Secretary of State must lay before each House of Parliament a copy of each report so provided to him<sup>7</sup>; and the Director must publish the report once it has been so laid<sup>8</sup>.

It is the duty of the Director: (1) to keep proper accounts and proper records in relation to the accounts<sup>9</sup>; (2) to prepare in respect of each financial year a statement of the accounts in such form as the Secretary of State may direct<sup>10</sup>; and (3) to send copies of the statement to the Secretary of State and the Comptroller and Auditor General<sup>11</sup> before the end of the month of August next following the financial year to which the statement relates<sup>12</sup>. The Comptroller and Auditor General must examine, certify and report on each statement so received by him, and must lay copies of each statement and of his report before each House of Parliament<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Higher Education Act 2004 s 31(1), (6), Sch 5 para 6. As to the relevant authority in relation to Wales see PARA 763 post.

3 For these purposes, 'financial year' means: (1) the period beginning with the date on which the first Director takes office and ending with the next 31 March; and (2) each subsequent period of 12 months ending with 31 March: *ibid* Sch 5 para 7(4).

4 *Ibid* Sch 5 para 7(1).

5 For the meaning of 'higher education' under the Education Act 1996 see PARA 19 ante.

6 Higher Education Act 2004 Sch 5 para 7(2).

7 *Ibid* Sch 5 para 7(3).

8 *Ibid* Sch 5 para 7(3).

9 *Ibid* Sch 5 para 8(1)(a).

10 *Ibid* Sch 5 para 8(1)(b).

11 As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726.

12 Higher Education Act 2004 Sch 5 para 8(1)(c).

13 *Ibid* Sch 5 para 8(2).



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## **(ii) The Relevant Authority in relation to Wales**

### **763. General duties of the relevant authority.**

The relevant authority in relation to Wales<sup>1</sup> must, in the performance of the functions that are conferred on it as the relevant authority<sup>2</sup>, have regard to any guidance given to it by the National Assembly for Wales<sup>3</sup>.

1 'Relevant authority', in relation to Wales, means such person as may be designated for these purposes by regulations made by the National Assembly for Wales: Higher Education Act 2004 s 30(1)(b). This power includes the power to designate the Higher Education Funding Council for Wales: s 30(2). Regulations designating a person as the relevant authority in relation to Wales may make such amendments of any enactment, including any enactment contained in the Higher Education Act 2004, as appear to the National Assembly for Wales to be necessary or expedient in connection with the designation of that person: s 30(3). For the meaning of 'Wales' see PARA 52 note 13 ante. As to the National Assembly for Wales see PARA 53 ante; and as to the Higher Education Funding Council for Wales see PARA 733 et seq ante. As to the making of regulations under the Higher Education Act 2004 see PARA 764 note 9 post. At the date at which this volume states the law, no regulations had been made under s 30.

The provisions of s 30(1) come into force in relation to Wales as from a day to be appointed under s 52(6), and those of s 30(2), (3) come into force as from a day to be appointed under s 52(3). At the date at which this volume states the law, no such day had been appointed.

2 Ie under ibid Pt 3 (as amended).

3 Ibid ss 10(2), 32(4), 48. The provisions of s 32(4) come into force as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/4. HIGHER EDUCATION/(6) STUDENT FEES AND FAIR ACCESS TO HIGHER EDUCATION/(iii) Plans relating to Student Fees and Fair Access to Higher Education/764. Duty of Secretary of State to impose condition as to student fees, etc.

### **(iii) Plans relating to Student Fees and Fair Access to Higher Education**

#### **764. Duty of Secretary of State to impose condition as to student fees, etc.**

The Secretary of State<sup>1</sup> must, when making any grant to an English funding body<sup>2</sup>, impose a condition<sup>3</sup> requiring that body to impose a condition<sup>4</sup> in relation to any grants, loans or other payments made by that body<sup>5</sup> to the governing body<sup>6</sup> of a relevant institution<sup>7</sup>.

The condition to be imposed<sup>8</sup> by an English funding body requires the governing body of the relevant institution to:

- 1328 (1) secure that, in respect of any qualifying course<sup>9</sup>, the qualifying fees<sup>10</sup> in respect of any academic year<sup>11</sup> which begins during the grant period<sup>12</sup> at a time when an English approved plan is in force in relation to the institution do not exceed such limit, not exceeding the higher amount<sup>13</sup>, as is provided by the plan for that course and that academic year<sup>14</sup>;
- 1329 (2) secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when no English approved plan is in force in relation to the institution do not exceed the basic amount<sup>15</sup>; and
- 1330 (3) comply with the general provisions<sup>16</sup> of any English approved plan that is in force in relation to the institution during any part of the grant period during which it is in force<sup>17</sup>.

Such a condition must provide:

- 1331 (a) in the event of a failure by the governing body to comply with the requirement specified in head (1) above:
  - 4
  - 3. (i) where the qualifying fees do not exceed the higher amount, for the imposition by the funding body on the governing body of any financial requirements required by a relevant direction<sup>18</sup>; and
  - 4. (ii) where the qualifying fees exceed that amount, for the imposition by the funding body on the governing body of any financial requirements required by a relevant direction<sup>19</sup> and of other financial requirements determined by the funding body in accordance with principles specified by the Secretary of State in the condition<sup>20</sup>;
  - 5
- 1332 (b) in the event of a failure by the governing body to comply with the requirement specified in head (2) above, for the imposition by the funding body on the governing body of financial requirements determined by the funding body in accordance with principles specified by the Secretary of State in the condition<sup>21</sup>; and
- 1333 (c) in the event of a failure by the governing body to comply with the requirement specified in head (3) above, for the imposition by the funding body on the governing body of any financial requirements required by a relevant direction<sup>22</sup>.

Where such a condition is imposed in connection with any grants, loans or other payments made to the governing body of a relevant institution, and those payments are to any extent made in respect of persons undertaking a course which is provided in whole or part by any other institution, then for these purposes fees payable by such persons to the other institution are to be regarded as fees payable by them to the relevant institution<sup>23</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the power of the National Assembly for Wales to impose conditions see PARA 765 post.

2 Ie under the Further and Higher Education Act 1992 s 68 (see PARA 757 ante) or the Education Act 2005 s 81 (see PARA 796 post). For this purpose, 'funding body' means the Higher Education Funding Council for England or the Training and Development Agency for Schools: Higher Education Act 2004 s 23(2) (definition amended by the Education Act 2005 s 98, Sch 14 para 25(1), (3)). As to the Higher Education Funding Council for England see PARA 733 et seq ante; and as to the Training and Development Agency for Schools see PARA 784 et seq post.

3 Ie under the Further and Higher Education Act 1992 s 68(1) (see PARA 757 ante) or the Education Act 2005 s 81(1) (see PARA 796 post).

4 Ie under the Higher Education Act 2004 s 24 (as amended): see the text and notes 8-23 infra.

5 Ie under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 ante) or the Education Act 2005 s 78 (see PARA 795 post).

6 In the Higher Education Act 2004, any reference to the governing body of an institution: (1) in relation to any institution except a training provider falling within head (2) infra, has the meaning given by the Further and Higher Education Act 1992 s 90(1) (see PARA 584 note 5 ante), but subject to any provision made by virtue of s 90(2) (see PARA 584 note 5 ante); and (2) in the case of a training provider who but for s 90(1) would not be regarded as an institution, means the training provider: Higher Education Act 2004 s 41(1A) (added by the Education Act 2005 Sch 14 para 35(1), (3)). For the meanings of 'institution' and 'training provider' see PARA 760 note 6 ante.

The Higher Education Act 2004 s 41 (as amended) came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) but, in relation to Wales, is to come into force as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

7 Ibid s 23(1) (amended by the Education Act 2005 Sch 14 para 25(1), (2)(a)). For this purpose, 'relevant institution' means an institution specified by the Secretary of State in a condition under the Higher Education Act 2004 s 23(1) (as amended), or an institution of a class so specified: s 23(2). Nothing in the Further and Higher Education Act 1992 or the Education Act 2005, so far as it imposes any prohibition or other requirement in relation to the imposition of conditions by the Secretary of State, the Higher Education Funding Council for England or the Training and Development Agency for Schools applies to: (1) any condition under the Higher Education Act 2004 s 23 (as amended) imposed by the Secretary of State; or (2) any condition under s 24 (as amended) (see the text and notes 8-23 infra) imposed by the Higher Education Funding Council for England or the Training and Development Agency for Schools: s 29(3) (amended by the Education Act 2005 Sch 14 para 29).

The Higher Education Act 2004 s 29 (as amended) came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) but, in relation to Wales, is to come into force as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

8 Ie under ibid s 24 (as amended). No condition under s 24 (as amended) applies in relation to any fees which are payable, in accordance with regulations under the Education (Fees and Awards) Act 1983 s 1, by students other than those falling within any class of persons prescribed by such regulations for the purposes of s 1(1) or (2) (see PARA 1056 post): Higher Education Act 2004 s 29(1). See note 7 supra.

9 For this purpose, 'qualifying course' means a course of any description prescribed for the purposes of ibid s 24 (as amended): s 24(6). For the meaning of 'course' see PARA 760 note 9 ante. 'Prescribed' means prescribed by regulations made by the Secretary of State: s 24(6). The power to prescribe descriptions of course by virtue of the definition of 'qualifying course' in s 24(6) may not be exercised in such a way as to discriminate: (1) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given; and (2) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate: s 29(2). See note 7 supra. As to the regulations made under s 24(6) see the Student Fees (Amounts) (England) Regulations 2004, SI 2004/1932.

Any power of the Secretary of State or the National Assembly for Wales to make an order or regulations under the Higher Education Act 2004 is exercisable by statutory instrument: s 47(1). Any statutory instrument containing an order made by the Secretary of State under s 18 (see PARA 1044 post) or regulations made by the Secretary of State under any provision of the Act is subject to annulment in pursuance of a resolution of either House of Parliament (s 47(2)), unless they are regulations to which s 26(2)(a)(ii) or s 26(b)(ii) applies (see note 13 infra), or regulations to which s 13(3)(b), Sch 2 para 12(3) (see PARA 1042 note 8 post) applies (s 47(3)). A statutory instrument which contains (whether alone or with other provisions) regulations made by the Secretary of State by virtue of s 33(2) (see PARA 766 post), s 34 (see PARA 767 post) or s 37(3)(c) (see PARA 768 post) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: s 47(3), (4). Any order or regulations under the Higher Education Act 2004 may make different provision for different cases or different areas, may make provision generally or only in relation to specified cases, and may contain such incidental, supplemental, saving or transitional provisions as the person making the order or regulations thinks fit: s 47(5). Nothing in the Higher Education Act 2004 is to be regarded as affecting the generality of s 47(5): s 47(6). As to the National Assembly for Wales see PARA 53 ante.

10 For this purpose, 'qualifying fees', in relation to a relevant institution, means the fees payable to the institution by a qualifying person in connection with his undertaking a qualifying course; and 'qualifying person' means a person falling within any class of persons prescribed for the purposes of ibid s 24 (as amended): s 24(6). See note 9 supra. In Pt 3 (as amended), 'fees', in relation to undertaking a course, means fees in respect of, or otherwise in connection with, undertaking the course, including admission, registration, tuition and graduation fees but excluding: (1) fees payable to an institution for awarding or accrediting any qualification where the institution does not provide the whole or part of the course and is not a publicly-funded institution; (2) fees payable for board or lodging; (3) fees payable for field trips (including any tuition element of such fees); (4) fees payable for attending any graduation or other ceremony; and (5) such other fees as may be prescribed, in relation to England, by regulations made by the Secretary of State, or, in relation to Wales, by regulations made by the National Assembly for Wales: s 41(1). For this purpose, 'publicly-funded institution' means any university or other institution receiving grants, loans or other payments under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 ante) or the Education Act 2005 s 78 (see PARA 795 post) or s 86 (see PARA 803 post), any institution maintained by a local education authority in the exercise of its further and higher education functions, any institution receiving a recurrent grant towards its costs under regulations made under the Education Act 1996 s 485 (see PARA 69 ante), and any institution receiving financial resources under the Learning and Skills Act 2000 s 5 (as amended) (see PARA 1092 post) or s 34 (see PARA 1132 post): Higher Education Act 2004 s 41(2) (amended by the Education Act 2005 Sch 14 para 35(1), (4)). See note 6 supra.

11 For this purpose, 'academic year', in relation to a course, means an academic year applicable to the course: Higher Education Act 2004 s 24(6).

12 For this purpose, 'the grant period' means the period in respect of which the grants, loans or other payments to which the relevant condition under ibid s 23 (as amended) (see the text and notes 1-7 supra) relates: s 24(6). For the purposes of s 24(1), an academic year which begins at the same time as the grant period is to be taken to begin during the grant period, and an academic year which begins with the day on which an English approved plan comes into force is to be taken to begin at a time when the plan is in force: s 24(2). In Pt 3 (as amended), any reference to a plan is a reference to a plan complying with s 33 (see PARA 766 post), and any reference to an English approved plan is a reference to a plan approved under s 34 (as amended) (see PARA 767 post) in relation to England: s 22. Section 22 came into force, so far as relating to England, on the passing of the Act (ie 1 July 2004: see s 52(1)) and is to come into force in relation to Wales as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

13 For this purpose, 'the higher amount' means such amount as may be prescribed for the purposes of ibid s 24 (as amended) as the higher amount: s 24(6). For this purpose, 'the basic amount' means such amount as may be prescribed for the purposes of s 24 (as amended) as the basic amount: s 24(6). As to the regulations made under s 24(6) see the Student Fees (Amounts) (England) Regulations 2004, SI 2004/1932, regs 4-5. Where regulations under the Higher Education Act 2004 s 24(6) have been made prescribing the basic amount and the higher amount for those purposes: (1) no regulations may be made increasing the basic amount unless: (a) the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms (s 26(2)(a)(i)); or (b) a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament (s 26(2)(a)(ii)); and (2) no regulations may be made increasing the higher amount unless: (a) the Secretary of State is satisfied that the increase is no greater than is required to maintain the value of the amount in real terms (s 26(2)(b)(i)); or each House of Parliament has at any time after 1 January 2010 passed a resolution that, with effect from a date specified in the resolution, the higher amount should be increased to an amount specified in the resolution, and the increase is an increase to the specified amount with effect from the specified date (s 26(2)(b)(ii)). For the purposes of heads (1) and (2) supra, the Secretary of State is to have regard to such index of prices as may be specified in, or determined in accordance with, regulations made by him under s 26(3): s 26(3). At the date at which this volume states the law, no regulations had been made under s 26(3).

14 Ibid s 24(1)(a).

15 Ibid s 24(1)(b). Section 24(1)(b) has effect in relation to the qualifying fees payable by a qualifying person in connection with his undertaking a qualifying course ('the relevant course'), even if those fees are payable in respect of an academic year which begins at a time when an English approved plan is in force in relation to the institution, where: (1) the qualifying person had on or before 1 August 2005 received an offer, whether conditional on obtaining specified qualifications or not, of a place on the relevant course or a similar course, and the first academic year of the relevant course begins before 1 September 2007; or (2) where the qualifying person had received an offer of a place on a qualifying course (whether or not at the same institution as the relevant course) the first academic year of which begins before 1 September 2006, he was unable to take up the offer because a specified qualification or grade was not awarded to him, he appealed against the decision not to award him the qualification or grade, the appeal was allowed after the last date on which he could have taken up the offer, and as a result he was offered a place on the relevant course, and the first academic year of the relevant course begins after 31 August 2006 but before 1 September 2007: see s 25(1)-(3). For the purposes of head (1) *supra*, a course ('the original course') is similar to the relevant course if it appears to the governing body of the institution providing the relevant course that the subject matter of the course is in whole or in part the same as the subject matter of the original course, and (except where the original course is no longer being provided) the relevant course is provided by the institution which was to have provided the original course: s 25(4).

16 For the purposes of *ibid* Pt 3 (as amended), 'general provisions', in relation to a plan, has the meaning given by s 33(4) (see PARA 766 note 12 *post*): s 41(1). See note 6 *supra*.

17 Ibid s 24(1)(c).

18 Ibid s 24(3)(a)(i). The direction referred to in the text is a direction under s 37(1)(a) (as amended) (see PARA 768 *post*).

19 *Ie* under s 37(1)(a) (as amended) (see PARA 768 *post*).

20 Ibid s 24(3)(a)(ii). The condition referred to in the text is the condition under s 23 (as amended) (see the text and notes 1-7 *supra*).

21 Ibid s 24(3)(b). The condition referred to in the text is the condition under s 23 (as amended) (see the text and notes 1-7 *supra*).

22 Ibid s 24(3)(c). The direction referred to in the text is a direction under s 37(1)(a) (as amended) (see PARA 768 *post*). Any financial requirements imposed by virtue of s 24(3)(c) must relate to one or more of the following: (1) the repayment, with or without interest, of the whole or any part of any sums received by the governing body in respect of the grant, loan or other payment in question; (2) the withdrawal or reduction of any amount that has been awarded but not yet paid in respect of the grant, loan or other payment in question; or (3) the refusal to award (or to award to the extent expected) any other grant, loan or other payment under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 *ante*) or (as the case may be) the Education Act 2005 s 78 (see PARA 795 *post*) in respect of the grant period or any subsequent period: Higher Education Act 2004 s 24(4) (amended by the Education Act 2005 Sch 14 para 26).

23 Higher Education Act 2004 s 24(5).

## UPDATE

### 764 Duty of Secretary of State to impose conditions as to student fees, etc

NOTE 9--In exercise of the powers conferred on him by the 2004 Act ss 24(6), 47, the Secretary of State has made the Student Fees (Qualifying Courses and Persons) (England) Regulations 2007, SI 2007/778 (amended by SI 2007/2263, SI 2008/1640). SI 2004/1932 amended: SI 2007/1865, SI 2009/3113 (in force on 1 September 2010).

NOTE 13--See now the Student Fees (Inflation Index) Regulations 2006, SI 2006/507, made under the 2004 Act s 26(3), specifying the All Items Retail Prices Index Excluding Mortgage Interest Repayments published by the Office of National Statistics (now the Statistics Board). SI 2004/1932 regs 4, 5 amended: SI 2007/1865, SI 2009/3113 (in force on 1 September 2010).

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**765. Power of the National Assembly for Wales to impose conditions as to student fees, etc.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The power of the National Assembly for Wales<sup>2</sup> to impose conditions<sup>3</sup> in relation to grants paid to a Welsh funding body<sup>4</sup> includes power to impose a condition requiring the funding body to impose a condition<sup>5</sup> in relation to any grants, loans or other payments made by the funding body<sup>6</sup>, to the governing body<sup>7</sup> of a relevant institution<sup>8</sup>.

The condition to be imposed<sup>9</sup> by Welsh funding bodies requires the governing body of the relevant institution to:

- 1334 (1) secure that, in respect of any qualifying course<sup>10</sup>, the qualifying fees<sup>11</sup> in respect of any academic year<sup>12</sup> which begins during the grant period<sup>13</sup> at a time when a Welsh approved plan is in force in relation to the institution do not exceed such limit, not exceeding the higher amount<sup>14</sup>, as is provided by the plan for that course and that academic year<sup>15</sup>;
- 1335 (2) secure that, in respect of any qualifying course, the qualifying fees in respect of any academic year which begins during the grant period at a time when no Welsh approved plan is in force in relation to the institution do not exceed the basic amount<sup>16</sup>; and
- 1336 (3) comply with the general provisions<sup>17</sup> of any Welsh approved plan that is in force in relation to the institution during any part of the grant period during which it is in force<sup>18</sup>.

Such a condition must provide, in the event of a failure of the governing body to comply with any of the requirements specified in heads (1) to (3) above, for the imposition by the funding body on the governing body of financial requirements determined in accordance with principles specified by the National Assembly for Wales in the condition<sup>19</sup>.

Where such a condition is imposed in connection with any grants, loans or other payments made to the governing body of a relevant institution, and those payments are to any extent made in respect of persons undertaking a course which is provided in whole or part by any other institution, then for these purposes fees payable by such persons to the other institution are to be regarded as fees payable by them to the relevant institution<sup>20</sup>.

1 The Higher Education Act 2004 s 27 (as substituted) and s 28 (as amended) are to come into force as from a day to be appointed under s 52(3). At the date at which this volume states the law, no such day had been appointed.

2 As to the National Assembly for Wales see PARA 53 ante.

3 ie under the Further and Higher Education Act 1992 s 68(1) (see PARA 757 ante) or the Education Act 2005 s 82(1) (see PARA 798 post) or s 88(1) (see PARA 804 post).

4 For the purposes of the Higher Education Act 2004 s 27 (as substituted), 'funding body' means the Higher Education Funding Council for Wales or the Training and Development Agency for Schools: s 27(2) (s 27 substituted by the Education Act 2005 s 98, Sch 14 para 27). See note 1 supra. As to the Higher Education

Funding Council for Wales see PARA 733 et seq ante; and as to the Training and Development Agency for Schools see PARA 784 et seq post.

5    Ie under the Higher Education Act 2004 s 28 (as amended): see the text and notes 9-20 infra.

6    Ie under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 ante) or the Education Act 2005 s 78 (see PARA 795 post) or s 86 (see PARA 803 post).

7    As to the meaning of 'governing body' see PARA 764 note 6 ante.

8    Higher Education Act 2004 s 27(1) (as substituted: see note 4 supra). For this purpose, 'relevant institution' means an institution specified by the National Assembly for Wales in a condition under s 27(1) (as substituted), or an institution of a class so specified: s 27(2) (as so substituted). See note 1 supra. For the meaning of 'institution' see PARA 760 note 6 ante.

Nothing in the Further and Higher Education Act 1992 or the Education Act 2005, so far as it imposes any prohibition or other requirement in relation to the imposition of conditions by the National Assembly for Wales, the Higher Education Funding Council for Wales or the Training and Development Agency for Schools applies to: (1) any condition under s 27 (as substituted) imposed by the National Assembly for Wales; or (2) any condition under s 28 (as amended) (see the text and notes 9-20 infra) imposed by the Higher Education Funding Council for Wales or the Training and Development Agency for Schools: s 29(3) (amended by the Education Act 2005 Sch 14 para 29). The Higher Education Act 2004 s 29 (as amended) came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) but, in relation to Wales, is to come into force as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

9    Ie under *ibid* s 28 (as amended). No condition under s 28 (as amended) applies in relation to any fees which are payable, in accordance with regulations under the Education (Fees and Awards) Act 1983 s 1, by students other than those falling within any class of persons prescribed by such regulations for the purposes of s 1(1) or (2) (see PARA 1056 post): Higher Education Act 2004 s 29(1). See note 8 supra.

10   For this purpose, 'qualifying course' means a course of any description prescribed for the purposes of *ibid* s 28 (as amended): s 28(6). As to the meaning of 'course' see PARA 760 note 9 ante. 'Prescribed' means prescribed by regulations made by the National Assembly for Wales: s 28(6). See note 1 supra. The power to prescribe descriptions of course by virtue of the definition of 'qualifying course' in s 28(6) may not be exercised in such a way as to discriminate: (1) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given; and (2) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate: s 29(2). See note 8 supra. At the date at which this volume states the law, no such regulations had been made. As to the making of regulations under the Higher Education Act 2004 see PARA 764 note 9 ante.

11   For this purpose, 'qualifying fees', in relation to a relevant institution, means the fees payable to the institution by a qualifying person in connection with his undertaking a qualifying course; and 'qualifying person' means a person falling within any class of persons prescribed for the purposes of *ibid* s 28 (as amended): s 28(6). See note 1 supra. For the meaning of 'fees' see PARA 764 note 10 ante.

12   For this purpose, 'academic year', in relation to a course, means an academic year applicable to the course: *ibid* s 28(6). See note 1 supra.

13   For this purpose, 'the grant period' means the period in respect of which the grants, loans or other payments to which the relevant condition under *ibid* s 27 (as substituted) relates are made: s 28(6). For the purposes of s 28(1), an academic year which begins at the same time as the grant period is to be taken to begin during the grant period, and an academic year which begins with the day on which a Welsh approved plan comes into force is to be taken to begin at a time when the plan is in force: s 28(2). See note 1 supra. In Pt 3 (ss 22-41) (as amended), any reference to a plan is a reference to a plan complying with s 33 (see PARA 766 post), and any reference to a Welsh approved plan is a reference to a plan approved under s 34 (as amended) (see PARA 767 post) in relation to Wales: s 22. For the meaning of 'Wales' see PARA 52 note 13 ante. Section 22 came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) and is to come into force in relation to Wales as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

14   For this purpose, 'the higher amount' means such amount as may be prescribed for the purposes of *ibid* s 28 (as amended) as the higher amount: s 28(6). See note 1 supra.

15   *Ibid* s 28(1)(a). See note 1 supra.

16   *Ibid* s 28(1)(b). For this purpose, 'the basic amount' means such amount as may be prescribed for the purposes of s 28 (as amended) as the basic amount: s 28(6). See note 1 supra.

17 For the meaning of 'general provisions' see PARA 764 note 16 ante.

18 Higher Education Act 2004 s 28(1)(c). See note 1 supra.

19 Ibid s 28(3) (amended by the Education Act 2005 Sch 14 para 28(1), (3)). The condition referred to in the text is the condition under the Higher Education Act 2004 s 27 (as substituted) (see the text and notes 1-8 supra). Any financial requirements imposed by virtue of s 28(3) (as amended) must relate to one or more of the following: (1) the repayment, with or without interest, of the whole or any part of any sums received by the governing body in respect of the grant, loan or other payment in question; (2) the withdrawal or reduction of any amount that has been awarded but not yet paid in respect of the grant, loan or other payment in question; or (3) the refusal to award (or to award to the extent expected) any other grant, loan or other payment under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 ante) or (as the case may be) the Education Act 2005 s 78 (see PARA 795 post) or s 86 (see PARA 803 post) in respect of the grant period or any subsequent period: Higher Education Act 2004 s 28(4) (amended by the Education Act 2005 Sch 14 para 28(1), (4)). See note 1 supra.

20 Higher Education Act 2004 s 28(5). See note 1 supra.



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## **766. Contents of plans.**

A plan regarding student fees and fair access to higher education<sup>1</sup> relating to an institution<sup>2</sup> must, in relation to each qualifying course<sup>3</sup> in connection with which fees<sup>4</sup> are to be payable to the institution by qualifying persons<sup>5</sup>, specify or provide for the determination of a limit (not exceeding the higher amount<sup>6</sup>) which those fees are not permitted to exceed<sup>7</sup>. In relation to England, such a plan must also include such provisions relating to the promotion of equality of opportunity<sup>8</sup> as are required by regulations<sup>9</sup> to be included in the plan, and may also include further provisions relating to the promotion of equality of opportunity<sup>10</sup>. In relation to Wales, such a plan must also include such provisions relating to the promotion of equality of opportunity or the promotion of higher education as are required by regulations to be included in the plan, and may also include further provisions relating to either of those matters<sup>11</sup>.

The general provisions of such a plan<sup>12</sup> that may be required by such regulations include, in particular, provisions:

- 1337 (1) requiring the governing body<sup>13</sup> to take, or secure the taking of, measures to attract applications from prospective students who are members of groups which, at the time when the plan is approved, are under-represented in higher education<sup>14</sup>;
- 1338 (2) requiring the governing body to provide, or secure the provision of, financial assistance to students<sup>15</sup>;
- 1339 (3) requiring the governing body to make available to students and prospective students information about financial assistance available to students from any source<sup>16</sup>;
- 1340 (4) setting out objectives relating to the promotion of equality of opportunity (and, in relation to Wales, the promotion of higher education)<sup>17</sup>;
- 1341 (5) relating to the monitoring by the governing body of its compliance with the provisions of the plan and its progress in achieving any objectives set out in the plan by virtue of head (4) above<sup>18</sup>; and
- 1342 (6) requiring the provision of information to the relevant authority<sup>19</sup>.

Such regulations may not require a plan to include among the general provisions of the plan any provision referring to particular courses<sup>20</sup> or to the manner in which courses are taught, supervised or assessed, or to include any provision relating to the criteria for the admission of students<sup>21</sup>.

1 As to the meaning of 'plan' see PARA 760 note 2 ante.

2 As to the meaning of 'institution' see PARA 760 note 6 ante.

3 For the meaning of 'qualifying course' in relation to England see PARA 764 note 9 ante; and in relation to Wales see PARA 765 note 10 ante (definition applied by virtue of the Higher Education Act 2004 s 33(7)).

Section 33 came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) but is to come into force in relation to Wales as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

4 For the meaning of 'fees' see PARA 764 note 10 ante.

5 For the meaning of 'qualifying person' in relation to England see PARA 764 note 10 ante; and in relation to Wales see PARA 765 note 11 ante (definition applied by virtue of the Higher Education Act 2004 s 33(7)). See note 3 supra.

6 For these purposes, 'the higher amount' means, in relation to England, the amount from time to time prescribed as the higher amount under *ibid* s 24(6) (see PARA 764 ante), and, in relation to Wales, the amount from time to time prescribed as the higher amount under s 28(6) (see PARA 765 note 14 ante): s 33(7). See note 3 supra.

7 *Ibid* s 33(1). See note 3 supra.

8 For these purposes, 'equality of opportunity' means equality of opportunity in connection with access to higher education: *ibid* s 33(7). See note 3 supra.

9 For these purposes, 'regulations' means regulations made, in relation to England, by the Secretary of State, and, in relation to Wales, by the National Assembly for Wales: *ibid* s 33(7). See note 3 supra. As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. Regulations under s 33(2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: see s 47(3), (4); and PARA 764 note 9 ante. As to the regulations made under s 33 see the Student Fees (Approved Plans) (England) Regulations 2004, SI 2004/2473.

10 Higher Education Act 2004 s 33(2). See note 3 supra. As to the content of approved plans see the Student Fees (Approved Plans) (England) Regulations 2004, SI 2004/2473, regs 3-4.

11 Higher Education Act 2004 s 33(3). See note 3 supra.

12 In *ibid* Pt 3 (ss 22-41) (as amended), any reference to the 'general provisions' of a plan under s 33 is a reference to the provisions included in the plan by virtue of s 33(2) (see the text and notes 8-10 supra) or s 33(3) (see the text and note 11 supra): s 33(4). See note 3 supra.

13 As to the meaning of 'governing body' see PARA 764 note 6 ante.

14 Higher Education Act 2004 s 33(5)(a). See note 3 supra.

15 *Ibid* s 33(5)(b). See note 3 supra.

16 *Ibid* s 33(5)(c). See note 3 supra.

17 *Ibid* s 33(5)(d). See note 3 supra.

18 *Ibid* s 33(5)(e). See note 3 supra.

19 *Ibid* s 33(5)(f). See note 3 supra. 'Relevant authority', in relation to England, means the Director of Fair Access to Higher Education: ss 30(1)(b), 31(1). As to the Director of Fair Access to Higher Education see PARA 760 ante. As to the relevant authority in relation to Wales see PARA 763 ante.

20 For the meaning of 'course' see PARA 760 note 9 ante.

21 Higher Education Act 2004 s 33(6). See note 3 supra.

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## **767. Approval, duration and variation of plans.**

The governing body<sup>1</sup> of any institution<sup>2</sup> which is or may become eligible to receive grants<sup>3</sup> may apply to the relevant authority<sup>4</sup> for approval of a proposed plan regarding student fees and access to higher education<sup>5</sup> relating to the institution<sup>6</sup>. The relevant authority may, if it thinks fit, approve the plan<sup>7</sup>, and may issue guidance to such institutions as to the matters to which the relevant authority is to have regard in deciding whether to approve plans<sup>8</sup>. The relevant authority's functions in relation to the approval of plans must be exercised in accordance with regulations<sup>9</sup>. Regulations may, in particular, specify matters to which the relevant authority is, or is not, to have regard in making any determination relating to approval<sup>10</sup>. Regulations may require the institution to which any approved plan relates to publish the plan in the prescribed manner<sup>11</sup>.

A plan must specify the period during which it is to be in force<sup>12</sup>. The length of that period must not exceed such maximum as may be prescribed by regulations made (in relation to England) by the Secretary of State or (in relation to Wales) by the National Assembly for Wales<sup>13</sup>. These provisions<sup>14</sup> do not prevent the approval of a new plan taking effect on the expiry of a previous plan<sup>15</sup>.

Regulations<sup>16</sup> may make provision enabling an English approved plan<sup>17</sup> or a Welsh approved plan<sup>18</sup> to be varied with the approval of the relevant authority<sup>19</sup>.

1 As to the meaning of 'governing body' see PARA 764 note 6 ante.

2 For the meaning of 'institution' see PARA 760 note 6 ante.

3 I.e. under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 ante) or the Education Act 2005 s 78 (see PARA 795 post) or s 86 (see PARA 803 post).

4 For the meaning of 'relevant authority' in relation to England see PARA 766 note 19 ante. As to the relevant authority in relation to Wales see PARA 763 ante.

5 As to the meaning of 'plan' see PARA 760 note 2 ante.

6 Higher Education Act 2004 s 34(1) (amended by the Education Act 2005 s 98, Sch 14 para 31).

The Higher Education Act 2004 s 34 came into force, so far as relating to England, on the passing of the Act (i.e. on 1 July 2004: see s 52(1)) but is to come into force in relation to Wales as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

7 Ibid s 34(2). See note 6 supra.

8 Ibid s 34(3). See note 6 supra.

9 Ibid s 34(4). For this purpose, 'regulations' means regulations made, in relation to England, by the Secretary of State, or, in relation to Wales, by the National Assembly for Wales: s 34(7). See note 6 supra. Regulations under s 34 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: see s 47(3), (4); and PARA 764 note 9 ante. As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. Regulations made by virtue of s 34 (as amended), s 36 (see the text and notes 16-19 infra), s 37(3)(b) (see PARA 768 post) or s 38(3)(b) (see PARA 768 post) must include provision: (1) requiring any decision of the relevant authority under s 34 (as amended), s 36, s 37 (as amended) (see PARA 768 post) or s 38 (as amended) (see PARA 768 post) affecting the governing body of an institution to have effect in the first instance as a provisional decision; (2) enabling the governing body of the institution to apply for a review of the provisional decision to a person, or panel of

persons, appointed in accordance with the regulations by the Secretary of State (in relation to England) or the Assembly (in relation to Wales); (3) enabling the Secretary of State or the Assembly to pay remuneration and allowances to any person so appointed; (4) prescribing the grounds on which an application for the review of a provisional decision may be made; and (5) requiring the relevant authority to reconsider its provisional decision having regard to any recommendation of the person or panel: s 39. As to the making of regulations under the Higher Education Act 2004 generally see PARA 764 note 9 ante. As to the approval of plans see the Student Fees (Approved Plans) (England) Regulations 2004, SI 2004/2473, reg 5; and as to the review of decisions see regs 15-22.

The Higher Education Act 2004 s 39 came into force, so far as relating to England, on the passing of the Act (ie on 1 July 2004: see s 52(1)) and is to come into force in relation to Wales as from a day to be appointed under s 52(6). At the date at which this volume states the law, no such day had been appointed.

10 Ibid s 34(5). See note 6 supra.

11 Ibid s 34(6). See note 6 supra. Where the Director has approved a plan, the institution must publish it in a manner which makes it conveniently accessible to students and prospective students: see the Student Fees (Approved Plans) (England) Regulations 2004, SI 2004/2473, reg 6. As to the Director of Fair Access to Higher Education see PARA 760 ante.

12 Higher Education Act 2004 s 35(1). Section 35 came into force, in relation to England, for the purpose of making regulations on the passing of the Act (ie on 1 July 2004: see s 52(1)) and for remaining purposes on 1 November 2004 (see the Higher Education Act 2004 (Commencement No 1 and Transitional Provisions) Order 2004, SI 2004/2781, art 2). In relation to Wales, the Higher Education Act 2004 s 35 is to come into force as from a day to be appointed under s 52(6) but, at the date at which this volume states the law, no such day had been appointed.

13 Ibid s 35(2). See note 12 supra. Currently, the maximum period of time during which a plan may be in force is five years: see the Student Fees (Approved Plans) (England) Regulations 2004, SI 2004/2473, reg 7.

14 Ie the Higher Education Act 2004 s 35(1), (2): see the text and notes 12-13 supra.

15 Ibid s 35(3). See note 12 supra.

16 For this purpose, 'regulations' means regulations made, in relation to England, by the Secretary of State, or, in relation to Wales, by the National Assembly for Wales: ibid s 36(2). Section 36 came into force, in relation to England, for the purpose of making regulations on the passing of the Act (ie on 1 July 2004: see s 52(1)) and for remaining purposes on 1 November 2004 (see the Higher Education Act 2004 (Commencement No 1 and Transitional Provisions) Order 2004, SI 2004/2781, art 2). In relation to Wales, the Higher Education Act 2004 s 36 is to come into force as from a day to be appointed under s 52(6) but, at the date at which this volume states the law, no such day had been appointed.

17 As to the meaning of 'English approved plan' see PARA 764 note 12 ante.

18 As to the meaning of 'Welsh approved plan' see PARA 765 note 13 ante.

19 Higher Education Act 2004 s 36(1). See note 16 supra. As to the variation of English approved plans see the Student Fees (Approved Plans) (England) Regulations 2004, SI 2004/2473, reg 8.

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## **768. Enforcement of plans.**

If the Director of Fair Access to Higher Education<sup>1</sup> is satisfied that the governing body<sup>2</sup> of an institution<sup>3</sup> in England which is required<sup>4</sup> to comply with a specified requirement<sup>5</sup> relating to student fees has failed to comply with that requirement<sup>6</sup>, the Director may either:

1343 (1) direct the Higher Education Funding Council for England<sup>7</sup> or the Training and Development Agency for Schools<sup>8</sup> (or both) to impose specified financial requirements<sup>9</sup> on the governing body<sup>10</sup>; or

1344 (2) notify the governing body that on the expiry of the existing plan he will refuse to approve a new plan<sup>11</sup> during a specified period<sup>12</sup>,

or he may do both<sup>13</sup>. The Secretary of State<sup>14</sup> may by regulations<sup>15</sup> make provision:

1345 (a) as to the matters to which the Director must, or may not, have regard in exercising these powers<sup>16</sup>;

1346 (b) as to the procedure to be followed in connection with the giving of any direction or notification under head (1) or head (2) above<sup>17</sup>;

1347 (c) as to the financial requirements that may be specified by virtue of head (1) above<sup>18</sup>; and

1348 (d) as to the effect of a notification under head (2) above<sup>19</sup>.

If the relevant authority in relation to Wales<sup>20</sup> is satisfied that the governing body of an institution which, by virtue of a condition imposed<sup>21</sup> by a Welsh funding body<sup>22</sup> is required to comply with a specified requirement<sup>23</sup>, has failed to comply with that requirement, the relevant authority may notify the governing body that on the expiry of the existing plan it will refuse to approve a new plan<sup>24</sup> during a specified period<sup>25</sup>. The period specified must not exceed any maximum period prescribed by regulations made by the National Assembly for Wales<sup>26</sup>. The Assembly may by regulations make provision:

1349 (i) as to the matters to which the relevant authority must, or may not, have regard in exercising its power of refusal<sup>27</sup>;

1350 (ii) as to the procedure to be followed in connection with the giving of any notification<sup>28</sup>; and

1351 (iii) as to the effect of such a notification<sup>29</sup>.

The exercise of the power of refusal<sup>30</sup>, whether or not by the Higher Education Funding Council for Wales, does not prevent the Council or the Training and Development Agency for Schools from enforcing the relevant condition<sup>31</sup> by imposing financial requirements on the governing body in pursuance of any condition<sup>32</sup>.

1 As to the Director of Fair Access to Higher Education see PARA 760 ante.

2 As to the meaning of 'governing body' see PARA 764 note 6 ante.

3 For the meaning of 'institution' see PARA 760 note 6 ante.

4    Ie by virtue of a condition imposed under the Higher Education Act 2004 s 24 (as amended) (see PARA 764 ante).

5    Ie specified under ibid s 24(1)(a) or s 24(1)(c) (see PARA 764 ante).

6    The governing body of an institution is not to be regarded for the purposes of ibid s 37(1) as having failed to comply with the requirement specified in s 24(1)(c) (see PARA 764 ante) by reason of its failure to comply with any of the general provisions of an English approved plan, if the governing body shows that it has taken all reasonable steps to comply with that provision: s 37(2). For the meaning of 'general provisions' of a plan see PARA 764 note 16 ante. As to the meaning of 'plan' see PARA 760 note 2 ante; and as to the meaning of 'English approved plan' see PARA 764 note 12 ante.

7    As to the Higher Education Funding Council for England see PARA 733 et seq ante.

8    As to the Training and Development Agency for Schools see PARA 784 et seq post.

9    Ie under the Higher Education Act 2004 s 24(3) (see PARA 764 ante).

10   Ibid s 37(1)(a) (amended by the Education Act 2005 s 98, Sch 14 para 32).

11   Ie under the Higher Education Act 2004 s 34 (as amended) (see PARA 767 ante).

12   Ibid s 37(1)(b).

13   Ibid s 37(1).

14   As to the Secretary of State see PARA 52 ante.

15   As to the regulations made under the Higher Education Act 2004 s 37 (as amended) see the Student Fees (Approved Plans) (England) Regulations 2004, SI 2004/2473, regs 9-14.

16   Higher Education Act 2004 s 37(3)(a).

17   Ibid s 37(3)(b).

18   Ibid s 37(3)(c). Regulations under s 37(3)(c) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: see s 47(3), (4); and PARA 764 note 9 ante.

19   Ibid s 37(3)(d).

20   As to the relevant authority in relation to Wales see PARA 763 ante.

21   Ie under the Higher Education Act 2004 s 28 (as amended) (see PARA 765 ante).

22   For the meaning of 'funding body' in relation to Wales see PARA 765 note 4 ante.

23   Ie specified under the Higher Education Act 2004 s 28(1)(a) or s 28(1)(c) (see PARA 765 ante).

24   Ie under ibid s 34 (as amended) (see PARA 767 ante).

25   Ibid s 38(1). Section 38 is to come into force as from a day to be appointed under s 52(3) but, at the date at which this volume states the law, no such day had been appointed.

26   Ibid s 38(2). See note 25 supra. As to the National Assembly for Wales see PARA 53 ante.

27   Ibid s 38(3)(a). The powers referred to in the text are those under s 38(1) (see the text and notes 20-25 supra). See note 25 supra.

28   Ibid s 38(3)(b). The giving of notification referred to in the text is that under s 38(1) (see the text and notes 20-25 supra). See note 25 supra.

29   Ibid s 38(3)(c).

30   Ie the power under ibid s 38(1) (see the text and notes 20-25 supra).

31   Ie the condition imposed under ibid s 28 (as amended) (see PARA 765 ante).

32 Ibid s 38(4) (amended by the Education Act 2005 Sch 14 para 33). The text refers to financial requirements imposed on a governing body in pursuance of a condition under the Higher Education Act 2004 s 28(3) (as amended) (see PARA 765 ante): s 38(4).

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## 5. TEACHERS

### (1) QUALIFICATION, REGISTRATION AND OTHER REQUIREMENTS

#### (i) Requirements for Teaching Staff under the Teaching and Higher Education Act 1998 and the Education Act 2002

##### 769. Meaning of 'qualified teacher'.

A reference in the Education Acts<sup>1</sup> to a 'qualified teacher' is a reference to a person who satisfies requirements specified in regulations<sup>2</sup>. A requirement of such regulations may relate to:

- 1352 (1) the possession of a specified qualification<sup>3</sup> or experience of a specified kind<sup>4</sup>;
- 1353 (2) participation in or completion of a specified programme or course of training<sup>5</sup>;
- 1354 (3) compliance with a specified condition<sup>6</sup>;
- 1355 (4) an exercise of discretion by the Secretary of State, the National Assembly for Wales or another specified person<sup>7</sup>.

The Secretary of State must consult the General Teaching Council for England, and the National Assembly for Wales must consult the General Teaching Council for Wales, before making any such regulations which make provision by reference to the content of a course or programme<sup>8</sup> or to the standard of education or training provided through a course or programme<sup>9</sup>.

1 For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 Ibid s 132(1). 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 132 see the Education (School Teachers' Qualifications) (England) Regulations 2003, SI 2003/1662; and the Education (School Teachers' Qualifications) (Wales) Regulations 2004, SI 2004/1729.

The provisions of the Education Reform Act 1988 s 218(1)(a), (2), (2A), (2AA), (3) (s 218(2A), (2AA) as added; s 218(3) as amended) also impose a requirement for teachers to be qualified, but are repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). That day has been appointed in relation to England but, at the date at which this volume states the law, no such day had been appointed in relation to Wales: see PARA 776 post.

3 A power under the Education Act 2002 ss 132-140 (as amended) to make provision by reference to a specified qualification, a specified course of education or training or a specified programme includes power to make provision: (1) by reference to a class or description of qualification, course or programme; (2) by

reference to the institution, or class or description of institution, which awards the qualification or provides the course or programme; (3) which confers discretion on the Secretary of State, the Training and Development Agency for Schools, the General Teaching Council for England, the National Assembly for Wales, the Higher Education Funding Council for Wales, the General Teaching Council for Wales or another specified person: s 145(1) (amended by the Education Act 2005 s 98, Sch 14 para 24). A discretion under head (3) *supra* may, in particular, refer to approval or accreditation of a qualification, course, programme or institution: Education Act 2002 s 145(2). Regulations made by virtue of s 145(1) (as amended) may impose a duty on the Training and Development Agency for Schools or the Higher Education Funding Council for Wales: s 145(3) (amended by the Education Act 2005 Sch 14 para 24). As to the regulations made under the Education Act 2002 s 145 (as amended) see the Education (School Teachers' Qualifications) (England) Regulations 2003, SI 2003/1662; the Education (Specified Work and Registration) (England) Regulations 2003, SI 2003/1663; the Education (School Teachers' Qualifications) (Wales) Regulations 2004, SI 2004/1729; and the Education (Specified Work and Registration) (Wales) Regulations 2004, SI 2004/1744. As to the Training and Development Agency for Schools see PARA 784 *et seq post*; as to the General Teaching Council for England and the General Teaching Council for Wales see PARA 809 *et seq post*; and as to the Higher Education Funding Council for Wales see PARA 733 *et seq ante*.

4 Education Act 2002 s 132(2)(a).

5 *Ibid* s 132(2)(b). As to the specification of courses see note 3 *supra*.

As from a day to be appointed under s 216(4), regulations may provide that a person may undertake a specified course of training with a view to becoming a qualified teacher only if he is registered with provisional registration under the Teaching and Higher Education Act 1998 s 3 (as amended) (register maintained by General Teaching Council: see PARAS 822, 847 *post*): Education Act 2002 s 134(3). At the date at which this volume states the law, no such day had been appointed.

6 *Ibid* s 132(2)(c).

7 *Ibid* s 132(2)(d).

8 *Ibid* s 132(3)(a), (4)(a).

9 *Ibid* s 132(3)(b), (4)(b).

## UPDATE

### 769 Meaning of 'qualified teacher'

NOTES 2, 3--SI 2004/1729 amended: SI 2007/2811, SI 2008/215. SI 2003/1662 amended: SI 2007/2782 (revoked); SI 2009/3156.

NOTE 3--SI 2003/1663 amended: SI 2007/2117, SI 2008/1883. See also the Further Education (Principals' Qualifications) (England) Regulations 2007, SI 2007/1864 (amended by SI 2009/472, SI 2009/2049); the Further Education Teachers' Qualifications (England) Regulations 2007, SI 2007/2264.

NOTE 5--Day now appointed in relation to England: SI 2006/2895.



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**770. Requirement for teachers at schools and head teachers of schools to be qualified.**

Regulations<sup>1</sup> may provide that specified work may not be carried out by a person in a school<sup>2</sup> unless he: (1) is a qualified teacher<sup>3</sup>; or (2) satisfies specified requirements<sup>4</sup>. Regulations specifying work for these purposes may make provision by reference to one or more specified activities<sup>5</sup> or to the circumstances in which activities are carried out<sup>6</sup>. A requirement of such regulations may, in particular, relate to:

- 1356 (a) the possession of a specified qualification<sup>7</sup> or experience of a specified kind<sup>8</sup>;
- 1357 (b) participation in or completion of a specified programme or course of training<sup>9</sup>;
- 1358 (c) compliance with a specified condition<sup>10</sup>;
- 1359 (d) an exercise of discretion by the Secretary of State, the National Assembly for Wales, another specified person or another person of a specified description<sup>11</sup>.

Regulations<sup>12</sup> may provide that a person may serve as the head teacher<sup>13</sup> of a school<sup>14</sup> only if he is a qualified teacher<sup>15</sup>, and only if he has, in addition to any qualification so required, a specified qualification<sup>16</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 133 see the Education (Specified Work and Registration) (England) Regulations 2003, SI 2003/1663; and the Education (Specified Work and Registration) (Wales) Regulations 2004, SI 2004/1744.

2 For these purposes, 'school' means a school maintained by a local education authority or a special school not so maintained: Education Act 2002 s 133(6). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post.

3 Ibid s 133(1)(a). For the meaning of 'qualified teacher' see PARA 769 ante.

4 Ibid s 133(1)(b). Regulations may limit the period of time during which work may be carried out by a person in reliance on s 133(1)(b): s 133(5).

As from a day to be appointed under s 216(4), regulations may provide that work may be carried out by a person in reliance on s 133(1)(b) only if he is registered with provisional registration under the Teaching and Higher Education Act 1998 s 3 (as amended) (register maintained by General Teaching Council: see PARA 822 post): Education Act 2002 s 134(2). At the date at which this volume states the law, no such day had been appointed. Regulations specifying work for the purpose of s 134(2) (not yet in force) may make provision by reference to one or more specified activities, or to the circumstances in which activities are carried out: s 134(4).

The provisions of the Education Reform Act 1988 s 218(1)(a), (2), (2A), (2AA), (3) (s 218(2A), (2AA) as added; s 218(3) as amended) also impose a requirement for teachers to be qualified, but are repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). That day has been appointed in relation to England but, at the date at which this volume states the law, no such day had been appointed in relation to Wales: see PARA 776 post.

5 Education Act 2002 s 133(2)(a). Provision by virtue of s 133(2) may, in particular, be made by reference to an activity specified in a document of the kind mentioned in s 124(3) (pay and conditions orders: see PARA 864 post): s 133(3).

6 Ibid s 133(2)(b). See note 1 supra.

7 As to the specification of qualifications see PARA 769 note 3 ante.

8 Education Act 2002 s 133(4)(a).

9 Ibid s 133(4)(b). As to the specification of courses see PARA 769 note 3 ante. See also PARA 769 note 5 ante.

10 Ibid s 133(4)(c).

11 Ibid s 133(4)(d).

12 As to the regulations made under ibid s 135 see the Education (Head Teachers' Qualifications) (England) Regulations 2003, SI 2003/3111 (amended by SI 2005/875; SI 2005/3322); and the Head Teachers' Qualifications and Registration (Wales) Regulations 2005, SI 2005/1227.

13 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212.

14 For the purposes of ibid s 135, 'school' means: (1) a school maintained by a local education authority; or (2) a special school not so maintained: s 135(5). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post.

15 Ibid s 135(1).

16 Ibid s 135(2). Regulations under s 135(2) do not prevent a person from carrying out the functions of the head teacher of a school: (1) pending the appointment of a head teacher; or (2) in the absence of the head teacher: s 135(4). A provision of regulations under s 135(2) does not apply to a person who has been appointed as the head teacher of a school before the commencement of the provision: s 135(3).

## UPDATE

### **770 Requirement for teachers at schools and head teachers of schools to be qualified**

NOTE 1--SI 2003/1663 amended: SI 2007/2117, SI 2008/1883.

NOTE 4--Education Act 2002 s 134(2) now in force in relation to England: SI 2006/2895.

NOTE 14--SI 2005/1227 amended: SI 2007/2811.

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### **771. Requirement for teachers at schools to be registered.**

Regulations<sup>1</sup> may provide that specified work may be carried out in a school<sup>2</sup> by a qualified teacher<sup>3</sup> only if he is registered<sup>4</sup> with full registration<sup>5</sup>. Regulations specifying work for this purpose may make provision by reference to one or more specified activities, or to the circumstances in which activities are carried out<sup>6</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 134 (as amended) see the Education (Specified Work and Registration) (England) Regulations 2003, SI 2003/1663; and the Education (Specified Work and Registration) (Wales) Regulations 2004, SI 2004/1744.

2 For the purposes of the Education Act 2002 s 134 (as amended), 'school' means: (1) a school maintained by a local education authority; or (2) a special school not so maintained: s 134(5). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post.

3 For the meaning of 'qualified teacher' see PARA 769 ante.

4 le under the Teaching and Higher Education Act 1998 s 3 (as amended) (register maintained by General Teaching Council: see PARAS 822, 847 post).

5 Education Act 2002 s 134(1). Until a day is appointed in relation to Wales, s 134(1) is modified so as to omit the reference to full registration: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 7(1).

The provisions of the Education Reform Act 1988 s 218(1)(aa) (as added) also impose a requirement for teachers to be registered, but repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). That day has been appointed in relation to England but, at the date at which this volume states the law, no such day had been appointed in relation to Wales: see PARA 777 post.

6 Education Act 2002 s 134(4).

### **UPDATE**

### **771 Requirement for teachers at schools to be registered**

NOTE 1--SI 2003/1663 amended: SI 2007/2117, SI 2008/1883.

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## **772. Requirements to be met by teachers at, and principals of, further education institutions.**

Regulations<sup>1</sup> may: (1) prohibit the provision of education<sup>2</sup> at a further education institution by a person who does not have a specified qualification<sup>3</sup>; (2) prohibit the provision of education at a further education institution by a person unless he is serving or has served a probationary period<sup>4</sup>; (3) specify conditions to be complied with by or in respect of persons providing education at a further education institution<sup>5</sup>; and (4) provide that a person may serve as the principal of a further education institution only if he has a specified qualification<sup>6</sup>.

The Secretary of State may by regulations<sup>7</sup>: (a) prohibit the provision by a further or higher education institution in England<sup>8</sup> of a course, which is designed to lead to the award of a qualification specified under heads (1) and (4) above, without the approval of the Secretary of State<sup>9</sup>; (b) enable the Secretary of State to determine the number of persons who may undertake a course, which is designed to lead to the award of a qualification specified under heads (1) and (4) above, at a further or higher education institution in England<sup>10</sup>; (c) enable the Secretary of State to determine the number of persons in different categories who may undertake a course, which is designed to lead to the award of a qualification specified under heads (1) and (4) above, at a further or higher education institution in England<sup>11</sup>. The National Assembly for Wales may by regulations: (i) prohibit the provision by a further or higher education institution in Wales<sup>12</sup> of a course, which is designed to lead to the award of a qualification specified under heads (1) and (4) above, without the approval of the National Assembly<sup>13</sup>; (ii) enable the National Assembly to determine the number of persons who may undertake a course, which is designed to lead to the award of a qualification specified under heads (1) and (4) above, at a further or higher education institution in Wales<sup>14</sup>; (iii) enable the National Assembly to determine the number of persons in different categories who may undertake a course, which is designed to lead to the award of a qualification specified under heads (1) and (4) above, at a further or higher education institution in Wales<sup>15</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 136. However, by virtue of the Interpretation Act 1978 s 17(2)(b), the Education (Teachers' Qualifications and Health Standards) (England) Regulations 1999, SI 1999/2166 (amended by SI 2000/2704; SI 2001/1209; SI 2001/1391; SI 2001/2896; SI 2001/3737; SI 2002/1434; SI 2003/107; SI 2003/1662; SI 2003/1663; SI 2003/3139); and the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, SI 1999/2817 (amended by SI 2002/1663; SI 2002/2938; SI 2003/140; SI 2003/2458; SI 2004/1744; SI 2004/1729; SI 2004/2733), made under the Education Reform Act 1988 s 218(1) (as amended; prospectively repealed) (see PARA 778 post), have effect as if made under the Education Act 2002 s 136.

Regulations under any of ss 136-138 may provide that a specified provision of the regulations is not to apply where a specified condition, which may refer to the opinion of a specified person, is satisfied (s 140(1)); and such regulations may impose a function on a local education authority, or the governing body of a further or higher education institution (s 140(2)). For the meaning of 'governing body' under the Further and Higher Education Act 1992 in relation to a further education institution see PARA 584 note 5 ante. As to the meaning of 'governing body' under the Education Reform Act 1988 in relation to a higher education institution see PARA 704 note 4 ante. For these purposes, 'further education institution' means an institution which: (1) provides further

education and is maintained by a local education authority; or (2) is within the further education sector: Education Act 2002 s 140(3). For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'institutions within the further education sector' see PARA 579 ante. As to local education authorities see PARA 20 ante. For these purposes, 'higher education institution' means an institution which: (a) is within the higher education sector; and (b) receives financial support under the Further and Higher Education Act 1992 s 65 (as amended) (administration of funds by higher education funding councils: see PARA 746 ante): Education Act 2002 s 140(3). For the meaning of 'institutions within the higher education sector' see PARA 646 ante.

Sections 136-138, 140 are brought into force as from a day to be appointed under s 216(4). In relation to Wales, the appointed day is 1 September 2003 (see the Education Act 2002 (Commencement No 2) (Wales) Order 2003, SI 2003/1718, arts 2, 5, Schedule Pt II) but, at the date at which this volume states the law, no such day had been appointed in relation to England.

The provisions of the Education Reform Act 1988 s 218(1)(b)-(c) (as amended) also impose requirements on teachers at institutions providing further or higher education, but are repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 778 post.

2 For these purposes, 'education' includes vocational, social, physical and recreational training: Education Act 2002 s 140(3).

3 Ibid s 136(a). See note 1 supra. As to the specification of a qualification see PARA 769 note 3 ante. As to courses which are designed to lead to a specified qualification see the text and notes 7-15 infra.

4 Ibid s 136(b). See note 1 supra.

5 Ibid s 136(c). See note 1 supra.

6 Ibid s 137(1). Regulations under s 137(1) do not prevent a person from serving as the principal of an institution while he is following a course or programme which is of a kind specified in the regulations, and is designed to lead to the award of a qualification specified under s 137(1): s 137(2). Nor do such regulations prevent a person from carrying out the functions of the principal of an institution pending the appointment of a principal, or in the absence of the principal: s 137(4). A provision of regulations under s 137(1) does not apply to a person who has been appointed as the principal of an institution before the commencement of the provision: s 137(3). See note 1 supra. At the date at which this volume states the law, no regulations had been made under s 137.

7 At the date at which this volume states the law, no regulations had been made under ibid s 138.

8 For the meaning of 'England' see PARA 52 note 11 ante.

9 Education Act 2002 s 138(1), (2)(a). See note 1 supra.

10 Ibid s 138(1), (2)(b). See note 1 supra.

11 Ibid s 138(1), (2)(c). See note 1 supra.

12 For the meaning of 'Wales' see PARA 52 note 13 ante.

13 Education Act 2002 s 138(1), (3)(a). See note 1 supra.

14 Ibid s 138(1), (3)(b). See note 1 supra.

15 Ibid s 138(1), (3)(c). See note 1 supra.

## UPDATE

### **772 Requirements to be met by teachers at, and principals of, further education institutions**

NOTES 1, 3, 5--See the Further Education (Providers of Education) (England) Regulations 2006, SI 2006/3199 (amended by SI 2009/1924); the Further Education Teachers' Continuing Professional Development and Registration (England) Regulations 2007, SI 2007/2116; and the Further Education Teachers' Qualifications (England) Regulations 2007, SI 2007/2264.

NOTE 1--Education Act 2002 ss 136-138, 140 now in force in relation to England: SI 2006/2895.

NOTE 6--Education Act 2002 s 137(3) amended: Further Education and Training Act 2007 s 23(3). See the Further Education (Principals' Qualifications) (England) Regulations 2007, SI 2007/1864 (amended by SI 2009/472, SI 2009/2049).

TEXT AND NOTES 7-11--Regulations under the Education Act 2002 s 137(1) may limit the period of time during which a person may serve as the principal of an institution in reliance on s 137(2): s 137(2A) (added by the Further Education and Training Act 2007 s 23(2)).

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### **773. Requirements for teachers as to health and physical capacity.**

Regulations<sup>1</sup> may provide that certain activities may be carried out only by a person who satisfies specified conditions as to health or physical capacity<sup>2</sup>. The activities to which this requirement relates are:

- 1360 (1) an activity of a prescribed<sup>3</sup> kind performed in the course of the provision of education<sup>4</sup> at a school<sup>5</sup>, or a further education institution<sup>6</sup>;
- 1361 (2) an activity of a prescribed kind performed in the course of the provision of education by a person otherwise than in a school or a further education institution and under a contract of employment<sup>7</sup> or for services where the other party is a local education authority or a person exercising a function relating to the provision of education on behalf of a local education authority<sup>8</sup>;
- 1362 (3) an activity of a prescribed kind, other than the provision of education, where: (a) the activity is carried out by a person under a contract of employment or for services<sup>9</sup>; (b) the other party to the contract is a local education authority or the governing body of a school<sup>10</sup> or a further education institution<sup>11</sup>; and (c) the activity regularly brings the person into contact with children<sup>12</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations that have been made under s 141 see the Education (Health Standards) (England) Regulations 2003, SI 2003/3139; and the Education (Health Standards) (Wales) Regulations 2004, SI 2004/2733.

2 Education Act 2002 s 141(1). As to the specified health standards see the Education (Health Standards) (England) Regulations 2003, SI 2003/3139, reg 6; and the Education (Health Standards) (Wales) Regulations 2004, SI 2004/2733, reg 6. As to whether such regulations can impose a public law duty on the employer to dismiss see the following cases (decided under previous legislation, ie the Education (Teachers' Qualifications and Health Standards) (England) Regulations 1999, SI 1999/2166 (revoked)): *R (on the application of Verner) v Derby City Council*, *R (on the application of Sheppard) v Norfolk County Council*, *R (on the application of Ridley) v St Thomas More Roman Catholic High School* [2003] EWHC 2708 (Admin), [2004] ICR 535 (where a teacher successfully applied for ill-health retirement benefit the onus was on him to arrange for termination of the employment); cf *R (on the application of Dorling) v Sheffield City Council* [2002] EWHC 2505 (Admin), [2003] ICR 424, [2003] ELR 486 (illness resulting in incapacity to fulfil employment obligations does not give rise to an automatic termination of a contract of employment). See also *Healey v Bridgend County Borough Council* [2002] EWCA Civ 1996, [2004] ICR 561 (employee who applied voluntarily for ill-health retirement benefits and passed paperwork to employer had made a decision to retire).

The provisions of the Education Reform Act 1988 s 218(5) also impose requirements as to health and physical capacity on teachers and persons employed at schools and at institutions within the further and higher education sectors, but are repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). That day has been appointed in relation to England but, at the date at which this volume states the law, no such day had been appointed in relation to Wales: see PARA 781 post.

3 'Prescribed' means prescribed by regulations: Education Act 2002 s 212(1). As to the kinds of activity prescribed for the purposes of s 141 see the Education (Health Standards) (England) Regulations 2003, SI 2003/3139, reg 5; and the Education (Health Standards) (Wales) Regulations 2004, SI 2004/2733, reg 5.

4 For these purposes, 'education' includes vocational, social, physical and recreational training: Education Act 2002 s 141(5).

5 For these purposes, 'school' means a school maintained by a local education authority or a special school not so maintained: *ibid* s 141(5). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post.

6 *Ibid* s 141(2). For the meaning of 'further education institution' see PARA 772 note 1 ante; definition applied by virtue of s 141(5).

7 For the meaning of 'contract of employment' see PARA 333 note 3 ante.

8 Education Act 2002 s 141(3). See note 3 *supra*.

9 *Ibid* s 141(4)(a). See note 3 *supra*.

10 As to the governing bodies of maintained schools see PARA 203 et seq ante.

11 Education Act 2002 s 141(4)(b). For the meaning of 'governing body' under the Further and Higher Education Act 1992 in relation to a further education institution see PARA 584 note 5 ante. See note 3 *supra*.

12 Education Act 2002 s 141(4)(c). For these purposes, 'child' means a person who has not attained the age of 18 years: s 141(5). See note 3 *supra*.



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#### **774. Service of induction period for teachers.**

Regulations<sup>1</sup> may make provision for, and in connection with, requiring persons employed<sup>2</sup> as teachers at relevant schools<sup>3</sup> (subject to such exceptions as may be provided for by or under the regulations) to have satisfactorily completed an 'induction period'<sup>4</sup> of not less than three school terms<sup>5</sup>:

- 1363 (1) in a relevant school<sup>6</sup>;
- 1364 (2) in such circumstances as may be prescribed<sup>7</sup>, in an independent school<sup>8</sup>; or
- 1365 (3) in such circumstances as may be prescribed, in a further education institution<sup>9</sup> (or a further education institution of a prescribed description)<sup>10</sup>.

Such regulations may, in particular, make provision:

- 1366 (a) as to the length of the induction period in any prescribed circumstances<sup>11</sup>;
- 1367 (b) as to periods of employment<sup>12</sup> which are to count towards the induction period<sup>13</sup>;
- 1368 (c) precluding a person from serving more than one induction period except in any prescribed circumstances<sup>14</sup>;
- 1369 (d) precluding a relevant school, in such circumstances as may be prescribed, from being one at which an induction period may be served<sup>15</sup>;
- 1370 (e) as to the supervision and training of a person during his induction period<sup>16</sup>;
- 1371 (f) authorising the Secretary of State to determine the standards against which a person is to be assessed for the purpose of deciding whether he has satisfactorily completed an induction period<sup>17</sup>;
- 1372 (g) requiring the appropriate body to decide whether a person<sup>18</sup>:
  - 85 1. (i) has achieved those standards and has accordingly satisfactorily completed his induction period<sup>19</sup>; or
  - 2. (ii) should have his induction period extended by such period as may be determined by the appropriate body<sup>20</sup>; or
  - 3. (iii) has failed satisfactorily to complete his induction period<sup>21</sup>;
- 86 1373 (h) requiring the head teacher<sup>22</sup> of a school to make a recommendation to the appropriate body as to whether a person has achieved the standards mentioned in head (f) above<sup>23</sup>;
- 1374 (i) requiring the appropriate body to inform the Secretary of State and either the General Teaching Council for England or the General Teaching Council for Wales of any decision under head (g) above<sup>24</sup>;
- 1375 (j) requiring the employer<sup>25</sup> of a person employed as a teacher at a relevant school to secure<sup>26</sup>:
  - 87 4. (i) the termination of that person's employment as a teacher<sup>27</sup>; or
  - 5. (ii) that he only undertakes such teaching duties as may be determined in accordance with the regulations<sup>28</sup>,
  - 88

- 1376 in such circumstances following a decision that he has failed satisfactorily to complete his induction period as may be prescribed<sup>29</sup>;
- 1377 (k) authorising or requiring the appropriate body to exercise such other functions<sup>30</sup> as may be prescribed (which may include functions with respect to the provision of assistance to schools or to further education institutions or of training for teachers)<sup>31</sup>;
- 1378 (l) authorising the appropriate body in such circumstances as may be prescribed to make such reasonable charges in connection with the exercise of its functions under the regulations as it may determine<sup>32</sup>;
- 1379 (m) requiring any person or body exercising any prescribed function under the regulations to have regard to any guidance given from time to time by the Secretary of State as to the exercise of that function<sup>33</sup>.

Such regulations must include provision conferring on a person aggrieved by a decision under head (g) above a right to appeal against the decision to the Secretary of State or the General Teaching Council for England or the General Teaching Council for Wales, and any decision made on such an appeal is final<sup>34</sup>. The regulations may make provision for, or for the determination in accordance with the regulations of, such matters relating to such appeals as the Secretary of State considers necessary or expedient<sup>35</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 19 (as amended) see the Education (Induction Arrangements for School Teachers) (Consolidation) (England) Regulations 2001, SI 2001/2897 (amended by SI 2001/3938; SI 2002/2063; SI 2003/106; SI 2003/2148; SI 2005/1740); and the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2005, SI 2005/1818.

Regulations may provide for references to 'eligible expenditure' in the Education Act 1996 s 484 (as amended) (education standards grants: see PARA 68 ante) to include such expenditure incurred by local education authorities in Wales in consequence of any regulations made by virtue of the Teaching and Higher Education Act 1998 s 19(1) (as amended) or s 19(2) (as amended) as may be prescribed: s 19(8) (amended by the Education Act 2002 s 215(1), Sch 21 para 85(b)).

2 As to the meaning of 'employed' see PARA 825 note 7 post.

3 For this purpose, 'relevant school' means a school maintained by a local education authority or a special school not so maintained: Teaching and Higher Education Act 1998 s 19(10)(b) (substituted by the Education Act 2002 s 215(1), Sch 21 para 85(c)). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post. The substitution made by the Education Act 2002 Sch 21 para 85(c) is brought into force as from a day to be appointed under s 216(4). In relation to Wales, the appointed day is 19 December 2002 (see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to England. Until such a day is appointed in relation to England, 'relevant schools' means such schools as are referred to in the Education Reform Act 1988 s 218(12) (as substituted; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 776 note 4 post): Teaching and Higher Education Act 1998 s 19(10)(b) (amended by the Learning and Skills Act 2000 s 153, Sch 11; repealed in relation to Wales; prospectively repealed in relation to England).

4 During the induction period which a person is required to serve by virtue of regulations made under the Teaching and Higher Education Act 1998 s 19 (as amended), the provisions of the Education Act 2002 s 131 (appraisal of teachers' performance: see PARA 775 post) and regulations made under s 131 do not apply to him: Teaching and Higher Education Act 1998 s 19(7) (amended by the Education Act 2002 Sch 21 para 85(a)).

5 Teaching and Higher Education Act 1998 s 19(1). In the application of s 19 (as amended) to a further education institution a reference to a school term is to be taken as a reference to a term of the institution: s 19(11)(a) (s 19(11) added by the Learning and Skills Act 2000 s 139(1), (7)).

The Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions: see PARA 57 ante), and s 497 (as amended) (general default powers: see PARA 58 ante) have effect as if: (1) the duties and powers referred to in ss 496-497 (as amended) included duties imposed and powers conferred by virtue of the

Teaching and Higher Education Act 1998 s 19 (as amended); and (2) in relation to those duties and powers, the bodies to which the Education Act 1996 ss 496-497 (as amended) apply included the governing body of a relevant school, the governing body, within the meaning given by the Further and Higher Education Act 1992 s 90(1) (see PARA 584 note 5 ante), of a further education institution and an appropriate body for the purposes of s 90(2) (see PARA 584 note 5 ante): Teaching and Higher Education Act 1998 s 19(12) (added by the Learning and Skills Act 2000 s 139(1), (7)).

6 Teaching and Higher Education Act 1998 s 19(1)(a).

7 'Prescribed' means prescribed by regulations: *ibid* s 43(1). As to the regulations made under s 19(1)(b) see note 1 *supra*.

8 *Ibid* s 19(1)(b). As to independent schools see PARA 465 *et seq ante*.

9 'Further education institution' means an institution within the further education sector: *ibid* s 19(10)(d) (added by the Learning and Skills Act 2000 s 139(1), (6)). For the meaning of 'institutions within the further education sector' see PARA 579 *ante*.

10 Teaching and Higher Education Act 1998 s 19(1)(c) (added by the Learning and Skills Act 2000 s 139(1), (2)). Regulations under the Teaching and Higher Education Act 1998 s 19(1)(c) (as added) may, in particular: (1) provide that an induction period may not be begun without approval of the appropriate body for the serving of that induction period; (2) provide for approval to be general or specific; (3) make provision (including transitional provision) about the withdrawal of approval; and (4) impose conditions or limitations on the appropriate body's power to give or withhold approval: s 19(6A) (added by the Learning and Skills Act 2000 s 139(1), (5)). For the purposes of the Teaching and Higher Education Act 1998 s 19(2) (as amended) and s 19(6A) (as added), 'the appropriate body' means such person or body (including a local education authority) as may be prescribed by, or determined by the Secretary of State in accordance with, regulations under s 19 (as amended); and such regulations may provide for an appropriate body which is not a local education authority to include a representative of such an authority: s 19(6) (amended by the Learning and Skills Act 2000 s 139(1), (4)). As to local education authorities see PARA 20 *ante*.

11 Teaching and Higher Education Act 1998 s 19(2)(a).

12 As to the meaning of 'employment' see PARA 825 note 7 *post*.

13 Teaching and Higher Education Act 1998 s 19(2)(b).

14 *Ibid* s 19(2)(c).

15 *Ibid* s 19(2)(d).

16 *Ibid* s 19(2)(e).

17 *Ibid* s 19(2)(f) (amended by the Learning and Skills Act 2000 ss 139(1), (3)(a), 153, Sch 11). The Secretary of State must consult either or both of the General Teaching Council for England or the General Teaching Council for Wales, as appropriate, before making any determination as to standards by virtue of regulations made under the Teaching and Higher Education Act 1998 s 19(2)(f) (as amended): s 19(3). As to the General Teaching Council for England see PARA 809 *et seq post*; and as to the General Teaching Council for Wales see PARA 834 *et seq post*.

18 *Ibid* s 19(2)(g).

19 *Ibid* s 19(2)(g)(i).

20 *Ibid* s 19(2)(g)(ii).

21 *Ibid* s 19(2)(g)(iii).

22 In the application of *ibid* s 19 (as amended) to a further education institution a reference to the head teacher of a school is to be taken as a reference to the principal of the institution: s 19(11)(b) (as added: see note 5 *supra*).

23 *Ibid* s 19(2)(h).

24 *Ibid* ss 19(2)(i), 43(1).

25 As to the meaning of 'employer' see PARA 825 note 7 *post*.

26 Teaching and Higher Education Act 1998 s 19(2)(j).

27 Ibid s 19(2)(j)(i). For the meaning of 'termination of employment' see PARA 825 note 7 post.

28 Ibid s 19(2)(j)(ii). Where, in accordance with a requirement imposed by virtue of s 19(2)(j)(ii), a teacher employed at a school maintained by a local education authority continues to be employed at the school, but is not undertaking his normal teaching duties there, any costs incurred by the local education authority in respect of the teacher's emoluments must not be met from the school's budget share for any financial year except in so far as the authority has good reason for deducting those costs, or any part of those costs, from that share: s 19(9). This does not apply to a maintained school at any time when the school does not have a delegated budget: s 19(9). For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante. For the meaning of 'budget share' see PARA 312 ante; definition applied by the Teaching and Higher Education Act 1998 s 19(10)(a). As to delegated budgets see PARA 320 ante.

29 Ibid s 19(2)(j)(iii).

30 'Functions' includes powers and duties: ibid s 43(1).

31 Ibid s 19(2)(k) (amended by the Learning and Skills Act 2000 s 139(1), (3)(b)). As to further education institutions see PARA 579 et seq ante.

32 Teaching and Higher Education Act 1998 s 19(2)(l).

33 Ibid s 19(2)(m). The Department for Education and Skills has issued guidance on the arrangements for newly qualified teachers to complete an induction period: see the Department for Education and Skills Guidance *The Induction Period for Newly Qualified Teachers* (July 2001; Ref: DfES 582/2001).

34 Teaching and Higher Education Act 1998 s 19(4).

35 Ibid s 19(5).

## **UPDATE**

### **774 Service of induction period for teachers**

NOTE 1--SI 2001/2897 replaced: Education (Induction Arrangements for School Teachers) (England) Regulations 2008, SI 2008/657. SI 2005/1818 amended: SI 2007/2811.

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### **775. Appraisal of performance of teachers.**

Regulations<sup>1</sup> may require the appraisal of the performance of teachers in a manner specified by the regulations<sup>2</sup>, and at times specified by or determined in accordance with the regulations<sup>3</sup>. The regulations may impose a duty on: (1) a local education authority<sup>4</sup>; (2) the governing body of a school<sup>5</sup> or institution<sup>6</sup>; (3) the head teacher<sup>7</sup> of a school or the principal of an institution<sup>8</sup>. The regulations may require or permit an appraisal to be carried out in a manner which confers a discretion on a person specified by or chosen or determined in accordance with the regulations<sup>9</sup>, and permit a person listed in heads (1) to (3) above on whom a duty is imposed to delegate that duty in whole or in part<sup>10</sup>. The regulations may require or permit a person listed in heads (1) to (3) above to have regard to the results of an appraisal in the performance of a function specified by the regulations<sup>11</sup>. The results of an appraisal may be used in determining a teacher's remuneration<sup>12</sup>.

Before making such regulations, the Secretary of State must consult such of the following as appear to him to be appropriate: (a) associations of local education authorities in England<sup>13</sup>; (b) local education authorities in England<sup>14</sup>; (c) bodies representing the interests of governing bodies in England<sup>15</sup>; (d) bodies representing the interests of teachers in England<sup>16</sup>; and (e) the Learning and Skills Council for England<sup>17</sup>. Before making such regulations, the National Assembly for Wales must consult such of the following as appear to it to be appropriate: (i) associations of local education authorities in Wales<sup>18</sup>; (ii) local education authorities in Wales<sup>19</sup>; (iii) bodies representing the interests of governing bodies in Wales<sup>20</sup>; (iv) bodies representing the interests of teachers in Wales<sup>21</sup>; and (v) the National Council for Education and Training for Wales<sup>22</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 131. However, by virtue of the Interpretation Act 1978 s 17(2)(b), the Education (School Teacher Appraisal) (England) Regulations 2001, SI 2001/2855, and the School Teacher Appraisal (Wales) Regulations 2002, SI 2002/1394, made under the Education (No 2) Act 1986 s 49 (repealed), have effect as if made under the Education Act 2002 s 131. During the induction period which a person is required to serve by virtue of regulations made under the Teaching and Higher Education Act 1998 s 19 (as amended) (see PARA 774 ante), the provisions of the Education Act 2002 s 131 and regulations made thereunder do not apply to him: see the Teaching and Higher Education Act 1998 s 19(7) (as amended); and PARA 774 ante.

2 Education Act 2002 s 131(1)(a).

3 Ibid s 131(1)(b).

4 Ibid s 131(2)(a). As to local education authorities see PARA 20 ante.

5 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3). As to the governing bodies of maintained schools see PARA 203 et seq ante.

6 Ibid s 131(2)(b). For the meaning of 'governing body' under the Further and Higher Education Act 1992 in relation to a further education institution see PARA 584 note 5 ante. As to the meaning of 'governing body' under the Education Reform Act 1988 in relation to a higher education institution see PARA 704 note 4 ante.

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

8 Ibid s 131(2)(c).

9 Ibid s 131(3)(a).

10 Ibid s 131(3)(b).

11 Ibid s 131(4).

12 Ibid s 131(5). As to the determination of teachers' remuneration see PARA 861 et seq post.

13 Ibid s 131(6)(a). For the meaning of 'England' see PARA 52 note 11 ante.

14 Ibid s 131(6)(b).

15 Ibid s 131(6)(c).

16 Ibid s 131(6)(d).

17 Ibid s 131(6)(e). As to the Learning and Skills Council for England see PARA 1072 et seq post.

18 Ibid s 131(7)(a). For the meaning of 'Wales' see PARA 52 note 13 ante.

19 Ibid s 131(7)(b).

20 Ibid s 131(7)(c).

21 Ibid s 131(7)(d).

22 Ibid s 131(7)(e). As to the National Council for Education and Training for Wales see PARA 1113 et seq post.

## **UPDATE**

### **775 Appraisal of performance of teachers**

NOTE 1--SI 2002/1394 amended: SI 2007/944, SI 2009/2159, SI 2009/2864. SI 2001/2855 replaced: Education (School Teacher Performance Management) (England) Regulations 2006, SI 2006/2661 (in force 1 September 2007).

TEXT AND NOTE 22--2002 Act s 131(7)(e) repealed: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

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## **(ii) Requirements for Teaching Staff under the Education Reform Act 1988**

### **776. Requirement for teachers in Wales to be qualified.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

The National Assembly for Wales<sup>2</sup> may by regulations make provision for requiring persons employed as teachers<sup>3</sup> at schools<sup>4</sup> (subject to such exceptions as may be provided for by or under the regulations<sup>5</sup>) to be qualified teachers<sup>6</sup>.

For the purposes of the Education Reform Act 1988, 'qualified teacher' means a person who: (1) is a qualified teacher in accordance with any provision made by or under the regulations<sup>7</sup>; or (2) is determined to be a qualified teacher by the Assembly in accordance with any provision so made<sup>8</sup>. Before making any such regulations<sup>9</sup> or making any provision by virtue of such regulations as to the standards required of a person who wishes to become a qualified teacher, the Assembly must consult the General Teaching Council for Wales, as appropriate<sup>10</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, 1 August 2003 has been appointed in respect of the Education Reform Act 1988 s 218(1)(a), (2), (2A), (2AA), (3) (s 218(2A), (2AA) as added; s 218(3) as amended) and 1 October 2003 has been appointed in respect of s 218(12) (as substituted); see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, arts 3, 5. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The Education Act 2002 ss 132-133, 135 also impose a requirement for teachers to be qualified: see PARAS 769-770 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For the purposes of the Education Reform Act 1988 s 218 (as amended; prospectively repealed), any reference to persons employed as teachers includes a reference to persons engaged to provide their services as teachers otherwise than under contracts of employment, and any reference to employment (or further employment) is to be construed accordingly: s 218(13)(a) (s 218(13) added by the Education Act 1997 s 49(4)). For the meanings of 'employed' and 'contract of employment' for these purposes see PARA 387 note 4 ante.

4 For the purposes of the Education Reform Act 1988 s 218 (as amended; prospectively repealed), 'school' means any school maintained by a local education authority or any special school not so maintained: s 218(12) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 17). See note 1 supra. As to local education authorities see PARA 20 ante. For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante. As to special schools see PARA 1027 et seq post.

5 The provision authorised by the Education Reform Act 1988 s 218(1)(a) (prospectively repealed) with respect to exceptions from any requirement imposed by virtue of s 218(1)(a) (prospectively repealed) includes in particular provision permitting the employment as there mentioned, in such cases or circumstances and subject to such conditions as may be specified in or determined under the regulations, of persons licensed or otherwise authorised to teach in accordance with any provision made by or under the regulations: s 218(3) (amended by the Education Act 1994 s 14(3)). See note 1 supra. As to the regulations made in exercise of this power see the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, SI 1999/2817 (amended by SI 2002/1663; SI 2002/2938; SI 2003/140; SI 2003/2458; SI 2004/1744; SI 2004/1729; SI 2004/2733). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante.

Regulations made under the Education Reform Act 1988 s 218(2) (prospectively repealed) (see the text to notes 7-8 *infra*) or s 218(3) (as amended; prospectively repealed) as they apply to teachers at schools may make provision for a determination under those regulations to be made by the General Teaching Council for Wales: Teaching and Higher Education Act 1998 s 10(1), (2). Provision may be made in such regulations: (1) for any determination made under those regulations as they apply in relation to England to be treated, in relation to Wales, as if it were a determination made under those regulations as they apply in relation to Wales; and (2) for any determination made under those regulations as they apply in relation to Wales to be treated, in relation to England, as if it were a determination made under those regulations as they apply in relation to England: s 10(3). As to the General Teaching Council for Wales see *PARA 834 et seq post*. Section 10 is repealed by the Education Act 2002 s 215, Sch 21 para 79, Sch 22 Pt 3 as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed.

6 Education Reform Act 1988 s 218(1)(a). See note 1 *supra*. As to the regulations made in exercise of this power see the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, SI 1999/2817 (amended by SI 2002/1663; SI 2002/2938; SI 2003/140; SI 2003/2458; SI 2004/1744; SI 2004/1729; SI 2004/2733). As to the registration of teachers see *PARAS 822, 847 post*.

7 Education Reform Act 1988 s 218(2)(a). Regulations under s 218(2)(a) (prospectively repealed) may make provision: (1) by reference to the successful completion of a course of initial training for teachers in schools at an accredited institution; and (2) conferring on the Training and Development Agency for Schools or the Higher Education Funding Council for Wales such functions in relation to accreditation or otherwise as may be prescribed: s 218(2A) (added by the Education Act 1994 s 14(1)). See note 1 *supra*. 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(4)). As to the Higher Education Funding Council for Wales see *PARA 733 et seq ante*. As to the Training and Development Agency for Schools (formerly the Teacher Training Agency): see *PARA 784 et seq post*.

As to the regulations made under the Education Reform Act 1988 s 218(2), (2A) (s 218(2A) as added; s 218(2), (2A) prospectively repealed) see the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, SI 1999/2817 (amended by SI 2002/1663; SI 2002/2938; SI 2003/140; SI 2003/2458; SI 2004/1744; SI 2004/1729; SI 2004/2733).

8 Education Reform Act 1988 s 218(2)(b). The regulations may provide for any determination under the regulations with respect to a person's status as a qualified teacher to be made so as to have effect, in such cases or circumstances as may be specified in the regulations, from a date earlier than the determination: s 218(2). See notes 1, 7 *supra*.

9 *Ie* under *ibid* s 218(2) (prospectively repealed) or s 218(2A) (as added; prospectively repealed): see the text and notes 7-8 *supra*.

10 *Ibid* s 218(2AA) (added by the Teaching and Higher Education Act 1998 s 13). See note 1 *supra*.



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### **777. Requirement for teachers in Wales to be registered.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

The National Assembly for Wales<sup>2</sup> may by regulations make provision for requiring persons employed as teachers<sup>3</sup> at schools<sup>4</sup> (subject to such exceptions as may be provided for by or under the regulations) to be registered<sup>5</sup> by the General Teaching Council for Wales<sup>6</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 August 2003 in respect of the Education Reform Act 1988 s 218(1)(aa) (as added): see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The Education Act 2002 s 134 (as amended) also imposes a requirement for teachers to be registered: see PARA 771 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 As to the meaning of 'persons employed as teachers' see PARA 776 note 3 ante.

4 For the meaning of 'school' see PARA 776 note 4 ante.

5 In accordance with the Teaching and Higher Education Act 1998 s 3 (as amended): see PARAS 822, 847 post.

6 Education Reform Act 1988 s 218(1)(aa) (added by the Teaching and Higher Education Act 1998 s 11). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante. As to the General Teaching Council for Wales see PARA 834 et seq post. As to the registration of teachers see PARAS 822, 847 post.

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**778. Requirement for teachers at institutions providing higher education or further education to possess qualifications.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The Secretary of State<sup>2</sup> may by regulations<sup>3</sup> make provision for requiring persons employed as teachers<sup>4</sup> at institutions<sup>5</sup> providing higher education<sup>6</sup> or further education<sup>7</sup> (or both) and which either<sup>8</sup> are maintained by a local education authority<sup>9</sup> or are within the further education sector<sup>10</sup> to possess such qualifications as may be determined by or under the regulations<sup>11</sup>. As from a day to be appointed<sup>12</sup>, the Secretary of State may by regulations make provision for requiring persons employed as head teachers<sup>13</sup> at schools<sup>14</sup> (subject to such exceptions as may be provided for by or under the regulations) to possess a professional headship qualification<sup>15</sup>.

The Secretary of State may by regulations<sup>16</sup> make provision: (1) for requiring his approval to be obtained for the provision at institutions<sup>17</sup>: (a) providing higher education or further education (or both) and which either<sup>18</sup> are maintained by a local education authority<sup>19</sup> or are within the further education sector<sup>20</sup>; or (b) within the higher education sector in receipt of financial support<sup>21</sup>, of courses designated by or under the regulations as courses of initial teacher training<sup>22</sup>; and (2) for enabling him to give directions for the discontinuance of any such course at such an institution or as to the number and categories of students to be admitted to such courses at such institutions<sup>23</sup>. Similar provision is made in relation to Wales in respect of institutions falling within head (1) above<sup>24</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to the Education Reform Act 1988 s 218(1)(b), (9), (10) (as amended) (see the text and notes 2-11, 16-23 *infra*).

As from a day to be appointed, the Education Act 2002 ss 136-138, 140 also impose requirements on teachers and courses of teacher training at institutions providing further education. That day has been appointed in relation to Wales but, at the date at which this volume states the law, no such day had been appointed in relation to England. See PARA 772 *ante*.

2 As to the Secretary of State see PARA 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

3 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 Pt I para 81(1), (4)). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 *ante*. As to the regulations that been made under the Education Reform Act 1988 s 218(1)(b) (prospectively repealed) see the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, SI 1999/2817 (amended by SI 2002/1663; SI 2002/2938; SI 2003/140; SI 2003/2458; SI 2004/1744; SI 2004/1729; SI 2004/2733); the Further Education Teachers' Qualifications (England) Regulations 2001, SI 2001/1209 (amended by SI 2003/2039); and the Further Education Teachers' Qualifications (Wales) Regulations 2002, SI 2002/1663 (amended by SI 2003/1717; SI 2004/1745).

4 As to the meaning of 'persons employed as teachers' see PARA 776 note 3 *ante*.

5 Education Reform Act 1988 s 218(1)(b). See note 1 *supra*.

6 For the meaning of 'higher education' see PARA 19 *ante*.

7 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (as amended: see note 3 supra).

8 Ibid s 218(1)(b), (10). See note 1 supra.

9 Ibid s 218(1)(b), (10)(a). See note 1 supra. As to local education authorities see PARA 20 ante.

10 Ibid s 218(1)(b), (10)(aa) (s 218(10)(aa) added by the Further and Higher Education Act 1992 s 93, Sch 8 para 49(c), Sch 9). See note 1 supra. As to the regulations made under the Education Reform Act 1988 s 218(10)(aa) (as added) see the Further Education Teachers' Qualifications (England) Regulations 2001, SI 2001/1209 (amended by SI 2003/2039); and the Further Education Teachers' Qualifications (Wales) Regulations 2002, SI 2002/1663 (amended by SI 2003/1717; SI 2004/1745).

11 Education Reform Act 1988 s 218(1)(b). See note 1 supra. As to the status in the United Kingdom of qualified teachers from abroad see *Hampson v Department of Education and Science* [1991] 1 AC 171, [1990] 2 All ER 513, HL; Case C-4/91 *Bleis v Ministère de L'Éducation Nationale* [1991] ECR I-5627, [1994] 1 CMLR 793, ECJ.

12 The provisions of the Education Reform Act 1988 s 218(1)(ab), (2C)-(2F), (14) are to be brought into force as from a day to be appointed under the Teaching and Higher Education Act 1998 s 46(4). At the date at which this volume states the law, no such day had been appointed. However, the Education Reform Act 1988 s 218 (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, 1 October 2003 has been appointed in respect of the Education Reform Act 1988 s 218(1)(ab), (2C)-(2F), (14) (prospectively added) (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 5) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

13 For the purposes of the Education Reform Act 1988 s 218 (as amended; prospectively further amended; prospectively repealed), 'head teacher' does not include an acting head teacher: s 218(14) (prospectively added by the Teaching and Higher Education Act 1998 s 18(5)). See also note 11 supra.

14 For the meaning of 'school' see PARA 776 note 4 ante.

15 Education Reform Act 1988 s 218(1)(ab) (prospectively added by the Teaching and Higher Education Act 1998 s 18(2)). See note 12 supra. The requirement imposed by virtue of the Education Reform Act 1988 s 218(1)(ab) (prospectively added; prospectively repealed) (subject to the exceptions mentioned in that provision) applies to every person who is appointed as head teacher of a school on or after the date when that requirement comes into force unless he has held such an appointment before that date: s 218(2D) (prospectively added by the Teaching and Higher Education Act 1998 s 18(3)).

A 'professional headship qualification' is a qualification which: (1) is a professional headship qualification in accordance with any provision made by or under the regulations; or (2) is determined to be a professional headship qualification by the Secretary of State in accordance with any provision so made: Education Reform Act 1988 s 218(2C) (prospectively added by the Teaching and Higher Education Act 1998 s 18(3)). The regulations may provide for any determination by the Secretary of State under the regulations with respect to the status of a qualification as a professional headship qualification to be made so as to have effect, in such cases or circumstances as may be specified in the regulations, from a date earlier than the determination: Education Reform Act 1988 s 218(2C) (prospectively added by the Teaching and Higher Education Act 1998 s 18(3)).

Regulations under the Education Reform Act 1988 s 218(2C) (prospectively added; prospectively repealed) may: (a) make provision conferring, or enabling the Secretary of State to confer, on bodies or persons determined by or in accordance with the regulations such functions in relation to the accreditation of courses or the awarding of qualifications or otherwise as may be so determined (s 218(2E) (prospectively added by the Teaching and Higher Education Act 1998 s 18(3))); and (b) require any body or person who awards a professional headship qualification to notify the Secretary of State, or such other body or person as he may determine, of the name of any person awarded that qualification, and such other information relating to that person as may be prescribed (Education Reform Act 1988 s 218(2F) (prospectively added by the Teaching and Higher Education Act 1998 s 18(3))). See also note 11 supra. 'Prescribed' means prescribed by regulations made by the Secretary of State: Education Act 1996 s 579(1); definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(4)).

16 As to the regulations made under the Education Reform Act 1988 s 218(9) (as amended) see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended by SI 2001/692; SI 2001/3708; SI 2004/571).

17 Education Reform Act 1988 s 218(9)(b). See note 1 supra.

18 Ibid s 218(9)(b), (10). See note 1 supra.

19 Ibid s 218(9)(b), (10)(a). See note 1 supra.

20 Ibid s 218(9)(b), (10)(aa) (as added: see note 10 supra). See note 1 supra. As to the regulations made under s 218(10)(aa) (as added) see note 10 supra.

21 Ibid s 218(9)(b), (11) (s 218(11) amended by the Further and Higher Education Act 1992 Sch 8 para 49(d)). The text refers to an institution within the higher education sector in receipt of financial support under the Further and Higher Education Act 1992 s 65 (as amended) (see PARAS 746-747 ante); Education Reform Act 1988 s 218(11) (as so amended). See note 1 supra.

22 Ibid s 218(9)(b). See note 1 supra. As from a day to be appointed, s 218(9)(b) is amended to provide that regulations may make provision for requiring approval to be obtained for the provision at such institutions of courses designated by or under the regulations as courses of initial teacher training or courses leading to a professional headship qualification for the purposes of s 218(1)(ab) (prospectively added) (see the text and notes 12-15 supra): see s 218(9)(b) (prospectively amended by the Teaching and Higher Education Act 1998 s 18(4)). At the date at which this volume states the law, no such day had been appointed and the amendment has been repealed in relation to England: see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 5.

23 Education Reform Act 1988 s 218(9)(c). See note 1 supra.

24 See PARAS 629, 724 ante.

## UPDATE

### **778-779 Requirement for teachers at institutions providing higher education or further education to possess qualifications, Requirement for teachers at institutions providing higher education or further education to serve probationary periods**

Day now appointed in relation to England: SI 2006/2895.

### **778 Requirement for teachers at institutions providing higher education or further education to possess qualifications**

NOTE 16--SI 1989/351 revoked in relation to England: SI 2008/1701.

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**779. Requirement for teachers at institutions providing higher education or further education to serve probationary periods.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Secretary of State<sup>2</sup> may by regulations make provision for requiring persons employed as teachers<sup>3</sup> at institutions<sup>4</sup> providing higher education<sup>5</sup> or further education<sup>6</sup> (or both) and which either<sup>7</sup> are maintained by a local education authority<sup>8</sup> or are within the further education sector<sup>9</sup> to serve probationary periods<sup>10</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). However, at the date at which this volume states the law, no such day had been appointed in relation to the Education Reform Act 1988 s 218(1)(c), (10) (s 218(1)(c) as amended).

As from a day to be appointed, the Education Act 2002 ss 136-140 also impose requirements on teachers at institutions providing further education. That day has been appointed in relation to Wales but, at the date at which this volume states the law, no such day had been appointed in relation to England. See PARA 772 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 As to the meaning of 'persons employed as teachers' see PARA 776 note 3 ante.

4 Education Reform Act 1988 s 218(1)(c) (amended by the Teaching and Higher Education Act 1998 s 44(2), Sch 4). See note 1 supra.

5 For the meaning of 'higher education' see PARA 19 ante.

6 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(4)).

7 Education Reform Act 1988 s 218(1)(c), (10) (s 218(1)(c) as amended: see note 4 supra). See note 1 supra.

8 Ibid s 218(1)(c), (10)(a) (s 218(1)(c) as amended: see note 4 supra). See note 1 supra. As to local education authorities see PARA 20 ante.

9 Ibid s 218(1)(c) (as amended: see note 4 supra), s 218(10)(aa) (added by the Further and Higher Education Act 1992 s 93, Sch 8 para 49(c), Sch 9). See note 1 supra. As to the regulations made under the Education Reform Act 1988 s 218(10)(aa) (as added; prospectively repealed) see the Further Education Teachers' Qualifications (England) Regulations 2001, SI 2001/1209 (amended by SI 2003/2039); and the Further Education Teachers' Qualifications (Wales) Regulations 2002, SI 2002/1663 (amended by SI 2003/1717; SI 2004/1745).

10 Education Reform Act 1988 s 218(1)(c) (as amended: see note 4 supra). See note 1 supra.

**UPDATE**

**778-779 Requirement for teachers at institutions providing higher education or further education to possess qualifications, Requirement for teachers at institutions providing higher education or further education to serve probationary periods**

Day now appointed in relation to England: SI 2006/2895.



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**780. Other requirements for teaching staff at institutions providing higher education or further education in Wales.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

The National Assembly for Wales<sup>2</sup> may by regulations make provision with respect to the teaching staff to be provided in schools<sup>3</sup> and institutions<sup>4</sup> providing higher education<sup>5</sup> or further education<sup>6</sup> (or both) and which either<sup>7</sup> are maintained by a local education authority<sup>8</sup> or are within the further education sector<sup>9</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, 1 September 2003 has been appointed in respect of the Education Reform Act 1988 s 218(1)(d): see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

As from a day to be appointed, the Education Act 2002 ss 136-140 also impose requirements on teachers at institutions providing further education. That day has been appointed in relation to Wales but, at the date at which this volume states the law, no such day had been appointed in relation to England. See PARA 772 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'school' see PARA 776 note 4 ante.

4 Education Reform Act 1988 s 218(1)(d). See note 1 supra.

5 For the meaning of 'higher education' see PARA 19 ante.

6 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(4)).

7 Education Reform Act 1988 s 218(1)(d), (10). See note 1 supra.

8 Ibid s 218(1)(d), (10)(a). See note 1 supra. As to local education authorities see PARA 20 ante.

9 Ibid s 218(1)(d), (10)(aa) (added by the Further and Higher Education Act 1992 s 93, Sch 8 para 49(c), Sch 9). See note 1 supra. As to the regulations made under the Education Reform Act 1988 s 218(1)(d) (prospectively repealed) see the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, SI 1999/2817 (amended by SI 2002/1663; SI 2002/2938; SI 2003/140; SI 2003/2458; SI 2004/1744; SI 2004/1729; SI 2004/2733). As to the regulations made under the Education Reform Act 1988 s 218(10)(aa) (as added; prospectively repealed) see the Further Education Teachers' Qualifications (Wales) Regulations 2002, SI 2002/1663 (amended by SI 2003/1717; SI 2004/1745). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante.

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### **781. Requirements in Wales as to health and physical capacity.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

The National Assembly for Wales<sup>2</sup> may by regulations make provision for imposing requirements as to the health and physical capacity<sup>3</sup> of:

- 1380 (1) teachers at schools<sup>4</sup> and institutions<sup>5</sup>: (a) providing higher education<sup>6</sup> or further education<sup>7</sup> (or both) and which either<sup>8</sup> are maintained by a local education authority<sup>9</sup> or are within the further education sector<sup>10</sup>; or (b) within the higher education sector in receipt of financial support<sup>11</sup>;
- 1381 (2) teachers employed by local education authorities<sup>12</sup> otherwise than at schools or such institutions<sup>13</sup>; and
- 1382 (3) persons employed by local education authorities<sup>14</sup>, or by the governing bodies of schools<sup>15</sup> or such institutions<sup>16</sup>, in work otherwise than as teachers which brings them regularly into contact with persons who have not attained the age of 19 years<sup>17</sup>.

1 The Education Reform Act 1988 s 218 (as amended) is repealed by the Education Act 2002 ss 146, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, 1 August 2003 has been appointed in respect of the Education Reform Act 1988 s 218(5): see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The Education Act 2002 s 141 also imposes requirements as to health and physical capacity on teachers and persons employed at schools and at institutions within the further education sectors: see PARA 773 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Education Reform Act 1988 s 218(5). See note 1 supra. As to the regulations made in exercise of this power see the Education (Teachers' Qualifications and Health Standards) (Wales) Regulations 1999, SI 1999/2817 (amended by SI 2002/1663; SI 2002/2938; SI 2003/140; SI 2003/2458; SI 2004/1744; SI 2004/1729; SI 2004/2733). As to the making of regulations under the Education Reform Act 1988 generally see PARA 19 note 1 ante.

4 For the meaning of 'school' see PARA 776 note 4 ante.

5 Education Reform Act 1988 s 218(5)(a). See note 1 supra.

6 For the meaning of 'higher education' see PARA 19 ante.

7 For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of the Education Reform Act 1988 s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(4)).

8 Education Reform Act 1988 s 218(5)(a), (10). See note 1 supra.

9 Ibid s 218(5)(a), (10)(a). See note 1 supra. As to local education authorities see PARA 20 ante.

10 Ibid s 218(5)(a), (10)(aa) (s 218(10)(aa) added by the Further and Higher Education Act 1992 s 93, Sch 8 para 49(c), Sch 9). See note 1 supra. As to the regulations made under the Education Reform Act 1988 s 218(10)(aa) (as added; prospectively repealed) see the Further Education Teachers' Qualifications (Wales) Regulations 2002, SI 2002/1663 (amended by SI 2003/1717; SI 2004/1745).



11 Education Reform Act 1988 s 218(5)(a), (11) (s 218(11) amended by the Further and Higher Education Act 1992 Sch 8 para 49(d)). See note 1 supra. The text refers to an institution within the higher education sector in receipt of financial support under the Further and Higher Education Act 1992 s 65 (as amended) (see PARAS 746-747 ante): Education Reform Act 1988 s 218(11) (as so amended).

12 For the purposes of *ibid* s 218 (as amended; prospectively repealed), any reference to teachers or other persons employed by local education authorities or by any description of governing bodies or proprietors includes a reference to teachers or other persons engaged to provide their services for such authorities, governing bodies or proprietors (as the case may be) otherwise than under contracts of employment; and any reference to employment (or further employment) is to be construed accordingly: s 218(13)(b) (s 218(13) added by the Education Act 1997 s 49(4)). For the meaning of 'employed' generally for these purposes see PARA 387 note 4 ante.

13 Education Reform Act 1988 s 218(5)(b). See note 1 supra. As to whether such regulations can impose a public law duty on the employer to dismiss see eg the following cases (decided under previous legislation, ie the Education (Teachers' Qualifications and Health Standards) (England) Regulations 1999, SI 1999/2166 (revoked)): *R (on the application of Verner) v Derby City Council*, *R (on the application of Sheppard) v Norfolk County Council*, *R (on the application of Ridley) v St Thomas More Roman Catholic High School* [2003] EWHC 2708 (Admin), [2004] ICR 535 (where a teacher successfully applied for ill-health retirement benefit the onus was on him to arrange for termination of the employment); cf *R (on the application of Dorling) v Sheffield City Council* [2002] EWHC 2505 (Admin), [2003] ICR 424, [2003] ELR 486 (illness resulting in incapacity to fulfil employment obligations does not give rise to an automatic termination of a contract of employment). See also *Healey v Bridgend County Borough Council* [2002] EWCA Civ 1996, [2004] ICR 561 (employee who applied voluntarily for ill-health retirement benefits and passed paperwork to employer had made a decision to retire).

14 A person employed by a local education authority is to be regarded as employed to work at a school or other institution if his employment with the authority for the time being involves work at that school or institution; and a person employed by such an authority is to be regarded as employed to work solely at a school or other institution if his only employment with the authority (disregarding any employment under a separate contract with the authority) is for the time being at that school or institution: Education Reform Act 1988 s 235(3) (amended by the Education Act 1993 s 307, Sch 19 paras 112, 139, Sch 21 Pt I).

15 As to the governing bodies of maintained schools see PARA 203 et seq ante.

16 For the meaning of 'governing body' under the Further and Higher Education Act 1992 in relation to a further education institution see PARA 584 note 5 ante. As to the meaning of 'governing body' under the Education Reform Act 1988 in relation to a higher education institution see PARA 704 note 4 ante.

17 Education Reform Act 1988 s 218(5)(c). See note 1 supra.

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### **(iii) Prohibitions and Restrictions on Employment**

#### **782. Prohibition and restriction of employment of persons involved in providing education or in managing schools.**

The Secretary of State<sup>1</sup>, in relation to England<sup>2</sup>, or the Secretary of State and the National Assembly for Wales<sup>3</sup> concurrently, in relation to Wales<sup>4</sup>, may direct that a person<sup>5</sup>:

- 1383 (1) may not carry out work which involves:  
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- 6. (a) providing education<sup>6</sup> at a school<sup>7</sup>;
  - 7. (b) providing education at a further education institution<sup>8</sup>;
  - 8. (c) providing education under a contract of employment<sup>9</sup> or for services where the other party to the contract is a local education authority<sup>10</sup> or a person exercising a function relating to the provision of education on behalf of a local education authority<sup>11</sup>; and
  - 9. (d) taking part in the management of an independent school<sup>12</sup>,
- 90
- 1384 or work of a kind which brings a person regularly into contact with children<sup>13</sup> and is carried out at the request of or with the consent of a relevant employer<sup>14</sup> (whether or not under a contract)<sup>15</sup>;
- 1385 (2) may carry out such work only in circumstances specified in the direction<sup>16</sup>;
- 1386 (3) may carry out such work only if conditions specified in the direction are satisfied<sup>17</sup>.

Such a direction may be given in respect of a person only on grounds:

- 1387 (i) that the person is included, otherwise than provisionally, in the list of individuals considered unsuitable to work with children<sup>18</sup>;
- 1388 (ii) that the person is unsuitable to work with children<sup>19</sup>;
- 1389 (iii) relating to the person's misconduct<sup>20</sup>;
- 1390 (iv) relating to the person's health<sup>21</sup>; or
- 1391 (v) relating to the person's professional incompetence (in the case of a direction given by virtue of head (1)(d) above), or on a ground mentioned in any of heads (i) to (iv) above<sup>22</sup>.

The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations<sup>23</sup> prescribe<sup>24</sup> the procedure for giving such a direction<sup>25</sup>. A direction under these provisions may be varied or revoked except in a case where the direction was given on the grounds that a person is unsuitable to work with children, and the person claims that he is no longer unsuitable to work with children<sup>26</sup>.

Where a person is subject to such a direction, a relevant employer must not use the person to carry out work in contravention of the direction<sup>27</sup>; and a person must not arrange for an individual who is subject to such a direction to carry out work in contravention of the direction<sup>28</sup>.

If the Secretary of State thinks that a person is likely to fail to comply with the duty not to arrange for an individual who is subject to such a direction to carry out work in England in contravention of the direction, the Secretary of State may direct the person to take or refrain from taking specified steps with a view to securing compliance with that duty<sup>29</sup>. If the Assembly thinks that such a person is likely to fail to comply with the same duty in relation to work in Wales, the Assembly may direct the person to take or refrain from taking specified steps with a view to securing compliance with that duty<sup>30</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 Education Act 2002 s 142(1).

6 For these purposes, 'education' includes vocational, social, physical and recreational training: *ibid* s 142(9).

7 *Ibid* s 142(1)(a), (2)(a). For these purposes, 'school' includes an independent school: s 142(9). For the meaning of 'independent school' see PARA 465 ante.

8 *Ibid* s 142(1)(a), (2)(b). For the meaning of 'further education institution' see PARA 772 note 1 ante; definition applied by virtue of s 142(9).

9 For the meaning of 'contract of employment' see PARA 333 note 3 ante.

10 As to local education authorities see PARA 20 ante.

11 Education Act 2002 s 142(1)(a), (2)(c).

12 *Ibid* s 142(1)(a), (2)(d).

13 *Ibid* s 142(1)(a), (3)(a). For these purposes, 'child' means a person who has not attained the age of 18 years: s 142(9).

14 For these purposes, 'relevant employer' means: (1) a local education authority; (2) a person exercising a function relating to the provision of education on behalf of a local education authority; (3) the proprietor of a school; or (4) the governing body of a further education institution: *ibid* s 142(9). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'governing body' under the Further and Higher Education Act 1992 in relation to a further education institution see PARA 584 note 5 ante.

15 Education Act 2002 s 142(1)(a), (3)(b).

16 *Ibid* s 142(1)(b).

17 *Ibid* s 142(1)(c).

18 *Ibid* s 142(4)(a). The list referred to in the text is the list kept under the Protection of Children Act 1999 s 1 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 648).

19 Education Act 2002 s 142(4)(b).

20 *Ibid* s 142(4)(c).

21 *Ibid* s 142(4)(d).

22 *Ibid* s 142(4)(e).

23 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 142 see the Education (Prohibition from Teaching or Working with Children) Regulations 2003, SI 2003/1184

(amended by SI 2004/1493). As to the supply of information to the Secretary of State following dismissal, resignation, etc see PARA 860 post.

24 'Prescribed' means prescribed by regulations (see note 23 supra): Education Act 2002 s 212(1).

25 Ibid s 142(5). The regulations so prescribed may include provision about notification of persons who are subject to directions: s 142(5). See note 23 supra.

26 Ibid s 142(6). The Secretary of State, in relation to England, or the Secretary of State and the National Assembly for Wales concurrently, in relation to Wales, may by regulations prescribe the grounds on which a person subject to a direction under s 142 may seek to have it varied or revoked under s 142(6): s 142(7). As to the regulations so made see the Education (Prohibition from Teaching or Working with Children) Regulations 2003, SI 2003/1184, reg 9.

27 Education Act 2002 s 142(8).

28 Ibid s 143(1).

29 Ibid s 143(2). A direction under s 143(2) is enforceable, on the application of the Secretary of State, by a mandatory order: s 143(4). As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

30 Ibid s 143(3). A direction under s 143(3) is enforceable, on the application of the National Assembly, by a mandatory order: s 143(5).

## UPDATE

### **782 Prohibition and restriction of employment of persons involved in providing education or in managing schools**

TEXT AND NOTES--Education Act 2002 ss 142, 143 repealed: Safeguarding Vulnerable Groups Act 2006 Sch 10 (in force for certain purposes: SI 2009/2611).

NOTE 8--As to the conditions required to be complied with in relation to persons providing education at further education institutions in Wales, see the Persons Providing Education at Further Education Institutions in Wales (Conditions) Regulations 2007, SI 2007/2220 (amended by SI 2009/2544, SI 2009/2730).

NOTE 23--SI 2003/1184 further amended: SI 2007/195, SI 2008/2683.

NOTE 26--SI 2003/1184 reg 9 amended: SI 2007/195.

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**783. Appeals against a direction prohibiting or restricting the employment of persons involved in providing education or in managing schools.**

A person in respect of whom a direction has been given<sup>1</sup>, prohibiting or restricting his employment in providing education or managing schools, may appeal to the Care Standards Tribunal<sup>2</sup> against the decision to give the direction or against a decision not to vary or revoke the direction<sup>3</sup>. Where the direction was given on the grounds that the applicant is unsuitable to work with children<sup>4</sup>, the applicant has obtained the leave of the Tribunal to apply for a review of the direction<sup>5</sup>, and the Tribunal is satisfied that the applicant is no longer unsuitable to work with children<sup>6</sup>, the Tribunal may, on an application for a review of a direction, revoke the direction<sup>7</sup>.

The Secretary of State<sup>8</sup>, in relation to England<sup>9</sup>, or the Secretary of State and the National Assembly for Wales<sup>10</sup> concurrently, in relation to Wales<sup>11</sup>, may by regulations<sup>12</sup>:

- 1392 (1) provide that the Tribunal may not entertain an appeal under these provisions in so far as the appellant's case is inconsistent with his having been convicted of an offence<sup>13</sup>;
- 1393 (2) prescribe circumstances in which the Tribunal must allow an appeal under these provisions<sup>14</sup>;
- 1394 (3) prescribe the powers available to the Tribunal on allowing an appeal under these provisions<sup>15</sup>;
- 1395 (4) prescribe circumstances in which the Tribunal must grant an application for leave under these provisions<sup>16</sup>;
- 1396 (5) prescribe circumstances in which the Tribunal must grant an application for a review under these provisions<sup>17</sup>;
- 1397 (6) prescribe the powers available to the Tribunal on revoking a direction<sup>18</sup>.

1    Ie under the Education Act 2002 s 142 (see PARA 782 ante).

2    Ie the Tribunal established under the Protection of Children Act 1999 s 9 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 708).

3    Education Act 2002 s 144(1).

4    Ibid s 144(3)(a).

5    Ibid s 144(3)(b).

6    Ibid s 144(3)(c).

7    Ibid s 144(2).

8    As to the Secretary of State see PARA 52 ante.

9    For the meaning of 'England' see PARA 52 note 11 ante.

10   As to the National Assembly for Wales see PARA 53 ante.

11   For the meaning of 'Wales' see PARA 52 note 13 ante.

12 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or by the National Assembly for Wales (in relation to Wales): s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 144 see the Education (Prohibition from Teaching or Working with Children) Regulations 2003, SI 2003/1184, regs 10-13.

13 Education Act 2002 s 144(4)(a).

14 Ibid s 144(4)(b).

15 Ibid s 144(4)(c).

16 Ibid s 144(4)(d).

17 Ibid s 144(4)(e).

18 Ibid s 144(4)(f).

## UPDATE

### **783 Appeals against a direction prohibiting or restricting the employment of persons involved in providing education or in managing schools**

TEXT AND NOTES--Education Act 2002 s 144 repealed: Safeguarding Vulnerable Groups Act 2006 Sch 10 (in force for certain purposes: SI 2009/2611).

TEXT AND NOTES--Education Act 2002 s 144(1) amended: SI 2008/2833. The functions of the former Care Standards Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A).

NOTES 6, 7--See *Secretary of State for Children, Schools and Families v Philliskirk* [2008] EWHC 2838 (Admin), [2009] ELR 68, [2008] All ER (D) 329 (Oct) (tribunal had been entitled to exercise its judgment in the manner it had).

NOTE 12--SI 2003/1184 regs 10-12 amended, reg 10A added: SI 2007/195. SI 2003/1184 regs 10-12 further amended: SI 2008/2683.

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## **(2) TEACHER TRAINING**

### **(i) The Training and Development Agency for Schools**

#### ***A. ESTABLISHMENT AND CONSTITUTION***

##### **784. Establishment.**

The body corporate<sup>1</sup>, originally established under the Education Act 1994<sup>2</sup> and known as the Teacher Training Agency, continues in existence but is now known as the Training and Development Agency for Schools<sup>3</sup>.

The Agency exercises the functions conferred on it by or under any enactment but especially the provisions relating to training the school workforce<sup>4</sup>. The functions of the Agency are exercisable in relation to England and Wales generally<sup>5</sup>.

1 As to bodies corporate see generally COMPANIES; CORPORATIONS.

2 Ie under the Education Act 1994 s 1(1) (repealed).

3 Education Act 2005 s 74. The Agency is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of the Agency is not to be regarded as property of, or property held on behalf of, the Crown: s 77(2), Sch 13 para 19.

4 The provisions referred to in the text are those under *ibid* Pt 3 (ss 74-100): see PARA 785 et seq post. As to the constitution of the school workforce see PARA 793 note 4 post.

5 See PARA 793 post.

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### **785. Appointment of members, chairman and chief officer.**

The Training and Development Agency for Schools<sup>1</sup> consists of such number of members appointed by the Secretary of State<sup>2</sup> as he may determine, of whom one is appointed as chairman<sup>3</sup>.

One of the members of the Agency is the chief officer<sup>4</sup>. The chief officer is appointed by the Agency with the approval of the Secretary of State on such terms and conditions (including terms with respect to tenure and vacation of office) as the Agency may with the approval of the Secretary of State determine<sup>5</sup>. On approval by the Secretary of State of the person to be appointed on any occasion as chief officer of the Agency and the terms and conditions of his appointment, the Secretary of State must<sup>6</sup>: (1) if that person is not already a member of the Agency, appoint him as a member for the same term as the term of his appointment as chief officer<sup>7</sup>; or (2) if he is already such a member but his term of appointment as such ends before the term of his appointment as chief officer ends, extend his term of appointment as a member so that it ends at the same time as the term of his appointment as chief officer<sup>8</sup>.

The Agency may authorise the chairman, the chief officer or any committee<sup>9</sup> to exercise such of its functions as it may determine<sup>10</sup>.

1 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Education Act 2005 ss 77(1), 100(1).

4 Ibid s 77(2), Sch 13 para 2(1).

5 Ibid Sch 13 para 2(2).

6 Ibid Sch 13 para 2(3).

7 Ibid Sch 13 para 2(3)(a).

8 Ibid Sch 13 para 2(3)(b).

9 Ie established under ibid Sch 13 para 8: see PARA 789 post.

10 Ibid Sch 13 para 9.



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### **786. Tenure of office.**

A person holds and vacates office as a member or chairman or chief officer<sup>1</sup> of the Training and Development Agency for Schools<sup>2</sup> in accordance with the terms of his appointment and, on ceasing to be a member, is eligible for re-appointment<sup>3</sup>. A person may at any time by notice in writing to the Secretary of State<sup>4</sup> resign his office as a member or chairman of the Agency<sup>5</sup>.

If the Secretary of State is satisfied that a member of the Agency: (1) has been absent from meetings of the Agency for a period longer than six consecutive months without the permission of the Agency<sup>6</sup>; or (2) is unable or unfit to discharge the functions of a member<sup>7</sup>, the Secretary of State may by notice in writing to that member remove him from office and thereupon the office becomes vacant<sup>8</sup>.

1 As to the appointment of the members, chairman and chief officer of the Training and Development Agency for Schools see PARA 785 ante.

2 As to the establishment of the Agency see PARA 784 ante.

3 Education Act 2005 ss 77(2), 100(1), Sch 13 para 3(1).

4 As to the Secretary of State see PARA 52 ante.

5 Education Act 2005 Sch 13 para 3(2).

6 Ibid Sch 13 para 4(a).

7 Ibid Sch 13 para 4(b).

8 Ibid Sch 13 para 4.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/5. TEACHERS/(2) TEACHER TRAINING/(i) The Training and Development Agency for Schools/A. ESTABLISHMENT AND CONSTITUTION/787. Salaries, allowances and pensions.

### **787. Salaries, allowances and pensions.**

The Training and Development Agency for Schools<sup>1</sup> must: (1) pay to its members<sup>2</sup> such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State<sup>3</sup> may determine<sup>4</sup>; and (2) as regards any member in whose case the Secretary of State may so determine, pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine<sup>5</sup>.

If a person ceases to be a member of the Agency and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Agency to make to that person a payment of such amount as the Secretary of State may determine<sup>6</sup>.

The Agency must pay to the members of any of its committees<sup>7</sup> who are not members of the Agency such travelling, subsistence and other allowances as the Secretary of State may determine<sup>8</sup>.

1 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 As to membership of the Agency see PARA 785 ante.

3 As to the Secretary of State see PARA 52 ante.

4 Education Act 2005 ss 77(2), 100(1), Sch 13 para 5(1)(a).

5 Ibid Sch 13 para 5(1)(b).

6 Ibid Sch 13 para 5(2). As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.

7 As to committees see PARA 789 post.

8 Education Act 2005 Sch 13 para 5(3).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/5. TEACHERS/(2) TEACHER TRAINING/(i) The Training and Development Agency for Schools/A. ESTABLISHMENT AND CONSTITUTION/788. Staff.

## **788. Staff.**

The Training and Development Agency for Schools<sup>1</sup> may appoint such employees as it thinks fit<sup>2</sup>. The Agency must pay to its employees such remuneration and allowances as it may determine<sup>3</sup>, and the employees must be appointed on such other terms and conditions as the Agency may determine<sup>4</sup>. Any such determination requires the approval of the Secretary of State<sup>5</sup>.

Employment with the Agency is included among the kinds of employment to which a superannuation scheme<sup>6</sup> can apply<sup>7</sup>.

1 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 Education Act 2005 ss 77(2), 100(1), Sch 13 para 6(1).

3 Ibid Sch 13 para 6(2).

4 Ibid Sch 13 para 6(3).

5 Ibid Sch 13 para 6(4). As to the Secretary of State see PARA 52 ante.

6 Ie under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

7 Education Act 2005 Sch 13 para 7(1). The Agency must pay to the Minister for the Civil Service, at such times as the minister may direct, such sums as the minister may determine in respect of the increase attributable to Sch 13 para 7(1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Education Act 2005 Sch 13 para 7(2). As to directions under the Education Act 2005 generally see PARA 175 note 9 ante. Where an employee of the Agency is, by reference to that employment, a participant in a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) and is also a member of the Agency, the minister may determine that his service as such a member is to be treated for the purposes of the scheme as service as an employee of the Agency, whether or not any benefits are payable to or in respect of him by virtue of the Education Act 2005 Sch 13 para 5 (see PARA 787 ante): Sch 13 para 7(3). As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550.

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### **789. Committees.**

The Training and Development Agency for Schools<sup>1</sup> may establish a committee for any purpose<sup>2</sup>. The number of the members of any such committee, and the terms on which they are to hold and vacate office, must be fixed by the Agency<sup>3</sup>. A committee may include persons who are not members of the Agency<sup>4</sup>. The Agency must keep under review the structure of committees so established and the scope of each committee's activities<sup>5</sup>.

1 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 Education Act 2005 ss 77(2), 100(1), Sch 13 para 8(1).

3 Ibid Sch 13 para 8(2).

4 Ibid Sch 13 para 8(3).

5 Ibid Sch 13 para 8(4).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/5. TEACHERS/(2) TEACHER TRAINING/(i) The Training and Development Agency for Schools/A. ESTABLISHMENT AND CONSTITUTION/790. Proceedings.

## **790. Proceedings.**

A representative of the Secretary of State<sup>1</sup> is entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Training and Development Agency for Schools<sup>2</sup> or of any committee<sup>3</sup> of the Agency<sup>4</sup>. The Agency must provide the Secretary of State with such copies of any documents distributed to members<sup>5</sup> of the Agency or of any such committee as he may require<sup>6</sup>. A representative of the National Assembly for Wales<sup>7</sup> is entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Agency or of any committee of the Agency<sup>8</sup>. The Agency must provide the Assembly with such copies of any documents distributed to members of the Agency or of any such committee as it may require<sup>9</sup>. Her Majesty's Chief Inspector of Schools in England<sup>10</sup>, or a representative of his, is also entitled to attend and take part in any deliberations (but not in decisions) at meetings of the Agency or of any committee of the Agency<sup>11</sup>. The Agency must provide the Chief Inspector with such copies of any documents distributed to members of the Agency or of any such committee as he may require<sup>12</sup>.

The validity of any proceedings of the Agency or of any committee of the Agency is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>13</sup> and the Agency may regulate its own procedure and that of any of its committees<sup>14</sup>.

The application of the seal of the Agency is authenticated by the signature of: (1) the chairman or of some other person authorised either generally or specially by the Agency to act for that purpose<sup>15</sup>; and (2) one other member<sup>16</sup>. Every document purporting to be an instrument made or issued by or on behalf of the Agency and to be duly executed under the seal of the Agency, or to be signed or executed by a person authorised by the Agency to act in that behalf, must be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown<sup>17</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

3 As to committees see PARA 789 ante.

4 Education Act 2005 ss 77(2), 100(1), Sch 13 para 10(a). This is without prejudice to any other rights the Secretary of State may require to be accorded to him as a condition of any grants made to the Agency under the Education Act 2005: Sch 13 para 10.

5 As to membership of the Agency see PARA 785 ante.

6 Education Act 2005 Sch 13 para 10(b). This is without prejudice to any other rights the Secretary of State may require to be accorded to him as a condition of any grants made to the Agency under the Education Act 2005: Sch 13 para 10.

7 As to the National Assembly for Wales see PARA 53 ante.

8 Education Act 2005 Sch 13 para 11(a). This is without prejudice to any other rights the Assembly may require to be accorded to it as a condition of any grants made to the Agency under the Education Act 2005: Sch 13 para 10.

9 Ibid Sch 13 para 11(b). This is without prejudice to any other rights the Assembly may require to be accorded to it as a condition of any grants made to the Agency under the Education Act 2005: Sch 13 para 10.

- 10 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 post.
- 11 Education Act 2005 Sch 13 para 12(1).
- 12 Ibid Sch 13 para 12(2).
- 13 Ibid Sch 13 para 13.
- 14 Ibid Sch 13 para 14. This is expressed to be subject to Sch 13 paras 1-13 (see PARA 785 et seq ante).
- 15 Ibid Sch 13 para 15(a).
- 16 Ibid Sch 13 para 15(b).
- 17 Ibid Sch 13 para 16.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/5. TEACHERS/(2) TEACHER TRAINING/(i) The Training and Development Agency for Schools/A. ESTABLISHMENT AND CONSTITUTION/791. Annual reports.

**791. Annual reports.**

The Training and Development Agency for Schools<sup>1</sup> must make an annual report to the Secretary of State<sup>2</sup>, who must lay a copy of it before each House of Parliament<sup>3</sup>. The Agency may arrange for any such report to be published in such manner as it considers appropriate<sup>4</sup>.

1 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Education Act 2005 ss 77(2), 100(1), Sch 13 para 18(a).

4 Ibid Sch 13 para 18(b).

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## **792. Accounts.**

It is the duty of the Training and Development Agency for Schools<sup>1</sup>:

- 1398 (1) to keep proper accounts and proper records in relation to them<sup>2</sup>;
- 1399 (2) to prepare in respect of each financial year<sup>3</sup> of the Agency a statement of accounts<sup>4</sup>; and
- 1400 (3) to send copies of the statement to the Secretary of State<sup>5</sup> and to the Comptroller and Auditor General<sup>6</sup> by such time as the Secretary of State may direct<sup>7</sup>.

The statement of accounts must comply with any directions given by the Secretary of State as to<sup>8</sup>:

- 1401 (a) the information to be contained in it<sup>9</sup>;
- 1402 (b) the manner in which the information contained in it is to be presented<sup>10</sup>; or
- 1403 (c) the methods and principles according to which the statement is to be prepared<sup>11</sup>,

and must contain such additional information as the Secretary of State may require to be provided for the information of Parliament<sup>12</sup>.

The Comptroller and Auditor General must examine, certify and report on each statement received by him and must lay copies of each statement and of his report before each House of Parliament<sup>13</sup>.

1 Education Act 2005 ss 77(2), 100(1), Sch 13 para 17(1). As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 Ibid Sch 13 para 17(1)(a).

3 For this purpose 'financial year' means each period of 12 months beginning with 1 April: ibid Sch 13 para 17(4).

4 Ibid Sch 13 para 17(1)(b).

5 As to the Secretary of State see PARA 52 ante.

6 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 724 et seq.

7 Education Act 2005 Sch 13 para 17(1)(c). As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.

8 Ibid Sch 13 para 17(2).

9 Ibid Sch 13 para 17(2)(a).

10 Ibid Sch 13 para 17(2)(b).

11 Ibid Sch 13 para 17(2)(c).



12 Ibid Sch 13 para 17(2).

13 Ibid Sch 13 para 17(3).

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## **B. FUNCTIONS**

### **793. General functions and objectives.**

The Training and Development Agency for Schools<sup>1</sup> exercises the functions conferred on it by or under Part 3 of the Education Act 2005<sup>2</sup> or any other enactment<sup>3</sup>. The objectives of the Agency in exercising its functions are:

- 1404 (1) to contribute to raising the standards of teaching and of other activities carried out by the school workforce<sup>4</sup>;
- 1405 (2) to promote careers in the school workforce<sup>5</sup>;
- 1406 (3) to improve the quality and efficiency of all routes into the school workforce<sup>6</sup>;
- 1407 (4) to secure the involvement of schools in all courses and programmes for the initial training<sup>7</sup> of school teachers<sup>8</sup>.

The Agency may do anything which it thinks fit in furtherance of any of the objectives set out in heads (1) to (4) above<sup>9</sup>, including power to do anything which appears to it to be incidental to the furtherance of those objectives or to the exercise of any other function conferred on it by any enactment, including, in particular, the power to<sup>10</sup>:

- 1408 (a) acquire and dispose of land and other property<sup>11</sup>;
- 1409 (b) enter into contracts<sup>12</sup>;
- 1410 (c) invest sums not immediately required for the purpose of the discharge of its functions<sup>13</sup>; and
- 1411 (d) accept gifts of money, land or other property<sup>14</sup>.

However, the Agency must not borrow money except with the consent of the Secretary of State<sup>15</sup>.

The functions of the Agency are exercisable in relation to England and Wales generally<sup>16</sup>. However, the Agency must not do anything in relation to Wales unless the Agency has been requested to do so by the National Assembly for Wales, and the Agency has given the Assembly notice that it is willing to do so<sup>17</sup>.

In exercising its functions, the Agency must have regard, in particular, to the desirability of securing that the school workforce is well fitted and trained: (i) to promote the spiritual, moral, behavioural, social, cultural, mental and physical development of children and young people<sup>18</sup>; (ii) to contribute to their well-being<sup>19</sup>; and (iii) to prepare them for the opportunities, responsibilities and experiences of later life<sup>20</sup>.

In exercising its functions, the Agency must also comply with any general directions<sup>21</sup> given to it about the exercise of its functions: (A) by the Secretary of State, except so far as those functions are exercisable in relation to Wales<sup>22</sup>; and (B) by the National Assembly for Wales, so far as those functions are exercisable in relation to Wales<sup>23</sup>.

<sup>1</sup> As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 le under the Education Act 2005 Pt 3 (ss 74-100).

3 Ibid s 75(1).

4 Ibid s 75(2)(a). For the purposes of Pt 3, the school workforce consists of the following members: (1) persons who work in schools; and (2) persons not falling within head (1) supra who are teachers or carry out work that consists of or includes teaching: s 75(5). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 100(3).

5 Ibid s 75(2)(b).

6 Ibid s 75(2)(c).

7 References in ibid Pt 3 to training, in relation to teachers or other members of the school workforce (including references to the provision of training 'for' teachers or other members of the school workforce), include: (1) any training or education with the object of fitting persons to be teachers or other members of the school workforce, or to be better teachers or other members of the school workforce; and (2) any assessment related to the award of any qualification or status as a teacher or other member of the school workforce: s 96(1). References elsewhere in the Education Acts to training, in relation to teachers, include any training or education with a view to fitting persons to be teachers, or better teachers: s 96(2). For the meaning of 'the Education Acts' see PARA 1 note 14 ante.

The governing body of a maintained school may: (a) provide courses of initial or further training for school teachers; (b) provide courses of training for other members of the school workforce; or (c) join in partnership with other training providers, or (alone or jointly with other training providers) establish a body, for the purpose of providing training falling within head (a) or head (b) supra: s 95(1). It is immaterial for these purposes whether or not the training constitutes higher education: s 95(2). In relation to an exercise of the powers so conferred, the governing body has all the same supplementary and incidental powers as it has in relation to the conduct of the school (s 95(3)); and any exercise by the governing body of a maintained school of the powers so conferred is not to be treated, for the purposes of the School Standards and Framework Act 1998 Pt II Ch IV (ss 45-53A) (as amended) (financing of maintained schools: see PARA 312 et seq ante) as being undertaken for the purposes of the school: Education Act 2005 s 95(4). The School Standards and Framework Act 1998 s 80 (exercise of power by a maintained school to provide further education: see PARA 607 ante) does not apply in relation to any course of training that is provided under the Education Act 2005 s 95: s 95(5). Nothing in s 95 is to be read as affecting the power of the governing body of a school, as an ordinary incident of the conduct of the school to provide training for members of the school workforce who work at the school, or to participate in the provision of training for members of the school workforce as part of a course provided by another training provider: s 95(6). As to the governing bodies of maintained schools see PARA 203 et seq ante.

8 Ibid s 75(2)(d).

9 Ibid s 83(1). The power conferred by s 83 includes power to provide information, advice or other services to persons outside England and Wales, for the provision of which the Agency may make such charges as it thinks fit: s 83(2), (3). However, s 83 does not authorise the provision of financial support, and is subject to s 77(2), Sch 13 para 1(2) (see the text and note 15 infra): s 83(4). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

10 Ibid Sch 13 para 1(1).

11 Ibid Sch 13 para 1(1)(a).

12 Ibid Sch 13 para 1(1)(b).

13 Ibid Sch 13 para 1(1)(c).

14 Ibid Sch 13 para 1(1)(d).

15 Ibid Sch 13 para 1(2). As to the Secretary of State see PARA 52 ante.

16 Ibid s 76(1).

17 Ibid ss 76(2), 122(1). Section 76(2) does not affect any function conferred on the Agency by s 94 (duty to provide information: see PARA 794 post) or by regulations made under any of the Education Act 2002 ss 132-140 (as amended) (qualifications etc of school teachers and persons providing further education: see PARA 769 et seq ante): Education Act 2005 s 76(3). As to the National Assembly for Wales see PARA 53 ante.

18 Ibid s 75(3)(a).

19 Ibid s 75(3)(b). In s 75(3)(b), 'well-being', in relation to children and young people, is a reference to their well-being having regard to the matters mentioned in the Children Act 2004 s 10(2) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 187): Education Act 2005 s 75(4).

20 Ibid s 75(3)(c).

21 Directions under ibid s 84 must be contained in an order made by the Secretary of State or the National Assembly for Wales: s 84(4). As to the making of orders under the Education Act 2005 see PARA 62 note 1 ante; and as to directions under the Education Act 2005 see PARA 175 note 9 ante. Orders under s 84 are local in nature, and are not recorded in this work.

22 Ibid s 84(1), (2).

23 Ibid ss 84(1), (3), 122(1). The text refers to functions exercisable in relation to Wales in accordance with s 76: see the text and notes 16-20 supra.

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#### **794. Duty to provide information.**

The Training and Development Agency for Schools<sup>1</sup>: (1) must provide the Secretary of State<sup>2</sup> (in such manner as he may from time to time determine) with such information or advice relating to matters for which it is responsible as he may from time to time require<sup>3</sup>; and (2) may provide the Secretary of State with such information or advice relating to such matters as it thinks fit<sup>4</sup>.

The Agency must also provide the National Assembly for Wales (in such manner as the Assembly may from time to time determine) with such information or advice relating to matters for which the Agency is responsible<sup>5</sup> as the Assembly may from time to time require<sup>6</sup>. The Agency may provide the Assembly with such information or advice relating to other matters as the Agency thinks fit<sup>7</sup>.

The funding functions of the Agency<sup>8</sup> are carried out in relation to Wales by the Higher Education Funding Council for Wales<sup>9</sup>. The Agency and the Council must give each other such information as each may require for the purposes of the exercise of its functions under any enactment<sup>10</sup>.

Any person receiving, or who has received or applied for, any grant, loan or other payment under Part 3<sup>11</sup> of the Education Act 2005<sup>12</sup>, and any local education authority<sup>13</sup>, must give the Agency or the Council such information as it may require for the purpose of the exercise of its functions under any enactment<sup>14</sup>.

1 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Education Act 2005 s 94(1)(a).

4 Ibid s 94(1)(b).

5 Ie by virtue of ibid s 76(2) (see PARA 793 ante) or by virtue of regulations made under any of the Education Act 2002 ss 132-140 (as amended) (qualifications etc of school teachers and persons providing further education: see PARA 769 et seq ante).

6 Education Act 2005 ss 94(2), 122(1).

7 Ibid s 94(3).

8 As to the funding functions of the Agency see PARA 795 post.

9 As to the Higher Education Funding Council for Wales see PARA 733 et seq ante.

10 Education Act 2005 s 94(4).

11 Ie under ibid Pt 3 (ss 74-100).

12 Ibid s 94(5)(a).

13 Ibid s 94(5)(b). As to local education authorities see PARA 20 ante.

14 Ibid s 94(5).

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## **(ii) Funding of Training and Development**

### ***A. FUNDING OF SCHOOL WORKFORCE TRAINING BY THE TRAINING AND DEVELOPMENT AGENCY FOR SCHOOLS***

#### **795. Powers of the Training and Development Agency for Schools to provide financial support.**

The Training and Development Agency for Schools<sup>1</sup> may provide to any person such financial support as the Agency thinks fit in furtherance of any of its objectives in exercising its functions<sup>2</sup>. The persons to whom financial support may be provided include, in particular: (1) members of the school workforce<sup>3</sup>; (2) persons training to be members of the school workforce<sup>4</sup>; (3) training providers<sup>5</sup>; and (4) employers or prospective employers of members of the school workforce<sup>6</sup>.

Financial support so provided may be given by way of grants, loans or other payments<sup>7</sup>, and may be given subject to such terms and conditions<sup>8</sup> as the Agency thinks fit<sup>9</sup>. In exercising its functions in relation to the provision of financial support, the Agency must have regard: (a) to any forecast of demand for members of the school workforce of a particular category that is notified to it by the Secretary of State<sup>10</sup>; and (b) in relation to financial support for any training provider, to any assessment of the quality of the relevant training provided by that person made by the Chief Inspector for England<sup>11</sup> or to which the Agency thinks it is appropriate to have regard or to which the Secretary of State directs it to have regard<sup>12</sup>.

In exercising its functions in relation to the provision of financial support, the Agency must also have regard to the desirability of not discouraging any training provider for whose activities financial support is provided under Part 3 of the Education Act 2005 from maintaining or developing its funding from other sources<sup>13</sup>. In exercising its functions in relation to the provision of financial support for training providers, the Agency must have regard (so far as it thinks it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining what appears to it to be an appropriate balance in the support given by it as between institutions which are of a denominational character<sup>14</sup> and other training providers<sup>15</sup>.

In exercising its functions, the Agency must also take such steps as appear to it appropriate to secure that any person who provides any training funded by the Agency makes available such information relating to the training, in such manner and to such persons, as the Agency may require<sup>16</sup>.

1 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

2 Education Act 2005 ss 78(1), 100(1). As to the Agency's objectives see PARA 793 ante.

3 Ibid s 78(2)(a). As to the constitution of the school workforce see PARA 793 note 4 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 100(3).

4 Ibid s 78(2)(b). As to references to training see PARA 793 note 7 ante.

5 Ibid s 78(2)(c). In Pt 3 (ss 74-100), 'training provider' means a person who provides training for members of the school workforce: s 78(3).

6 Ibid s 78(2)(d).

7 Ibid s 79(1).

8 The terms and conditions on which the Agency may make any such grants, loans or other payments may in particular: (1) enable the Agency to require the repayment, in whole or in part, of sums paid by the Agency if any of the terms and conditions subject to which the sums were paid is not complied with; and (2) require the payment of interest in respect of any period during which a sum due to the Agency in accordance with any of the terms and conditions remains unpaid: *ibid* s 79(3). The power of the Agency to impose conditions on the making of any such grants, loans or other payments to a training provider includes, in particular, power to impose conditions prohibiting, restricting or requiring the charging of fees in connection with the provision by that training provider of relevant training of any description specified in the condition: s 79(4). In s 79, 'relevant training', in relation to a training provider, means any training provided by the training provider for members of the school workforce: s 79(8). Where a condition is imposed under s 79(4) in connection with any grant, loan or other payment made to a training provider ('T1'), and the grant, loan or other payment is to any extent made in respect of persons undertaking relevant training which is provided in whole or part by another training provider ('T2'), then, for the purposes of the condition, fees payable by such persons to T2 are to be regarded as fees charged by T1: s 79(5). The terms and conditions on which the Agency makes any such grants, loans or other payments to a training provider must not relate to the application by the training provider of any sums derived otherwise than from the Agency: s 79(6). However, this provision does not affect the power to impose conditions by virtue of s 79(4): s 79(6).

9 Ibid s 79(2). A funding agency and any other relevant funding body may exercise any of their functions jointly (s 92(1)); and the Training and Development Agency for Schools and any body specified in an order made by the Secretary of State for these purposes may exercise their functions jointly (ss 92(3), 100(1)). For these purposes, 'a funding agency' means the Training and Development Agency for Schools or the Higher Education Funding Council for Wales: s 100(1). 'Other relevant funding body' means the other funding agency, the Higher Education Funding Council for England, the Learning and Skills Council for England or the National Council for Education and Training for Wales: ss 92(2), 100(1). As to the Secretary of State see *PARA 52 ante*. As to the making of orders under the Education Act 2005 see *PARA 62 note 1 ante*. At the date at which this volume states the law, no such order had been made under s 92. As to the Higher Education Funding Council for England see *PARA 733 et seq ante*; as to the Learning and Skills Council for England see *PARA 1072 post*; and as to the National Council for Education and Training for Wales see *PARA 1113 post*.

10 Ibid s 79(7)(a).

11 *le Her Majesty's Chief Inspector of Schools in England*: *ibid* s 100(1). As to Her Majesty's Chief Inspector of Schools in England see *PARA 1168 post*.

12 Ibid s 79(7)(b). As to directions under the Education Act 2005 generally see *PARA 175 note 9 ante*.

13 Ibid s 80(1). Section 80(1) does not affect the power by virtue of s 79(4) (see *note 8 supra*) to impose conditions prohibiting or restricting the charging of fees: s 80(4).

14 For the purposes of *ibid* Pt 3, an institution is 'of a denominational character' if: (1) at least one-quarter of the members of the governing body of the institution, or in the case of a school at least one-fifth, are persons appointed to represent the interests of a religion or religious denomination; or (2) any of the property held for the purposes of the institution is held upon trusts which provide that, in the event of the discontinuance of the institution, the property concerned is to be held for, or sold and the proceeds of sale applied for, the benefit of a religion or religious denomination; or (3) any of the property held for the purposes of the institution is held on trust for or in connection with the provision of education, or the conduct of an educational institution, in accordance with the tenets of a religion or religious denomination: s 97.

15 Ibid s 80(2).

16 Ibid s 80(3).

## UPDATE

### **795 Powers of the Training and Development Agency for Schools to provide financial support**

NOTE 9--Reference to National Council for Education and Training for Wales now to National Assembly for Wales to the extent that it is discharging its functions under the Learning and Skills Act 2000 Pt 2 (ss 30-51): 2005 Act s 92(2) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).



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**796. Grants to the Training and Development Agency for Schools made by the Secretary of State; terms and conditions.**

The Secretary of State<sup>1</sup> may make grants to the Training and Development Agency for Schools<sup>2</sup> of such amounts and subject to such terms and conditions as he may determine<sup>3</sup>. The terms and conditions subject to which grants are made by the Secretary of State to the Agency, so far as they relate to the provision of financial support by the Agency to training providers<sup>4</sup>:

- 1412 (1) may in particular impose requirements to be complied with in respect of every training provider, or every training provider falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any training provider to which the requirements apply before financial support of any amount or description so specified is provided by the Agency in respect of activities carried on by the training provider<sup>5</sup>; but
- 1413 (2) must not otherwise relate to the provision of financial support by the Agency in respect of activities carried on by any particular training provider or training providers<sup>6</sup>.

The terms and conditions may not be framed by reference to particular criteria for the selection and appointment of academic staff and for the admission of students<sup>7</sup>. The terms and conditions subject to which grants are made by the Secretary of State to the Agency may in particular enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any of the terms and conditions subject to which the sums were paid is not complied with<sup>8</sup>, and require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the terms and conditions remains unpaid<sup>9</sup>.

<sup>1</sup> As to the Secretary of State see PARA 52 ante. As to the corresponding powers of the National Assembly for Wales see PARA 798 post.

<sup>2</sup> As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

<sup>3</sup> Education Act 2005 s 81(1).

<sup>4</sup> Ibid s 81(2). For the meaning of 'training provider' see PARA 795 note 5 ante.

<sup>5</sup> Ibid s 81(3)(a).

<sup>6</sup> Ibid s 81(3)(b).

<sup>7</sup> Ibid s 81(4).

<sup>8</sup> Ibid s 81(5)(a).

<sup>9</sup> Ibid s 81(5)(b). As to further conditions imposed in relation to grants paid by the Secretary of State see PARA 797 post.

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**797. Further conditions imposed in relation to grants paid to the Training and Development Agency for Schools by the Secretary of State.**

In relation to England<sup>1</sup>, the Secretary of State<sup>2</sup> must, when making any grant to a funding body<sup>3</sup>, impose a condition requiring that body to impose a condition regarding student fees and fair access to higher education in relation to any grants, loans or other payments made by that body to the governing body<sup>4</sup> of a relevant institution<sup>5</sup>. If a governing body in England fails to comply with that requirement<sup>6</sup>, the Director of Fair Access to Higher Education<sup>7</sup> may direct the Higher Education Funding Council for England<sup>8</sup> or the Training and Development Agency for Schools<sup>9</sup> (or both) to impose specified financial requirements<sup>10</sup> on the governing body<sup>11</sup>.

1 As to the corresponding powers in relation to Wales see PARA 798 post.

2 As to the Secretary of State see PARA 52 ante.

3 Ie under the Education Act 2005 s 81 (see PARA 796 ante). For these purposes, 'funding body' means the Training and Development Agency for Schools: see the Higher Education Act 2004 s 23(2) (as amended); and PARA 764 ante.

4 As to the meaning of 'governing body' see PARA 764 note 6 ante.

5 See the Higher Education Act 2004 s 23 (as amended); and PARA 764 ante. For the meaning of 'relevant institution' see PARA 764 note 7 ante.

6 Ie as specified under ibid s 24 (as amended) (see PARA 764 ante).

7 As to the Director of Fair Access to Higher Education see PARA 760 ante.

8 As to the Higher Education Funding Council for England see PARA 733 et seq ante.

9 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

10 Ie under the Higher Education Act 2004 s 24(3) (see PARA 764 ante).

11 See ibid s 37 (as amended); and PARA 768 ante.

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**798. Grants to the Training and Development Agency for Schools made by the National Assembly for Wales; terms and conditions.**

The National Assembly for Wales<sup>1</sup> may make grants to the Training and Development Agency for Schools<sup>2</sup> of such amounts and subject to such terms and conditions as the Assembly may determine<sup>3</sup>. The terms and conditions subject to which grants are made by the Assembly to the Agency, so far as they relate to the provision of financial support by the Agency to training providers<sup>4</sup>:

- 1414 (1) may in particular impose requirements to be complied with in respect of every training provider, or every training provider falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any training provider to which the requirements apply before financial support of any amount or description so specified is provided by the Agency in respect of activities carried on by the training provider<sup>5</sup>;
- 1415 (2) may include a condition requiring the Agency to impose a specified condition<sup>6</sup> in relation to any grants, loans or other payments made by the Agency under its powers to provide financial support<sup>7</sup> to a training provider specified by the Assembly<sup>8</sup>, or a training provider of a class so specified<sup>9</sup>; but
- 1416 (3) may not otherwise relate to the provision of financial support by the Agency in respect of activities carried on by any particular training provider or training providers<sup>10</sup>.

The terms and conditions may not be framed by reference to particular criteria for the selection and appointment of academic staff and for the admission of students<sup>11</sup>. The terms and conditions subject to which grants are made by the Assembly to the Agency may in particular enable the Assembly to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with<sup>12</sup>, and require the payment of interest in respect of any period during which a sum due to the Assembly in accordance with any of the terms and conditions remains unpaid<sup>13</sup>.

1 As to the National Assembly for Wales see PARA 53 ante. As to the corresponding powers of the Secretary of State see PARA 796 ante.

2 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

3 Education Act 2005 ss 82(1), 100(1), 122(1).

4 Ibid s 82(2). For the meaning of 'training provider' see PARA 795 note 5 ante.

5 Ibid s 82(3)(a).

6 Ie a condition falling within ibid s 79(4) (see PARA 795 note 8 ante).

7 Ie under ibid s 78 (see PARA 795 ante).

8 Ie in the condition under ibid s 82(1) (see the text and notes 1-3 supra).

9 Ibid s 82(3)(b). A condition imposed by virtue of s 82(3)(b) does not apply in relation to grants, loans or other payments made by the Agency in respect of any course which is a qualifying course for the purposes of the Higher Education Act 2004 s 28 (as amended) (condition that may be required to be imposed by Welsh funding bodies: see PARA 765 ante): Education Act 2005 s 82(5).

10 Ibid s 82(3)(c).

11 Ibid s 82(4).

12 Ibid s 82(6)(a).

13 Ibid s 82(6)(b).

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**799. Further conditions imposed in relation to grants paid to the Training and Development Agency for Schools by the National Assembly for Wales.**

In relation to Wales, the following provisions have effect until a day to be appointed<sup>1</sup>. The power of the National Assembly for Wales<sup>2</sup> to impose conditions<sup>3</sup> in relation to grants paid to the Training and Development Agency for Schools<sup>4</sup> includes power to impose a condition requiring the Agency to impose a further condition<sup>5</sup> in relation to any grants, loans or other payments made<sup>6</sup> by it to the governing body of a relevant institution<sup>7</sup>. That further condition must:

- 1417 (1) require the governing body of any such institution to secure that, in respect of the relevant academic year<sup>8</sup>, the fees<sup>9</sup> payable to the institution by any prescribed<sup>10</sup> class of persons in connection with their undertaking courses<sup>11</sup> of any prescribed description<sup>12</sup> are equal to the prescribed amount<sup>13</sup>;
- 1418 (2) impose, in the event of a failure by the governing body to comply with the requirement specified in head (1) above, such further financial requirements on that body as may be specified, which may include requirements relating to the repayment, with or without interest, of the whole or part of any sums received by it in respect of the grant, loan or other payment in question<sup>14</sup>.

Where a further condition is imposed under head (1) above in connection with any grants, loans or other payments made to the governing body of a relevant institution<sup>15</sup>, and those payments are to any extent so made in respect of persons undertaking a course which is provided in whole or part by any other institution<sup>16</sup>, then, for these purposes, fees payable by such persons to the other institution must be regarded as fees payable by them to the relevant institution<sup>17</sup>.

As from a day to be appointed<sup>18</sup>, the Assembly must, when making any grant to a funding body<sup>19</sup>, impose a condition requiring that body to impose a condition regarding student fees and fair access to higher education in relation to any grants, loans or other payments made by that body to the governing body<sup>20</sup> of a relevant institution<sup>21</sup>. If a governing body in Wales fails to comply with such a requirement<sup>22</sup>, the Training and Development Agency for Schools may enforce the relevant condition<sup>23</sup> by imposing financial requirements on the governing body in pursuance of any condition<sup>24</sup>.

1 The Teaching and Higher Education Act 1998 s 26 (as amended) is repealed by the Higher Education Act 2004 ss 49-50, Sch 6 para 7, Sch 7 as from a day to be appointed under s 52(6). In relation to Wales, the appointed day is 7 July 2005 but only in relation to the repeal of the Teaching and Higher Education Act 1998 s 26(5) (as amended): see the Higher Education Act 2004 (Commencement No 2 and Transitional Provision) (Wales) Order 2005, SI 2005/1833, art 4(e), (f). At the date at which this volume states the law, no such day has been appointed for any other purpose in relation to Wales. As to prospective provision made in relation to grants paid by the National Assembly for Wales to the Training and Development Agency for Schools under the Higher Education Act 2004 Pt 3 (ss 22-41) see further the text and notes 18-24 *infra*.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*. As to the corresponding powers of the Secretary of State see PARA 796 *ante*.

3 le under the Education Act 2005 s 82(1) (see PARA 798 ante).

4 As to the establishment of the Training and Development Agency for Schools see PARA 784 ante.

5 le under the Teaching and Higher Education Act 1998 s 26(4) (as amended; prospectively repealed) (see the text and notes 8-13 infra).

6 le under the Education Act 2005 s 78 (see PARA 795 ante).

7 Teaching and Higher Education Act 1998 s 26(3) (amended by the Education Act 2005 s 98, Sch 14 para 19(1), (2)). 'Governing body', in relation to a training provider within the meaning of the Education Act 2005 Pt 3 (ss 74-100) (see PARA 795 note 5 post) who would not, apart from the Teaching and Higher Education Act 1998 s 26(9) (as amended; repealed in relation to England; prospectively repealed in relation to Wales), be regarded as an institution, means the training provider; and 'institution' includes any training provider within the meaning of the Education Act 2005 Pt 3 whether or not the training provider would apart from the Teaching and Higher Education Act 1998 s 26(9) (as amended; repealed in relation to England; prospectively repealed in relation to Wales) be regarded as an institution: s 26(9) (definitions added by the Education Act 2005 Sch 14 para 19(1), (3)(b)). See note 1 supra. For the meaning of 'relevant institution' see PARA 758 note 8 ante.

8 For the meaning of 'the relevant academic year' see PARA 758 note 9 ante.

9 For the meaning of 'fees' see PARA 1046 note 18 post.

10 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. Classes of persons are prescribed for the purposes of s 26(4) (as amended; prospectively repealed) by the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 3.

11 'Course', where it appears in the Teaching and Higher Education Act 1998 s 26(4) (as amended; prospectively repealed), does not include any part-time or postgraduate course other than a course of initial teacher training: s 26(9). See note 1 supra. See also note 12 infra.

12 The National Assembly for Wales must not exercise the power to prescribe descriptions of courses under *ibid* s 26(4) (as amended; prospectively repealed) in such a way as to discriminate: (1) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given; or (2) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate: s 26(8). See note 1 supra. Descriptions of courses are prescribed for the purposes of s 26(4) (as amended; prospectively repealed) by the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 4.

13 Teaching and Higher Education Act 1998 s 26(4) (amended by the Learning and Skills Act 2000 s 146(1), (4)). As to the amount prescribed in relation to an academic year that begins on or after 1 September 2006 see, in relation to Wales, the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 5.

No further condition under the Teaching and Higher Education Act 1998 s 26(4) (as amended; prospectively repealed) may apply in relation to any fees which are payable, in accordance with regulations under the Education (Fees and Awards) Act 1983 s 1 (as amended) (fees at universities and further education establishments: see PARA 1056 post), by students other than those falling within any class of persons prescribed by such regulations for the purposes of s 1(1) or s 1(2): Teaching and Higher Education Act 1998 s 26(7) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)).

Nothing in the Education Act 2005, so far as it imposes any prohibition or other requirement in relation to the imposition of conditions by the Assembly or by the Training and Development Agency for Schools, applies to any condition under the Teaching and Higher Education Act 1998 s 26(3) (as amended; prospectively repealed) (see the text and notes 1-7 supra) imposed by the Assembly or any condition under s 26(4) (as amended; prospectively repealed) imposed by the Agency: s 26(11) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3), (5); and the Education Act 2005 Sch 14 para 19(1), (4)). See note 1 supra.

14 Teaching and Higher Education Act 1998 s 26(6) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)). See note 1 supra.

15 Teaching and Higher Education Act 1998 s 26(10)(a) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)). See note 1 supra.

16 Teaching and Higher Education Act 1998 s 26(10)(b) (amended by the Learning and Skills Act 2000 s 146(1), (4)). See note 1 supra.

17 Teaching and Higher Education Act 1998 s 26(10). See note 1 supra.

18 As from a day to be appointed, provision is made in relation to grants paid by the National Assembly for Wales to the Training and Development Agency for Schools under the Higher Education Act 2004 Pt 3 (ss 22-41) (see PARA 760 et seq ante). However, at the date at which this volume states the law, the relevant substantive provisions, namely ss 27-29 (as amended) (conditions to be imposed by funding agency: see PARA 765 ante), ss 33-36, 38 (as amended) (plans: see PARAS 766-768 ante) and ss 30, 32, 39 (relevant authority: see PARAS 760, 763, 767 ante), had not been brought into force in relation to Wales.

19 Ie under the Education Act 2005 s 82 (see PARA 798 ante). For these purposes, 'funding body' means the Training and Development Agency for Schools: see the Higher Education Act 2004 s 27(2) (substituted by the Education Act 2005 s 98, Sch 14 para 27). See note 18 supra.

20 As to the meaning of 'governing body' see PARA 764 note 6 ante.

21 See the Higher Education Act 2004 s 27 (as substituted); and PARA 765 ante. For the meaning of 'relevant institution' see PARA 764 note 7 ante. See note 18 supra.

22 Ie as specified under ibid s 28 (as amended) (see PARA 765 ante). See note 18 supra.

23 Ie the condition imposed under ibid s 28 (as amended) (see PARA 765 ante). See note 18 supra.

24 See ibid s 38 (as amended); and PARA 768 ante. The text refers to financial requirements imposed on a governing body in pursuance of a condition under s 28(3) (as amended) (see PARA 765 ante). See note 18 supra.

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### **800. Efficiency studies and research.**

A funding agency<sup>1</sup> may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of a qualifying person<sup>2</sup>. A person promoting or carrying out such studies at the request of a funding agency may require the qualifying person concerned to provide him, or a person authorised by him, with such information, and to make its accounts and such other documents available to him, or a person authorised by him, for inspection, as he may reasonably require for that purpose<sup>3</sup>.

<sup>1</sup> I.e., for this purpose, the Training and Development Agency for Schools: see PARA 795 ante. As to the Training and Development Agency for Schools see PARA 784 et seq ante.

<sup>2</sup> Education Act 2005 s 93(1). For these purposes, 'qualifying person' means a training provider receiving financial support under Pt 3 (ss 74-100) from the Training and Development Agency for Schools: s 93(3). For the meaning of 'training provider' see PARA 795 note 5 ante.

<sup>3</sup> Ibid s 93(2).



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### **801. Financial assistance for the training of teachers.**

The Secretary of State<sup>1</sup> (in relation to England<sup>2</sup>) or the National Assembly for Wales<sup>3</sup> (in relation to Wales<sup>4</sup>) may give, or make arrangements<sup>5</sup> for the giving of, financial assistance<sup>6</sup> to any person for or in connection with the provision of any form of training for teachers or for non-teaching staff<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 As to the arrangements made under the Education Act 2002 see PARA 65 ante.

6 Ibid s 14(1). The power given in s 14 supersedes the specific power conferred by the Education (No 2) Act 1986 s 50(1)(b) (repealed) (grants to facilitate training of persons other than teachers): see the Education Act 2002 s 18(1)(c).

7 Ibid s 14(2)(g). For the meaning of 'training for teachers or for non-teaching staff' see PARA 65 note 16 ante.

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## **802. Loans for capital expenditure for purposes of colleges for the training of teachers in Wales.**

The National Assembly for Wales<sup>1</sup> may by regulations<sup>2</sup> make provision for the making by it, out of moneys provided by Parliament, of loans to persons other than local education authorities<sup>3</sup> for the purpose of helping them to meet capital expenditure incurred or to be incurred by them or on their behalf in connection with the provision, replacement, extension, improvement, furnishing or equipment of colleges for the training of teachers<sup>4</sup>. Any loan made to any persons in pursuance of regulations must be made on such terms and conditions as may be specified in an agreement made between the Assembly and those persons<sup>5</sup>. Regulations may make the making of loans dependent on the fulfilment of such conditions as may be determined by or in accordance with the regulations, and may also make provision for requiring persons to whom loans have been made in pursuance of the regulations to comply with such requirements as may be so determined<sup>6</sup>.

1 The Education Act 1967 ss 4, 5 (as amended) are repealed by the Education Act 2002 ss 18(1)(a), 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 April 2003 (see the Education Act 2002 (Commencement No 4 and Transitional and Saving Provisions) Order 2003, SI 2003/124, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. The power provided by the Education Act 1967 ss 4, 5 (as amended) has been superseded in relation to England by the general grant-making powers contained in the Education Act 2002 Pt 2 (ss 14-18); see PARA 65 et seq ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Regulations may make, in relation to Wales, provision different from that made in relation to England: Education Act 1967 s 4(3A) (added by the Education Reform Act 1988 s 229(2)). See note 1 supra. Regulations must be made by statutory instrument: see the Education Act 1967 s 4(4). As to the regulations that have been made see note 4 infra.

3 As to local education authorities see PARA 20 ante.

4 Education Act 1967 s 4(1). See note 1 supra. As to the regulations made in exercise of this power see the Education (Grant) Regulations 1990, SI 1990/1989 (amended by SI 1991/1975; SI 1992/1296; SI 1993/559; SI 1994/2102; SI 1995/2985; SI 1997/678; SI 1997/2961; SI 1998/86). There must be defrayed out of moneys provided by Parliament any increase attributable to the Education Act 1967 in the sums so payable under any other enactment: s 5.

5 See *ibid* s 4(2). See note 1 supra.

6 *Ibid* s 4(3). See note 1 supra. As to the regulations made in exercise of this power see the Education (Grant) Regulations 1990, SI 1990/1989 (as amended; and note 4 supra).

### **UPDATE**

## **802 Loans for capital expenditure for purposes of colleges for the training of teachers in Wales**

NOTE 1--Day now appointed in relation to Wales: SI 2007/3611.

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## ***B. FUNDING OF TEACHER TRAINING BY THE HIGHER EDUCATION FUNDING COUNCIL FOR WALES***

### **803. The Higher Education Funding Council for Wales as a funding agency for teacher training.**

The Higher Education Funding Council for Wales<sup>1</sup> is responsible for administering funds made available to it by the National Assembly for Wales and others for the purpose of providing financial support for the carrying on by eligible institutions<sup>2</sup> of: (1) the provision of teacher training<sup>3</sup>; (2) the provision of facilities, and the carrying on of other activities, by eligible institutions which the governing bodies of those institutions<sup>4</sup> consider it necessary or desirable to provide or carry on for the purpose of or in connection with activities within head (1) above<sup>5</sup>; (3) the provision by any person of services for the purposes of, or in connection with, such activities<sup>6</sup>. These are known as 'qualifying activities'<sup>7</sup>.

The institutions eligible for funding under Part 3 of the Education Act 2005 ('eligible institutions') are<sup>8</sup>: (a) any institution in Wales<sup>9</sup> within the higher or further education sector<sup>10</sup>; (b) the Open University<sup>11</sup>; (c) any school in Wales<sup>12</sup>; (d) any other institution or body in Wales designated by order of the Assembly<sup>13</sup>; and (e) any partnership or association of eligible institutions, or body established by one or more such institutions, for the purpose of carrying on qualifying activities<sup>14</sup>.

The Higher Education Funding Council for Wales may: (i) make grants, loans or other payments in respect of expenditure incurred or to be incurred by the governing body of an eligible institution for the purposes of activities qualifying for funding by the Council under Part 3 of the Education Act 2005 by virtue of head (1) or head (2) above<sup>15</sup> subject to such terms and conditions<sup>16</sup> as the Council thinks fit<sup>17</sup>; and (ii) make grants, loans or other payments in respect of expenditure incurred or to be incurred for the purposes of the provision of services as mentioned in head (3) above<sup>18</sup>, subject to such terms and conditions as the Council thinks fit<sup>19</sup>. Before exercising its discretion under head (i) or head (ii) above with respect to the terms and conditions to be imposed in relation to any grants, loans or other payments, the Council must consult certain bodies<sup>20</sup>.

In exercising its functions in relation to grants, loans and other payments, the Council must have regard to any forecast of demand for newly-qualified teachers notified to it by the Assembly and, in relation to any particular institution, to any assessment of the quality of the teacher training provided by that institution made by the Chief Inspector for Wales<sup>21</sup> or to which the Council thinks it is appropriate to have regard or to which the Assembly directs it to have regard<sup>22</sup>.

In exercising its functions in relation to the provision of financial support for qualifying activities, the Council must have regard to the desirability of not discouraging any institution for whose activities financial support is provided under Part 3 of the Education Act 2005 from maintaining or developing its funding from other sources<sup>23</sup>. The Council also must have regard (so far as it thinks it appropriate to do so in the light of any other relevant considerations) to the desirability of maintaining: (A) what appears to it to be an appropriate balance in the support given by it as between institutions which are of a denominational character<sup>24</sup> and other

institutions<sup>25</sup>; and (b) any distinctive characteristics of any eligible institution for whose activities financial support is provided under Part 3 of the Education Act 2005<sup>26</sup>.

The Council must also take such steps as appear to it appropriate to secure that the governing body of any institution which provides a course of initial teacher training funded by the Council makes available such information relating to the course, in such manner and to such persons, as the Council may require<sup>27</sup>.

In exercising its functions under Part 3 of the Education Act 2005, the Council must also comply with any directions given to it<sup>28</sup> and the Assembly may give general directions to the Council about the exercise of those functions<sup>29</sup>.

1 As to the Higher Education Funding Council for Wales see PARA 733 et seq ante. The National Assembly for Wales may by order confer or impose on the Council such functions supplementary to its functions under the Education Act 2005 Pt 3 (ss 74-100) as the Assembly thinks fit: ss 90(1), 122(1). As to the making of orders under the Education Act 2005 see PARA 62 note 1 ante. At the date at which this volume states the law, no such orders had been made under s 90(1). For these purposes, a function is a supplementary function in relation to the Council if: (1) it is exercisable for the purposes of the exercise by the Assembly of its functions under any enactment; and (2) it relates to, or to the activities of, an eligible institution: s 90(2). Before making such an order, the Assembly must carry out such consultation as appears to it to be appropriate: s 90(3). The Council may carry out such activities ancillary to its functions under Pt 3 as the Assembly may direct: s 90(4). In ss 86-91, 'eligible institution' is to be read in accordance with s 85(3) (see heads (a)-(e) in the text): s 85(5). As to the National Assembly for Wales see PARA 53 ante. As to the giving of directions under the Education Act 2005 generally see PARA 175 note 9 ante. As to the giving of directions by the Assembly under Pt 3 see also the text and notes 28-29 infra.

2 Ibid ss 85(1), 100(1), 122(1).

3 Ibid s 85(2)(a). As to references to training see PARA 793 note 7 ante.

4 The National Assembly for Wales may by order provide for references in ibid ss 85-91 to the governing body of an institution, in relation to an institution which is conducted by a company, to be read as references to the governing body provided for in the instrument of government, or to the company, or to both: ss 100(2), 122(1).

5 Ibid s 85(2)(b).

6 Ibid s 85(2)(c).

7 Ibid s 85(2). In ss 86-91, 'qualifying activities' is to be read in accordance with s 85(2) (see heads (1)-(3) in the text): s 85(5).

8 Ibid s 85(3).

9 For the purposes of ibid s 85(3), an institution or body is in Wales if its activities are carried on, or principally carried on, in Wales: s 85(4). For the meaning of 'Wales' see PARA 52 note 13 ante.

10 Ibid s 85(3)(a). For the meaning of 'higher education' see PARA 19 ante; definition applied by s 100(3). For the meaning of 'institutions within the higher education sector' see PARA 646 ante. For the meaning of 'further education' see PARA 18 ante; definition applied by s 100(3). For the meaning of 'institutions within the further education sector' see PARA 579 ante.

11 Ibid s 85(3)(b).

12 Ibid s 85(3)(c). For the meaning of 'school' see PARA 81 ante; definition applied by s 100(3).

13 Ibid s 85(3)(d). Orders under s 85 are local in nature, and are not recorded in this work.

14 Ibid s 85(3).

15 Ibid s 86(1)(a).

16 The terms and conditions on which the Council may make any such grants, loans or other payments may in particular: (1) enable the Council to require the repayment, in whole or in part, of sums paid by the Council if any of the terms and conditions subject to which the sums were paid is not complied with; and (2) require the payment of interest in respect of any period during which a sum due to the Council in accordance with any of

the terms and conditions remains unpaid: *ibid* s 86(2). The power of the Council to impose conditions on the making of any such grants, loans or other payments to an eligible institution includes in particular power to impose conditions prohibiting, restricting or requiring the charging of fees in connection with the carrying out by that institution of qualifying activities: s 86(3). Where a condition is imposed under s 86(3) in connection with any grant, loan or other payment made to an eligible institution, and the grant, loan or other payment is to any extent made in respect of persons undertaking training which is provided in whole or in part by another training provider, then, for the purposes of the condition, fees payable by such persons to the other training provider are to be regarded as fees charged by the eligible institution: s 86(4). The terms and conditions must not relate to the application of any sums derived otherwise than from the Council: s 86(5). However, this provision does not affect the power to impose conditions by virtue of s 86(3): s 86(5).

17 *Ibid* s 86(1). A funding agency and any other relevant funding body may exercise any of their functions jointly: s 92(1). For these purposes, 'a funding agency' means the Training and Development Agency for Schools or the Higher Education Funding Council for Wales: s 100(1). 'Other relevant funding body' means the other funding agency, the Higher Education Funding Council for England, the Learning and Skills Council for England or the National Council for Education and Training for Wales: ss 92(2), 100(1). The National Assembly for Wales may by order authorise the Higher Education Funding Council for Wales to exercise its functions under Pt 3 jointly with a body specified in the order, and the specified body to exercise its functions jointly with the Higher Education Funding Council for Wales: ss 92(4), 100(1), 122(1). As to the Higher Education Funding Council for England see *PARA 733 et seq ante*; as to the Learning and Skills Council for England see *PARA 1072 post*; and as to the National Council for Education and Training for Wales see *PARA 1113 post*.

18 *Ibid* s 86(1)(b).

19 *Ibid* s 86(1). See note 17 *supra*.

20 *Ibid* s 87(2). The Council must consult such of the following bodies as appear to it to be appropriate to consult in the circumstances: (1) such bodies representing the interests of eligible institutions as appear to the Council to be concerned (s 87(2)(a)); and (2) the governing body of any particular eligible institution which appears to the Council to be concerned (s 87(2)(b)).

21 *le Her Majesty's Chief Inspector of Education and Training in Wales* (see *PARA 1188 post*): *ibid* s 100(1).

22 *Ibid* ss 86(6), 100(1). As to the giving of directions see also the text and notes 28-29 *infra*.

23 *Ibid* s 87(1). This provision does not affect the power by virtue of s 86(3) (see note 16 *supra*) to impose conditions prohibiting or restricting the charging of fees: s 87(5).

24 As to the meaning of 'institution of a denominational character' see *PARA 795 note 14 ante*.

25 Education Act 2005 s 87(3)(a).

26 *Ibid* s 87(3)(b).

27 *Ibid* s 87(4).

28 *Ibid* ss 91(1), 100(1). If it appears to the Assembly that the financial affairs of an eligible institution have been or are being mismanaged, the Assembly may, after consulting the Council and the institution, give such directions to the Council about the provision of financial support in respect of the activities carried on by the institution as the Assembly considers necessary or expedient by reason of the mismanagement: s 91(3). Directions under s 91 must be contained in an order made by the Assembly: ss 91(4), 122(1). Orders under s 91 are local in nature, and are not recorded in this work.

29 *Ibid* s 91(2), 122(1). See note 28 *supra*.

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**804. Grants to the Higher Education Funding Council for Wales made by the National Assembly for Wales; terms and conditions.**

The National Assembly for Wales<sup>1</sup> may make grants to the Higher Education Funding Council for Wales<sup>2</sup> of such amounts and subject to such terms and conditions as the Assembly may determine<sup>3</sup>. The terms and conditions subject to which such grants are made by the Assembly to the Council:

- 1419 (1) may in particular impose requirements to be complied with in respect of every institution, or every institution falling within a class or description specified in the terms and conditions, being requirements to be complied with in the case of any institution to which the requirements apply before financial support of any amount or description so specified is provided by the Council in respect of activities carried on by the institution<sup>4</sup>; but
- 1420 (2) may not otherwise relate to the provision of financial support by the Council in respect of activities carried on by any particular institution or institutions<sup>5</sup>.

The terms and conditions may not be framed by reference to criteria for the selection and appointment of academic staff and for the admission of students<sup>6</sup>. The terms and conditions may in particular enable the Assembly to require the repayment, in whole or in part, of sums paid by it if any of the terms and conditions subject to which the sums were paid is not complied with, and require the payment of interest in respect of any period during which a sum due to the Assembly in accordance with any of the terms and conditions remains unpaid<sup>7</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 As to the Higher Education Funding Council for Wales see PARA 733 et seq ante; and as to the Higher Education Funding Council for Wales as a funding agency for teacher training see PARA 803 ante.

3 Education Act 2005 ss 88(1), 100(1), 122(1). As to further conditions imposed in relation to grants paid to the Higher Education Funding Council for Wales see PARA 805 post.

4 Ibid s 88(2)(a).

5 Ibid s 88(2)(b).

6 Ibid s 88(3).

7 Ibid s 88(4).

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### **805. Further conditions imposed in relation to grants paid to the Higher Education Funding Council for Wales.**

The following provisions have effect in relation to Wales until a day to be appointed<sup>1</sup>. The power of the National Assembly for Wales<sup>2</sup> to impose conditions<sup>3</sup> in relation to grants paid to the Higher Education Funding Council for Wales<sup>4</sup> includes power to impose a condition requiring the Council to impose a further condition<sup>5</sup> in relation to any grants, loans or other payments made<sup>6</sup> by it to the governing body of a relevant institution<sup>7</sup>. That further condition must:

- 1421 (1) require the governing body of any such institution to secure that, in respect of the relevant academic year<sup>8</sup>, the fees<sup>9</sup> payable to the institution by any prescribed<sup>10</sup> class of persons in connection with their undertaking courses<sup>11</sup> of any prescribed description<sup>12</sup> are equal to the prescribed amount<sup>13</sup>;
- 1422 (2) impose, in the event of a failure by the governing body to comply with the requirement specified in head (1) above, such further financial requirements on that body as may be specified, which may include requirements relating to the repayment, with or without interest, of the whole or part of any sums received by it in respect of the grant, loan or other payment in question<sup>14</sup>.

Where a further condition is imposed under head (1) above in connection with any grants, loans or other payments made to the governing body of a relevant institution<sup>15</sup>, and those payments are to any extent so made in respect of persons undertaking a course which is provided in whole or part by any other institution<sup>16</sup>, then, for these purposes, fees payable by such persons to the other institution must be regarded as fees payable by them to the relevant institution<sup>17</sup>.

As from a day to be appointed<sup>18</sup>, the Assembly must, when making any grant to a funding body<sup>19</sup>, impose a condition requiring that body to impose a condition regarding student fees and fair access to higher education in relation to any grants, loans or other payments made by that body, to the governing body<sup>20</sup> of a relevant institution<sup>21</sup>. If a governing body in Wales fails to comply with such a requirement<sup>22</sup>, the Council may enforce the relevant condition<sup>23</sup> by imposing financial requirements on the governing body in pursuance of any condition<sup>24</sup>.

1 The Teaching and Higher Education Act 1998 s 26 (as amended) is repealed by the Higher Education Act 2004 ss 49-50, Sch 6 para 7, Sch 7 as from a day to be appointed under s 52(6). In relation to Wales, the appointed day is 7 July 2005 but only in relation to the repeal of the Teaching and Higher Education Act 1998 s 26(5) (as amended): see the Higher Education Act 2004 (Commencement No 2 and Transitional Provision) (Wales) Order 2005, SI 2005/1833, art 4(e), (f). At the date at which this volume states the law, no such day has been appointed for any other purpose in relation to Wales. As to prospective provision made in relation to grants paid by the National Assembly for Wales to the Training and Development Agency for Schools under the Higher Education Act 2004 Pt 3 (ss 22-41) see further the text and notes 18-24 infra.

2 As to the National Assembly for Wales see PARA 53 ante.

3 ie under the Education Act 2005 s 88(1) (see PARA 804 ante).

4 As to the Higher Education Funding Council for Wales see PARA 733 et seq ante. As to the Higher Education Funding Council for Wales as a funding agency for teacher training see PARA 803 ante.

5 le under the Teaching and Higher Education Act 1998 s 26(4) (as amended; prospectively repealed).

6 le under the Education Act 2005 s 86: see PARA 803 ante.

7 Teaching and Higher Education Act 1998 s 26(3) (amended by the Education Act 2005 s 98, Sch 14 para 19(1), (2)). See note 1 supra. For the meanings of 'governing body' and 'institution' see PARA 799 note 7 ante. For the meaning of 'relevant institution' see PARA 758 note 8 ante.

8 For the meaning of 'the relevant academic year' see PARA 758 note 9 ante.

9 For the meaning of 'fees' see PARA 1046 note 18 post.

10 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. Classes of persons are prescribed for the purposes of s 26(4) (as amended; prospectively repealed) by the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 3.

11 'Course', where it appears in the Teaching and Higher Education Act 1998 s 26(4) (as amended; prospectively repealed), does not include any part-time or postgraduate course other than a course of initial teacher training: s 26(9). See note 1 supra. See also note 12 infra.

12 The National Assembly for Wales must not exercise the power to prescribe descriptions of courses under *ibid* s 26(4) (as amended; prospectively repealed) in such a way as to discriminate: (1) in relation to courses of initial teacher training, between different courses on the basis of the subjects in which such training is given; or (2) in relation to other courses, between different courses at the same or a comparable level on the basis of the areas of study or research to which they relate: s 26(8). See note 1 supra. Descriptions of courses are prescribed for the purposes of s 26(4) (as amended; prospectively repealed) by the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 4.

13 Teaching and Higher Education Act 1998 s 26(4) (amended by the Learning and Skills Act 2000 s 146(1), (4)). See note 1 supra. As to the amount prescribed in relation to an academic year that begins on or after 1 September 2006 see, in relation to Wales, the Fees in Higher Education Institutions (Wales) Regulations 2005, SI 2005/1860, reg 5.

No further condition under the Teaching and Higher Education Act 1998 s 26(4) (as amended; prospectively repealed) may apply in relation to any fees which are payable, in accordance with regulations under the Education (Fees and Awards) Act 1983 s 1 (as amended) (fees at universities and further education establishments: see PARA 1056 post), by students other than those falling within any class of persons prescribed by such regulations for the purposes of s 1(1) or s 1(2): Teaching and Higher Education Act 1998 s 26(7) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)).

Nothing in the Education Act 2005, so far as it imposes any prohibition or other requirement in relation to the imposition of conditions by the National Assembly for Wales or by the Higher Education Funding Council for Wales, applies to any condition under the Teaching and Higher Education Act 1998 s 26(3) (as amended; prospectively repealed) (see the text and notes 1-7 supra) imposed by the National Assembly for Wales or any condition under s 26(4) (as amended; prospectively repealed) imposed by the Council: s 26(11) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3), (5); and the Education Act 2005 Sch 14 para 19(1), (4)).

14 Teaching and Higher Education Act 1998 s 26(6) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)). See note 1 supra.

15 Teaching and Higher Education Act 1998 s 26(10)(a) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 74(1), (3)). See note 1 supra.

16 Teaching and Higher Education Act 1998 s 26(10)(b) (amended by the Learning and Skills Act 2000 s 146(1), (4)). See note 1 supra.

17 Teaching and Higher Education Act 1998 s 26(10). See note 1 supra.

18 As from a day to be appointed, provision is made in relation to grants paid by the National Assembly for Wales to the Higher Education Funding Council for Wales under the Higher Education Act 2004 Pt 3 (ss 22-41) (see PARA 760 et seq ante). However, at the date at which this volume states the law, the relevant substantive provisions, namely ss 27-29 (as amended) (conditions to be imposed by funding agency: see PARA 765 ante), ss 33-36, 38 (as amended) (plans: see PARAS 766-768 ante) and ss 30, 32, 39 (relevant authority: see PARAS 760, 763, 767 ante), had not been brought into force in relation to Wales.



19     le under the Education Act 2005 s 88(1) (see PARA 804 ante). For these purposes, 'funding body' means the Higher Education Funding Council for Wales: see the Higher Education Act 2004 s 27(2) (substituted by the Education Act 2005 s 98, Sch 14 para 27). See note 18 supra.

20     As to the meaning of 'governing body' see PARA 764 note 6 ante.

21     See the Higher Education Act 2004 s 27 (as substituted); and PARA 765 ante. See note 18 supra. For the meaning of 'relevant institution' see PARA 764 note 7 ante.

22     le as specified under ibid s 28 (as amended) (see PARA 765 ante). See note 18 supra.

23     le the condition imposed under ibid s 28 (as amended) (see PARA 765 ante). See note 18 supra.

24     See ibid s 38 (as amended); and PARA 768 ante. The text refers to financial requirements imposed on a governing body in pursuance of a condition under s 28(3) (as amended) (see PARA 765 ante). See note 18 supra.

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#### **806. Duty to provide information.**

The Training and Development Agency for Schools<sup>1</sup> and the Higher Education Funding Council for Wales<sup>2</sup> must give each other such information as each may require for the purposes of the exercise of its functions under any enactment<sup>3</sup>. Any person receiving, or who has received or applied for, any grant, loan or other payment under Part 3<sup>4</sup> of the Education Act 2005<sup>5</sup>, and any local education authority<sup>6</sup>, must give the Agency or the Council such information as it may require for the purpose of the exercise of its functions under any enactment<sup>7</sup>.

1 As to the Training and Development Agency for Schools see PARA 784 et seq ante.

2 As to the Higher Education Funding Council for Wales see PARA 733 et seq ante.

3 Education Act 2005 s 94(4).

4 Ie under ibid Pt 3 (ss 74-100).

5 Ibid s 94(5)(a).

6 Ibid s 94(5)(b). As to local education authorities see PARA 20 ante.

7 Ibid s 94(5).

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### **807. Efficiency studies and research.**

A funding agency<sup>1</sup> may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of a qualifying person<sup>2</sup>. A person promoting or carrying out such studies at the request of a funding agency may require the qualifying person concerned to provide him, or a person authorised by him, with such information, and to make its accounts and such other documents available to him, or a person authorised by him, for inspection, as he may reasonably require for that purpose<sup>3</sup>.

The Higher Education Funding Council for Wales may carry out or commission such research as it considers appropriate with a view to improving the training<sup>4</sup> of teachers or the standards of teaching<sup>5</sup>.

1 In relation to institutions in Wales, this means the Higher Education Funding Council for Wales: see PARA 803 ante. As to the Higher Education Funding Council for Wales see PARA 733 et seq ante.

2 Education Act 2005 s 93(1). For these purposes, 'qualifying person' means the governing body of an eligible institution, as defined by s 85(3) (see PARA 803 ante), receiving financial support under Pt 3 (ss 74-100) from the Higher Education Funding Council for Wales: s 93(3).

3 Ibid s 93(2).

4 As to references to training see PARA 793 note 7 ante.

5 Education Act 2005 s 89.

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**808. Power to reimburse certain payments to persons formerly employed in teacher training.**

A Higher Education Funding Council<sup>1</sup> may make payments, subject to such terms and conditions as it thinks fit, to a further education corporation<sup>2</sup> or the governing body of any designated institution<sup>3</sup>, in respect of expenditure incurred or to be incurred by that body in making safeguarded salary payments<sup>4</sup> to a person who in consequence of a direction given<sup>5</sup> by the Secretary of State<sup>6</sup> ceased before 1 April 1989 to be employed in a college for the training of teachers, or in a department for the training of teachers in any other establishment of further education<sup>7</sup>.

A further education corporation or the governing body of any designated institution must give to a Higher Education Funding Council such information as the Council may require for the purposes of the exercise of its power under these provisions<sup>8</sup>.

1 As to the Higher Education Funding Councils see PARA 733 et seq ante.

2 For the meaning of 'further education' see PARA 18 ante; definition applied by the Education Act 1994 s 19(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 128). As to further education corporations see PARAS 583-598 ante.

3 I.e. designated under the Further and Higher Education Act 1992 s 28 (as amended): see PARA 599 ante.

4 Education Act 1994 s 18(1) (amended by the School Standards and Framework Act 1998 s 140(3), Sch 31). The amount of the safeguarded salary payment is the amount by which, in consequence of the matters mentioned in the Education Act 1994 s 18(2) (see the text to notes 5-7 infra), a person's salary exceeds that which would normally be appropriate to the post held by him: s 18(3).

5 I.e. under *ibid* s 16(4) (repealed).

6 I.e. under the Further Education Regulations 1975, SI 1975/1054, reg 3(2) (revoked), the Education (Schools and Further Education) Regulations 1981, SI 1981/1086, reg 15 (revoked) (being a direction relating to a course for the training of teachers), or reg 16 (revoked): Education Act 1994 s 18(2). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 *Ibid* s 18(2).

8 See *ibid* s 18(4).

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### **(3) THE GENERAL TEACHING COUNCILS**

#### **(i) The General Teaching Council for England**

##### ***A. ESTABLISHMENT AND CONSTITUTION***

##### **809. Establishment.**

The General Teaching Council for England was established as a body corporate<sup>1</sup> under the Teaching and Higher Education Act 1998<sup>2</sup>. The principal aims of the Council in exercising its functions are to contribute to improving the standards of teaching and the quality of learning, and to maintain and improve standards of professional conduct amongst teachers, in the interests of the public<sup>3</sup>.

<sup>1</sup> As to bodies corporate see generally COMPANIES; CORPORATIONS.

<sup>2</sup> Teaching and Higher Education Act 1998 ss 1(1), 43(1). The Teaching and Higher Education Act 1998 provides for the General Teaching Council for England to exercise functions in relation to England and Wales until the date of the establishment of the General Teaching Council for Wales, and to exercise functions in relation to England only after that date: see s 1(3). As to the meaning of 'functions' see PARA 774 note 30 ante. Provision is also made for the transfer of staff and property to the General Teaching Council for Wales: see s 8(3). However, the General Teaching Council for England and the General Teaching Council for Wales were both established on the same date, namely 1 September 2000: see ss 1, 8; the Teaching and Higher Education Act 1998 (Commencement No 6) Order 2000, SI 2000/970; and the General Teaching Council for Wales Order 1998, SI 1998/2911 (amended by SI 2002/2940). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

In relation to any time before 1 September 2000, references to the Council in any enactment must be construed as references to the General Teaching Council for England and Wales, and any reference to the Council by that name in an instrument or document made before that date must be construed on or after that date as a reference to the General Teaching Council for England: see the Teaching and Higher Education Act 1998 s 1(10); and the General Teaching Council for Wales Order 1998, SI 1998/2911, arts 1, 2.

The Council is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the property of the Council is not to be regarded as property of, or property held on behalf of, the Crown: Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 1.

<sup>3</sup> Ibid s 1(2).

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### **810. Constitution.**

The General Teaching Council for England<sup>1</sup> must be constituted in accordance with regulations made by the Secretary of State<sup>2</sup>, and such regulations may authorise it to make rules with respect to such matters relating to its constitution as may be specified<sup>3</sup>. In exercising his power to make such regulations, the Secretary of State must have regard to the desirability of the Council's membership reflecting the interests of<sup>4</sup>:

- 1423 (1) teachers<sup>5</sup>;
- 1424 (2) employers of teachers<sup>6</sup>;
- 1425 (3) providers of teacher training<sup>7</sup>;
- 1426 (4) persons concerned with the teaching of persons with special educational needs<sup>8</sup>;
- 1427 (5) religious bodies involved in the provision of education<sup>9</sup>;
- 1428 (6) parents of pupils<sup>10</sup>;
- 1429 (7) commerce and industry<sup>11</sup>; and
- 1430 (8) the general public<sup>12</sup>,

and such other interests as in the opinion of the Secretary of State will enable the Council to carry out its functions more effectively<sup>13</sup>.

Such regulations must be framed so as to secure that a majority of the members of the Council are registered teachers<sup>14</sup> who<sup>15</sup>:

- 1431 (a) either are for the time being employed or otherwise engaged to provide their services as teachers or have had such recent employment or engagement as teachers as may be prescribed<sup>16</sup>; and
- 1432 (b) satisfy such other criteria as to eligibility for appointment or election to the Council as may be prescribed<sup>17</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 I.e. regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 1(5) see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726 (as amended); and PARA 811 post.

3 Teaching and Higher Education Act 1998 s 1(5).

4 Ibid s 1(6).

5 Ibid s 1(6)(a).

6 Ibid s 1(6)(b).

7 Ibid s 1(6)(c). As to teacher training see PARA 784 et seq ante.

8 Ibid s 1(6)(d). As to the education of children with special educational needs see PARA 984 et seq post.

9 Ibid s 1(6)(e).

10 Ibid s 1(6)(f).

11 Ibid s 1(6)(g).

12 Ibid s 1(6)(h).

13 Ibid s 1(6). As to the meaning of 'functions' see PARA 774 note 30 ante.

14 'Registered teacher' means, subject to ibid Sch 2 para 8 (see PARA 827 post), a person for the time being registered under s 3 (as amended) (see PARA 822 post) with full registration: s 43(1) (amended by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 10); Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3. As from a day to be appointed under the Education Act 2002 s 216(4), the amendment made by Sch 12 paras 1, 10 is to be brought fully into force in England so as to refer to full or provisional registration. At the date at which this volume states the law, no such day had been appointed in relation to England.

15 Teaching and Higher Education Act 1998 s 1(7). As to the regulations made under s 1(7) see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726 (as amended); and PARA 811 post.

16 Teaching and Higher Education Act 1998 s 1(7)(a). 'Prescribed' means prescribed by regulations: s 43(1).

17 Ibid s 1(7)(b).

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### **811. Appointment of members.**

Regulations<sup>1</sup> may make provision with respect to: (1) the appointment or election of one of the members of the General Teaching Council for England to be chairman of the Council<sup>2</sup>; (2) the period for which the chairman is to hold office<sup>3</sup>; and (3) the appointment or election and tenure of office of, and the vacation of office by, members of the Council<sup>4</sup>.

The Council may authorise the chairman, the chief officer or any committee<sup>5</sup> to exercise such of its functions<sup>6</sup> as it may determine<sup>7</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. Regulations made before the establishment of the General Teaching Council for England could enable the Secretary of State to make provision with respect to any of the matters referred to in heads (1)-(3) in the text, but regulations made after the establishment of the Council may authorise the Council to make rules with respect to any such matters: Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 3(2). Regulations were made before the Council was established: see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726 (as amended); and notes 3-5 infra. As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 Teaching and Higher Education Act 1998 Sch 1 para 3(1)(a). As to the appointment or election of the chairman see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 12 (amended by SI 1999/2019).

3 Teaching and Higher Education Act 1998 Sch 1 para 3(1)(b). As to the resignation, removal and term of office of the chairman see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 12 (amended by SI 1999/2019).

4 Teaching and Higher Education Act 1998 Sch 1 para 3(1)(c). As to membership of the Council see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 3 (amended by SI 2000/1447). As to the elected members of the Council see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 4 (amended by SI 2004/1935). As to eligibility for election, appointment and to vote in elections see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 5 (amended by SI 2004/1935). As to the scheme for elections see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 6 (amended by SI 2004/1935). As to the appointed members of the Council see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, regs 7, 8, 9 (reg 8 amended by SI 2000/1447; SI 2004/1935). As to the term of office of members of the Council see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 10 (amended by SI 2004/1935). As to casual vacancies in the Council see the General Teaching Council for England (Constitution) Regulations 1999, SI 1999/1726, reg 11.

5 Ie established under the Teaching and Higher Education Act 1998 Sch 1 para 9: see PARA 814 post.

6 As to the meaning of 'functions' see PARA 774 note 30 ante.

7 Teaching and Higher Education Act 1998 Sch 1 para 10(1). This provision is expressed to have effect without prejudice to any power to authorise an employee of the Council to carry out any of the Council's activities on behalf of the Council: Sch 1 para 10(2). As to the staff of the Council see PARA 813 post.

## **UPDATE**

### **811 Appointment of members**



NOTE 4--SI 1999/1726 reg 8 further amended: SI 2007/2602. SI 1999/1726 regs 5, 10 further amended: SI 2009/1924.

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## **812. Salaries, allowances, pensions and other payments.**

The General Teaching Council for England<sup>1</sup> must pay to its members<sup>2</sup> such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State<sup>3</sup> may determine, and it must, as regards any member in whose case the Secretary of State may so determine, pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine<sup>4</sup>.

If a person ceases to be a member of the Council and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Council to make to that person a payment of such amount as the Secretary of State may determine<sup>5</sup>. The Council must pay to the members of any of its committees<sup>6</sup> who are not members of the Council such travelling, subsistence and other allowances as the Secretary of State may determine<sup>7</sup>. The Council may pay to the employer of a person who is a member of the Council (or a member of any of its committees but not a member of the Council) such compensation in respect of the loss of that person's services as the Secretary of State may determine<sup>8</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 As to membership of the Council see PARAS 810-811 ante.

3 As to the Secretary of State see PARA 52 ante.

4 Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 4(1).

The Secretary of State may by order amend Sch 1 (as amended) for the purpose of removing or relaxing any control exercisable by him by virtue of Sch 1 para 4: Sch 1 para 18(1), (2)(b) (Sch 1 para 18 added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 11). A statutory instrument containing an order under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(2) (amended by the Education Act 2002 Sch 12 para 9). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. At the date at which this volume states the law, no order had been made under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added).

5 Ibid Sch 1 para 4(2). See note 4 supra.

6 As to committees see PARA 814 post.

7 Teaching and Higher Education Act 1998 Sch 1 para 4(3). See note 4 supra.

8 Ibid Sch 1 para 4(4). See note 4 supra.

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### **813. Staff.**

The General Teaching Council for England<sup>1</sup> may<sup>2</sup> appoint a chief officer and such other employees as it thinks fit<sup>3</sup>. The Council must pay to its employees such remuneration and allowances as it may determine<sup>4</sup>, and the employees must be appointed on such other terms and conditions as it may determine<sup>5</sup>. Any such determination requires the approval of the Secretary of State<sup>6</sup>. The Secretary of State appointed the first chief officer<sup>7</sup>.

The Council, with the consent of the Secretary of State, may pay, or make payments in respect of, pensions or gratuities<sup>8</sup> to or in respect of employees or former employees and may provide and maintain such schemes (whether contributory or not) for the payment of pensions and gratuities to or in respect of employees or former employees<sup>9</sup>.

If any person, on ceasing to be employed by the Council, becomes or continues to be one of its members, and was, by reference to his employment, a participant in a pension scheme maintained by the Council, the Council may, with the consent of the Secretary of State, make provision for that person to continue to participate in that scheme, on such terms and conditions as it may with the consent of the Secretary of State determine, as if his service as a member were service as an employee<sup>10</sup>.

Employment with the Council is included among the kinds of employment to which a superannuation scheme<sup>11</sup> can apply<sup>12</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 Ie subject to the Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 5(5): see the text to note 7 infra.

3 Ibid Sch 1 para 5(1).

4 Ibid Sch 1 para 5(2).

5 Ibid Sch 1 para 5(3).

6 Ibid Sch 1 para 5(4). As to the Secretary of State see PARA 52 ante.

The Secretary of State may by order amend Sch 1 (as amended) for the purpose of removing or relaxing any control exercisable by him by virtue of Sch 1 paras 5, 6: Sch 1 para 18(1), (2)(c), (d) (Sch 1 para 18 added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 11). A statutory instrument containing an order under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(2) (amended by the Education Act 2002 Sch 12 para 9). As to the making of orders under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. At the date at which this volume states the law, no order had been made under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added).

7 Ibid Sch 1 para 5(5). See note 6 supra.

8 References in ibid Sch 1 para 6 to pensions and gratuities include references to pensions or gratuities by way of compensation to or in respect of employees who suffer loss of employment or loss or diminution of emoluments: Sch 1 para 6(2).

9 Ibid Sch 1 para 6(1). See note 6 supra.

10 Ibid Sch 1 para 6(3). Any such provision is without prejudice to Sch 1 para 4 (see PARA 812 ante): Sch 1 para 6(3). See note 6 supra.

11 le under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

12 Teaching and Higher Education Act 1998 Sch 1 para 7(1). The Council must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to Sch 1 para 7(1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Teaching and Higher Education Act 1998 Sch 1 para 7(2). Where an employee of the Council is, by reference to that employment, a participant in a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) and is also a member of the Council, the Secretary of State may determine that his service as a member is to be treated for the purposes of the scheme as service as an employee, whether or not any benefits are payable to or in respect of him by virtue of the Teaching and Higher Education Act 1998 Sch 1 para 4 (see PARA 812 ante): Sch 1 para 7(3). As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550.

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#### **814. Committees.**

The General Teaching Council for England<sup>1</sup>: (1) may establish a committee for any purpose<sup>2</sup>; and (2) if so required by regulations<sup>3</sup>, must establish such committees for such purposes as are specified in the regulations<sup>4</sup>. The Council must determine the number of members which a committee so established is to have, and the terms on which they are to hold and vacate office<sup>5</sup>. Regulations under head (1) above may make provision as to:

- 1433 (a) the membership of a committee established under the regulations<sup>6</sup>;
- 1434 (b) the terms on which such a committee's members are to hold and vacate office<sup>7</sup>; and
- 1435 (c) the procedure of any such committee<sup>8</sup>.

The regulations may authorise the Council to make provision with respect to any matter as to which provision may be made by those regulations<sup>9</sup>. Subject to such conditions as may be imposed by such regulations, the Council may include on a committee persons who are not members of the Council<sup>10</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 9(1)(a). As to the delegation of functions of the Council see PARA 811 ante.

3 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under Sch 1 para 9 see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186).

4 Teaching and Higher Education Act 1998 Sch 1 para 9(1)(b). Provision has been made for Investigating Committees, Professional Conduct Committees and Professional Competence Committees to exercise disciplinary powers of the Council in relation to registered teachers and persons applying for registration: see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268, Pt II (regs 3-28) (regs 9, 18, 20 amended, and reg 13A added, by SI 2003/1186). As to the registration of teachers see PARA 822 post.

5 Teaching and Higher Education Act 1998 Sch 1 para 9(2).

6 Ibid Sch 1 para 9(3)(a).

7 Ibid Sch 1 para 9(3)(b).

8 Ibid Sch 1 para 9(3)(c).

9 Ibid Sch 1 para 9(3).

10 Ibid Sch 1 para 9(4). As to membership of the Council see PARAS 810-811 ante.

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### **815. Proceedings.**

Two representatives of the Secretary of State<sup>1</sup>, and one representative of such body as the Secretary of State may designate, are entitled to attend and take part in deliberations (but not in decisions) at meetings of the General Teaching Council for England<sup>2</sup> or of any committee of the Council<sup>3</sup>. The Council must provide the Secretary of State with such copies of any documents distributed to members of the Council or of any such committee as he may require<sup>4</sup>.

The validity of the Council's proceedings is not affected by a vacancy among the members or any defect in the appointment of a member<sup>5</sup>, and the Council may regulate its own procedure and that of any of its committees<sup>6</sup>.

The application of the seal of the Council is authenticated by the signature of: (1) the chairman or of some other person authorised either generally or specially by the Council to act for that purpose<sup>7</sup>; and (2) one other member<sup>8</sup>. Every document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the seal of the Council, or to be signed or executed by a person authorised by the Council to act in that behalf, must be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the General Teaching Council for England see PARA 809 ante.

3 Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 11(1). As to committees see PARA 814 ante.

The Secretary of State may by order amend Sch 1 (as amended) for the purpose of removing or relaxing any control exercisable by him by virtue of Sch 1 para 11: Sch 1 para 18(1), (2)(e) (Sch 1 para 18 added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 11). A statutory instrument containing an order under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(2) (amended by the Education Act 2002 Sch 12 para 9). As to the making of orders under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. At the date at which this volume states the law, no order had been made under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added).

4 Ibid Sch 1 para 11(2). See note 3 supra.

5 Ibid Sch 1 para 12.

6 Ibid Sch 1 para 13. This is expressed to be subject to Sch 1 paras 1-12 (see PARAS 809 et seq ante, 818-819 post).

7 Ibid Sch 1 para 16(a).

8 Ibid Sch 1 para 16(b).

9 Ibid Sch 1 para 17.

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#### **816. Annual reports.**

The General Teaching Council for England<sup>1</sup> must make an annual report to the Secretary of State<sup>2</sup>, who must lay a copy of it before each House of Parliament<sup>3</sup>. The Council may arrange for any such report to be published in such manner as it considers appropriate<sup>4</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 15(a).

4 Ibid Sch 1 para 15(b).

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### **817. Accounts.**

It is the duty of the General Teaching Council for England<sup>1</sup>:

- 1436 (1) to keep proper accounts and proper records in relation to them<sup>2</sup>;
- 1437 (2) to prepare in respect of each financial year<sup>3</sup> of the Council a statement of accounts<sup>4</sup>; and
- 1438 (3) to send copies of the statement to the Secretary of State<sup>5</sup> and to the Comptroller and Auditor General<sup>6</sup> before the end of the month of August next following the financial year to which the statement relates<sup>7</sup>.

The statement of accounts must comply with any directions given by the Secretary of State<sup>8</sup> as to:

- 1439 (a) the information to be contained in it<sup>9</sup>;
- 1440 (b) the manner in which the information contained in it is to be presented<sup>10</sup>; or
- 1441 (c) the methods and principles according to which the statement is to be prepared<sup>11</sup>,

and must contain such additional information as the Secretary of State may require to be provided for the information of Parliament<sup>12</sup>.

The Comptroller and Auditor General must examine, certify and report on each statement received by him and must lay copies of each statement and of his report before each House of Parliament<sup>13</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 14(1)(a).

3 For this purpose 'financial year' means the period beginning with the date on which the Council is established and ending with the 31 March following that date, and each successive period of 12 months: *ibid* Sch 1 para 14(4).

4 *Ibid* Sch 1 para 14(1)(b).

5 As to the Secretary of State see PARA 52 ante.

6 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 724 et seq.

7 Teaching and Higher Education Act 1998 Sch 1 para 14(1)(c).

8 *Ibid* Sch 1 para 14(2).

The Secretary of State may by order amend Sch 1 (as amended) for the purpose of removing or relaxing any control exercisable by him by virtue of Sch 1 para 14(2): Sch 1 para 18(1), (2)(f) (Sch 1 para 18 added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 11). A statutory instrument containing an order under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(2) (amended by the Education Act 2002 Sch 12 para 9). As to the making of orders under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. At



the date at which this volume states the law, no order had been made under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added).

9 Ibid Sch 1 para 14(2)(a).

10 Ibid Sch 1 para 14(2)(b).

11 Ibid Sch 1 para 14(2)(c).

12 Ibid Sch 1 para 14(2).

13 Ibid Sch 1 para 14(3).

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**818. Grants.**

The Secretary of State<sup>1</sup> may make grants to the General Teaching Council for England<sup>2</sup> of such amounts and subject to such terms and conditions as he may determine<sup>3</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the General Teaching Council for England see PARA 809 ante.

3 Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 8.

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## ***B. FUNCTIONS***

### **(A) IN GENERAL**

#### **819. General functions.**

The General Teaching Council for England<sup>1</sup> may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions<sup>2</sup>. In particular, the Council may:

- 1442 (1) acquire and dispose of land or other property<sup>3</sup>;
- 1443 (2) enter into contracts<sup>4</sup>;
- 1444 (3) invest sums not immediately required for the purpose of carrying out its functions<sup>5</sup>;
- 1445 (4) accept gifts of money, land or other property<sup>6</sup>;
- 1446 (5) form bodies corporate or associated or other bodies which are not bodies corporate<sup>7</sup>;
- 1447 (6) enter into joint ventures with other persons<sup>8</sup>;
- 1448 (7) subscribe for shares and stock<sup>9</sup>; and
- 1449 (8) borrow money<sup>10</sup>.

The consent of the Secretary of State<sup>11</sup> is required for the exercise of any power conferred by head (5), head (6), head (7) or head (8) above<sup>12</sup>.

The Council may also undertake activities designed to promote the standing of the teaching profession<sup>13</sup>.

In exercising its functions, the Council must have regard to the requirements of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995<sup>14</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 2(1). As to the meaning of 'functions' see PARA 774 note 30 ante.

3 Ibid Sch 1 para 2(2)(a).

4 Ibid Sch 1 para 2(2)(b).

5 Ibid Sch 1 para 2(2)(c).

6 Ibid Sch 1 para 2(2)(d).

7 Ibid Sch 1 para 2(2)(e). As to bodies corporate see generally COMPANIES; CORPORATIONS.

8 Ibid Sch 1 para 2(2)(f).

9 Ibid Sch 1 para 2(2)(g).

10 Ibid Sch 1 para 2(2)(h).

11 As to the Secretary of State see PARA 52 ante.

12 Teaching and Higher Education Act 1998 Sch 1 para 2(3).

The Secretary of State may by order amend Sch 1 (as amended) for the purpose of removing or relaxing any control exercisable by him by virtue of Sch 1 para 2(3): Sch 1 para 18(1), (2)(a) (Sch 1 para 18 added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 11). A statutory instrument containing an order under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added) is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(2) (amended by the Education Act 2002 Sch 12 para 9). As to the making of orders under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. At the date at which this volume states the law, no order had been made under the Teaching and Higher Education Act 1998 Sch 1 para 18 (as added).

13 Ibid s 6A(1) (s 6A added by the Education Act 2002 Sch 12 para 6). Without prejudice to the generality of the Teaching and Higher Education Act 1998 s 6A(1) (as added), such activities may include: (1) giving advice; (2) organising conferences and lectures; and (3) arranging for the publication of material in any form: s 6A(2) (as so added).

14 Ibid s 1(4). For the meaning of 'disabled persons' see DISCRIMINATION vol 13 (2007 Reissue) PARA 511.

## **UPDATE**

### **819 General functions**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## **820. Additional and ancillary functions.**

The Secretary of State<sup>1</sup> may by order confer or impose on the General Teaching Council for England<sup>2</sup> such additional functions<sup>3</sup> as he considers it may appropriately discharge in conjunction with any of its other functions<sup>4</sup>. Before making such an order, the Secretary of State must carry out such consultation as appears to him to be appropriate<sup>5</sup>. The Council must carry out such functions ancillary to its other functions<sup>6</sup> as the Secretary of State may direct<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the General Teaching Council for England see PARA 809 ante.

3 As to the meaning of 'functions' see PARA 774 note 30 ante.

4 Teaching and Higher Education Act 1998 s 7(1). The text refers to functions under Pt I Ch I (ss 1-17). The additional functions conferred are the functions of: (1) maintaining records relating to: (a) persons whose names have been removed from the register other than those who have died; (b) persons who are ineligible for registration; (c) qualified teachers who are not registered teachers; (d) persons who are not registered teachers who have started a course for the initial training of teachers, whether or not they have completed such course; (e) persons who are not qualified teachers who are employed as teachers in certain schools; (f) persons who are not registered teachers who are preparing for, or who have obtained, the National Professional Qualification for Headship; and (g) persons not falling within heads (a)-(f) supra who have a teacher reference number and who are, or have in the past been, employed as a teacher at a school or other educational institution (see the General Teaching Council for England (Additional Functions) Order 2000, SI 2000/2175, art 3, Schedule Pt 1 paras 1-7 (art 3 amended by SI 2001/1270)); and (2) assisting the Secretary of State in relation to the exercise of his function as a designated authority under the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824 (revoked: see now the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18) (see the General Teaching Council for England (Additional Functions) Order 2004, SI 2004/1886).

A statutory instrument containing an order under the Teaching and Higher Education Act 1998 s 7 is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(2). As to the making of orders under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante.

Without prejudice to the generality of s 7(1), the Secretary of State may under s 7(1) require the Council to give him such assistance as he may specify in relation to the exercise of his power under the Education Reform Act 1988 s 218(2) (see PARA 776 ante) to determine, in accordance with regulations made under s 218(2), whether a person is a qualified teacher: Teaching and Higher Education Act 1998 s 7(3). As from a day to be appointed, this provision is amended so as to provide that the Secretary of State may under s 7(1) require the Council to give him such assistance as he may specify in relation to the specification of requirements of regulations under the Education Act 2002 s 132 (qualified teacher status: see PARA 769 ante): Teaching and Higher Education Act 1998 s 7(3) (prospectively amended by the Education Act 2002 s 215(1), Sch 21 para 78). At the date at which this volume states the law, no such day had been appointed in relation to England.

Without prejudice to the generality of the Teaching and Higher Education Act 1998 s 7(1), the Secretary of State may under s 7(1) require the Council to maintain records relating to such categories of persons (including persons not eligible to be registered under s 3 (as amended) (see PARA 822 post)) as may be prescribed; and the records must contain such information relating to those persons and be kept in such manner as may be prescribed: s 7(4). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made in relation to the maintenance of records by the Council see the General Teaching Council for England (Additional Functions) Order 2000, SI 2000/2175, art 3, Schedule Pt II paras 1-24 (Schedule para 8 substituted, Schedule paras 17A, 23A-23B added, and Schedule para 18 amended, by SI 2001/1270).

5 Teaching and Higher Education Act 1998 s 7(2).

6 le under ibid Pt I Ch I (as amended).

7 Ibid s 7(5).

## **UPDATE**

### **820 Additional and ancillary functions**

NOTE 4--SI 2005/18 replaced: European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781 (amended by SI 2008/2683, SI 2009/1587, SI 2009/1885).

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## (B) ADVICE

### **821. Advisory functions.**

The General Teaching Council for England<sup>1</sup> must from time to time advise the Secretary of State<sup>2</sup>, and such other persons or bodies as he may from time to time designate, on<sup>3</sup>:

- 1450 (1) standards of teaching<sup>4</sup>;
- 1451 (2) standards of conduct for teachers<sup>5</sup>;
- 1452 (3) the role of the teaching profession<sup>6</sup>;
- 1453 (4) the training, career development and performance management of teachers<sup>7</sup>;
- 1454 (5) recruitment to the teaching profession<sup>8</sup>;
- 1455 (6) the supply of teachers<sup>9</sup>;
- 1456 (7) the retention of teachers within the teaching profession<sup>10</sup>;
- 1457 (8) the standing of the teaching profession<sup>11</sup>; and
- 1458 (9) medical fitness to teach<sup>12</sup>,

as it thinks fit<sup>13</sup>. The Council must also advise the Secretary of State on: (a) such matters falling within heads (1) to (9) above<sup>14</sup>; or (b) on such other matters relating to teaching<sup>15</sup>, as he may from time to time require<sup>16</sup>. The Council may give advice on such matters falling within heads (1) to (9) above as it thinks fit to such persons or bodies as it may from time to time determine<sup>17</sup>. Any advice given by the Council on matters falling within heads (1) to (9) above must be advice of a general nature<sup>18</sup>. The Council may publish advice given by it<sup>19</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Teaching and Higher Education Act 1998 s 2(1).

4 Ibid s 2(2)(a).

5 Ibid s 2(2)(b).

6 Ibid s 2(2)(c).

7 Ibid s 2(2)(d).

8 Ibid s 2(2)(e).

9 Ibid s 2(2)(ee) (added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 2).

10 Teaching and Higher Education Act 1998 s 2(2)(ef) (added by the Education Act 2002 Sch 12 Pt 1 paras 1, 2).

11 Teaching and Higher Education Act 1998 s 2(2)(eg) (added by the Education Act 2002 Sch 12 Pt 1 paras 1, 2).

12 Teaching and Higher Education Act 1998 s 2(2)(f).

13 Ibid s 2(1). See note 19 infra.

14 Ibid s 2(3)(a).

15 Ibid s 2(3)(b). The Council may be required under s 2(3)(b) to advise the Secretary of State on any matter relevant to a decision by him as to whether any power exercisable by him under the Education Act 2002 s 142 (prohibition from teaching, etc: see PARA 782 ante) should or should not be exercised in any particular case: Teaching and Higher Education Act 1998 s 2(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 75).

16 Teaching and Higher Education Act 1998 s 2(3). See note 19 infra.

17 Ibid s 2(5). See note 19 infra.

18 Ibid s 2(6).

19 Advice under ibid s 2(1) (see the text to notes 1-13 supra), s 2(3) (see the text to notes 14-16 supra) or s 2(5) (see the text to note 17 supra) may be published: s 2(7).

## **UPDATE**

### **821 Advisory functions**

NOTE 15--Teaching and Higher Education Act 1998 s 2(4) repealed: Safeguarding Vulnerable Groups Act 2006 Sch 9 para 3.



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## (C) REGISTRATION OF TEACHERS

### 822. Registration of teachers.

The General Teaching Council for England<sup>1</sup> is required to establish and maintain a register<sup>2</sup>, which must contain the name of every person who is eligible for full registration and applies to be registered in the register in accordance with regulations relating to registration<sup>3</sup>.

A person is eligible for full registration if he is a qualified teacher and he is not for the time being<sup>4</sup>:

- 1459 (1) subject to a direction given by the Secretary of State<sup>5</sup>; or
- 1460 (2) subject to a disciplinary order<sup>6</sup> by virtue of which he is not eligible for full registration<sup>7</sup>; or
- 1461 (3) (subject to such exceptions as may be prescribed<sup>8</sup> or determined by the Secretary of State under regulations) ineligible for registration as a teacher, or disqualified from being a teacher in any school, by virtue of any prescribed provision of the law of Scotland or of Northern Ireland<sup>9</sup>.

Except in such circumstances as may be prescribed, a person is not eligible for full registration if, having served an induction period in accordance with regulations<sup>10</sup>, he has failed to complete it satisfactorily for the purposes of those regulations<sup>11</sup>.

As from a day to be appointed, a person is eligible for provisional registration if he satisfies such conditions as may be prescribed<sup>12</sup>; and a person is not eligible for provisional registration or full registration unless at the relevant time<sup>13</sup> the Council is or was satisfied as to his suitability to be a teacher<sup>14</sup>. Regulations may provide that any prescribed description of person is, or is not, to be taken to be suitable to be a teacher<sup>15</sup>.

1 As to the establishment of the General Teaching Council for England see PARA 809 ante.

2 Teaching and Higher Education Act 1998 s 3(1) (amended by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1 3(1), (2)). The text refers to a register for the purposes of the Teaching and Higher Education Act 1998 Pt I Ch I (ss 1-17) (as amended).

3 Ibid s 3(2) (amended by the Education Act 2002 Sch 12 Pt 1 paras 1, 3(1), (3)); Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3. As from a day to be appointed under the Education Act 2002 s 216(4), the amendment made by Sch 12 paras 1, 3 is to be brought fully into force in England so as to refer to full or provisional registration. At the date at which this volume states the law, no such day had been appointed.

'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 4 (as amended) see PARA 823 post.

4 Ibid s 3(3) (amended by the Education Act 2002 s 215, Sch 12 Pt 1 paras 1, 3(1), (4), Sch 21 para 76(a), Sch 22 Pt 3).

5 Teaching and Higher Education Act 1998 s 3(3)(a) (substituted by the Education Act 2002 Sch 21 para 76(b)). The direction referred to in the text is given under the Education Act 2002 s 142 (prohibition from teaching, etc: see PARA 782 ante).

6 le made under the Teaching and Higher Education Act 1998 Sch 2 (as amended): see PARAS 827-833 post.

7 Ibid s 3(3)(b) (amended by the Education Act 2002 Sch 12 Pt 1 paras 1, 3(1), (4)).

8 'Prescribed' means prescribed by regulations: Teaching and Higher Education Act 1998 s 43(1).

9 Ibid s 3(3)(d). As to the regulations made under s 3(3)(d) see the General Teaching Council for England (Registration of Teachers) Regulations 2000, SI 2000/2176 (amended by SI 2001/23; SI 2001/1267).

10 le under the Teaching and Higher Education Act 1998 s 19 (as amended): see PARA 774 ante.

11 Ibid s 3(4) (amended by the Education Act 2002 Sch 12 Pt 1 paras 1, 3(1), (6)).

12 Teaching and Higher Education Act 1998 s 3(3A) (s 3(3A)-(3D) prospectively added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 3(1), (5)). The provisions of the Teaching and Higher Education Act 1998 s 3(3A)-(3D) are added as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed.

13 In the Teaching and Higher Education Act 1998 s 3(3B) (prospectively added), 'the relevant time' means: (1) in relation to an applicant for provisional registration or an applicant for full registration who is already registered with provisional registration, the time of provisional registration; or (2) in the case of an applicant for full registration who is not already registered with provisional registration, the time of full registration: s 3(3C) (prospectively added: see note 12 supra).

14 Ibid s 3(3B) (prospectively added: see note 12 supra).

15 Ibid s 3(3D) (prospectively added: see note 12 supra).

## UPDATE

### 822 Registration of teachers

TEXT AND NOTES--As to provision for the registration of teachers from other EEA states or Switzerland who come to England or Wales to provide teaching services on a temporary and occasional basis see the General Teaching Council (Registration of Temporary Teachers from Relevant European States) (England and Wales) Regulations 2009, SI 2009/3200.

NOTES 3, 12--Day now appointed: SI 2006/2895.

TEXT AND NOTES 4-9--Add head (4) barred from regulated activity relating to children (within the meaning of the Safeguarding Vulnerable Groups Act 2006 s 3(2) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 685): Teaching and Higher Education Act 1998 s 3(3)(aa) (added by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 4).

NOTE 9--SI 2000/2176 further amended: SI 2007/1883.

NOTE 12--In exercise of the powers conferred on him under the Teaching and Higher Education Act 1998 s 3(3A), the Secretary of State has made the General Teaching Council for England (Eligibility for Provisional Registration) Regulations 2008, SI 2008/1884.

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### **823. Regulations relating to registration.**

Regulations<sup>1</sup> may make provision as to the form and manner in which the register of persons eligible for registration<sup>2</sup> is to be kept and other matters relating to registration<sup>3</sup>. Such regulations may, in particular, make provision as to:

- 1462 (1) the form and manner in which applications for registration are to be made<sup>4</sup>;
- 1463 (2) the documentary and other evidence which is to accompany applications for registration<sup>5</sup>;
- 1464 (3) as from a day to be appointed<sup>6</sup>, the service on applicants for registration of notice of the General Teaching Council for England's<sup>7</sup> decision to grant or refuse the application and, in the case of a refusal, of the grounds on which the decision was taken and (where applicable) of the applicant's right to appeal against the decision<sup>8</sup>;
- 1465 (4) the registration, on the establishment of the register, of persons who have not made such applications<sup>9</sup>;
- 1466 (5) the matters which are to be recorded in the register against the names of those registered in it<sup>10</sup>;
- 1467 (6) the division of the register into separate parts<sup>11</sup>;
- 1468 (7) the restoration and alteration of entries and their transfer between different parts of the register (where separate parts are required by virtue of head (6) above)<sup>12</sup>;
- 1469 (8) the charging by the General Teaching Council for England of authorised fees<sup>13</sup>;
- 1470 (9) the removal of entries from the register in circumstances where the persons concerned have ceased to be eligible for registration, or have failed to pay any such fee, or otherwise<sup>14</sup>;
- 1471 (10) the issue and form of certificates of registration<sup>15</sup>;
- 1472 (11) the information contained in the register which may be made available for inspection by members of the public, and the circumstances in which and the conditions subject to which that information may be made available<sup>16</sup>.

The regulations may authorise the Council to make provision in relation to any matter as to which provision may be made by such regulations<sup>17</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 4 (as amended) see the General Teaching Council for England (Registration of Teachers) Regulations 2000, SI 2000/2176 (amended by SI 2001/23; SI 2001/1267).

2 As to the establishment and maintenance of the register see PARA 822 ante.

3 Teaching and Higher Education Act 1998 s 4(1). In s 4 (as amended), 'registration' means full registration: s 4(6) (added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 4(1), (4)); Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3. As from a day to be appointed under the Education Act 2002 s 216(4), the Teaching and Higher Education Act 1998 s 4(6) (as added) is to be brought fully into force in England so as to refer to full or provisional registration. At the date at which this volume states the law, no such day had been appointed.

- 4 Teaching and Higher Education Act 1998 s 4(2)(a).
- 5 Ibid s 4(2)(b).
- 6 Ibid s 4(2)(ba) is added as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed.
- 7 As to the establishment of the General Teaching Council for England see PARA 809 ante.
- 8 Teaching and Higher Education Act 1998 s 4(2)(ba) (prospectively added by the Education Act 2002 Sch 12 Pt 1 paras 1, 4(1), (2)). See note 6 supra. An applicant's right to appeal against the decision as mentioned in the text takes effect under the Teaching and Higher Education Act 1998 s 4A (as added; not yet in force) (see PARA 824 post).
- 9 Ibid s 4(2)(c).
- 10 Ibid s 4(2)(d). Regulations made in pursuance of s 4(2)(d) may require the recording of any restrictions for the time being in force in relation to a person as the result of: (1) a direction given under the Education Act 2002 s 142 (prohibition from teaching, etc: see PARA 782 ante); or (2) a disciplinary order made under the Teaching and Higher Education Act 1998 s 6, Sch 2 (as amended) (see PARAS 827-833 post): s 4(3) (amended by the Education Act 2002 s 215(1), Sch 21 para 77).
- 11 Teaching and Higher Education Act 1998 s 4(2)(e).
- 12 Ibid s 4(2)(f).
- 13 Ibid s 4(2)(g). The text refers to fees authorised by virtue of s 4(4). For the purposes of s 4(2)(g), regulations under s 4 (as amended) may authorise the Council (subject to such exceptions as may be provided for by or under the regulations) to charge fees fixed by it with the approval of the Secretary of State in respect of: (1) applications for registration or for the restoration of entries in the register; (2) registration in accordance with s 4(2)(c) (see head (4) in the text); or (3) the retention of entries in the register, and the regulations may accordingly authorise the Council to refuse an application falling within head (1) supra until the appropriate fee has been paid: s 4(4). The Council, in exercising any power to fix fees authorised by virtue of s 4(4), must have regard to its expenditure in exercising: (a) its functions under the Teaching and Higher Education Act 1998 relating to registration; and (b) all other functions conferred on it under the Teaching and Higher Education Act 1998 or any other enactment: s 4(4A) (added by the Education Act 2002 Sch 12 Pt 1 paras 1, 4(1), (3)).
- 14 Teaching and Higher Education Act 1998 s 4(2)(h).
- 15 Ibid s 4(2)(i).
- 16 Ibid s 4(2)(j).
- 17 Ibid s 4(5).

## UPDATE

### 823 Regulations relating to registration

NOTE 1--SI 2000/2176 further amended: SI 2007/1883.

NOTES 3, 6, 8--Day now appointed and Teaching and Higher Education Act 1998 s 4A now in force: SI 2006/2895.

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## **824. Appeals against refusal of registration.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> must make provision for conferring on a person aggrieved by a decision made on relevant grounds<sup>3</sup> to refuse an application made by him for registration<sup>4</sup> a right to appeal against the decision to the High Court<sup>5</sup> within 28 days from the date on which notice of the decision is served on him<sup>6</sup>. On such an appeal the court may make any order which appears appropriate<sup>7</sup>.

No appeal lies from any decision of the court on such an appeal<sup>8</sup>.

1 The Teaching and Higher Education Act 1998 s 4A is added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 5, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed.

2 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. At the date at which this volume states the law, no regulations had been made under s 4A (prospectively added).

3 The reference in *ibid* s 4A(1) (prospectively added) to a decision made on relevant grounds is a reference to a decision made on the ground that at the relevant time the General Teaching Council for England was not satisfied of the applicant's suitability to be a teacher: s 4A(2) (prospectively added: see note 1 *supra*). As to the establishment of the General Teaching Council for England see PARA 809 ante.

4 *Ie* under *ibid* s 3 (as amended) (see PARA 822 ante).

5 'High Court' means Her Majesty's High Court of Justice in England: see the Interpretation Act 1978 s 5, Sch 1.

6 Teaching and Higher Education Act 1998 s 4A(1) (prospectively added: see note 1 *supra*).

7 *Ibid* s 4A(3) (prospectively added: see note 1 *supra*).

8 *Ibid* s 4A(4) (prospectively added: see note 1 *supra*).

### **UPDATE**

## **824 Appeals against refusal of registration**

TEXT AND NOTE 1--Day now appointed: SI 2006/2895.

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## **825. Deduction of fees from salaries.**

In relation to teachers at schools<sup>1</sup> who, on such date or during such period as may be specified<sup>2</sup>, are registered<sup>3</sup> in the register<sup>4</sup> or are required<sup>5</sup> to be so registered<sup>6</sup>, regulations may make provision requiring employers<sup>7</sup> of such teachers (subject to such exceptions as may be provided for by or under the regulations)<sup>8</sup>: (1) to deduct (or arrange for the deduction) from the salary<sup>9</sup> of such teachers any fee payable<sup>10</sup> in respect of the registration or retention of an entry on the register relating to any such teacher<sup>11</sup>; and (2) to remit that fee to the General Teaching Council for England<sup>12</sup>.

The regulations may make provision with respect to<sup>13</sup>: (a) the arrangements to be adopted by employers of such teachers for the deduction and remittance of fees<sup>14</sup>; (b) the administration charges which may be deducted from any fees remitted to the Council<sup>15</sup>; and (c) the notification to the Council by employers of such teachers of such particulars relating to those teachers as the regulations may specify<sup>16</sup>.

<sup>1</sup> For these purposes, 'school' means a school maintained by a local education authority or a special school not so maintained: Teaching and Higher Education Act 1998 s 12(4) (definition substituted by the Education Act 2002 s 215(1), Sch 21 para 81(b)). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post.

<sup>2</sup> I.e. specified in the regulations made under the Teaching and Higher Education Act 1998 s 12 (as amended). 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 12 (as amended) see the General Teaching Council for England (Deduction of Fees) Regulations 2001, SI 2001/3993 (amended by SI 2003/985; SI 2003/2039).

<sup>3</sup> In the Teaching and Higher Education Act 1998 s 12 (as amended), 'registration' means full registration: s 12(4) (definition added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 8); Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3. As from a day to be appointed under the Education Act 2002 s 216(4), this definition is to be brought fully into force in England so as to refer to full or provisional registration. At the date at which this volume states the law, no such day had been appointed.

<sup>4</sup> Teaching and Higher Education Act 1998 s 12(2)(a). As to the register see PARA 822 ante.

<sup>5</sup> I.e. by virtue of the Education Act 2002 s 134 (as amended) (see PARA 771 ante).

<sup>6</sup> Teaching and Higher Education Act 1998 s 12(2)(b) (substituted by the Education Act 2002 s 215(1), Sch 21 para 81(a)).

<sup>7</sup> For the purposes of the Teaching and Higher Education Act 1998 s 12 (as amended), s 15 (as substituted) (see PARA 860 post), s 19 (as amended) (see PARA 774 ante), Sch 2 (as amended) (see PARAS 827-833 post), 'employer', in relation to a teacher, includes a local education authority, governing body or other person who engages (or makes arrangements for the engagement of) that person to provide his services as a teacher otherwise than under a contract of employment; and 'employed', 'employment' and any expressions relating to the termination of employment are to be construed accordingly: s 43(2). As to contracts of employment see EMPLOYMENT vol 39 (2009) PARA 1 et seq.

<sup>8</sup> Ibid s 12(1).

<sup>9</sup> For this purpose, 'salary' includes any remuneration payable in respect of services as a teacher: ibid s 12(4).

10 le by virtue of *ibid* s 4(4): see PARA 823 ante.

11 *Ibid* s 12(1)(a).

12 *Ibid* s 12(1)(b), (4). As to the establishment of the General Teaching Council for England see PARA 809 ante.

13 *Ibid* s 12(3).

14 *Ibid* s 12(3)(a).

15 *Ibid* s 12(3)(b), (4).

16 *Ibid* s 12(3)(c), (4).

## **UPDATE**

### **825 Deduction of fees from salaries**

NOTE 2--SI 2001/3993 further amended: SI 2007/3224.

NOTE 3--Day now appointed: SI 2006/2895.

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## **826. Code of practice for registered teachers.**

Regulations<sup>1</sup> may make provision for, and in connection with, authorising the General Teaching Council for England<sup>2</sup> to issue, and from time to time revise, a code laying down standards of professional conduct and practice expected of registered teachers<sup>3</sup>. Such regulations may, in particular, make provision:

1473 (1) as to the consequences of any failure by a registered teacher to comply with the provisions of the code<sup>4</sup>;

1474 (2) for the provision by the Council of copies of the code, either on payment of a reasonable charge decided by the Council or, in such circumstances as may be determined in accordance with the regulations, free of charge<sup>5</sup>.

Regulations made in pursuance of head (1) above may provide for any failure by a registered teacher to comply with the provisions of the code to be taken into account in any proceedings against him<sup>6</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 5(1) see the General Teaching Council for England (Registration of Teachers) Regulations 2000, SI 2000/2176 (amended by SI 2001/23; SI 2001/1267).

2 As to the establishment of the General Teaching Council for England see PARA 809 ante.

3 Teaching and Higher Education Act 1998 s 5(1). For the meaning of 'registered teacher' see PARA 810 note 14 ante.

4 Ibid s 5(2)(a). As to the regulations made under s 5(2)(a) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186).

5 Teaching and Higher Education Act 1998 s 5(2)(b). As to the regulations made under s 5(2)(b) see the General Teaching Council for England (Registration of Teachers) Regulations 2000, SI 2000/2176 (as amended: see note 1 supra).

6 Teaching and Higher Education Act 1998 s 5(3). The text refers to proceedings under Sch 2 (as amended): see PARAS 827-833 post. As to the regulations made under s 5(3) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (as amended: see note 4 supra).

## **UPDATE**

### **826 Code of practice for registered teachers**

NOTE 1--SI 2000/2176 further amended: SI 2007/1883.

NOTE 3--SI 2001/1268 further amended: SI 2008/3256.



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## (D) DISCIPLINE OF TEACHERS

### **827. Disciplinary powers in relation to registered teachers.**

Regulations<sup>1</sup> may make provision for and in connection with the investigation by the General Teaching Council for England<sup>2</sup> of cases where<sup>3</sup>:

- 1475 (1) it is alleged that a registered teacher<sup>4</sup> is guilty of unacceptable professional conduct<sup>5</sup> or serious professional incompetence, or has been convicted (at any time) of a relevant offence<sup>6</sup>; or
- 1476 (2) it appears to the Council that a registered teacher may be so guilty or have been so convicted<sup>7</sup>,

and the hearing and determination by the Council of such cases where it is found on investigation that a registered teacher has a case to answer<sup>8</sup>.

The regulations may, in particular, make provision:

- 1477 (a) requiring the Council, where any proceedings are being taken against any person<sup>9</sup> to serve a notice on him outlining the case against him, and to give him the opportunity of appearing and making oral representations<sup>10</sup>;
- 1478 (b) entitling such a person to be represented, by any person whom he desires to represent him, at any hearing of the Council at which his case is considered<sup>11</sup>;
- 1479 (c) requiring the Council, where it does not find the case against such a person proved, to publish at his request a statement to that effect<sup>12</sup>;
- 1480 (d) empowering the Council to require persons to attend and give evidence or to produce documents or other material evidence<sup>13</sup>;
- 1481 (e) about the admissibility of evidence<sup>14</sup>;
- 1482 (f) enabling the Council to administer oaths<sup>15</sup>;
- 1483 (g) for the procedure to be followed by the Council in connection with proceedings<sup>16</sup> to be such as may be specified in or determined under the regulations<sup>17</sup>.

No person is required by virtue of the regulations to give any evidence or produce any document or other material evidence which he could not be compelled to give or produce in civil proceedings in any court in England and Wales<sup>18</sup>.

The regulations may make provision for any functions conferred on the Council<sup>19</sup> to be excluded or restricted in such manner as may be specified in or determined under the regulations, including such provision for excluding or restricting any such functions as the Secretary of State considers appropriate with a view to taking account of any powers exercisable by him<sup>20</sup> in cases which he considers concern the safety and welfare of persons aged under 18<sup>21</sup>: (i) on the grounds that a person is unsuitable to work with children<sup>22</sup>; or (ii) on grounds relating to a person's misconduct or health<sup>23</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 814 ante).

2 As to the establishment of the General Teaching Council for England see PARA 809 ante. Where regulations under the Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 9(1)(b) (see PARA 814 ante) require the Council to establish a committee for the purpose of discharging any of the functions conferred on it by virtue of Sch 2 (as amended) (see PARAS 828-833 post), references in Sch 2 (as amended) to the Council must be construed, in relation to those functions, as references to that committee: Sch 2 para 8(2). As to the meaning of 'functions' see PARA 774 note 30 ante.

3 Ibid Sch 2 para 1(1).

4 For the meaning of 'registered teacher' generally see PARA 810 note 14 ante. For the purposes of ibid Sch 2 (as amended), 'registered teacher' includes: (1) a person who was a registered teacher at the time of any alleged conduct or offence on his part; and (2) a person who has made an application to be registered under s 3 (as amended) (see PARA 822 ante): Sch 2 para 8(1). References in Sch 2 (as amended) to registration under s 3 (as amended) are references to registration under s 3 (as amended) with full registration: Sch 2 para 8(1A) (added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 12(1), (3)); Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 3. As from a day to be appointed under the Education Act 2002 s 216(4), this provision is to be brought fully into force in England so as to refer to full or provisional registration. At the date at which this volume states the law, no such day had been appointed.

5 For the purposes of the Teaching and Higher Education Act 1998 Sch 2 (as amended), 'unacceptable professional conduct' means conduct which falls short of the standard expected of a registered teacher: Sch 2 para 8(1).

6 Ibid Sch 2 para 1(1)(a). For the purposes of Sch 2 (as amended), 'relevant offence', in relation to a registered teacher, means: (1) in the case of a conviction in the United Kingdom, a criminal offence other than one having no material relevance to his fitness to be a registered teacher; and (2) in the case of a conviction elsewhere, an offence which, if committed in England and Wales, would constitute such an offence as is mentioned in head (1) supra: Sch 2 para 8(1). For the meaning of 'United Kingdom' see PARA 63 note 3 ante; for the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

7 Ibid Sch 2 para 1(1)(b).

8 Ibid Sch 2 para 1(1).

9 Ie under ibid Sch 2 (as amended).

10 Ibid Sch 2 para 1(2)(a).

11 Ibid Sch 2 para 1(2)(b).

12 Ibid Sch 2 para 1(2)(c).

13 Ibid Sch 2 para 1(2)(d).

14 Ibid Sch 2 para 1(2)(e).

15 Ibid Sch 2 para 1(2)(f).

16 Ie under ibid Sch 2 (as amended).

17 Ibid Sch 2 para 1(2)(g).

18 Ibid Sch 2 para 1(3). As to the rules of civil evidence generally see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

19 Ie by virtue of ibid Sch 2 para 1(1): see the text to notes 1-8 supra.

20 Ie under the Education Act 2002 s 142 (see PARA 782 ante).

21 Teaching and Higher Education Act 1998 Sch 2 para 1(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 86(1), (2)).

22 Teaching and Higher Education Act 1998 Sch 2 para 1(4)(a) (added by the Education Act 2002 Sch 21 para 86(1), (2)).

23 Teaching and Higher Education Act 1998 Sch 2 para 1(4)(b) (added by the Education Act 2002 Sch 21 para 86(1), (2)).

## **UPDATE**

### **827 Disciplinary powers in relation to registered teachers**

NOTE 1--SI 2001/1268 further amended: see PARA 826 NOTE 3.

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## **828. Disciplinary orders.**

A 'disciplinary order' means a reprimand, a conditional registration order, a suspension order, or a prohibition order<sup>1</sup>.

Regulations<sup>2</sup> may make provision for and in connection with authorising the General Teaching Council for England<sup>3</sup> to make disciplinary orders in relation to persons who in proceedings<sup>4</sup> are found by the Council<sup>5</sup>:

1484 (1) to have been guilty of unacceptable professional conduct<sup>6</sup> or serious professional incompetence<sup>7</sup>; or

1485 (2) to have been convicted (at any time) of a relevant offence<sup>8</sup>.

The regulations may, in particular, make provision:

1486 (a) for the Council to serve on any such person notice of the disciplinary order which has been made in relation to him, and of his right to appeal against the order<sup>9</sup>;

1487 (b) as to the time when any such order takes effect, whether in a case where any such person exercises that right of appeal or otherwise<sup>10</sup>;

1488 (c) for the Council to publish, in such manner as may be prescribed<sup>11</sup>, such information relating to the case of any such person and any disciplinary order made by the Council as may be prescribed<sup>12</sup>.

1 Teaching and Higher Education Act 1998 s 6, Sch 2 paras 2(3), 8(1). As to conditional registration orders see PARA 829 post; as to suspension orders see PARA 830 post; and as to prohibition orders see PARA 831 post.

2 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under Sch 2 (as amended) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 814 ante).

3 As to the establishment of the General Teaching Council for England see PARA 809 ante.

4 le under the Teaching and Higher Education Act 1998 Sch 2 (as amended).

5 Ibid Sch 2 para 2(1).

6 For the meaning of 'unacceptable professional conduct' see PARA 827 note 5 ante.

7 Teaching and Higher Education Act 1998 Sch 2 para 2(1)(a).

8 Ibid Sch 2 para 2(1)(b). For the meaning of 'relevant offence' see PARA 827 note 6 ante.

9 Ibid Sch 2 para 2(2)(a). The text refers to the right to appeal against the order under Sch 2 para 6 (see PARA 832 post).

10 Ibid Sch 2 para 2(2)(b).

11 'Prescribed' means prescribed by regulations: ibid s 43(1).

12 Ibid Sch 2 para 2(2)(c).

## **UPDATE**

### **828 Disciplinary orders**

NOTE 2--SI 2001/1268 further amended: see PARA 826 NOTE 3.

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### **829. Conditional registration orders.**

Where a conditional registration order is made in relation to a person, he continues to be eligible for registration as a teacher<sup>1</sup>, but he must comply with such conditions relevant to his employment<sup>2</sup> as a teacher as may be specified in the order<sup>3</sup>. The conditions which may be specified in a conditional registration order include conditions for requiring the person in question to take any specified steps that will, in the opinion of the General Teaching Council for England<sup>4</sup>, be conducive to his becoming a competent teacher<sup>5</sup>, and conditions may be so specified that will involve expenditure on the part of that person<sup>6</sup>.

Any condition specified in a conditional registration order has effect either for such period as may be so specified, or without limit of time<sup>7</sup>. However, a person in relation to whom a conditional registration order has been made may, in accordance with regulations<sup>8</sup>, apply to the Council for it to vary or revoke any condition specified in the order<sup>9</sup>. Regulations may make provision authorising the Council, if satisfied that such a person has failed to comply with any such condition, to make a suspension or prohibition order in relation to him<sup>10</sup>.

1    le under the Teaching and Higher Education Act 1998 s 3 (as amended): see PARA 822 ante.

2    As to the meaning of 'employment' see PARA 825 note 7 ante.

3    Teaching and Higher Education Act 1998 s 6, Sch 2 para 3(1).

4    As to the establishment of the General Teaching Council for England see PARA 809 ante.

5    Teaching and Higher Education Act 1998 Sch 2 para 3(2)(a).

6    Ibid Sch 2 para 3(2)(b).

7    Ibid Sch 2 para 3(3).

8    'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under Sch 2 (as amended) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 814 ante).

9    Teaching and Higher Education Act 1998 Sch 2 para 3(4).

10   Ibid Sch 2 para 3(5). As to suspension orders see PARA 830 post. As to prohibition orders see PARA 831 post.

### **UPDATE**

### **829 Conditional registration orders**

NOTE 8--SI 2001/1268 further amended: see PARA 826 NOTE 3.

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### **830. Suspension orders.**

Where a suspension order is made in relation to a person: (1) he ceases to be eligible for registration as a teacher<sup>1</sup>; and (2) if he is a registered teacher<sup>2</sup> at the time when the order is made, his name must be removed from the register<sup>3</sup> accordingly<sup>4</sup>. However, he becomes eligible for registration again at the end of such period not exceeding two years as may be specified in the order<sup>5</sup>.

A suspension order may specify conditions to be complied with by the person to whom the order relates and where it does so: (a) that person becomes eligible again for registration<sup>6</sup> at the end of the period specified in the order<sup>7</sup> only if he has then complied with the conditions<sup>8</sup>; and (b) if he has not then complied with the conditions, he does not become so eligible again until he has complied with the conditions<sup>9</sup>. The conditions which may be specified in a suspension order include conditions for requiring the person in question to take any specified steps that will, in the opinion of the General Teaching Council for England<sup>10</sup>, be conducive to his becoming a competent teacher<sup>11</sup>, and conditions may be so specified that will involve expenditure on the part of that person<sup>12</sup>. A person in relation to whom conditions have been specified in a suspension order may, in accordance with regulations, apply to the Council for it to vary or revoke any of the conditions<sup>13</sup>.

1 Teaching and Higher Education Act 1998 s 6, Sch 2 para 4(1)(a) (Sch 2 para 4 substituted by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 12(1), (2)). As to the registration of teachers see the Teaching and Higher Education Act 1998 s 3 (as amended); and PARA 822 ante.

2 As to the meaning of 'registered teacher' see PARA 827 note 4 ante.

3 As to the establishment and maintenance of the register of teachers see PARA 822 ante.

4 Teaching and Higher Education Act 1998 Sch 2 para 4(1)(b) (as substituted: see note 1 supra).

5 Ibid Sch 2 para 4(1) (as substituted: see note 1 supra).

6 Ie under ibid s 3 (as amended) (see PARA 822 ante).

7 Ie specified under ibid Sch 2 para 4(1) (as substituted): see the text and note 5 supra.

8 Ibid Sch 2 para 4(2)(a) (as substituted: see note 1 supra).

9 Ibid Sch 2 para 4(2)(b) (as substituted: see note 1 supra).

10 As to the establishment of the General Teaching Council for England see PARA 809 ante.

11 Teaching and Higher Education Act 1998 Sch 2 para 3(2)(a); applied by Sch 2 para 4(3) (as substituted: see note 1 supra).

12 Ibid Sch 2 para 3(2)(b); applied by Sch 2 para 4(3) (as substituted: see note 1 supra).

13 Ibid Sch 2 para 4(4) (as substituted: see note 1 supra).

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### **831. Prohibition orders.**

Where a prohibition order is made in relation to a person: (1) he ceases to be eligible for registration as a teacher<sup>1</sup>; and (2) if he is a registered teacher<sup>2</sup> at the time when the order is made, his name must be removed from the register<sup>3</sup> accordingly<sup>4</sup>. He does not become eligible for registration again unless the General Teaching Council for England<sup>5</sup>, on an application made by him in accordance with regulations<sup>6</sup>, so directs<sup>7</sup>. No such application may be made before the end of the period of two years beginning with the date when the prohibition order takes effect or such longer period as may be specified in the order<sup>8</sup>.

1 Teaching and Higher Education Act 1998 s 6, Sch 2 para 5(1)(a). As to the registration of teachers see s 3 (as amended); and PARA 822 ante.

2 As to the meaning of 'registered teacher' see PARA 827 note 4 ante.

3 As to the establishment and maintenance of the register see PARA 822 ante.

4 Teaching and Higher Education Act 1998 Sch 2 para 5(1)(b).

5 As to the establishment of the General Teaching Council for England see PARA 809 ante.

6 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under Sch 2 (as amended) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186).

7 Teaching and Higher Education Act 1998 Sch 2 para 5(1).

8 Ibid Sch 2 para 5(2).

### **UPDATE**

### **831 Prohibition orders**

NOTE 6--SI 2001/1268 further amended: see PARA 826 NOTE 3.



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### **832. Appeals against disciplinary orders.**

Regulations<sup>1</sup> must make provision for conferring on a person aggrieved by a disciplinary order<sup>2</sup> made in relation to him<sup>3</sup> a right to appeal against the order to the High Court<sup>4</sup> within 28 days from the date on which notice of the order is served on him<sup>5</sup>. On such an appeal the court may make any order which appears appropriate<sup>6</sup>. No appeal lies from any decision of the court on such an appeal<sup>7</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186).

2 For the meaning of 'disciplinary order' see PARA 828 ante.

3 le under the Teaching and Higher Education Act 1998 Sch 2 (as amended).

4 'High Court' means Her Majesty's High Court of Justice in England: see the Interpretation Act 1978 s 5, Sch 1.

5 Teaching and Higher Education Act 1998 Sch 2 para 6(1).

6 Ibid Sch 2 para 6(2).

7 Ibid Sch 2 para 6(3).

### **UPDATE**

### **832 Appeals against disciplinary orders**

NOTE 1--SI 2001/1268 further amended: see PARA 826 NOTE 3.

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### **833. Regulations in connection with disciplinary powers.**

Regulations<sup>1</sup> may make provision for such incidental and supplementary matters as the Secretary of State<sup>2</sup> considers appropriate in connection with disciplinary powers<sup>3</sup>, including provision<sup>4</sup>:

- 1489 (1) for the General Teaching Council for England<sup>5</sup>, where a disciplinary order<sup>6</sup> takes effect in relation to a person, to serve notice of the order on that person's employer<sup>7</sup>;
- 1490 (2) requiring the employer of any such person to take in relation to that person such steps in consequence of the order (which may include his dismissal) as may be prescribed<sup>8</sup>;
- 1491 (3) authorising the delegation of functions<sup>9</sup> and the determination of matters by any person or persons specified in the regulations<sup>10</sup>.

Regulations may also, in relation to any time after 1 September 2000<sup>11</sup>, make provision for securing that any disciplinary order<sup>12</sup> as it applies in relation to England<sup>13</sup> or (as the case may be) Wales<sup>14</sup> has the corresponding effect in relation to Wales or (as the case may be) England<sup>15</sup>, and such regulations may modify any provision of the Teaching and Higher Education Act 1998<sup>16</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI 2003/1186).

2 As to the Secretary of State see PARA 52 ante.

3 Ie in connection with the Teaching and Higher Education Act 1998 Sch 2 paras 1-6 (as amended): see PARAS 827-832 ante.

4 Ibid Sch 2 para 7(1).

5 As to the establishment of the General Teaching Council for England see PARA 809 ante.

6 For the meaning of 'disciplinary order' see PARA 828 ante.

7 Teaching and Higher Education Act 1998 Sch 2 para 7(1)(a). As to the meaning of 'employer' see PARA 825 note 7 ante.

8 Ibid Sch 2 para 7(1)(b). 'Prescribed' means prescribed by regulations: s 43(1). See note 1 supra.

9 Ie conferred by virtue of ibid Sch 2 (as amended). As to the meaning of 'functions' see PARA 774 note 30 ante.

10 Ibid Sch 2 para 7(1)(c).

11 Ie the date specified in an order under ibid s 8(1): see PARA 834 post.

12 Ie made under ibid Sch 2 (as amended).

13 For the meaning of 'England' see PARA 52 note 11 ante.

14 For the meaning of 'Wales' see PARA 52 note 13 ante.

15 Teaching and Higher Education Act 1998 Sch 2 para 7(2); General Teaching Council for Wales Order 1998, SI 1998/2911, arts 1, 2. As to the application of disciplinary orders made by the General Teaching Council for England and the General Teaching Council for Wales see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268, reg 25; and the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424, reg 25.

16 Teaching and Higher Education Act 1998 Sch 2 para 7(3). 'Modifications' includes additions, alterations and omissions; and 'modify' is to be construed accordingly: s 43(1).

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## **(ii) The General Teaching Council for Wales**

### **A. ESTABLISHMENT AND CONSTITUTION**

#### **834. Establishment.**

The General Teaching Council for Wales (or 'Cyngor Addysgu Cyffredinol Cymru') was established by order<sup>1</sup> to exercise, in relation to Wales<sup>2</sup>, the functions<sup>3</sup> conferred on it by or under Chapter I of Part I of the Teaching and Higher Education Act 1998<sup>4</sup>, as from 1 September 2000<sup>5</sup>.

The principal aims of the Council in exercising its functions are to contribute to improving the standards of teaching and the quality of learning, and to maintain and improve standards of professional conduct amongst teachers, in the interests of the public<sup>6</sup>.

The Council is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown, and the property of the Council is not to be regarded as property of, or property held on behalf of, the Crown<sup>7</sup>.

1 See the General Teaching Council for Wales Order 1998, SI 1998/2911 (amended by SI 2002/2940). As to the making of orders under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante.

2 For the meaning of 'Wales' see PARA 52 note 13 ante.

3 As to the meaning of 'functions' see PARA 774 note 30 ante.

4 Ie the Teaching and Higher Education Act 1998 Pt I Ch I (ss 1-17) (as amended).

5 Ibid s 8(1); General Teaching Council for Wales Order 1998, SI 1998/2911, arts 1, 2.

The Teaching and Higher Education Act 1998 provided for the General Teaching Council for England to exercise functions in relation to both England and Wales until the date of the establishment of the General Teaching Council for Wales, and to exercise functions in relation to England only after that date: see s 1(3). Provision was also made for the transfer of staff and property to the General Teaching Council for Wales: see s 8(3). However, the General Teaching Council for England and the General Teaching Council for Wales were both established on 1 September 2000: see ss 1, 8; the Teaching and Higher Education Act 1998 (Commencement No 6) Order 2000, SI 2000/970; and the General Teaching Council for Wales Order 1998, SI 1998/2911 (amended by SI 2002/2940).

6 Teaching and Higher Education Act 1998 ss 1(2), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

7 Teaching and Higher Education Act 1998 ss 1(9), 8(2), Sch 1 para 1; General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. The Council is a body corporate: see the Teaching and Higher Education Act 1998 s 8(1). As to bodies corporate see generally COMPANIES; CORPORATIONS.

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### **835. Constitution.**

The General Teaching Council for Wales<sup>1</sup> must be constituted in accordance with regulations made by the National Assembly for Wales<sup>2</sup>, and such regulations may authorise it to make rules with respect to such matters relating to its constitution as may be specified<sup>3</sup>. In exercising its powers to make such regulations, the Assembly must have regard to the desirability of the Council's membership reflecting the interests of<sup>4</sup>:

- 1492 (1) teachers<sup>5</sup>;
- 1493 (2) employers of teachers<sup>6</sup>;
- 1494 (3) providers of teacher training<sup>7</sup>;
- 1495 (4) persons concerned with the teaching of persons with special educational needs<sup>8</sup>;
- 1496 (5) religious bodies involved in the provision of education<sup>9</sup>;
- 1497 (6) parents of pupils<sup>10</sup>;
- 1498 (7) commerce and industry<sup>11</sup>; and
- 1499 (8) the general public<sup>12</sup>,

and such other interests as in the opinion of the Assembly will enable the Council to carry out its functions more effectively<sup>13</sup>.

Such regulations must be framed so as to secure that a majority of the members of the Council are registered teachers<sup>14</sup> who<sup>15</sup>:

- 1500 (a) are for the time being employed or otherwise engaged to provide their services as teachers or have had such recent employment or engagement as teachers as may be prescribed<sup>16</sup>; and
- 1501 (b) satisfy such other criteria as to eligibility for appointment or election to the Council as may be prescribed<sup>17</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under the Teaching and Higher Education Act 1998 s 1(5) see the General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619 (as amended); and PARA 836 post. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Teaching and Higher Education Act 1998 ss 1(5), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

4 Teaching and Higher Education Act 1998 ss 1(6), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

5 Teaching and Higher Education Act 1998 ss 1(6)(a), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

6 Teaching and Higher Education Act 1998 ss 1(6)(b), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

7 Teaching and Higher Education Act 1998 ss 1(6)(c), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to teacher training see PARA 784 et seq ante.

8 Teaching and Higher Education Act 1998 ss 1(6)(d), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the education of children with special educational needs see PARA 984 et seq post.

9 Teaching and Higher Education Act 1998 ss 1(6)(e), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

10 Teaching and Higher Education Act 1998 ss 1(6)(f), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

11 Teaching and Higher Education Act 1998 ss 1(6)(g), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

12 Teaching and Higher Education Act 1998 ss 1(6)(h), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

13 Teaching and Higher Education Act 1998 ss 1(6), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the meaning of 'functions' see PARA 774 note 30 ante.

14 'Registered teacher' means, subject to the Teaching and Higher Education Act 1998 Sch 2 para 8 (see PARA 852 post), a person for the time being registered under s 3 (as amended) (see PARA 847 post): s 43(1). As from a day to be appointed under the Education Act 2002 s 216(4), this provision is amended so as to refer to being registered with full or provisional registration: see the Teaching and Higher Education Act 1998 s 43(1) (prospectively amended by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 10). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

15 Teaching and Higher Education Act 1998 ss 1(7), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the regulations made under the Teaching and Higher Education Act 1998 s 1(7) see the General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619 (as amended); and PARA 836 post.

16 Teaching and Higher Education Act 1998 ss 1(7)(a), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. 'Prescribed' means prescribed by regulations: Teaching and Higher Education Act 1998 s 43(1). See note 15 supra.

17 Ibid ss 1(7)(b), 8(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. See note 15 supra.

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### **836. Appointment of members.**

Regulations<sup>1</sup> may make provision with respect to: (1) the appointment or election of one of the members of the General Teaching Council for Wales to be chairman of the Council<sup>2</sup>; (2) the period for which the chairman is to hold office<sup>3</sup>; and (3) the appointment or election and tenure of office of, and the vacation of office by, members of the Council<sup>4</sup>.

The Council may authorise the chairman, the chief officer or any committee<sup>5</sup> to exercise such of its functions<sup>6</sup> as it may determine<sup>7</sup>.

1 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. Regulations made before the establishment of the General Teaching Council for Wales could enable the Secretary of State to make provision with respect to any of the matters referred to in heads (1)-(3) in the text, but regulations made after the establishment of the Council may authorise the Council to make rules with respect to any such matters: Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 3(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. The General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619 (as amended) were made before the Council was established. As to the establishment of the General Teaching Council for Wales see PARA 834 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 3(1)(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the appointment or election of the chairman see the General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619, reg 12.

3 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 3(1)(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the resignation, removal and term of office of the chairman see the General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619, reg 12.

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 3(1)(c); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to membership of the Council see the General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619, reg 3. As to the elected members of the Council see reg 4 (substituted by SI 1999/3185). As to eligibility for election, appointment and to vote in elections see the General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619, reg 5. As to the scheme for elections see reg 6. As to the appointed members of the Council see regs 7, 8, 9 (reg 9 amended by SI 1999/3185). As to the term of office of members of the Council see the General Teaching Council for Wales (Constitution) Regulations 1999, SI 1999/1619, reg 10. As to casual vacancies in the Council see reg 11.

5 It is established under the Teaching and Higher Education Act 1998 Sch 1 para 9: see PARA 839 post.

6 As to the meaning of 'functions' see PARA 774 note 30 ante.

7 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 10(1); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. This provision is expressed to have effect without prejudice to any power to authorise an employee of the Council to carry out any of the Council's activities on behalf of the Council: Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 10(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the staff of the Council see PARA 838 post.

## **UPDATE**

### **836 Appointment of members**

NOTE 4--SI 1999/1619 regs 3, 4, 6, 7 amended by SI 2007/812; SI 1999/1619 reg 5 amended: SI 2007/812, SI 2009/1352; SI 1999/1619 reg 10 amended: SI 2009/1352.



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### **837. Salaries, allowances, pensions and other payments.**

The General Teaching Council for Wales<sup>1</sup> must pay to its members<sup>2</sup> such salaries or fees, and such travelling, subsistence or other allowances, as it may determine, and it must, as regards any member in whose case it may so determine, pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of that member as it may determine<sup>3</sup>.

If a person ceases to be a member of the Council and it appears to the Council that there are special circumstances which make it right that he should receive compensation, the Council may make to that person a payment of such amount as it may determine<sup>4</sup>. The Council must pay to the members of any of its committees<sup>5</sup> who are not members of the Council such travelling, subsistence and other allowances as it may determine<sup>6</sup>. The Council may pay to the employer of a person who is a member of the Council (or a member of any of its committees but not a member of the Council) such compensation in respect of the loss of that person's services as it may determine<sup>7</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 As to membership of the Council see PARAS 835-836 ante.

3 Teaching and Higher Education Act 1998 ss 1(9), 8(2), Sch 1 para 4(1); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3 (amended by SI 2002/2940).

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 4(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3 (amended by SI 2002/2940).

5 As to committees see PARA 839 post.

6 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 4(3); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3 (amended by SI 2002/2940).

7 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 4(4); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3 (amended by SI 2002/2940).

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### **838. Staff.**

The General Teaching Council for Wales<sup>1</sup> may<sup>2</sup> appoint a chief officer and such other employees as it thinks fit<sup>3</sup>. The Council must pay to its employees such remuneration and allowances as it may determine<sup>4</sup>, and the employees must be appointed on such other terms and conditions as it may determine<sup>5</sup>.

The Council may pay, or make payments in respect of, pensions or gratuities<sup>6</sup> to or in respect of employees or former employees and may provide and maintain such schemes (whether contributory or not) for the payment of pensions and gratuities to or in respect of employees or former employees<sup>7</sup>.

If any person, on ceasing to be employed by the Council, becomes or continues to be one of its members, and was, by reference to his employment, a participant in a pension scheme maintained by the Council, the Council may make provision for that person to continue to participate in that scheme, on such terms and conditions as it may with the consent of the National Assembly for Wales determine, as if his service as a member were service as an employee<sup>8</sup>.

Employment with the Council is included among the kinds of employment to which a superannuation scheme<sup>9</sup> can apply<sup>10</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 I.e. subject to the Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 5(5): see the text to note 6 infra.

3 Ibid s 8(2), Sch 1 para 5(1); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the appointment of the first chief officer see the Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 5(5); and the General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 5(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

5 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 5(3); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

6 References in the Teaching and Higher Education Act 1998 Sch 1 para 6 to pensions and gratuities include references to pensions or gratuities by way of compensation to or in respect of employees who suffer loss of employment or loss or diminution of emoluments: s 8(2), Sch 1 para 6(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

7 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 6(1); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3 (amended by SI 2002/2940).

8 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 6(3); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3 (amended by SI 2002/2940). Any such provision is without prejudice to the Teaching and Higher Education Act 1998 Sch 1 para 4 (see PARA 837 ante): s 8(2), Sch 1 para 6(3); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 I.e. under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

10 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 7(1); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

The Council must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to the Teaching and Higher Education Act 1998 Sch 1 para 7(1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972: Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 7(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. Where an employee of the Council is, by reference to that employment, a participant in a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) and is also a member of the Council, the National Assembly for Wales may determine that his service as a member is to be treated for the purposes of the scheme as service as an employee, whether or not any benefits are payable to or in respect of him by virtue of the Teaching and Higher Education Act 1998 Sch 1 para 4 (see PARA 837 ante): s 8(2), Sch 1 para 7(3); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550.

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### **839. Committees.**

The General Teaching Council for Wales<sup>1</sup>: (1) may establish a committee for any purpose<sup>2</sup>, and; (2) if so required by regulations<sup>3</sup>, must establish such committees for such purposes as are specified in the regulations<sup>4</sup>. The Council must determine the number of members which a committee so established is to have, and the terms on which they are to hold and vacate office<sup>5</sup>. Such regulations may make provision as to:

- 1502 (a) the membership of a committee established under the regulations<sup>6</sup>;
- 1503 (b) the terms on which such a committee's members are to hold and vacate office<sup>7</sup>; and
- 1504 (c) the procedure of any such committee<sup>8</sup>.

The regulations may authorise the Council to make provision with respect to any matter as to which provision may be made by those regulations<sup>9</sup>. Subject to such conditions as may be imposed by regulations, the Council may include on a committee persons who are not members of the Council<sup>10</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(1)(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

3 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under the Teaching and Higher Education Act 1998 Sch 1 para 9 see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542).

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(1)(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. Provision has been made for Investigating Committees, Professional Conduct Committees and Professional Competence Committees to exercise disciplinary powers of the Council in relation to registered teachers and persons applying for registration: see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424, Pt II (regs 3-27) (regs 8-9, 18 amended, and reg 21A added, by SI 2003/503). As to the delegation of functions to members of the Council see PARA 836 ante. As to the registration of teachers see PARA 847 post.

5 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

6 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(3)(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

7 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(3)(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

8 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(3)(c); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

9 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(3); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

10 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 9(4); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to membership of the Council see PARAS 835-836 ante.

## **UPDATE**

### **839 Committees**

NOTES 3, 4--SI 2001/1424 reg 9 amended: SI 2009/2161.

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#### **840. Proceedings.**

The General Teaching Council for Wales<sup>1</sup> must provide the National Assembly for Wales<sup>2</sup> with such copies of any documents distributed to members of the Council or of any committee as it may require<sup>3</sup>.

The validity of the Council's proceedings is not affected by a vacancy among the members or any defect in the appointment of a member<sup>4</sup>, and the Council may regulate its own procedure and that of any of its committees<sup>5</sup>.

The application of the seal of the Council is authenticated by the signature of: (1) the chairman or of some other person authorised either generally or specially by the Council to act for that purpose<sup>6</sup>; and (2) one other member<sup>7</sup>. Every document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the seal of the Council, or to be signed or executed by a person authorised by the Council to act in that behalf, must be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown<sup>8</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 11(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to committees see PARA 839 ante.

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 12; General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

5 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 13; General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. The Teaching and Higher Education Act 1998 Sch 1 para 13 is expressed to be subject to Sch 1 paras 1-12 (see PARAS 834 et seq ante, 843-844 post).

6 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 16(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

7 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 16(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

8 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 17; General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

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#### **841. Annual reports.**

The General Teaching Council for Wales<sup>1</sup> must make an annual report to the National Assembly for Wales<sup>2</sup>, which must publish the matter contained in the report<sup>3</sup>. The Council may arrange for any such report to be published in such manner as it considers appropriate<sup>4</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 Teaching and Higher Education Act 1998 ss 1(9), 8(2), Sch 1 para 15(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 See the Government of Wales Act 1998 s 45; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 15(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

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## **842. Accounts.**

It is the duty of the General Teaching Council for Wales<sup>1</sup>:

- 1505 (1) to keep proper accounts and proper records in relation to them<sup>2</sup>;
- 1506 (2) to prepare in respect of each financial year<sup>3</sup> of the Council a statement of accounts<sup>4</sup>; and
- 1507 (3) to send copies of the statement to the National Assembly for Wales<sup>5</sup> and to the Auditor General for Wales<sup>6</sup> before the end of the month of August next following the financial year to which the statement relates<sup>7</sup>.

The statement of accounts must comply with any directions given by the Assembly<sup>8</sup> as to:

- 1508 (a) the information to be contained in it<sup>9</sup>;
- 1509 (b) the manner in which the information contained in it is to be presented<sup>10</sup>; or
- 1510 (c) the methods and principles according to which the statement is to be prepared<sup>11</sup>,

and must contain such additional information as the Assembly may require to be provided<sup>12</sup>.

The Auditor General for Wales must examine, certify and report on each statement received by him and must lay copies of each statement and of his report before the Assembly, which must publish them<sup>13</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 Teaching and Higher Education Act 1998 ss 1(9), 8(2), Sch 1 para 14(1)(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

3 For the meaning of 'financial year' see PARA 817 note 3 ante.

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(1)(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

5 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

6 The Teaching and Higher Education Act 1998 refers to the Comptroller and Auditor General, but, so far as they are exercisable in relation to Wales, functions have been transferred to the Auditor General for Wales. As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726; and as to the Auditor General for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(1)(c); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

8 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

9 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(2)(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.



10 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(2)(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

11 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(2)(c); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

12 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(2); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

13 See the Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 14(3); the Government of Wales Act 1998 s 45; the General Teaching Council for Wales Order 1998, SI 1998/2911, art 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

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### **843. Grants.**

The National Assembly for Wales<sup>1</sup> may make grants to the General Teaching Council for Wales<sup>2</sup> of such amounts and subject to such terms and conditions as it may determine<sup>3</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

3 Teaching and Higher Education Act 1998 ss 1(9), 8(2), Sch 1 para 8; General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

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## **B. FUNCTIONS**

### **(A) IN GENERAL**

#### **844. General functions.**

The General Teaching Council for Wales<sup>1</sup> may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions<sup>2</sup>. In particular, the Council may:

- 1511 (1) acquire and dispose of land or other property<sup>3</sup>;
- 1512 (2) enter into contracts<sup>4</sup>;
- 1513 (3) invest sums not immediately required for the purpose of carrying out its functions<sup>5</sup>;
- 1514 (4) accept gifts of money, land or other property<sup>6</sup>;
- 1515 (5) form bodies corporate or associated or other bodies which are not bodies corporate<sup>7</sup>;
- 1516 (6) enter into joint ventures with other persons<sup>8</sup>;
- 1517 (7) subscribe for shares and stock<sup>9</sup>; and
- 1518 (8) borrow money<sup>10</sup>.

The Council may also undertake activities designed to promote the standing of the teaching profession<sup>11</sup>.

In exercising its functions, the Council must have regard to the requirements of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995<sup>12</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 Teaching and Higher Education Act 1998 ss 1(9), 8(2), Sch 1 para 2(1); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to the meaning of 'functions' see PARA 774 note 30 ante.

3 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(a); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

4 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(b); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

5 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(c); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

6 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(d); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

7 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(e); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. As to bodies corporate see generally COMPANIES; CORPORATIONS.

8 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(f); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

9 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(g); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

10 Teaching and Higher Education Act 1998 s 8(2), Sch 1 para 2(2)(h); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3.

11 Teaching and Higher Education Act 1998 ss 6A(1), 9(1) (s 6A added, s 9(1) amended, by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 6-7). Without prejudice to the generality of the Teaching and Higher Education Act 1998 s 6A(1) (as added), such activities may include: (1) giving advice; (2) organising conferences and lectures; and (3) arranging for the publication of material in any form: s 6A(2) (as so added), s 9(1) (as so amended).

12 Teaching and Higher Education Act 1998 s 8(2), s 1(4); General Teaching Council for Wales Order 1998, SI 1998/2911, art 3. For the meaning of 'disabled persons' see DISCRIMINATION vol 13 (2007 Reissue) PARA 511.

## **UPDATE**

### **844 General functions**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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#### **845. Additional and ancillary functions conferred by the National Assembly for Wales.**

The National Assembly for Wales<sup>1</sup> may require the General Teaching Council for Wales<sup>2</sup> to undertake (or join with any other person or body in undertaking) activities designed to promote<sup>3</sup>: (1) recruitment to the teaching profession<sup>4</sup>; or (2) the continuing professional development of teachers<sup>5</sup>. Such activities may include giving advice, organising conferences and lectures, and arranging for the publication of material in any form<sup>6</sup>.

The Assembly may by order confer or impose on the Council such additional functions<sup>7</sup> as the Assembly considers it may appropriately discharge in conjunction with any of its other functions<sup>8</sup>. Before making such an order, the Assembly must carry out such consultation as appears to it to be appropriate<sup>9</sup>.

The Council must carry out such functions ancillary to its other functions<sup>10</sup> as the Assembly may direct<sup>11</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

3 Teaching and Higher Education Act 1998 s 9(2).

4 Ibid s 9(2)(a).

5 Ibid s 9(2)(b).

6 Ibid s 9(3).

7 As to the meaning of 'functions' see PARA 774 note 30 ante.

8 Teaching and Higher Education Act 1998 ss 7(1), 9(1) (s 9(1) amended by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 7). The text refers to functions under the Teaching and Higher Education Act 1998 Pt I Ch I (ss 1-17) (as amended). The additional functions conferred are the functions of (1): maintaining records relating to: (a) persons whose names have been removed from the register other than those whose names were removed at their own request or who have died; (b) persons who are ineligible for registration; (c) qualified teachers who are not registered teachers; (d) persons who are not registered teachers who have started a course for the initial training of teachers, whether or not they have completed such course; (e) persons who are not qualified teachers who are employed as teachers in schools maintained by a local education authority; (f) persons who are not registered teachers who are preparing for, or who have obtained, the National Professional Qualification for Headship; and (g) persons not falling within heads (a)-(f) supra and who are not registered teachers, who have a teacher reference number and who are, or have in the past been, employed as a teacher at a school or other educational institution (General Teaching Council for Wales (Additional Functions) Order 2000, SI 2000/1941, art 3, Schedule Pt I paras 1-7); (2) considering applications and granting authorisations to practise the profession of school teacher in Wales for the purpose of EC Council Directive 89/48 (OJ L019, 24.1.89, p 16) on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (General Teaching Council for Wales (Additional Functions) Order 2005, SI 2005/36, art 3(1)); and (3) giving advice and information to the public about the requirements for recognition in Wales of teaching qualifications obtained in a member state of the European Community, Iceland, Norway, Liechtenstein or Switzerland (arts 2, 3(2)).

A statutory instrument containing an order under the Teaching and Higher Education Act 1998 s 7 (as amended) is subject to annulment in pursuance of a resolution of either House of Parliament: s 42(2). As to the making of orders under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante.

Without prejudice to the generality of s 7(1), the National Assembly for Wales may under s 7(1) require the Council to give it such assistance as it may specify in relation to the specification of requirements of regulations under the Education Act 2002 s 132 (qualified teacher status: see PARA 769 ante): Teaching and Higher Education Act 1998 s 7(3) (amended by the Education Act 2002 s 215(1), Sch 21 para 78); Teaching and Higher Education Act 1998 s 9(1) (as so amended).

Without prejudice to the generality of s 7(1), the National Assembly for Wales may under s 7(1) require the Council to maintain records relating to such categories of persons (including persons not eligible to be registered under s 3 (as amended) (see PARA 847 post)) as may be prescribed; and the records must contain such information relating to those persons and must be kept in such manner as may be prescribed: ss 7(4), 9(1). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made in relation to the maintenance of records by the Council see the General Teaching Council for Wales (Additional Functions) Order 2000, SI 2000/1941, art 3, Schedule Pt II paras 1-24 (Schedule paras 12, 22 substituted, and Schedule paras 14, 16, 19 amended, by SI 2005/68; and the General Teaching Council for Wales (Additional Functions) Order 2000, SI 2000/1941, Schedule paras 23A-23B added by SI 2001/2497).

9 Teaching and Higher Education Act 1998 ss 7(2), 9(1).

10 le under ibid Pt I Ch I (as amended).

11 Ibid ss 7(5), 9(1).

## **UPDATE**

### **845 Additional and ancillary functions conferred by the National Assembly for Wales**

NOTE 8--References to SI 2000/1941 Schedule paras 12, 22 and to Schedule paras 14, 16, 19 should be to Schedule Pt II paras 12, 22 and to Schedule Pt II paras 14, 16, 19.

SI 2000/1941 Schedule Pt II para 20A added: SI 2006/1341. SI 2000/1941 Schedule Pt I para 2 amended, para 3A added; Schedule Pt II paras 19A, 22A, 23C, 23D added: SI 2009/1351.

SI 2005/36 art 2 amended: SI 2007/2810.

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## (B) ADVICE

### 846. Advisory functions.

The General Teaching Council for Wales<sup>1</sup> must from time to time advise the National Assembly for Wales<sup>2</sup>, and such other persons or bodies as the Assembly may from time to time designate, on<sup>3</sup>:

- 1519 (1) standards of teaching<sup>4</sup>;
- 1520 (2) standards of conduct for teachers<sup>5</sup>;
- 1521 (3) the role of the teaching profession<sup>6</sup>;
- 1522 (4) the training, career development and performance management of teachers<sup>7</sup>;
- 1523 (5) recruitment to the teaching profession<sup>8</sup>;
- 1524 (6) the supply of teachers<sup>9</sup>;
- 1525 (7) the retention of teachers within the teaching profession<sup>10</sup>;
- 1526 (8) the standing of the teaching profession<sup>11</sup>; and
- 1527 (9) medical fitness to teach<sup>12</sup>,

as it thinks fit<sup>13</sup>. The Council must also advise the Assembly on: (a) such matters falling within heads (1) to (9) above<sup>14</sup>; or (b) on such other matters relating to teaching<sup>15</sup>, as it may from time to time require<sup>16</sup>. The Council may give advice on such matters falling within heads (1) to (9) above as it thinks fit to such persons or bodies as it may from time to time determine<sup>17</sup>. Any advice given by the Council on matters falling within heads (1) to (9) above must be advice of a general nature<sup>18</sup>. The Council may publish advice given by it<sup>19</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Teaching and Higher Education Act 1998 ss 2(1), 9(1).

4 Ibid ss 2(2)(a), 9(1).

5 Ibid ss 2(2)(b), 9(1).

6 Ibid ss 2(2)(c), 9(1).

7 Ibid ss 2(2)(d), 9(1).

8 Ibid ss 2(2)(e), 9(1).

9 Ibid ss 2(2)(ee), 9(1) (s 2(2)(ee) added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 2).

10 Teaching and Higher Education Act 1998 ss 2(2)(ef), 9(1) (s 2(2)(ef) added by the Education Act 2002 Sch 12 Pt 1 paras 1, 2).

11 Teaching and Higher Education Act 1998 ss 2(2)(eg), 9(1) (s 2(2)(eg) added by the Education Act 2002 Sch 12 Pt 1 paras 1, 2).

12 Teaching and Higher Education Act 1998 ss 2(2)(f), 9(1).

13 Ibid ss 2(1), 9(1).

14 Ibid ss 2(3)(a), 9(1).

15 Ibid ss 2(3)(b), 9(1). The Council may be required under s 2(3)(b) to advise the Secretary of State on any matter relevant to a decision by him as to whether any power exercisable by him and the National Assembly for Wales concurrently under the Education Act 2002 s 142 (prohibition from teaching, etc: see PARA 782 ante) should or should not be exercised in any particular case: Teaching and Higher Education Act 1998 s 2(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 75).

16 Teaching and Higher Education Act 1998 ss 2(3), 9(1).

17 Ibid ss 2(5), 9(1).

18 Ibid ss 2(6), 9(1).

19 Advice under ibid s 2(1) (see the text to notes 1-13 supra), s 2(3) (see the text to notes 14-16 supra) or s 2(5) (see the text to note 17 supra) may be published: ss 2(7), 9(1).

## **UPDATE**

### **846 Advisory functions**

NOTE 15--Teaching and Higher Education Act 1998 s 2(4) repealed: Safeguarding Vulnerable Groups Act 2006 Sch 9 para 3.



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## (C) REGISTRATION OF TEACHERS

### 847. Registration of teachers.

The General Teaching Council for Wales<sup>1</sup> is required to establish and maintain a register of teachers<sup>2</sup>, which must contain the name of every person who is eligible for registration and applies to be registered in the register in accordance with regulations relating to registration<sup>3</sup>.

A person is eligible for registration if he is a qualified teacher and he is not for the time being<sup>4</sup>:

- 1528 (1) subject to a direction<sup>5</sup>; or
- 1529 (2) subject to a disciplinary order<sup>6</sup> by virtue of which he is not eligible for registration<sup>7</sup>; or
- 1530 (3) (subject to certain exceptions<sup>8</sup>) ineligible for registration as a teacher, or disqualified from being a teacher in any school, by virtue of any prescribed provision of the law of Scotland or of Northern Ireland<sup>9</sup>.

Except in such circumstances as may be prescribed, a person is not eligible for registration if, having served an induction period in accordance with regulations<sup>10</sup>, he has failed to complete it satisfactorily for the purposes of those regulations<sup>11</sup>.

1 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

2 Teaching and Higher Education Act 1998 ss 3(1), 9(1). As from a day to be appointed, s 3(1) is amended so as to refer to a register for the purposes of Pt I Ch I (ss 1-17) (as amended): see s 3(1) (prospectively amended by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1 3(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 Teaching and Higher Education Act 1998 ss 3(2), 9(1). As from a day to be appointed, s 3(2) is amended so as to refer to full or provisional registration: see s 3(2) (prospectively amended by the Education Act 2002 Sch 12 Pt 1 paras 1, 3(1), (3)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 4 (as amended) see PARA 848 post.

As from a day to be appointed, a person is eligible for provisional registration if he satisfies such conditions as may be prescribed; and a person is not eligible for provisional registration or full registration unless at the relevant time the Council is or was satisfied as to his suitability to be a teacher: ss 3(3A), (3B), 9(1) (s 3(3A)-(3D) prospectively added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 3(1), (5)). Regulations may provide that any prescribed description of person is, or is not, to be taken to be suitable to be a teacher: Teaching and Higher Education Act 1998 ss 3(3D), 9(1) (s 3(3D) as so prospectively added). For these purposes, 'the relevant time' means: (1) in relation to an applicant for provisional registration or an applicant for full registration who is already registered with provisional registration, the time of provisional registration; or (2) in the case of an applicant for full registration who is not already registered with provisional registration, the time of full registration: ss 3(3C), 9(1) (s 3(3C) as so prospectively added). The provisions of s 3(3A)-(3D) are added as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed.

4 Teaching and Higher Education Act 1998 ss 3(3), 9(1). As from a day to be appointed, s 3(3) is amended so as to refer to full registration: see s 3(3) (prospectively amended by the Education Act 2002 s 215, Sch 12 Pt 1

paras 1, 3(1), (4), Sch 21 para 76(a), Sch 22 Pt 3). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

5 Teaching and Higher Education Act 1998 ss 3(3)(a), 9(1) (s 3(3)(a) substituted by the Education Act 2002 Sch 21 para 76(b)). The direction referred to in the text is a direction given by the National Assembly for Wales and the Secretary of State acting concurrently under the Education Act 2002 s 142 (prohibition from teaching, etc: see PARA 782 ante). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante.

6 le made under the Teaching and Higher Education Act 1998 Sch 2 (as amended): see PARAS 852-858 post.

7 Ibid ss 3(3)(b) 9(1). As from a day to be appointed, s 3(3)(b) is amended so as to refer to full registration: see s 3(3)(b) (prospectively amended by the Education Act 2002 Sch 12 Pt 1 paras 1, 3(1), (4)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

8 le subject to such exceptions as may be prescribed by, or determined by the National Assembly for Wales under, regulations. 'Prescribed' means prescribed by regulations: Teaching and Higher Education Act 1998 s 43(1).

9 Ibid ss 3(3)(d), 9(1). As to the regulations made under s 3(3)(d) see the General Teaching Council for Wales (Functions) Regulations 2000, SI 2000/1979 (amended by SI 2001/2496; SI 2004/1741; SI 2005/69).

10 le under the Teaching and Higher Education Act 1998 s 19 (as amended): see PARA 774 ante.

11 Ibid ss 3(4), 9(1). As from a day to be appointed, s 3(4) is amended so as to refer to full registration: see s 3(4) (prospectively amended by the Education Act 2002 Sch 12 Pt 1 paras 1, 3(1), (6)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

## UPDATE

### 847 Registration of teachers

NOTE 3--Day now appointed in relation to 1998 Act s 3(3B), (3D): SI 2006/1336.

In exercise of the powers conferred on him under the Teaching and Higher Education Act 1998 s 3(3A), the Secretary of State has made the General Teaching Council for England (Eligibility for Provisional Registration) Regulations 2008, SI 2008/1884.

TEXT AND NOTES 4-9--Add head (4) barred from regulated activity relating to children (within the meaning of the Safeguarding Vulnerable Groups Act 2006 s 3(2) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 685): Teaching and Higher Education Act 1998 s 3(3)(aa) (added by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 4).

NOTE 9--SI 2000/1979 further amended: SI 2009/1353.

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#### **848. Regulations relating to registration.**

Regulations<sup>1</sup> may make provision as to the form and manner in which the register of persons eligible for registration<sup>2</sup> is to be kept and other matters relating to registration<sup>3</sup>. Such regulations may, in particular, make provision as to:

- 1531 (1) the form and manner in which applications for registration are to be made<sup>4</sup>;
- 1532 (2) the documentary and other evidence which is to accompany applications for registration<sup>5</sup>;
- 1533 (3) as from a day to be appointed<sup>6</sup>, the service on applicants for registration of notice of the General Teaching Council for Wales's<sup>7</sup> decision to grant or refuse the application and, in the case of a refusal, of the grounds on which the decision was taken and (where applicable) of the applicant's right to appeal against the decision<sup>8</sup>;
- 1534 (4) the registration, on the establishment of the register, of persons who have not made such applications<sup>9</sup>;
- 1535 (5) the matters which are to be recorded in the register against the names of those registered in it<sup>10</sup>;
- 1536 (6) the division of the register into separate parts<sup>11</sup>;
- 1537 (7) the restoration and alteration of entries and their transfer between different parts of the register (where separate parts are required by virtue of head (6) above)<sup>12</sup>;
- 1538 (8) the charging by the General Teaching Council for Wales of authorised fees<sup>13</sup>;
- 1539 (9) the removal of entries from the register in circumstances where the persons concerned have ceased to be eligible for registration, or have failed to pay any such fee, or otherwise<sup>14</sup>;
- 1540 (10) the issue and form of certificates of registration<sup>15</sup>;
- 1541 (11) the information contained in the register which may be made available for inspection by members of the public, and the circumstances in which and the conditions subject to which that information may be made available<sup>16</sup>.

The regulations may authorise the Council to make provision in relation to any matter as to which provision may be made by such regulations<sup>17</sup>.

1 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 4 (as amended) see the General Teaching Council for Wales (Functions) Regulations 2000, SI 2000/1979 (amended by SI 2001/2496; SI 2004/1741; SI 2005/69).

2 As to the establishment and maintenance of the register see PARA 847 ante.

3 Teaching and Higher Education Act 1998 ss 4(1), 9(1). In s 4, 'registration' means full registration or provisional registration: ss 4(6), 9(1) (s 4(6) added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 4(1), (4)). This definition is to come into force as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

4 Teaching and Higher Education Act 1998 ss 4(2)(a), 9(1).

5 Ibid ss 4(2)(b), 9(1).

6 Ibid s 4(2)(ba) is added as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed.

7 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

8 Teaching and Higher Education Act 1998 ss 4(2)(ba), 9(1) (s 4(2)(ba) prospectively added by the Education Act 2002 Sch 12 Pt 1 paras 1, 4(1), (2)). See note 6 supra. An applicant's right to appeal against the decision as mentioned in the text takes effect under the Teaching and Higher Education Act 1998 s 4A (prospectively added) (see PARA 849 post).

9 Ibid ss 4(2)(c), 9(1).

10 Ibid s 4(2)(d), 9(1). Regulations made in pursuance of s 4(2)(d) may require the recording of any restrictions for the time being in force in relation to a person as the result of: (1) a direction given under the Education Act 2002 s 142 (prohibition from teaching, etc: see PARA 782 ante); or (2) a disciplinary order made under the Teaching and Higher Education Act 1998 s 6, Sch 2 (as amended) (see PARAS 852-858 post): ss 4(3), 9(1) (s 4(3) amended by the Education Act 2002 s 215(1), Sch 21 para 77).

11 Teaching and Higher Education Act 1998 ss 4(2)(e), 9(1).

12 Ibid ss 4(2)(f), 9(1).

13 Ibid ss 4(2)(g), 9(1). The text refers to fees authorised by virtue of s 4(4). For the purposes of s 4(2)(g), regulations under s 4 (as amended) may authorise the Council (subject to such exceptions as may be provided for by or under the regulations) to charge fees fixed by it with the approval of the National Assembly for Wales in respect of: (1) applications for registration or for the restoration of entries in the register; (2) registration in accordance with s 4(2)(c) (see head (4) in the text); or (3) the retention of entries in the register, and the regulations may accordingly authorise the Council to refuse an application falling within head (1) supra until the appropriate fee has been paid: ss 4(4), 9(1). The Council, in exercising any power to fix fees authorised by virtue of s 4(4), must have regard to its expenditure in exercising: (a) its functions under the Teaching and Higher Education Act 1998 relating to registration; and (b) all other functions conferred on it under the Teaching and Higher Education Act 1998 or any other enactment: ss 4(4A), 9(1) (added by the Education Act 2002 Sch 12 Pt 1 paras 1, 4(1), (3)). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

14 Teaching and Higher Education Act 1998 ss 4(2)(h), 9(1).

15 Ibid ss 4(2)(i), 9(1).

16 Ibid ss 4(2)(j), 9(1).

17 Ibid ss 4(5), 9(1).

## **UPDATE**

### **848 Regulations relating to registration**

NOTE 1--SI 2000/1979 further amended: SI 2006/1343, SI 2009/1353.

TEXT AND NOTE 6--Day now appointed: SI 2006/1336.

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### **849. Appeals against refusal of registration.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Regulations<sup>2</sup> must make provision for conferring on a person aggrieved by a decision made on relevant grounds<sup>3</sup> to refuse an application made by him for registration<sup>4</sup> a right to appeal against the decision to the High Court<sup>5</sup> within 28 days from the date on which notice of the decision is served on him<sup>6</sup>.

On such an appeal the court may make any order which appears appropriate<sup>7</sup>. No appeal lies from any decision of the court on such an appeal<sup>8</sup>.

1 The Teaching and Higher Education Act 1998 s 4A is added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 5 as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed.

2 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. At the date at which this volume states the law, no regulations had been made under s 4A (not yet in force).

3 The reference in *ibid* s 4A(1) (not yet in force) to a decision made on relevant grounds is a reference to a decision made on the ground that at the relevant time the General Teaching Council for Wales was not satisfied of the applicant's suitability to be a teacher: ss 4A(2), 9(1) (s 4A(2) prospectively added: see note 1 *supra*). As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

4 *Ie* under *ibid* s 3 (as amended) (see PARA 847 ante).

5 'High Court' means Her Majesty's High Court of Justice in England: see the Interpretation Act 1978 s 5, Sch 1.

6 Teaching and Higher Education Act 1998 ss 4A(1), 9(1) (s 4A(1) prospectively added: see note 1 *supra*).

7 *Ibid* ss 4A(3), 9(1) (s 4A(3) prospectively added: see note 1 *supra*).

8 *Ibid* ss 4A(4), 9(1) (s 4A(4) prospectively added: see note 1 *supra*).

### **UPDATE**

### **849 Appeals against refusal of registration**

TEXT AND NOTE 1--Day now appointed: SI 2006/1336.

NOTES 2, 6--See the General Teaching Council for Wales (Functions) Regulations 2000, SI 2000/1979, regs 4C, 4D (added by SI 2006/1343).

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### **850. Deduction of fees from salaries.**

In relation to teachers at schools<sup>1</sup> who, on such date or during such period as may be specified<sup>2</sup>, are registered<sup>3</sup> in the register<sup>4</sup> or are required<sup>5</sup> to be so registered<sup>6</sup>, regulations may make provision requiring employers<sup>7</sup> of such teachers (subject to such exceptions as may be provided for by or under the regulations)<sup>8</sup>: (1) to deduct (or arrange for the deduction) from the salary<sup>9</sup> of such teachers any fee payable<sup>10</sup> in respect of the registration or retention of an entry on the register relating to any such teacher<sup>11</sup>; and (2) to remit that fee to the General Teaching Council for Wales<sup>12</sup>.

The regulations may make provision with respect to<sup>13</sup>: (a) the arrangements to be adopted by employers of such teachers for the deduction and remittance of fees<sup>14</sup>; (b) the administration charges which may be deducted from any fees remitted to the Council<sup>15</sup>; and (c) the notification to the Council by employers of such teachers of such particulars relating to those teachers as the regulations may specify<sup>16</sup>.

<sup>1</sup> For these purposes, 'school' means a school maintained by a local education authority or a special school not so maintained: Teaching and Higher Education Act 1998 s 12(4) (definition substituted by the Education Act 2002 s 215(1), Sch 21 para 81(b)). As to local education authorities see PARA 20 ante; and as to special schools see PARA 1027 post.

<sup>2</sup> I.e. specified in the regulations made under the Teaching and Higher Education Act 1998 s 12 (as amended). 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 12 (as amended) see the General Teaching Council for Wales (Fees) Regulations 2002, SI 2002/326 (amended by SI 2004/1745).

<sup>3</sup> In the Teaching and Higher Education Act 1998 s 12 (as amended), 'registration' means full registration or provisional registration: s 12(4) (definition added by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 8). This definition is to come into force as from a day to be appointed under the Education Act 2002 s 216(4). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

<sup>4</sup> Teaching and Higher Education Act 1998 s 12(2)(a). As to the register see PARA 847 ante.

<sup>5</sup> I.e. by virtue of the Education Act 2002 s 134 (as amended) (see PARA 771 ante).

<sup>6</sup> Teaching and Higher Education Act 1998 s 12(2)(b) (substituted by the Education Act 2002 s 215(1), Sch 21 para 81(a)).

<sup>7</sup> For the purposes of the Teaching and Higher Education Act 1998 s 12 (as amended), s 15 (as substituted) (see PARA 860 post), s 19 (as amended) (see PARA 774 ante), Sch 2 (as amended) (see PARAS 827-833 ante), 'employer', in relation to a teacher, includes a local education authority, governing body or other person who engages (or makes arrangements for the engagement of) that person to provide his services as a teacher otherwise than under a contract of employment; and 'employed', 'employment' and any expressions relating to the termination of employment are to be construed accordingly: s 43(2). As to contracts of employment see EMPLOYMENT vol 39 (2009) PARA 1 et seq.

<sup>8</sup> Ibid s 12(1).

<sup>9</sup> For this purpose, 'salary' includes any remuneration payable in respect of services as a teacher: ibid s 12(4).

<sup>10</sup> I.e. by virtue of ibid s 4(4): see PARA 848 ante.

<sup>11</sup> Ibid s 12(1)(a).

- 12 Ibid s 12(1)(b), (4). As to the establishment of the General Teaching Council for Wales see PARA 834 ante.
- 13 Ibid s 12(3).
- 14 Ibid s 12(3)(a).
- 15 Ibid s 12(3)(b), (4).
- 16 Ibid s 12(3)(c), (4).

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### **851. Code of practice for registered teachers.**

Regulations<sup>1</sup> may make provision for, and in connection with, authorising the General Teaching Council for Wales<sup>2</sup> to issue, and from time to time revise, a code laying down standards of professional conduct and practice expected of registered teachers<sup>3</sup>. Such regulations may, in particular, make provision:

- 1542 (1) as to the consequences of any failure by a registered teacher to comply with the provisions of the code<sup>4</sup>;
- 1543 (2) for the provision by the Council of copies of the code, either on payment of a reasonable charge decided by the Council or, in such circumstances as may be determined in accordance with the regulations, free of charge<sup>5</sup>.

Regulations made in pursuance of head (1) above may provide for any failure by a registered teacher to comply with the provisions of the code to be taken into account in any proceedings against him<sup>6</sup>.

1 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante.

2 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

3 Teaching and Higher Education Act 1998 ss 5(1), 9(1). For the meaning of 'registered teacher' see PARA 810 note 14 ante. As to the regulations made under s 5 see the General Teaching Council for Wales (Functions) Regulations 2000, SI 2000/1979 (amended by SI 2001/2496; SI 2004/1741; SI 2005/69).

4 Teaching and Higher Education Act 1998 ss 5(2)(a), 9(1). As to the regulations made under s 5(2)(a) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542).

5 Teaching and Higher Education Act 1998 ss 5(2)(b), 9(1).

6 Ibid ss 5(3), 9(1). The text refers to proceedings under Sch 2 (as amended): see PARAS 852-858 post. As to the regulations made under s 5(3) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (as amended: see note 4 supra).

### **UPDATE**

### **851 Code of practice for registered teachers**

NOTE 3--SI 2000/1979 further amended: SI 2006/1343, SI 2009/1353.

NOTE 4--SI 2001/1424 further amended: see PARAS 852-858.



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## (D) DISCIPLINE OF TEACHERS

### **852. Disciplinary powers in relation to registered teachers.**

Regulations<sup>1</sup> may make provision for and in connection with the investigation by the General Teaching Council for Wales<sup>2</sup> of cases where<sup>3</sup>:

- 1544 (1) it is alleged that a registered teacher<sup>4</sup> is guilty of unacceptable professional conduct<sup>5</sup> or serious professional incompetence, or has been convicted (at any time) of a relevant offence<sup>6</sup>; or
- 1545 (2) it appears to the Council that a registered teacher may be so guilty or have been so convicted<sup>7</sup>,

and the hearing and determination by the Council of such cases where it is found on investigation that a registered teacher has a case to answer<sup>8</sup>.

The regulations may, in particular, make provision:

- 1546 (a) requiring the Council, where any proceedings are being taken against any person<sup>9</sup> to serve a notice on him outlining the case against him, and to give him the opportunity of appearing and making oral representations<sup>10</sup>;
- 1547 (b) entitling such a person to be represented, by any person whom he desires to represent him, at any hearing of the Council at which his case is considered<sup>11</sup>;
- 1548 (c) requiring the Council, where it does not find the case against such a person proved, to publish at his request a statement to that effect<sup>12</sup>;
- 1549 (d) empowering the Council to require persons to attend and give evidence or to produce documents or other material evidence<sup>13</sup>;
- 1550 (e) about the admissibility of evidence<sup>14</sup>;
- 1551 (f) enabling the Council to administer oaths<sup>15</sup>;
- 1552 (g) for the procedure to be followed by the Council in connection with proceedings<sup>16</sup> to be such as may be specified in or determined under the regulations<sup>17</sup>.

No person is required by virtue of the regulations to give any evidence or produce any document or other material evidence which he could not be compelled to give or produce in civil proceedings in any court in England and Wales<sup>18</sup>.

The regulations may make provision for any functions conferred on the Council<sup>19</sup> to be excluded or restricted in such manner as may be specified in or determined under the regulations, including such provision for excluding or restricting any such functions as the National Assembly for Wales<sup>20</sup> considers appropriate with a view to taking account of any powers exercisable by it and the Secretary of State concurrently<sup>21</sup> in cases which it considers concern the safety and welfare of persons aged under 18<sup>22</sup>: (i) on the grounds that a person is unsuitable to work with children<sup>23</sup>; or (ii) on grounds relating to a person's misconduct or health<sup>24</sup>.

1 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 839 ante). See also the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542, which set out requirements for employers' or agents' reports where a person's services have ceased to be used or withdrawn on grounds relating to the person's health, misconduct or suitability to work with children (see PARA 860 post).

2 As to the establishment of the General Teaching Council for Wales see PARA 834 ante. Where regulations under the Teaching and Higher Education Act 1998 s 1(9), Sch 1 para 9(1)(b) (see PARA 839 ante) require the Council to establish a committee for the purpose of discharging any of the functions conferred on it by virtue of Sch 2 (as amended) (see PARAS 853-858 post), references in Sch 2 (as amended) to the Council must be construed, in relation to those functions, as references to that committee: ss 6, 9(1), Sch 2 para 8(2). As to the meaning of 'functions' see PARA 774 note 30 ante.

3 Ibid s 9(1), Sch 2 para 1(1).

4 As to the meaning of 'registered teacher' see PARA 827 note 4 ante.

5 For the meaning of 'unacceptable professional conduct' see PARA 827 note 5 ante.

6 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 1(1)(a). For the meaning of 'relevant offence' see PARA 827 note 6 ante.

7 Ibid s 9(1), Sch 2 para 1(1)(b).

8 Ibid s 9(1), Sch 2 para 1(1).

9 Ie under ibid Sch 2 (as amended).

10 Ibid s 9(1), Sch 2 para 1(2)(a).

11 Ibid s 9(1), Sch 2 para 1(2)(b).

12 Ibid s 9(1), Sch 2 para 1(2)(c).

13 Ibid s 9(1), Sch 2 para 1(2)(d).

14 Ibid s 9(1), Sch 2 para 1(2)(e).

15 Ibid s 9(1), Sch 2 para 1(2)(f).

16 Ie under ibid Sch 2 (as amended).

17 Ibid s 9(1), Sch 2 para 1(2)(g).

18 Ibid s 9(1), Sch 2 para 1(3). As to rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

19 Ie by virtue of ibid Sch 2 para 1(1): see the text to notes 1-8 supra.

20 As to the National Assembly for Wales see PARA 53 ante.

21 Ie under the Education Act 2002 s 142 (see PARA 782 ante). As to the Secretary of State see PARA 52 ante.

22 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 1(4) (Sch 2 para 1(4) amended by the Education Act 2002 s 215(1), Sch 21 para 86(1), (2)).

23 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 1(4)(a) (Sch 2 para 1(4)(a) added by the Education Act 2002 Sch 21 para 86(1), (2)).

24 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 1(4)(b) (Sch 2 para 1(4)(b) added by the Education Act 2002 Sch 21 para 86(1), (2)).

## UPDATE

### 852-858 Discipline of Teachers

SI 2001/1424 further amended: SI 2009/2161.

**852 Disciplinary powers in relation to registered teachers**

NOTE 1--SI 2003/542 replaced: Education (Supply of Information) (Wales) Regulations 2009, SI 2009/1350.

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### **853. Disciplinary orders.**

Regulations<sup>1</sup> may make provision for and in connection with authorising the General Teaching Council for Wales<sup>2</sup> to make disciplinary orders<sup>3</sup> in relation to persons who in proceedings<sup>4</sup> are found by the Council<sup>5</sup>:

- 1553 (1) to have been guilty of unacceptable professional conduct<sup>6</sup> or serious professional incompetence<sup>7</sup>; or
- 1554 (2) to have been convicted (at any time) of a relevant offence<sup>8</sup>.

The regulations may, in particular, make provision:

- 1555 (a) for the Council to serve on any such person notice of the disciplinary order which has been made in relation to him, and of his right to appeal against the order<sup>9</sup>;
- 1556 (b) as to the time when any such order takes effect, whether in a case where any such person exercises that right of appeal or otherwise<sup>10</sup>;
- 1557 (c) for the Council to publish, in such manner as may be prescribed<sup>11</sup>, such information relating to the case of any such person and any disciplinary order made by the Council as may be prescribed<sup>12</sup>.

1 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 839 ante). See also the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542, which set out requirements for employers' or agents' reports where a person's services have ceased to be used or withdrawn on grounds relating to the person's health, misconduct or suitability to work with children (see PARA 860 post).

2 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

3 For the meaning of 'disciplinary order' see PARA 828 ante.

4 Ie under the Teaching and Higher Education Act 1998 Sch 2 (as amended).

5 Ibid s 9(1), Sch 2 para 2(1).

6 For the meaning of 'unacceptable professional conduct' see PARA 827 note 5 ante.

7 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 2(1)(a).

8 Ibid s 9(1), Sch 2 para 2(1)(b). For the meaning of 'relevant offence' see PARA 827 note 6 ante.

9 Ibid s 9(1), Sch 2 para 2(2)(a). The text refers to the right to appeal against the order under Sch 2 para 6: see PARA 857 post.

10 Ibid s 9(1), Sch 2 para 2(2)(b).

11 Ie prescribed by regulations made under the Teaching and Higher Education Act 1998: s 43(1).

12 Ibid s 9(1), Sch 2 para 2(2)(c).

**UPDATE**

**852-858 Discipline of Teachers**

SI 2001/1424 further amended: SI 2009/2161.

**853 Disciplinary orders**

NOTE 1--SI 2003/542 replaced: Education (Supply of Information) (Wales) Regulations 2009, SI 2009/1350.

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#### **854. Conditional registration orders.**

Where a conditional registration order is made in relation to a person, he continues to be eligible for registration as a teacher<sup>1</sup>, but he must comply with such conditions relevant to his employment<sup>2</sup> as a teacher as may be specified in the order<sup>3</sup>. The conditions which may be specified in a conditional registration order include conditions for requiring the person in question to take any specified steps that will, in the opinion of the General Teaching Council for Wales<sup>4</sup>, be conducive to his becoming a competent teacher<sup>5</sup>, and conditions may be so specified that will involve expenditure on the part of that person<sup>6</sup>.

Any condition specified in a conditional registration order has effect either for such period as may be so specified, or without limit of time<sup>7</sup>. However, a person in relation to whom a conditional registration order has been made may, in accordance with regulations<sup>8</sup>, apply to the Council for it to vary or revoke any condition specified in the order<sup>9</sup>. Regulations may make provision authorising the Council, if satisfied that such a person has failed to comply with any such condition, to make a suspension or prohibition order in relation to him<sup>10</sup>.

1    le under the Teaching and Higher Education Act 1998 s 3 (as amended): see PARA 847 ante.

2    As to the meaning of 'employment' see PARA 825 note 7 ante.

3    Teaching and Higher Education Act 1998 ss 6, 9(1), Sch 2 para 3(1).

4    As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

5    Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 3(2)(a).

6    Ibid s 9(1), Sch 2 para 3(2)(b).

7    Ibid s 9(1), Sch 2 para 3(3).

8    'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 839 ante).

9    Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 3(4).

10   Ibid s 9(1), Sch 2 para 3(5). As to suspension orders see PARA 855 post; and as to prohibition orders see PARA 856 post.

#### **UPDATE**

#### **852-858 Discipline of Teachers**

SI 2001/1424 further amended: SI 2009/2161.

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### **855. Suspension orders.**

Where a suspension order is made in relation to a person: (1) he ceases to be eligible for registration as a teacher<sup>1</sup>; and (2) if he is a registered teacher<sup>2</sup> at the time when the order is made, his name must be removed from the register<sup>3</sup> accordingly<sup>4</sup>. However, he becomes eligible for registration again at the end of such period not exceeding two years as may be specified in the order<sup>5</sup>.

A suspension order may specify conditions to be complied with by the person to whom the order relates and where it does so: (a) that person becomes eligible again for registration<sup>6</sup> at the end of the period specified in the order<sup>7</sup> only if he has then complied with the conditions<sup>8</sup>; and (b) if he has not then complied with the conditions, he does not become so eligible again until he has complied with the conditions<sup>9</sup>. The conditions which may be specified in a suspension order include conditions for requiring the person in question to take any specified steps that will, in the opinion of the General Teaching Council for Wales<sup>10</sup>, be conducive to his becoming a competent teacher<sup>11</sup>, and conditions may be so specified that will involve expenditure on the part of that person<sup>12</sup>. A person in relation to whom conditions have been specified in a suspension order may, in accordance with regulations, apply to the Council for it to vary or revoke any of the conditions<sup>13</sup>.

1 Teaching and Higher Education Act 1998 ss 6, 9(1), Sch 2 para 4(1)(a) (Sch 2 para 4 substituted by the Education Act 2002 s 148, Sch 12 Pt 1 paras 1, 12(1), (2)). As to the registration of teachers see the Teaching and Higher Education Act 1998 s 3 (as amended); and PARA 847 ante.

2 As to the meaning of 'registered teacher' see PARA 827 note 4 ante.

3 As to the establishment and maintenance of the register of teachers see PARA 847 ante.

4 Teaching and Higher Education Act 1998 Sch 2 para 4(1)(b) (as substituted: see note 1 supra).

5 Ibid Sch 2 para 4(1) (as substituted: see note 1 supra).

6 Ie under ibid s 3 (as amended) (see PARA 847 ante).

7 Ie specified under ibid Sch 2 para 4(1) (as substituted): see the text and note 5 supra.

8 Ibid Sch 2 para 4(2)(a) (as substituted: see note 1 supra).

9 Ibid Sch 2 para 4(2)(b) (as substituted: see note 1 supra).

10 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

11 Teaching and Higher Education Act 1998 Sch 2 para 3(2)(a) (applied by s 9(1)); Sch 2 para 4(3) (as substituted: see note 1 supra).

12 Ibid Sch 2 para 3(2)(b) (applied by s 9(1)); Sch 2 para 4(3) (as substituted: see note 1 supra).

13 Ibid Sch 2 para 4(4) (as substituted: see note 1 supra).

## **UPDATE**

### **852-858 Discipline of Teachers**

SI 2001/1424 further amended: SI 2009/2161.



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### **856. Prohibition orders.**

Where a prohibition order is made in relation to a person: (1) he ceases to be eligible for registration as a teacher<sup>1</sup>; and (2) if he is a registered teacher<sup>2</sup> at the time when the order is made, his name must be removed from the register<sup>3</sup> accordingly<sup>4</sup>. He does not become eligible again for registration unless the General Teaching Council for Wales<sup>5</sup>, on an application made by him in accordance with regulations<sup>6</sup>, so directs<sup>7</sup>. No such application may be made before the end of the period of two years beginning with the date when the prohibition order takes effect or such longer period as may be specified in the order<sup>8</sup>.

1 Teaching and Higher Education Act 1998 ss 6, 9(1), Sch 2 para 5(1)(a). As to the registration of teachers see s 3 (as amended); and PARA 847 ante.

2 As to the meaning of 'registered teacher' see PARA 827 note 4 ante.

3 As to the establishment and maintenance of the register of teachers see PARA 847 ante.

4 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 5(1)(b).

5 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

6 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under Sch 2 (as amended) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 839 ante).

7 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 5(1).

8 Ibid s 9(1), Sch 2 para 5(2).

### **UPDATE**

#### **852-858 Discipline of Teachers**

SI 2001/1424 further amended: SI 2009/2161.

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### **857. Appeals against disciplinary orders.**

Regulations<sup>1</sup> must make provision for conferring on a person aggrieved by a disciplinary order<sup>2</sup> made in relation to him<sup>3</sup> a right to appeal against the order to the High Court<sup>4</sup> within 28 days from the date on which notice of the order is served on him<sup>5</sup>. On such an appeal the court may make any order which appears appropriate<sup>6</sup>. No appeal lies from any decision of the court on such an appeal<sup>7</sup>.

1 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 839 ante).

2 For the meaning of 'disciplinary order' see PARA 828 ante.

3 Ie under the Teaching and Higher Education Act 1998 Sch 2.

4 For the meaning of 'High Court' see PARA 832 note 4 ante.

5 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 6(1).

6 Ibid s 9(1), Sch 2 para 6(2).

7 Ibid s 9(1), Sch 2 para 6(3).

## **UPDATE**

### **852-858 Discipline of Teachers**

SI 2001/1424 further amended: SI 2009/2161.

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### **858. Regulations in connection with disciplinary powers.**

Regulations<sup>1</sup> may make provision for such incidental and supplementary matters as the National Assembly for Wales<sup>2</sup> considers appropriate in connection with disciplinary powers<sup>3</sup>, including provision<sup>4</sup>:

- 1558 (1) for the General Teaching Council for Wales<sup>5</sup>, where a disciplinary order<sup>6</sup> takes effect in relation to a person, to serve notice of the order on that person's employer<sup>7</sup>;
- 1559 (2) requiring the employer of any such person to take in relation to that person such steps in consequence of the order (which may include his dismissal) as may be prescribed<sup>8</sup>;
- 1560 (3) authorising the delegation of functions<sup>9</sup> and the determination of matters by any person or persons specified in the regulations<sup>10</sup>.

Regulations may also, in relation to any time after 1 September 2000<sup>11</sup>, make provision for securing that any disciplinary order<sup>12</sup> as it applies in relation to England or (as the case may be) Wales has the corresponding effect in relation to Wales or (as the case may be) England<sup>13</sup>, and such regulations may modify any provision of the Teaching and Higher Education Act 1998<sup>14</sup>.

1 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 6, Sch 2 (as amended) see the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424 (amended by SI 2003/503; SI 2003/542), which contain various provisions relating to disciplinary powers including the establishment of committees (see PARA 839 ante).

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Ie in connection with the Teaching and Higher Education Act 1998 Sch 2 paras 1-6 (as amended): see PARAS 852-857 ante.

4 Ibid s 9(1), Sch 2 para 7(1).

5 As to the establishment of the General Teaching Council for Wales see PARA 834 ante.

6 For the meaning of 'disciplinary order' see PARA 828 ante.

7 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 7(1)(a). As to the meaning of 'employer' see PARA 825 note 7 ante.

8 Ibid s 9(1), Sch 2 para 7(1)(b). 'Prescribed' means prescribed by regulations: s 43(1). See note 1 supra. See also the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542, which set out requirements for employers' or agents' reports where a person's services have ceased to be used or withdrawn on grounds relating to the person's health, misconduct or suitability to work with children (see PARA 860 post).

9 Ie conferred by virtue of the Teaching and Higher Education Act 1998 Sch 2 (as amended). As to the meaning of 'functions' see PARA 774 note 30 ante.

10 Ibid s 9(1), Sch 2 para 7(1)(c).

11 le the date specified in an order under *ibid* s 8(1): see PARA 834 ante.

12 le made under *ibid* Sch 2 (as amended).

13 *Ibid* s 9(1), Sch 2 para 7(2); General Teaching Council for Wales Order 1998, SI 1998/2911, arts 1, 2. As to the application of disciplinary orders made by the General Teaching Council for England and the General Teaching Council for Wales see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268, reg 25; and the General Teaching Council for Wales (Disciplinary Functions) Regulations 2001, SI 2001/1424, reg 25.

14 Teaching and Higher Education Act 1998 s 9(1), Sch 2 para 7(3). As to the meaning of 'modifications' see PARA 833 note 16 ante.

## **UPDATE**

### **852-858 Discipline of Teachers**

SI 2001/1424 further amended: SI 2009/2161.

### **858 Regulations in connection with disciplinary powers**

NOTE 8--SI 2003/542 replaced: Education (Supply of Information) (Wales) Regulations 2009, SI 2009/1350.

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### **(iii) Supply of Information**

#### **859. Supply of information relating to teachers.**

The Secretary of State<sup>1</sup> must supply the General Teaching Council for England<sup>2</sup>, and the National Assembly for Wales must supply the General Teaching Council for Wales<sup>3</sup>, with such information relating to individual teachers as he or it considers it to be necessary or desirable for the Council to have for the purpose of carrying out any of its functions<sup>4</sup>. The General Teaching Council for England must supply the Secretary of State, and the General Teaching Council for Wales must supply the Assembly, with such information as he or it may request for the purpose of statistical analysis, or any other of his or its functions relating to teachers<sup>5</sup>. Regulations may require either Council to supply information to such other person or body, and for such purposes and subject to such conditions, as may be prescribed<sup>6</sup>. The General Teaching Council for Wales and the General Teaching Council for England must each supply the other with such information as it is necessary or desirable for that other Council to have for the purpose of carrying out any of its functions<sup>7</sup>. The provisions described above do not limit the circumstances in which information may otherwise be supplied<sup>8</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the General Teaching Council for England see PARA 809 et seq ante.

3 As to the General Teaching Council for Wales see PARA 834 et seq ante.

4 See the Teaching and Higher Education Act 1998 s 14(1). The text refers to functions conferred by or under Pt I Ch I (ss 1-17) (as amended). As to the meaning of 'functions' see PARA 774 note 30 ante.

5 See *ibid* s 14(2).

6 See *ibid* s 14(3). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 14(3) see the General Teaching Council for England (Registration of Teachers) Regulations 2000, SI 2000/2176 (amended by SI 2001/23; SI 2001/1267); and the General Teaching Council for Wales (Functions) Regulations 2000, SI 2000/1979 (amended by SI 2001/2496; SI 2004/1741; SI 2005/69).

7 See the Teaching and Higher Education Act 1998 s 14(4). This is expressed to be without prejudice to the generality of s 14(3) (see the text and note 6 *supra*).

8 See *ibid* s 14(5).

### **UPDATE**

#### **859 Supply of information relating to teachers**

NOTE 6--SI 2000/1979 further amended: SI 2006/1343, SI 2009/1353. SI 2000/2176 further amended: SI 2007/1883.

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### **860. Supply of information following the dismissal or resignation of teachers.**

Where a relevant employer<sup>1</sup> has ceased to use a person's services<sup>2</sup> on a ground mentioned in the provisions which prohibit or restrict employment in education work or in work which brings a person regularly into contact with children<sup>3</sup>, or where a relevant employer might have ceased to use a person's services on such a ground had the person not ceased to provide those services<sup>4</sup>, the following provisions apply. In the case of a person who was providing services to a relevant employer in England<sup>5</sup>, the employer must provide prescribed<sup>6</sup> information to such of the following as may be prescribed<sup>7</sup>, namely: (1) the Secretary of State<sup>8</sup>; and (2) where the person is a registered teacher<sup>9</sup>, the General Teaching Council for England<sup>10</sup>. In the case of a person who was providing services to a relevant employer in Wales<sup>11</sup>, the employer must provide prescribed<sup>12</sup> information to such of the following as may be prescribed<sup>13</sup>, namely: (a) the National Assembly for Wales<sup>14</sup>; and (b) where the person is a registered teacher, the General Teaching Council for Wales<sup>15</sup>.

Where arrangements are made by one person (the 'agent') for another person (the 'worker') to carry out work at the request of or with the consent of a relevant employer<sup>16</sup>, whether or not under a contract<sup>17</sup>, and where an agent has terminated the arrangements<sup>18</sup>, or might have terminated the arrangements<sup>19</sup> if the worker had not terminated them<sup>20</sup>, or might have refrained from making new arrangements for a worker<sup>21</sup> if he had not ceased to make himself available for work<sup>22</sup>, the following provisions apply. In the case of arrangements for a worker to carry out work in England, the agent must provide prescribed information to such of the following as may be prescribed<sup>23</sup>, namely: (i) the Secretary of State<sup>24</sup>; and (ii) where the person is a registered teacher, the General Teaching Council for England<sup>25</sup>. In the case of arrangements for a worker to carry out work in Wales, the agent must provide prescribed information to such of the following as may be prescribed<sup>26</sup>, namely: (A) the National Assembly for Wales<sup>27</sup>; and (B) where the person is a registered teacher, the General Teaching Council for Wales<sup>28</sup>.

1 For these purposes, 'relevant employer' has the meaning given by the Education Act 2002 s 142 (see PARA 782 ante): Teaching and Higher Education Act 1998 s 15(5) (s 15 substituted by the Education Act 2002 s 215(1), Sch 21 para 83).

2 For these purposes, 'services' includes professional and voluntary services: Teaching and Higher Education Act 1998 s 15(5) (as substituted: see note 1 supra).

3 Ibid s 15(1)(a) (as substituted: see note 1 supra). The text refers to a ground mentioned in the Education Act 2002 s 142 (see PARA 782 ante). For these purposes, a reference to a ground mentioned in the Education Act 2002 s 142 must be read as if s 142(4)(e) were not limited to the case of a direction given by virtue of s 142(2) (d) (grounds relating to the person's health: see PARA 782 ante): Teaching and Higher Education Act 1998 s 15(4) (as so substituted).

4 Ibid s 15(1)(b) (as substituted: see note 1 supra).

5 For the meaning of 'England' see PARA 52 note 11 ante.

6 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 15 (as substituted) and s 15A (as added) see the Education (Prohibition from Teaching or Working with Children) Regulations 2003, SI 2003/1184 (amended by SI 2004/1493). The General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268 (amended by SI

2003/1186) were made under the Teaching and Higher Education Act 1998 s 15 as originally enacted and continue to have effect in relation to England under s 15 (as substituted) and s 15A (as added).

7 Ibid s 15(2) (as substituted: see note 1 supra).

8 Ibid s 15(2)(a) (as substituted: see note 1 supra). As to the supply of information by an employer to the Secretary of State following dismissal, resignation etc see the Education (Prohibition from Teaching or Working with Children) Regulations 2003, SI 2003/1184, reg 4, Sch 1 Pt 1 paras 1-7.

9 As to the meaning of 'registered teacher' see PARA 827 note 4 ante.

10 Teaching and Higher Education Act 1998 s 15(2)(b) (as substituted: see note 1 supra). As to the General Teaching Council for England see PARA 809 et seq ante. As to the provision of information by employers to the Council see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268, Pt III (reg 29), Schedule Pt 1 paras 1-7 (reg 29, Schedule substituted by SI 2003/1186).

11 For the meaning of 'Wales' see PARA 52 note 13 ante.

12 Ie prescribed by regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the regulations made under s 15 (as substituted) and s 15A (as added) in relation to Wales see the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542.

13 Teaching and Higher Education Act 1998 s 15(3) (as substituted: see note 1 supra).

14 Ibid s 15(3)(a) (as substituted: see note 1 supra). As to the supply of information by employers to the National Assembly for Wales following dismissal, resignation etc see the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542, reg 4, Schedule Pt I paras 1-7. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

15 Teaching and Higher Education Act 1998 s 15(3)(b) (as substituted: see note 1 supra). As to the General Teaching Council for Wales see PARA 834 et seq ante. As to the provision of information by employers to the Council see the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542, reg 5, Schedule Pt I paras 1-7.

16 The provisions of the Teaching and Higher Education Act 1998 s 15(4), (5) (as substituted) (see notes 1-3 supra) apply for the purposes of s 15A (as added) as they apply for the purpose of s 15 (as substituted): s 15A(9) (s 15A added by the Education Act 2002 Sch 21 para 83).

17 Teaching and Higher Education Act 1998 s 15A(1) (as added: see note 16 supra).

18 Ibid s 15A(2)(a) (as added: see note 16 supra). The text mentions arrangements terminated on a ground mentioned in the Education Act 2002 s 142 (see PARA 782 ante).

19 Ie on a ground mentioned in ibid s 142 (see PARA 782 ante).

20 Teaching and Higher Education Act 1998 s 15A(2)(b) (as added: see note 16 supra).

21 Ie on a ground mentioned in the Education Act 2002 s 142 (see PARA 782 ante). See note 16 supra.

22 Teaching and Higher Education Act 1998 s 15A(2)(c) (as added: see note 16 supra).

Ibid s 15A(3) (as added: see note 16 supra).

If the Secretary of State thinks that an agent has failed or is likely to fail to comply with a duty arising under s 15A(3) (as added), the Secretary of State may direct the person to comply with the duty: s 15A(5) (as so added). A direction under s 15A(5) (as added) is enforceable, on the application of the Secretary of State, by mandatory order: s 15A(7) (as so added). As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

24 Ibid s 15A(3)(a) (as added: see note 16 supra). As to the supply of information by an agent to the Secretary of State following dismissal, resignation etc see the Education (Prohibition from Teaching or Working with Children) Regulations 2003, SI 2003/1184, reg 4, Sch 1 Pt 2 paras 1-7.

25 Teaching and Higher Education Act 1998 s 15A(3)(b) (as added: see note 16 supra). As to the provision of information by agents to the Council see the General Teaching Council for England (Disciplinary Functions) Regulations 2001, SI 2001/1268, Pt III (reg 29), Schedule Pt 2 paras 8-14 (reg 29, Schedule substituted by SI 2003/1186).

Teaching and Higher Education Act 1998 s 15A(4) (as added: see note 16 supra).

If the Assembly thinks that an agent has failed or is likely to fail to comply with a duty arising under s 15A(4) (as added), the Assembly may direct the person to comply with the duty: s 15A(6) (as so added). A direction under s 15A(6) (as added) is enforceable, on the application of the Assembly, by a mandatory order: s 15A(8) (as so added).

27 Ibid s 15A(4)(a) (as added: see note 16 supra). As to the supply of information by agents to the National Assembly for Wales following dismissal, resignation etc see the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542, reg 6, Schedule Pt II paras 1-7.

28 Teaching and Higher Education Act 1998 s 15A(4)(b) (as added: see note 16 supra). As to the provision of information by agents to the Council see the Education (Supply of Information) (Wales) Regulations 2003, SI 2003/542, reg 7, Schedule Pt II paras 1-7.

## **UPDATE**

### **860 Supply of information following the dismissal or resignation of teachers**

TEXT AND NOTES--Teaching and Higher Education Act 1998 ss 15(1)(a), (b), (2), (3),(5), 15A(1)-(3), (9) amended, s 15(1A) added, s 15(4) repealed: Safeguarding Vulnerable Groups Act 2006 Sch 9 paras 5, 6.

NOTE 6--SI 2003/1184 further amended: SI 2007/195, SI 2008/2683. SI 2001/1268 further amended: SI 2008/3256.

NOTE 10--SI 2001/1268 reg 29 further amended: SI 2008/3256.

NOTES 12, 14, 15, 17, 18--SI 2003/542 replaced: Education (Supply of Information) (Wales) Regulations 2009, SI 2009/1350.

NOTE 24--SI 2003/1184 Sch 2 substituted by the Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2007, SI 2007/195; and amended by the Safeguarding Vulnerable Groups Act 2006 Sch 9 para 7 (in force in relation to England).



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## **(4) PAY AND CONDITIONS**

### **(i) Statutory Conditions of Employment**

#### **861. Establishment and constitution of the School Teachers' Review Body.**

The review body, established under the School Teachers' Pay and Conditions Act 1991<sup>1</sup>, is preserved under the Education Act 2002 and is known as the School Teachers' Review Body<sup>2</sup>. The School Teachers' Review Body must consider any matter which is referred to it by the Secretary of State and which relates to: (1) the remuneration of school teachers<sup>3</sup>; or (2) other conditions of employment of school teachers which relate to their professional duties or working time<sup>4</sup>.

Before reporting on a matter so referred to it, the Review Body must: (a) notify each relevant body<sup>5</sup>; (b) give each relevant body an opportunity to submit evidence and make representations<sup>6</sup>; and (c) give the Secretary of State an opportunity to submit evidence and make representations<sup>7</sup>. Following consideration of any such matter, the Review Body must report to the Prime Minister and the Secretary of State in accordance with any direction<sup>8</sup> of the Secretary of State about: (i) a consideration to which it is to have particular regard<sup>9</sup>; (ii) a matter on which it is to make a recommendation<sup>10</sup>; or (iii) the time within which it is to report<sup>11</sup>. Where the Prime Minister and the Secretary of State receive such a report, they must arrange for it to be published<sup>12</sup>.

1     Ie the body established under the School Teachers' Pay and Conditions Act 1991 s 1 (repealed) to examine and report on such matters relating to the statutory conditions of employment of school teachers in England and Wales as may from time to time be referred to it by the Secretary of State.

2     Education Act 2002 s 119(1). As to the appointment of the members, chairman and deputy chairman see PARA 862 post. As to the Secretary of State see PARA 52 ante.

3     Ibid s 120(1)(a). For these purposes, 'school teacher' means a person who is a school teacher for the purposes of the Secretary of State's power under the Education Act 2002 s 122 (see PARA 864 post) to make orders about remuneration and other conditions of employment: s 120(2).

4     Ibid s 120(1)(b). See *Wandsworth London Borough Council v National Association of Schoolmasters/Union of Women Teachers* [1994] ELR 170, (1993) 92 LGR 91, CA (a dispute between members of a teaching union and their employers over the carrying out of National Curriculum assessments was held to be a trade dispute within the terms of the Trade Union and Labour Relations (Consolidation) Act 1992 s 244 (see EMPLOYMENT vol 41 (2009) PARAS 1324-1326) because it related to the statutory conditions of employment of teachers defined in the School Teachers' Pay and Conditions Act 1991 (repealed)). See also *P (A Minor) v National Association of Schoolmasters/Union of Women Teachers* [2003] UKHL 8, [2003] 2 AC 663, [2003] 1 All ER 993 (dispute between members of a teaching union and their head teacher and governors over the return of an excluded pupil to their classes was a dispute as to the teachers' terms and conditions of employment).

5     Education Act 2002 s 121(1)(a). In relation to a matter referred to the Review Body, 'relevant body' means such of the following as appear to the Review Body to be appropriate to consult about the matter: (1) associations of local education authorities; (2) local education authorities; (3) bodies representing the interests of governing bodies of schools; and (4) bodies representing the interests of teachers: s 121(2). As to local education authorities see PARA 20 ante; and as to the governing bodies of maintained schools see PARA 203 et seq ante.

6 Ibid s 121(1)(b). The Review Body may: (1) determine the manner in which each relevant body is permitted to submit evidence or make representations; and (2) may make different determinations in respect of different relevant bodies: s 121(3).

7 Ibid s 121(1)(c).

8 A direction under ibid s 120(3) (see heads (i) to (iii) in the text) may be varied or revoked: s 120(5).

9 Ibid s 120(3)(a).

10 Ibid s 120(3)(b).

11 Ibid s 120(3)(c).

12 Ibid s 120(4).

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## **862. Appointment of members, chairman and deputy chairman.**

The School Teachers' Review Body<sup>1</sup> is to consist of not less than five and not more than nine members (including the chairman)<sup>2</sup>. Members hold and vacate office in accordance with their terms of appointment<sup>3</sup> and may resign by notice in writing to the Secretary of State<sup>4</sup>. The Secretary of State may by notice in writing dismiss a member if the member: (1) is adjudged bankrupt<sup>5</sup>; (2) enters into an arrangement with his creditors<sup>6</sup>; or (3) is, in the opinion of the Secretary of State, unable, unfit or unwilling to perform his duties whether by reason of physical or mental illness or otherwise<sup>7</sup>.

The chairman of the Review Body is appointed by the Prime Minister<sup>8</sup>. The chairman may by notice in writing to the Prime Minister resign as chairman, or resign both as chairman and as a member of the Review Body<sup>9</sup>. The Prime Minister may by notice in writing dismiss a chairman<sup>10</sup>: (a) who is adjudged bankrupt<sup>11</sup>; (b) who enters into an arrangement with his creditors<sup>12</sup>; or (c) who is, in the opinion of the Prime Minister, unable, unfit or unwilling to perform his duties whether by reason of physical or mental illness or otherwise<sup>13</sup>. If the chairman ceases to be a member of the Review Body, he also ceases to be chairman<sup>14</sup>.

The Secretary of State may appoint one of the members of the Review Body to act as deputy chairman<sup>15</sup>. The deputy chairman may by notice in writing to the Secretary of State resign as deputy chairman, or resign both as deputy chairman and as a member of the Review Body<sup>16</sup>. If the deputy chairman ceases to be a member of the Review Body, he also ceases to be deputy chairman<sup>17</sup>.

The Review Body must determine its own proceedings, including any provision for a quorum<sup>18</sup>. The validity of proceedings of the Review Body is not affected by a vacancy in the membership, a vacancy in the position of chairman or a defect in the appointment of a member<sup>19</sup>.

1 As to the establishment of the Review Body see PARA 861 ante.

2 Education Act 2002 s 119(4), Sch 11 para 1. The Prime Minister must appoint the chairman of the Review Body; and the Secretary of State must appoint the other members: s 119(2), (3). As to the chairman see the text and notes 8-14 infra.

3 Ibid Sch 11 para 2. This is expressed to be subject to Sch 11 paras 3-15: see the text and notes 4-19 infra; and PARA 863 post.

4 Ibid Sch 11 para 3. As to the Secretary of State see PARA 52 ante.

5 Ibid Sch 11 para 4(a). As to the making of bankruptcy orders see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 195 et seq.

6 Ibid Sch 11 para 4(b). As to arrangements with creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 859 et seq.

7 Ibid Sch 11 para 4(c).

8 See ibid s 119(2); and note 2 supra.

9 Ibid Sch 11 para 6.

10 Ibid Sch 11 para 4; applied by Sch 11 para 7. This power may be exercised so as to dismiss the chairman only from that office or also from membership of the Review Body: Sch 11 para 7.

- 11 Ibid Sch 11 para 4(a); applied by Sch 11 para 7.
- 12 Ibid Sch 11 para 4(b); applied by Sch 11 para 7.
- 13 Ibid Sch 11 para 4(c); applied by Sch 11 para 7.
- 14 Ibid Sch 11 para 8.
- 15 Ibid Sch 11 para 9.
- 16 Ibid Sch 11 para 10.
- 17 Ibid Sch 11 para 11.
- 18 Ibid Sch 11 para 13.
- 19 Ibid Sch 11 para 14.

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**863. Remuneration, allowances and pensions; compensation.**

The Secretary of State<sup>1</sup> may pay remuneration and allowances to a member of the School Teachers' Review Body<sup>2</sup> and to the chairman or deputy chairman<sup>3</sup>. The Secretary of State may make payments to or in respect of a member, the chairman or the deputy chairman by way of or in connection with a pension or an allowance or gratuity on retirement or death<sup>4</sup>. The Secretary of State may pay compensation to a person who ceases to be a member of the Review Body if the Secretary of State thinks it right by reason of special circumstances<sup>5</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the Review Body see PARA 861 ante.

3 Education Act 2002 s 119(4), Sch 11 para 12(1), (2). As to the appointment of the chairman, deputy chairman and members of the Review Body see PARA 862 ante.

4 Ibid Sch 11 para 12(3).

5 Ibid Sch 11 para 12(4).

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#### **864. Pay and conditions orders.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> ('a pay and conditions order') make provision for the determination of the remuneration of school teachers<sup>3</sup> and other conditions of employment of school teachers which relate to their professional duties or working time<sup>4</sup>. However, such an order may make provision about a matter only if the Secretary of State has referred the matter to the School Teachers' Review Body<sup>5</sup>, and considered its report<sup>6</sup>; and the Secretary of State may not make an order<sup>7</sup> unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the content of the order: (1) associations of local education authorities<sup>8</sup>; (2) local education authorities<sup>9</sup>; (3) bodies representing the interests of governing bodies of schools<sup>10</sup>; and (4) bodies representing the interests of teachers<sup>11</sup>.

A pay and conditions order is made by statutory instrument<sup>12</sup>, and may make provision by reference to a document<sup>13</sup>. A pay and conditions order may, in particular<sup>14</sup>:

- 1561 (a) confer discretion on a local education authority or a governing body<sup>15</sup>;
- 1562 (b) confer a function (which may include the administration of a test or assessment, the exercise of a discretion or the exercise of a supervisory or appellate jurisdiction) on the Secretary of State or on a specified person who has agreed with the Secretary of State to perform that function<sup>16</sup>;
- 1563 (c) require a discretion or function conferred under head (a) or head (b) above to be exercised having regard to guidance given by the Secretary of State or another specified person<sup>17</sup>;
- 1564 (d) make provision for the determination of a teacher's remuneration by reference to any matter including, in particular, his qualifications, experience, duties, aptitude or previous salary<sup>18</sup>;
- 1565 (e) make provision for a right of appeal specified by or determined in accordance with the order<sup>19</sup>;
- 1566 (f) limit the aggregate amount of an allowance, or of a number of allowances, payable to teachers in a school<sup>20</sup>;
- 1567 (g) set a lower or upper limit on the number or proportion of teachers in a school who are paid on a specified scale<sup>21</sup>;
- 1568 (h) set a lower or upper limit on the number or proportion of teachers in a school who are paid a specified allowance<sup>22</sup>;
- 1569 (i) provide for special provisions to apply in relation to a description of school specified by or determined in accordance with the order<sup>23</sup>;
- 1570 (j) provide for the determination of a question of the interpretation or application of a provision of the order<sup>24</sup>.

Provision under head (e) or head (j) above may confer jurisdiction on a court, tribunal, person or body<sup>25</sup> and provide for a matter to be settled by agreement between, or in a manner agreed between, teachers and local education authorities or teachers and governing bodies<sup>26</sup>.

Where a pay and conditions order applies to a school teacher: (i) his remuneration must be determined and paid in accordance with any provision of the order which applies to him<sup>27</sup>; (ii) a provision of the order which relates to a condition of employment other than remuneration and which applies to him has effect as a term of his contract of employment<sup>28</sup>; and (iii) a term of

that contract has no effect in so far as it makes provision which is prohibited by the order or which is otherwise inconsistent with a provision of the order<sup>29</sup>.

A local education authority and the governing body of a school must have regard to any guidance issued by the Secretary of State about the procedure to be followed in applying provisions of a pay and conditions order<sup>30</sup>. Where an employer fails to follow such guidance, the failure will not give rise to civil liability, but a court or tribunal may take the failure into account in any proceedings<sup>31</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Such an order may: (1) make provision which applies generally or only in a specified case or in specified circumstances; (2) make different provision for different cases or circumstances; (3) make transitional provision: Education Act 2002 s 124(1). Such an order may make provision by reference to the exercise of another power under the Education Act 2002: s 124(2). See further the text and notes 12-31 *infra*. As to the making of orders under the Education Act 2002 generally see PARA 77 note 7 ante.

3 *Ibid* s 122(1)(a). A person is a school teacher for these purposes if: (1) he is a qualified teacher (s 122(3)(a)); (2) he provides primary or secondary education under a contract of employment or for services (s 122(3)(b)); (3) the other party to the contract is a local education authority or the governing body of a foundation, voluntary aided or foundation special school (s 122(3)(c)); and (4) the contract requires him to carry out work of a kind which is specified by regulations under s 133(1) (see PARA 770 ante) (s 122(3)(d)). A person is a school teacher for these purposes if he serves as the head teacher of a school maintained by a local education authority: s 122(4). A person is also a school teacher for these purposes if his case satisfies heads (2), (3) and (4) *supra* and: (a) he possesses a prescribed qualification; (b) he provides education of a prescribed kind or in prescribed circumstances, or both; (c) he is undertaking training of a prescribed kind, or obtaining experience of a prescribed kind, with a view to becoming a qualified teacher; (d) he is within a prescribed class of persons awaiting assessment for the purpose of becoming a qualified teacher; or (e) he is within a prescribed class of persons awaiting the award of a qualification: s 122(5). For these purposes, 'prescribed' means prescribed by an order under s 122: s 122(8). In exercise of the power so conferred, the Secretary of State has made the Education (School Teachers' Prescribed Qualifications, etc) Order 2003, SI 2003/1709. A person providing education in an establishment maintained by a local authority in the exercise of a social services function is not a school teacher for these purposes: Education Act 2002 s 122(6). For the meaning of 'qualified teacher' see PARA 769 ante. For the meaning of 'primary education' see PARA 16 ante; and for the meaning of 'secondary education' see PARA 17 ante. For the meaning of 'contract of employment' see PARA 333 note 3 ante. As to local education authorities see PARA 20 ante; and as to governing bodies of maintained schools see PARA 203 *et seq* ante. As to foundation and voluntary schools and foundation special schools see PARA 102 *et seq* ante; and as to special schools see PARA 1027 *et seq* post. As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

4 *Ibid* s 122(1)(b).

5 *Ie* under *ibid* s 120 (see PARA 861 ante). As to the establishment of the School Teachers' Review Body see PARA 861 ante.

6 *Ibid* s 125(1). Section 125(1) does not apply: (1) to subsidiary provision; or (2) in a case where the Secretary of State has consulted the chairman of the Review Body about disapplying s 125(1): s 125(2). Provision is subsidiary for the purpose of head (1) *supra* if the Secretary of State thinks that it: (a) concerns only the criteria for entry into or exit from a particular class of teachers for purposes of remuneration; (b) concerns only the criteria for moving from one scale of remuneration to another; (c) concerns only the implementation or application of a system or principle on which the Review Body has reported; (d) prescribes a matter for the purpose of s 122(5) (see note 3 *supra*); (e) is made under s 123(4) (see note 18 *infra*); or (f) is minor, consequential, temporary, transitional or designed to resolve an anomaly: s 125(3). The Secretary of State may by order provide that provision of a specified kind (which may be described wholly or partly by reference to an opinion of the Secretary of State or another person): (i) is subsidiary for the purpose of head (1) *supra* (s 125(4)(a)); or (ii) is to cease to be subsidiary for that purpose (s 125(4)(b)). An order under s 125(4) may amend s 125(3): s 125(5). However, no order may be made by the Secretary of State under s 125(4) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: see s 210(3); and PARA 77 note 7 ante.

7 *Ie* an order under either *ibid* s 122 (see the text and notes 1-4 *supra*) or 125(4)(a) (see note 6 head (i) *supra*).

8 *Ibid* s 126(a).

9 Ibid s 126(b).

10 Ibid s 126(c).

11 Ibid s 126(d).

12 See *ibid* s 210; and *PARA 77* note 7 *ante*. An order under s 122 is subject to annulment in pursuance of a resolution of either House of Parliament (see s 210(4); and *PARA 77* note 7 *ante*) unless it contains only provisions which, in the opinion of the Secretary of State, give effect without significant modification to recommendations of the School Teachers' Review Body, in which case: (1) the order must contain a statement to that effect; and (2) s 210(4) does not apply (s 210(6)). As to the meaning of 'modification' see *PARA 43* note 7 *ante*; definition applied by s 212(2), (3).

13 *Ibid* s 124(3). An order which makes provision by reference to a document must include provision about publication of the document; and a reference in s 124 to an order includes a reference to a document referred to by an order: s 124(3). In exercise of the powers conferred by ss 122(1), 123-124, the Secretary of State has made the Education (School Teachers' Pay and Conditions) (No 3) Order 2005, SI 2005/2212 (amended by SI 2005/3479), which directs that certain provisions set out in *School Teachers' Pay and Conditions Document 2005 and Guidance on School Teachers' Pay and Conditions* (September 2005; Ref: 0-11-271180-4), published by the Stationery Office Ltd, have effect from 1 September 2005 and that the remaining provisions have effect from 1 January 2006. As to the effect of the document referred to in the Education (School Teachers' Pay and Conditions) (No 2) Order 1999, SI 1999/2160 (revoked) for all purposes including the calculation of pensions see the Education Act 2002 s 147.

14 *Ibid* s 123(1). An order may make retrospective provision, but not so as to reduce remuneration in respect of a period wholly or partly before the making of the order, or alter a condition of employment to the detriment of a teacher in respect of a period wholly or partly before the making of the order: s 123(3). For special provisions as to schools in education action zones see *PARA 865* *post*; and for special provisions for teachers on transfer of employment see *PARA 866* *post*.

15 *Ibid* s 123(1)(a).

16 *Ibid* s 123(1)(b).

17 *Ibid* s 123(1)(c).

18 *Ibid* s 123(1)(d). The Secretary of State may by order provide: (1) that a payment or entitlement of a specified kind is or is not to be treated as remuneration (s 123(4)(a)); (2) that a specified matter is or is not to be treated for that purpose as relating to the professional duties of school teachers (s 123(4)(b)); (3) that a specified matter is or is not to be treated for that purpose as relating to the working time of school teachers (s 123(4)(c)). At the date at which this volume states the law, no such order had been made under s 123(4). However, by virtue of the Interpretation Act 1978 s 17(2)(b), the School Teachers' Remuneration, Professional Duties and Working Time Order 1992, SI 1992/3069, the School Teachers' Remuneration Order 2000, SI 2000/2324 (regarding lump sum incentive payments), and the School Teachers' Remuneration Order 2002, SI 2002/2103 (regarding personal bonus payments to school teachers taking part in the Excellence Fellowship scheme with a higher education institution), have effect as if made under the Education Act 2002 s 123(4). The School Teachers' Remuneration, Professional Duties and Working Time Order 1992, SI 1992/3069, provides that the following payments or other benefits are not to be regarded as remuneration: (a) pay, including sick pay and maternity pay, in respect of any period when a school teacher is absent from duties (art 2(1)(a)(i)); (b) any sum received as compensation for loss, injury, disablement or death arising during or out of the undertaking by a school teacher in his capacity as such of any activity, whether or not that activity is a professional duty or undertaken in working time (art 2(1)(a)(ii)); (c) any premium paid on an insurance policy taken out to cover risks arising during or out of the undertaking by a school teacher in his capacity as such of any activity, whether or not that activity is a professional duty or undertaken in working time (art 2(1)(a)(iii)). It also provides that the following matters are not to be regarded as falling within the professional duties or working time of school teachers: (i) sick leave (art 2(1)(b)(i)); (ii) maternity leave (art 2(1)(b)(ii)); (iii) other authorised absence of a teacher from his duties (art 2(1)(b)(iii)); (iv) the date when a teacher's appointment or retirement takes effect (art 2(1)(b)(iv)); (v) notice given by either party of termination of a teacher's contract of employment or the date when such termination takes effect (art 2(1)(b)(v)); (vi) procedures relating to the suspension or dismissal of a teacher (art 2(1)(b)(vi)); (vii) disciplinary and grievance procedures (art 2(1)(b)(vii)); (viii) procedures for establishing whether or not a teacher is fit to teach (art 2(1)(b)(viii)); (ix) the prohibition of acts which would constitute unlawful discrimination, whether on the part of the teacher or of any other person, under the provisions of the Race Relations Act 1976 or the Sex Discrimination Act 1975 (see *DISCRIMINATION* vol 13 (2007 Reissue)) (School Teachers' Remuneration, Professional Duties and Working Time Order 1992, SI 1992/3069, art 2(1)(b)(ix)); (x) the requirement to give denominational religious instruction (art 2(1)(b)(x)); (xi) the total hours and times of work of teachers employed to teach part-time (art 2(1)(b)(xi)).

19 Education Act 2002 s 123(1)(e).



20 Ibid s 123(1)(f).

21 Ibid s 123(1)(g).

22 Ibid s 123(1)(h).

23 Ibid s 123(1)(i).

24 Ibid s 123(1)(j).

25 Ibid s 123(2)(a).

26 Ibid s 123(2)(b).

27 Ibid s 122(2)(a). In the application of s 122(2): (1) it is immaterial whether someone other than the party mentioned in s 122(3)(c) (see note 3 head (3) *supra*) provides or is responsible for providing all or part of a teacher's remuneration; (2) it is immaterial whether someone other than the party mentioned in s 122(3)(c) is treated wholly or partly as a teacher's employer for some or all purposes by virtue of an enactment; and (3) in relation to a person who provides education under a contract for services, a reference to his contract of employment is a reference to the contract for services: s 122(7). As to contracts for services see EMPLOYMENT vol 39 (2009) PARA 1 *et seq.*

28 Ibid s 122(2)(b). See note 27 *supra*.

29 Ibid s 122(2)(c). See note 27 *supra*.

30 Ibid s 127(1), (2). The Secretary of State may not issue guidance under s 127(1) unless he has consulted such of the following as appear to him to be appropriate to consult having regard to the nature of the guidance: (1) associations of local education authorities; (2) local education authorities; (3) bodies representing the interests of governing bodies of schools; and (4) bodies representing the interests of teachers: s 127(4).

31 Ibid s 127(3).

## UPDATE

### 864 Pay and conditions orders

NOTE 3--See the School Teachers' Incentive Payments (England) Order 2008, SI 2008/2099; the School Teachers' Incentive Payments (England) Order 2009, SI 2009/1974.

NOTE 13--SI 2005/2212 replaced: Education (School Teachers' Pay and Conditions) Order 2009, SI 2009/2132. Now, in exercise of the powers conferred by ss 122(1), 123, 124, the Secretary of State has made the Education (School Teachers' Pay and Conditions) Order 2009, SI 2009/2132, which directs that the provisions set out in *School Teachers' Pay and Conditions Document 2009 and Guidance on School Teachers' Pay and Conditions*, published by the Stationery Office Ltd, have effect from 1 September 2009.

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### **865. Special provisions as to schools in education action zones.**

On the application of the governing body<sup>1</sup> of a school<sup>2</sup> which forms part of an education action zone<sup>3</sup>, the Secretary of State<sup>4</sup> may by order<sup>5</sup> provide that the provisions governing the effect of a pay and conditions order<sup>6</sup> will not apply to any school teacher<sup>7</sup> at the school<sup>8</sup>. A governing body may not make such an application unless it has consulted each school teacher at the school<sup>9</sup>. Such an application must specify a date for commencement of the order sought<sup>10</sup>.

Where such an order is in force in respect of a school: (1) the governing body must determine the remuneration and other conditions of employment of each school teacher at the school<sup>11</sup>; (2) the local education authority<sup>12</sup> must do anything necessary to give effect to the governing body's determination<sup>13</sup>; and (3) pending a determination under head (1) above, the terms on which a school teacher works at the school must remain unchanged<sup>14</sup>.

The Secretary of State may make regulations<sup>15</sup> about the provisions governing the effect of a pay and conditions order<sup>16</sup> where an order disapplying those provisions<sup>17</sup> is revoked, or lapses in whole or in part because one or more schools to which the order relates cease to form part of an education action zone<sup>18</sup>.

1 As to governing bodies of maintained schools see PARA 203 et seq ante.

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 Ie for the purposes of the School Standards and Framework Act 1998 Pt I Ch III (ss 10-12) (as amended) (see PARA 454 et seq ante).

4 As to the Secretary of State see PARA 52 ante.

5 An order made under the Education Act 2002 s 128(2) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 210(4), (5); and PARA 77 note 7 ante.

6 Ie ibid s 122(2) (see PARA 864 ante). As to pay and conditions orders see PARA 864 ante.

7 For the meaning of 'school teacher' see PARA 864 note 3 ante; definition applied by virtue of ibid s 128(7).

8 Ibid s 128(1), (2).

9 Ibid s 128(4).

10 Ibid s 128(5). The date specified must not precede the expiry of the period of three months beginning with the date on which the application is made (s 128(5)(a)); and an order made on the application must provide that it comes into force on the date specified in the application or on a later date which is agreed between the Secretary of State and the governing body and which is specified in the order (s 128(5)(b)).

11 Ibid s 128(3)(a).

12 As to local education authorities see PARA 20 ante.

13 Education Act 2002 s 128(3)(b).

14 Ibid s 128(3)(c). Section 128(3)(c) applies irrespective of any new order made under s 122 (see PARA 864 ante); s 128(3)(c).

15 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 128.

16 Ie ibid s 122(2) (see PARA 864 ante).

17 Ie an order under ibid s 128(2).

18 Ibid s 128(6).

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## **866. Special provisions for teachers on transfer of employment.**

Where: (1) a community, foundation or voluntary or community or foundation special school<sup>1</sup> ('a maintained school') is established in place of an independent school<sup>2</sup> in pursuance of published proposals<sup>3</sup>; and (2) a person becomes a school teacher<sup>4</sup> in the maintained school in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 1981<sup>5</sup>, the provisions governing the effect of a pay and conditions order<sup>6</sup> do not apply to such a person unless he gives notice in writing to the new employer that the order is to so apply<sup>7</sup>. Where the governing body of a foundation, voluntary aided or foundation special school receives such a notice, it must inform the local education authority<sup>8</sup>.

1 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 et seq post.

2 As to independent schools see PARA 465 et seq ante.

3 Education Act 2002 s 129(1)(a), (5). The text refers to proposals published under the School Standards and Framework Act 1998 s 28 (as amended; prospectively amended) (see PARA 132 ante) or s 31 (prospectively amended) (see PARA 136 ante). The Education Act 2002 s 129(1)(a) is amended by the Education Act 2005 s 72, Sch 12 para 16 as from a day to be appointed under ss 125(4), 126(1), (3)(b) so that it applies also to proposals published under the School Standards and Framework Act 1998 s 28A (prospectively added) (see PARA 133 ante). However, at the date at which this volume states the law, no such day had been appointed.

4 For the meaning of 'school teacher' see PARA 864 note 3 ante; definition applied by virtue of the Education Act 2002 s 129(4).

5 Ibid s 129(1)(b). As to the Transfer of Undertakings (Protection of Employment) Regulations 1981, SI 1981/1794 (as amended) see EMPLOYMENT vol 39 (2009) PARAS 111 et seq, 561; EMPLOYMENT vol 40 (2009) PARA 755.

6 I.e. the Education Act 2002 s 122(2) (see PARA 864 ante). As to pay and conditions orders see PARA 864 ante.

7 Ibid s 129(2). Pursuant to s 129(2), s 122(2) applies to such a person in respect of the period beginning with: (1) a date specified in the notice; (2) if no date is specified under head (1) supra, a date agreed between the teacher and the new employer; or (3) if no date is specified under head (1) supra or agreed under head (2) supra, the date on which the employer receives the notice: s 129(2).

8 Ibid s 129(3). As to local education authorities see PARA 20 ante.

### **UPDATE**

## **866 Special provisions for teachers on transfer of employment**

TEXT AND NOTE 3--Prospective amendment repealed; in relation to England, the reference is to proposals published under the School Standards and Framework Act 1998 s 28, 28A or s 31, the Education Act 2005 s 66 or the Education and Inspections Act 2006 s 7 or 11: 2002 Act s 129(1)(a), (6) (s 129(1)(a) amended, s 129(6) added by the Education and Inspections Act 2006 Sch 3 para 47).

TEXT AND NOTE 5--Reference to SI 1981/1794 now to Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246: 2002 Act s 129(1)(b) (amended by SI 2006/246).



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## **(ii) Pensions and Benefits**

### **867. Superannuation of teachers.**

Teachers' superannuation and pensions were, until 1965, governed mainly by the Teachers' (Superannuation) Acts 1918 to 1956<sup>1</sup>. The Teachers' Superannuation Act 1965 provided for the making of superannuation regulations, and introduced pensions for the widows and other dependants of teachers<sup>2</sup>. Teachers' superannuation is now governed by regulations made under the Superannuation Act 1972<sup>3</sup>.

Under the Superannuation Act 1972, the Secretary of State<sup>4</sup> may, by regulations<sup>5</sup> made with the consent of the Minister for the Civil Service<sup>6</sup>, make provision with respect to the pensions, allowances or gratuities<sup>7</sup> which, subject to the fulfilment of such requirements and conditions as may be prescribed by the regulations, are to be, or may be, paid to or in respect of teachers<sup>8</sup> by the Secretary of State or, in the case of injury benefit<sup>9</sup>, by the Secretary of State, an employer of teachers or such other person as the Secretary of State may consider appropriate and may specify in the regulations<sup>10</sup>.

Where such regulations make provision with respect to money purchase benefits<sup>11</sup>, they may also: (1) include provision enabling a person to elect for such money purchase benefits as are to be provided to or in respect of him under the regulations to be purchased from any authorised provider<sup>12</sup> whom he may specify<sup>13</sup>; and (2) provide<sup>14</sup> that the making of such an election has the effect, in such cases as may be specified in the regulations, of discharging any liability of the Secretary of State to pay those benefits to or in respect of that person<sup>15</sup>. However, no regulations may be so framed as to have the effect that any money purchase benefits to be provided under them may only be provided in a manner which discharges that liability of the Secretary of State<sup>16</sup>.

Before making any regulations under the provisions described above, the Secretary of State must consult with representatives of local education authorities and teachers and with such representatives of other persons likely to be affected by the proposed regulations as appear to him to be appropriate<sup>17</sup>.

1 The Teachers' (Superannuation) Acts 1918 to 1956 have been repealed: see eg the Teachers' Superannuation Act 1965.

2 The Teachers' Superannuation Act 1965 was repealed by, and consolidated in, the Teachers' Superannuation Act 1967, which itself was repealed with savings by the Superannuation Act 1972.

3 See *ibid* s 9 (as amended); and the text and notes 4-17 *infra*.

4 As to the Secretary of State see PARA 52 *ante*.

5 As to the regulations made under the Superannuation Act 1972 s 9 (as amended) see the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924 (amended by SI 1995/2004; SI 1997/3001; SI 2000/666; SI 2000/3028; SI 2001/3649; SI 2005/2198) (see PARA 869 *post*); the Teachers' Pensions Regulations 1997, SI 1997/3001 (amended by SI 1998/1129; SI 1998/2255; SI 1998/2256; SI 1999/607; SI 2000/665; SI 2000/2431; SI 2000/3028; SI 2001/871; SI 2001/3649; SI 2002/3058; SI 2003/2096; SI 2004/587; SI 2005/2198) (see PARA 868 *post*); the Teachers' Pensions (Employers' Supplementary Contributions) Regulations 2000, SI 2000/502; the Teachers' Pensions (Contributable Salary) Regulations 2000, SI 2000/907; and the Teachers' Pensions (Sharing of Pensions on Divorce or Annulment) Regulations 2000, SI 2000/3028.

6 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550. The responsibility for pensions was transferred from the Minister for the Civil Service to the Treasury (see the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2(b)) and then back from the Treasury to the Minister for the Civil Service (see the Transfer of Functions (Treasury and Minister for the Civil Service) Order 1995, SI 1995/269, art 3, Schedule).

7 Regulations under the Superannuation Act 1972 s 9 (as amended) may provide, notwithstanding anything in the Pensions (Increase) Act 1971, that the cost of increases under the Pensions (Increase) Act 1971 of such of the pensions, allowances or gratuities payable under the regulations as may be prescribed by the regulations, or such part of those increases as may be so prescribed, are to be defrayed by contributions from employers of teachers or from such other persons or classes of person (apart from teachers) as the Secretary of State may consider appropriate and may specify in the regulations, or by contributions from such of those employers or other persons as may be so specified: Superannuation Act 1972 s 9(3A) (s 9(2A), (3A), (5A) added by the Pensions (Miscellaneous Provisions) Act 1990 ss 4(1), 8(3), 11(2)). Any provisions of the Pensions (Increase) Act 1971, or of regulations made under s 5 (as amended), relating to liability for the cost of increases of pensions, allowances or gratuities payable under the regulations have effect subject to the provisions of any regulations made by virtue of the Superannuation Act 1972 s 9(3A) (as added) and for the time being in force: s 9(3A) (as so added). As to the Pensions (Increase) Act 1971 and the regulations so made see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 614 et seq.

8 For these purposes, 'teachers' includes such persons as may be prescribed by regulations made under the Superannuation Act 1972 s 9 (as amended), being persons employed otherwise than as teachers: (1) in a capacity connected with education which to a substantial extent involves the control or supervision of teachers; or (2) in employment which involves the performance of duties in connection with the provision of education or services ancillary to education: s 9(6).

9 For these purposes, 'injury benefit' means a pension, allowance or gratuity payable under the regulations to or in respect of a teacher in consequence of any injury sustained, or disease contracted, by him in the course of his employment in that capacity: *ibid* s 9(6) (definition added by the Pensions (Miscellaneous Provisions) Act 1990 ss 8(6), 11(3)).

The subsidiary powers of local authorities exercisable by a local education authority by virtue of the Local Government Act 1972 s 111 (see LOCAL GOVERNMENT vol 69 (2009) PARA 462) are taken to include, and to have at all times included, power to pay, or arrange for the payment of, injury benefit to or in respect of teachers: Superannuation Act 1972 s 9(5A) (as added: see note 7 *supra*). However, the Local Government Act 1972 s 111 ceases to confer any such power on an authority as from the coming into force of the first regulations under the Superannuation Act 1972 s 9 (as amended) which make provision for the payment of injury benefit by a local education authority to or in respect of teachers: s 9(5A) (as so added). As to local education authorities see PARA 20 *ante*.

10 *Ibid* s 9(1) (amended by the Pensions (Miscellaneous Provisions) Act 1990 s 11(1)); and see the Superannuation Act 1972 s 1(1). Without prejudice to the generality of s 9(1), regulations under s 9 (as amended) may include all or any of the provisions referred to in Sch 3 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 875), and may make different provision as respects different classes of persons and different circumstances: s 9(2). Where the regulations provide for the making of any such payment as is referred to in Sch 3 para 3, 5 or 6, they may also provide for the payment to be made by the Secretary of State: s 9(3).

Where regulations under s 9 (as amended) provide for the establishment of a superannuation fund, the regulations may also provide for the payment by the Secretary of State of the administrative expenses of the persons by whom, in accordance with the regulations, the fund is to be administered, and of such travelling, subsistence and other allowances to those persons as the Secretary of State may, with the consent of the Minister for the Civil Service, determine: s 9(4).

11 For these purposes, 'money purchase benefits', in relation to a member of a personal or occupational pension scheme or the widow or widower of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not average salary benefits: *ibid* s 9(6) (definition added by the Pensions (Miscellaneous Provisions) Act 1990 s 8(6); and amended by the Pension Schemes Act 1993 s 190, Sch 8 para 7); Pension Schemes Act 1993 s 181(1).

12 For these purposes, 'authorised provider', in relation to the investment of any sums paid by way of voluntary contributions or the provision of any benefit, means: (1) a person who has permission under the Financial Services and Markets Act 2000 Pt IV (ss 40-55) (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 348 et seq) to invest such sums or, as the case may be, to provide that benefit; (2) an EEA firm of a kind mentioned in s 31(1)(b), s 425(1)(a), Sch 3 para 5(a), (b) or (c), which has permission under Sch 3 para 15, as a result of qualifying for authorisation under Sch 3 para 12 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315), to invest such sums or, as the case may be, to provide that benefit and which satisfies the conditions applicable to it which are specified in the Superannuation Act 1972 s 1(9B)-(9D) (as added); or (3) an EEA firm of a kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(d), which has

permission under Sch 3 para 15, as a result of qualifying for authorisation under Sch 3 para 12 (see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315), to invest such sums or, as the case may be, to provide that benefit: Superannuation Act 1972 s 1(9) (definition substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 1); definition applied by virtue of the Superannuation Act 1972 s 9(6) (definition substituted by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 1).

13 Superannuation Act 1972 s 9(2A)(a) (as added: see note 7 supra).

14 Ie notwithstanding ibid s 9(1) (as amended) (see the text and notes 4-10 supra).

15 Ibid s 9(2A)(b) (as added: see note 7 supra).

16 Ibid s 9(2A) (as added: see note 7 supra).

17 Ibid s 9(5).

## **UPDATE**

### **867 Superannuation of teachers**

NOTE 5--SI 1994/2924, SI 1997/3001 further amended: SI 2006/736, SI 2006/2214, SI 2008/541.

NOTE 11--Definition of 'money purchase benefits' in Pension Schemes Act 1993 s 181(1) amended: SI 2005/2053.



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### **868. The teachers' pension scheme.**

The Teachers' Pensions Regulations 1997<sup>1</sup> revoke and consolidate earlier regulations<sup>2</sup>, and provide for the superannuation of teachers and the pensions payable to their dependants. Provision is made in relation to pensionable employment<sup>3</sup>, teachers' contributions<sup>4</sup>, reckonable service<sup>5</sup>, benefits<sup>6</sup>, transfer values<sup>7</sup>, finance<sup>8</sup> and pension sharing<sup>9</sup>. The benefits offered by the scheme include a lump sum<sup>10</sup>, ill-health retirement benefits<sup>11</sup>, death grants<sup>12</sup> and family benefits<sup>13</sup>.

<sup>1</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001 (as amended). As to the interpretation of the Teachers' Pensions Regulations 1997, SI 1997/3001 (as amended) see Pt A (regs A1-A3, Schs 1, 9) (amended by SI 1998/2255; SI 1999/607; SI 2000/665; SI 2000/2431; SI 2000/3028; SI 2001/871; SI 2004/587; SI 2005/2198). Supplemental provisions are contained in the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt H (regs H1-H13, Schs 14, 15) (amended by SI 1998/2255; SI 2000/665; SI 2004/587; SI 2005/2198).

<sup>2</sup> The Teachers' Pensions Regulations 1997, SI 1997/3001 (as amended) revoked the Teachers' Superannuation (Consolidation) Regulations 1988, SI 1988/1652, which themselves consolidated and amended earlier regulations.

<sup>3</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt B (regs B1-B7, Sch 2) (amended by SI 1998/2255; SI 1999/607; SI 2000/665; SI 2000/2431; SI 2001/871; SI 2003/2096; SI 2004/587; SI 2005/2198).

<sup>4</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt C (regs C1-C18, Schs 3-6) (amended by SI 1998/2255; SI 2000/665; SI 2000/871; SI 2004/587; SI 2005/2198).

<sup>5</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt D (regs D1-D4, Sch 7) (amended by SI 2004/587; SI 2005/2198).

<sup>6</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt E (regs E1-E35, Schs 8, 10, 11) (amended by SI 1998/1129; SI 1998/2255; SI 2000/655; SI 2000/2431; SI 2000/3028; SI 2004/587; SI 2005/2198).

<sup>7</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt F (regs F1-F4, Sch 12) (amended by SI 2000/655; SI 2004/587; SI 2005/2198).

<sup>8</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt G (regs G1-G8, Sch 13) (amended by SI 1998/2255; SI 1999/607; SI 2000/665; SI 2002/3058; SI 2004/587; SI 2005/2198).

<sup>9</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, Pt I (regs I1-I11) (added by SI 2000/3028; and amended by SI 2005/2198).

<sup>10</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, reg E6 (amended by SI 2000/665).

<sup>11</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, reg E8 (amended by SI 2000/665).

<sup>12</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, reg E20 (amended by SI 2000/665; SI 2004/587; SI 2005/2198).

<sup>13</sup> See the Teachers' Pensions Regulations 1997, SI 1997/3001, reg E22 (amended by SI 2000/665; SI 2005/2198).

## **UPDATE**

### **868 The teachers' pension scheme**

NOTES--SI 1994/2924 regs B1, C1, C2, C3C, D1, E4-E6, E8A, E22, E25, E28, E31, E33, EA1, H3, Schs 1, 2, 2A further amended, regs B6A, C1A, D5 added: SI 2008/541.

NOTE 1--SI 1997/3001 Sch 1 further amended: SI 2006/736, SI 2006/2214.

NOTE 4--SI 1997/3001 regs C13, C14 further amended: SI 2006/736. SI 1997/3001 reg C1, C2 further amended: SI 2006/2214.

NOTES 6, 13--SI 1997/3001 regs E4, E19A, E22 further amended: SI 2006/736. SI 1997/3001 reg E4, E13, E19, Schs 8, 10 further amended: SI 2006/2214.

NOTE 7--SI 1997/3001 regs F1, F4, Sch 12 further amended: SI 2006/736.

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### **869. Additional voluntary contributions.**

Teachers may pay additional voluntary contributions to improve their pension provision<sup>1</sup>. The Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994<sup>2</sup> make provision in relation to eligibility to make additional voluntary contributions<sup>3</sup>, the making and acceptance of elections<sup>4</sup> to pay regular and lump sum contributions<sup>5</sup>, and the variation and cancellation of such elections<sup>6</sup>. Provision is made for the investment of contributions<sup>7</sup>, inward<sup>8</sup> and outward transfers<sup>9</sup>, retirement<sup>10</sup> and the repayment of investments in certain cases<sup>11</sup>. Benefits<sup>12</sup> may include lump sum death benefits<sup>13</sup> and pension sharing on divorce<sup>14</sup>. The regulations also contain provisions in relation to payments to be made by the Secretary of State<sup>15</sup>, information to be given to him<sup>16</sup> and the determination of questions by him<sup>17</sup>.

1 As to teachers' pension schemes see PARA 868 ante; and as to the power to make pension schemes for teachers see PARA 867 ante.

2 Ie the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924 (as amended). As to revocations and transitional provisions see reg 20 (amended by SI 1997/3001).

3 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 7 (amended by SI 1997/3001).

4 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 3.

5 See *ibid* regs 4-5 (reg 5 amended by SI 2000/666). As to the payment of contributions and the amount of regular contributions see the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 8 (amended by SI 1997/3001).

6 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 6.

7 See *ibid* reg 9.

8 See *ibid* reg 10 (amended by SI 2000/666).

9 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 11 (amended by SI 1997/3001; SI 2000/3028; SI 2005/2198).

10 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 12 (amended by SI 1997/3001; SI 2000/666; SI 2000/3028).

11 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 15 (amended by SI 1997/3001).

12 As to benefit limits see the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 14, Schedule (amended by SI 1997/3001; SI 2000/666).

13 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 13. As to payments in respect of deceased persons see reg 18.

14 See *ibid* reg 13A (added by SI 2000/3028).

15 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 16 (amended by SI 1997/3001). As to the Secretary of State see PARA 52 ante.

16 See the Teachers' Superannuation (Additional Voluntary Contributions) Regulations 1994, SI 1994/2924, reg 17.

17 See *ibid* reg 19.

## **UPDATE**

### **869 Additional voluntary contributions**

NOTES 3, 10, 15--SI 1994/2924 regs 7, 12, 16 further amended: SI 2008/541.

NOTES 4, 5, 8-12, 14, 15--SI 1994/2924 regs 3, 13A amended, regs 8, 10-12, 15, 16 further amended, reg 14, Schedule revoked: SI 2006/736.

NOTE 9--SI 1994/2924 reg 11 further amended: SI 2006/2214.

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### **870. Elementary school teachers' superannuation.**

The Elementary School Teachers (Superannuation) Act 1898<sup>1</sup> created a pension scheme for certificated teachers<sup>2</sup>. It provided a deferred annuity<sup>3</sup>, a superannuation allowance<sup>4</sup> and a disablement allowance<sup>5</sup>. Provision was also made in relation to the making of decisions<sup>6</sup>, forfeiture for misconduct<sup>7</sup> and the payment and assignment of annuities and allowances<sup>8</sup>.

1 The Elementary School Teachers (Superannuation) Act 1898 was amended by the Elementary School Teachers (Superannuation) Act 1912 and applied to Jersey by the Elementary School Teachers Superannuation (Jersey) Act 1900. As to the rules made under the Elementary School Teachers (Superannuation) Act 1898 s 6 (amended by virtue of Administration of Estates (Small Payments) (Increase of Limit) Order 1984, SI 1984/539) see the Elementary School Teachers Superannuation Rules 1919, SR & O 1920/2298 (amended by the Administration of Estates (Small Payments) Act 1965 ss 1(1)(c), 6, Sch 1 Pt III; and by SI 1950/60).

2 Prior to 1 April 1945, 'certificated teachers' meant a teacher who was recognised under the Education Code as a certificated teacher for public elementary schools: Elementary School Teachers (Superannuation) Act 1898 s 11; Teachers (Superannuation) Act 1945 s 11(2) (repealed). In relation to any subsequent period, 'certificated teacher' meant any person who would for the time being have been recognised as a certificated teacher under the regulations which were in force with respect to such recognition immediately before 1 April 1945 if those regulations had remained in force thereafter: s 11(2) (repealed). For these purposes, 'Education Code' meant such minutes of the Education Department as were for the time being in force for the purpose of the Elementary Education Act 1870: Elementary School Teachers (Superannuation) Act 1898 s 11.

3 See *ibid* s 1 (amended by the Teachers (Superannuation) Act 1925 s 23(3); the Elementary School Teachers (Superannuation) Act 1912 s 1(1), (2); the Teachers (Superannuation) Act 1945 s 11(1); the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986, art 4(5); and by virtue of Decimal Currency Act 1969 s 10(1)). As to the collection of contributions and the deferred annuity fund see the Elementary School Teachers (Superannuation) Act 1898 s 3 (amended by the School Teachers (Superannuation) Act 1918 s 12(4)).

4 See the Elementary School Teachers (Superannuation) Act 1898 s 1 (as amended: see note 3 *supra*).

5 See *ibid* s 2 (amended by the Elementary School Teachers (Superannuation) Act 1912 s 1(3); the School Teachers (Superannuation) Act 1918 ss 12(4), 13(3); and by virtue of Decimal Currency Act 1969 s 10(1)).

6 See the Elementary School Teachers (Superannuation) Act 1898 s 7.

7 See *ibid* s 8.

8 See *ibid* s 9 (amended by the Teachers (Superannuation) Act 1956 s 21).

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### **871. Compensation for redundancy and premature retirement.**

Regulations provide for compensation to teachers on redundancy and premature retirement<sup>1</sup>. A teacher who is entitled to a statutory redundancy payment<sup>2</sup> may claim compensation from his employer<sup>3</sup>.

A teacher who immediately before his employment ceased was employed in relevant employment<sup>4</sup>, who had attained the age of 50 but had not attained the age of 65<sup>5</sup>, and who satisfied certain conditions<sup>6</sup> is entitled to be credited with an additional service credit<sup>7</sup>. A teacher thus credited is entitled to a lump sum compensation and to annual compensation calculated in accordance with the regulations<sup>8</sup>. The regulations also provide for compensation to be paid after the teacher's death<sup>9</sup>.

Separate provision is made as to compensation payable for loss of employment or loss or diminution of emoluments consequent upon the reorganisation of education authorities in inner London<sup>10</sup>; and provision is also made for payment of compensation to teachers employed by a local education authority, other than those employed in schools or further or higher education institutions, and to certain administrative and support staff for redundancy or loss of remuneration caused by local government reorganisation<sup>11</sup>.

1 See the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311 (as amended); and notes 2-9 *infra*. Part IV (regs 7-10) (as amended) introduces provisions for mandatory compensation for premature retirement. As to dismissal by reason of redundancy generally see EMPLOYMENT vol 40 (2009) PARA 790 et seq. See also *Healey v Bridgend County Council* [2002] EWCA Civ 1996, [2004] ICR 561. As to requirements as to teachers' health and physical capacity see PARA 781 *ante*.

2 *Ie* under the Employment Rights Act 1996 Pt XI (ss 135-181) (as amended) (see EMPLOYMENT vol 40 (2009) PARA 790 et seq); see the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311, reg 4(1).

3 See *ibid* reg 5 (amended by SI 1999/608). Such compensation must not exceed the difference between the statutory redundancy payment and the payment he would have been entitled to if the Employment Rights Act 1996 s 227(1)(c) (see EMPLOYMENT vol 39 (2009) PARA 121) had been repealed: see the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311, reg 5. In the case of a person employed at an aided school, compensation is payable by the 'appropriate person', namely the local education authority, and in any other case is payable by the person by whom he was employed: reg 2(2) (definition substituted by SI 1999/608). The Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311 (as amended) also provide for discretionary compensation for termination of employment: see reg 6 (amended by SI 1998/2256; SI 1999/608).

4 See the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311, reg 4(6)(a). As to relevant employment see reg 3 (amended by SI 1998/2256; SI 1999/608; SI 2000/664).

5 See the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311, reg 4(7)(a).

6 As to these conditions see *ibid* reg 4(6)(c), (7)(b)-(e) (amended by SI 1998/2256). Only teachers who have not received discretionary compensation for termination under the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311, reg 6 (as amended) may be credited with an additional period of service: see reg 4(6)(b).

7 See *ibid* reg 11.

8 See *ibid* reg 12 (amended by SI 1998/2256).

9 See the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997, SI 1997/311, reg 14 (amended by SI 1998/2256).

10 See the Education (Reorganisation in Inner London) (Compensation) Regulations 1989, SI 1989/1139 (amended by the Employment Rights (Dispute Resolution) Act 1998 s 1(2)(a); and by SI 1990/1433; SI 1996/1935). As to education in inner London generally see PARA 20 ante; and LONDON GOVERNMENT.

11 See the Local Government Reorganisation (Compensation for Redundancy or Loss of Remuneration) (Education) Regulations 1996, SI 1996/1240.

## **UPDATE**

### **871 Compensation for redundancy and premature retirement**

NOTE 3--SI 1997/311 reg 6 substituted: SI 2006/2216.

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## **(5) TEACHERS' DUTIES**

### **872. The teacher's duties towards the pupil: common law and statutory.**

The teacher's duty at common law is to take such care of the children in his charge as a careful parent would take of his own children<sup>1</sup>. The standard of care generally expected of a teacher is that of a reasonably prudent parent judged not in the context of his own home but in that of a school<sup>2</sup>, or the standard of a reasonable parent of a rather large family<sup>3</sup>. The general position that the duty of care is that of the reasonably careful and prudent father towards his own children is helpful when considering, for example, individual instructions to individual children in a school, but that rule may sometimes be unrealistic in the context of a large group<sup>4</sup>.

It is the statutory duty of every employee (including a teacher) while at work to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work<sup>5</sup>.

In addition to the duties described above, there is a statutory duty imposed on teachers to promote the general progress and well-being of individual pupils or classes or groups assigned to them, to maintain good order and discipline among the pupils and to safeguard the health and safety of pupils both when they are authorised to be on school premises and when they are engaged in authorised school activities elsewhere<sup>6</sup>.

While the prevention of bullying among pupils is within a teacher's ordinary duty of care<sup>7</sup>, the occasions when a school would be in breach of duty for a failure to take steps within its power to combat the harmful behaviour of one pupil towards another even when they were outside school would be few and far between<sup>8</sup>.

Teachers may owe a duty of care in respect of the under-performance of pupils in some circumstances<sup>9</sup>.

1 *Williams v Eady* (1893) 10 TLR 41, CA.

2 *Lyes v Middlesex County Council* (1962) 61 LGR 443. 'A lot of pupils are apt to make much more noise even than a few children in a small home and there is . . . more skylarking and a bit of rough play': *Lyes v Middlesex County Council* supra at 446 per Edmund Davies J.

3 *Jacques v Oxfordshire County Council* (1967) 66 LGR 440 at 444 per Waller J.

Compare and contrast the court's decisions in *Butt v Cambridgeshire and Isle of Ely County Council* (1969) 68 LGR 81, CA, and *Black v Kent County Council* (1983) 82 LGR 39, CA. Both *Butt v Cambridgeshire and Isle of Ely County Council* supra and *Black v Kent County Council* supra were cases of eye injuries caused by young children using sharp-pointed scissors. In *Butt v Cambridgeshire and Isle of Ely County Council* supra (class of 37 nine and ten-year-old girls) the local education authority was held not liable for the injury. In *Black v Kent County Council* supra (class of 25 seven-year-olds) the authority was held liable.

The gradual raising of the standard of care expected in schools is evident from the cases. See eg *Rich v LCC* [1953] 2 All ER 376, [1953] 1 WLR 895, CA (heap of coke lying unfenced on part of senior school playground; plaintiff lost an eye when another young boy threw a piece of coke at him; it was held that the authority was not obliged to prevent the boys having access to the coke; the supervision of the boys was held to be adequate and therefore the authority was not liable); *Clark v Monmouthshire County Council* (1954) 52 LGR 246, CA (boy stabbed in leg by another boy in playground during break; staff did not know that the other boy was carrying a knife; at time of accident no prefect on duty in playground; master in charge passed through the playground twice during break; the authority was held not negligent ('The duty of a school does not extend to constant supervision of all the boys all the time': at 247-248 per Denning LJ)). See also *Suckling v Essex County Council* (1955) Times, 27 January (plaintiff injured during horseplay involving a scorer knife which another boy had



taken from a cupboard while the teacher was out of the room), where Vaisey J stated that it seemed to him that if he were to hold that every school with small children was committing an actionable wrong in leaving unlocked such implements as these scissor knives he would be putting an altogether excessive burden on educational establishments. Not only would it be difficult for them to be conducted in a successful and reasonable manner, but it would run the serious risk of turning these children into the votaries of the principle of safety first. He said that it was better that a boy should break his neck than allow other people to break his spirit. This decision and the tenor of the judge's language do not accord with the line of authority beginning with *Williams v Eady* (1893) 10 TLR 41, CA (see the text to note 1 supra), in which a boy played with bottle containing phosphorus which was in a conservatory to which the pupils had access; the bottle burst, and the phosphorus exploded and injured the plaintiff; and it was held that a schoolmaster is bound to take such care of his boys as a careful father would take of his boys, and is bound to take notice of the ordinary nature of young boys, their tendency to do mischievous acts, and their propensity to meddle with anything that came in their way, and that, having phosphorus in his house, he was bound not to leave it in any place in which they might get at it (at 42 per Lord Esher MR)). See also *Martin v Middlesbrough Corp*n (1965) 63 LGR 385, CA (girl slipped on icy playground and cut her hand on a piece of broken milk-bottle glass lying on a grating; broken milk bottles were often found on the playground; it was held there was a very serious risk of serious injury and the authority was liable); *Beaumont v Surrey County Council* (1968) 66 LGR 580 (discarded piece of elastic from mini-trampoline deposited, uncovered, in litter bin in loggia of school and found by pupils during next day's morning break; despite supervision of break by two masters, four prefects, four sub-prefects and four monitors, no member of staff was at loggia or on the playground when the plaintiff was injured in horseplay with the elastic; it was held: (1) the possibility of physical injury from use of, or horseplay with, the elastic was foreseeable; (2) if the school system of supervision had been working properly the horseplay would have been stopped; (3) the authority fell short of the high standards the law demanded of it); *Norman v Inner London Education Authority* (1974) Times, 14 December (unlabelled beaker of sulphuric acid left on bench in chemistry laboratory in master's absence; boy filled syringe from beaker and squirted it in another boy's eye; it was held that the master's failure to give a specific warning of the danger involved a departure from the very high standards demanded); *Moore v Hampshire County Council* (1981) 80 LGR 481, CA (girl born with dislocated hips, forbidden by parent to take part in physical education (PE); the headmistress noted fact, but the girl told PE teacher untruthfully that she was allowed by the doctor to do PE and, in attempting a handstand in PE class, fell and broke an ankle; it was held that the teacher had failed to conform to the standard of care required in that she failed to supervise the girl's ability to do a handstand, as her special condition required, and in allowing her to take part in the PE class without first checking that she was allowed to do so); *G v Upshire Primary School* (2 February 2001, unreported), QBD (no liability in respect of a pupil who fell when sliding down banister at school). As to the supervision of pupils see further PARA 873 post.

4 Eg when applied to an incident of horseplay in a school of 900 pupils: *Beaumont v Surrey County Council* (1968) 66 LGR 580 at 585 per Geoffrey Lane J.

5 Health and Safety at Work etc Act 1974 s 7; and see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 446.

6 See *School Teachers' Pay and Conditions Document 2005 and Guidance on School Teachers' Pay and Conditions* (September 2005; Ref: 0-11-271180-4), published by the Stationery Office Ltd, PARA 73 (professional duties). This document is given effect by the Education (School Teachers' Pay and Conditions) (No 3) Order 2005, SI 2005/2212 (amended by SI 2005/3479), which directs that most of the document's provisions come into force from 1 September 2005, with the remaining provisions coming into force on 1 January 2006. The order was made in exercise of the powers conferred on the Secretary of State by the Education Act 2002 ss 122(1), 123-124 (see PARA 864 ante).

As to the promotion of good behaviour and the prevention of the breakdown of discipline see PARA 559 et seq ante; and as to the restraint and punishment of pupils see PARAS 576-578 ante.

7 See eg *Scott v Lothian Regional Council* (29 September 1998, unreported). See also PARA 559 ante.

8 *Bradford-Smart v West Sussex County Council* [2002] EWCA Civ 07, [2002] LGR 489, [2002] ELR 139; revsg on this point [2001] ELR 138.

9 See *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, [1995] ELR 404, HL; *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619, [2000] 4 All ER 504, [2000] ELR 499, HL.

## UPDATE

### 872 The teacher's duties towards the pupil: common law and statutory

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--SI 2005/2212 replaced: SI 2009/2132. Now see *School Teachers' Pay and Conditions Document 2009 and Guidance on School Teachers' Pay and Conditions*, published by the Stationery Office Ltd, para 73 (professional duties), which is given effect by the Education (School Teachers' Pay and Conditions) Order 2009, SI 2009/2132, which directs that the provisions set out in the document come into force from 1 September 2009.

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### 873. Supervision of pupils.

Negligence in the supervision of pupils may render those charged with their care liable to compensate the pupils or any other person suffering injury or damage as a result<sup>1</sup>. The duty is to take at least such care of the pupils as a careful parent would take of his children<sup>2</sup>, and the ordinary principles of vicarious liability<sup>3</sup> apply where the negligence is that of a teacher<sup>4</sup>. The age of the pupil<sup>5</sup> and the nature of the activity<sup>6</sup> in which he is taking part are material factors in determining the degree of supervision demanded. For example, the release of a very young child from school before the scheduled time in certain circumstances has been held to be negligent<sup>7</sup>.

1 Supervision is an incident of the giving of secular instruction, which includes proper recreation periods, and the duty to provide supervision lies on the education authority or body of governors as the case may be: see *Greenwood v Atherton* [1938] 2 All ER 475 at 478 per Lewis J; affd [1939] 1 KB 388, [1938] 4 All ER 686, CA (the duty of supervision was held to be a public duty and protected by the Public Authorities Protection Act 1893 (repealed)).

2 *Williams v Eady* (1893) 10 TLR 41 at 42, CA, per Lord Esher MR. 'That test has been the one adopted ever since': *Rich v LCC* [1953] 2 All ER 376 at 379, [1953] 1 WLR 895 at 900, CA, per Singleton LJ. But 'one has to visualise a parent with a very large family': *Ricketts v Erith Borough Council* [1943] 2 All ER 629 at 631 per Tucker J. 'School authorities . . . must strike some balance between the meticulous supervision of children every moment of the time when they are under their care, and the very desirable object of encouraging the sturdy independence of children as they grow up; . . . encouragement . . . must start at quite an early age': *Jeffery v LCC* (1954) 52 LGR 521 at 523 per McNair J (a five-year-old child climbed on to a glass roof, fell and sustained fatal injuries).

In later cases a higher standard of care has been required than that in *Williams v Eady* supra: see eg *Lyes v Middlesex County Council* (1962) 61 LGR 443 (plaintiff's hand caused to break glass in door by fellow pupil's prank; glass too thin for the rough-and-tumble of school life); *Reffell v Surrey County Council* [1964] 1 All ER 743, [1964] 1 WLR 358 (dangerous door); *Beaumont v Surrey County Council* (1968) 66 LGR 580 (it is a schoolmaster's duty, bearing in mind the known propensities of children between the ages of 11 and 18, to take all reasonable and proper steps to prevent any of the pupils under his care from suffering injury from inanimate objects, from the actions of their fellow pupils, or from a combination of the two). As to supervision in school playgrounds see *Langham v Governors of Wellingborough School and Fryer* (1932) 101 LjKB 513, CA (golf ball, hit with stick in playground, flew through open door to strike plaintiff, inside school building, in the eye; no express evidence as to supervision in the playground; claim failed); *Rawsthorne v Ottley* [1937] 3 All ER 902 (tip-up lorry with single driver delivered coke to school playground; a pupil jumped on to lorry behind driver's cab; when tipping part of lorry was released it fell and crushed claimant pupil's leg; headmaster not negligent in leaving boys in playground without supervision); *Clark v Monmouthshire County Council* (1954) 52 LGR 246, CA (the duty of a schoolmaster does not extend to constant supervision of all the boys in his care all the time); *Mays v Essex County Council* (1975) Times, 11 October (school under no legal duty to supervise the early arrivals in the playground before school began nor to prevent children sliding on ice); cf *Kearn-Price v Kent County Council* [2002] EWCA Civ 1539, [2003] ELR 17, [2003] PIQR P167, [2002] All ER (D) 440 (Oct) (full-size leather football caused injury during pre-school period to pupil who had been behaving reasonably as a mere bystander in a playground; enforcement of ban on such footballs would have prevented injury; duty not unduly onerous, even shortly before registration started). See also *Jeffery v LCC* supra; *Price v Caernarvonshire County Council* (1960) Times, 11 February, CA; *Newton v East Ham Corp* [1963] CLY 2426; *Martin v Middlesbrough Corp* (1965) 63 LGR 385, CA; *Beaumont v Surrey County Council* supra; *Ward v Hertfordshire County Council* [1970] 1 All ER 535, [1970] 1 WLR 356, CA (unsupervised race in playground and pupil tripped and struck head against flint wall; it was held that the local education authority was not liable: (1) because the wall was not dangerous, bearing in mind its nature, typicality and long-standing and the fact that complaints had never been made against it; (2) since the accident occurred in the ordinary course of play the lack of supervision was irrelevant: it is impossible so to supervise children that they never fall down and hurt themselves); *Simonds v Isle of Wight Council* [2003] EWHC 2303 (QB), [2004] ELR 59, [2003] 39 LS Gaz R 40, (2003) Times, 9 October, [2003] All ER (D) 156 (Sep) (child broke arm on sports day while playing on swings unsupervised, having spent some time with his mother; school not liable; playing fields could not be made free of all hazards; fact that potential hazard had been diagnosed by school did not impose duty to make access or use impossible). As to

arrangements by councils for patrolling school crossings see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARAS 780, 781.

3 See TORT vol 97 (2010) PARA 680 et seq.

4 *Smith v Martin and Kingston-upon-Hull Corpn* [1911] 2 KB 775, CA. The education authority may, of course, also be responsible for the torts of other employees: see *Shrimpton v Hertfordshire County Council* (1911) 104 LT 145, HL (attendance officer); *Knott v LCC* [1934] 1 KB 126 at 138, CA, per Lord Wright, and at 142-143 per Slesser LJ (school-keeper). Cf *Smith v Glasgow Corpn* 1952 SLT 62, Sh Ct.

5 The duty to safeguard pupils' health and safety (see PARA 872 ante) has particular application in the case of young children. See eg *Jefferey v LCC* (1954) 52 LGR 521; *Carmarthenshire County Council v Lewis* [1955] AC 549, [1955] 1 All ER 565, HL (boy aged four, left unattended for 10 minutes, walked out of school to busy road where he caused a lorry to swerve so that it struck a telegraph pole and the driver was killed; it was held that there was a lack of reasonable precautions by the authority; the accident was foreseeable, and the authority was negligent and liable in damages); *Barnes (An Infant) v Hampshire County Council* [1969] 3 All ER 746, [1969] 1 WLR 1563, HL (small children released from school by their teachers five minutes before scheduled time; a girl was injured on a nearby main road, before the mother arrived to meet her; the school authority was held to be negligent; a school is not required to detain small children until their parents collect them, but must adhere to the timetable of which the parents had been informed). See also *J v North Lincolnshire County Council* [2000] ELR 245, [2000] PIQR P84, CA (school liable for injuries suffered by a child who wandered out of school premises into the path of a car).

6 The duty of care appropriate in sport and physical education may call for more than usual forethought and supervision: see *Gibbs v Barking Corpn* [1936] 1 All ER 115 (extent of instructor's duty in supervising vaulting over a horse); *Gillmore v LCC* [1938] 4 All ER 331 (accident during exercises on slippery floor); *Ralph v LCC* (1947) 111 JP 548, CA (accident during game of touch; plaintiff's hand went through glass partition); *Wright v Cheshire County Council* [1952] 2 All ER 789, CA (gymnastic exercises; degree of supervision required); cf *Barnes (An Infant) v Hampshire County Council* [1969] 3 All ER 746, [1969] 1 WLR 1563, HL; *Conrad v Inner London Education Authority* (1967) 111 Sol Jo 684, 65 LGR 543, CA (accident in judo class); *Affutu-Nartoy v Clarke* (1984) Times, 9 February (whether a teacher should tackle pupils when playing rugby football with them); *Van Oppen v Clerk to the Trustees of the Bedford Charity* [1989] 3 All ER 389, [1990] 1 WLR 235, CA (school under no duty to insure a pupil against accidental rugby injury or to inform or advise a parent of the need for personal accident insurance); *Fowles v Bedfordshire County Council* [1996] ELR 51, [1995] PIQR P380, CA (no warnings or prohibitions posted in respect of gymnastics at youth centre involving danger to participant; contributory negligence); *Smoldon v Whitworth* [1997] ELR 249, [1997] PIQR P133, CA (referee in breach of duty of care through negligent refereeing of rugby match; the Court of Appeal recommended (per curiam) a general practice of insuring against rugby injuries).

School trips present particular risks requiring careful supervision: *Porter v City of Bradford Metropolitan Council* (14 January 1985) Lexis, CA. As to the nature of the duty of care, and the standard of care, required when pupils are taken on a school trip see *Chittock v Woodbridge School* [2002] EWCA Civ 915, [2002] ELR 735, [2003] PIQR P81 (pupil injured in skiing trip accident).

For cases involving danger from machines see *Smerkinich v Newport Corpn* (1912) 10 LGR 959, 76 JP 454; *Butt v Inner London Education Authority* (1968) 66 LGR 379, CA. As to an accident with an unguarded cooker see *Fryer v Salford Corpn* [1937] 1 All ER 617, CA.

The standard of care is especially high in relation to children with disability: *Ellis v Sayers Confectioners Ltd* (1963) 61 LGR 299, 107 Sol Jo 252, CA; *Moore v Hampshire County Council* (1981) 80 LGR 481, CA.

7 Cf *Carmarthenshire County Council v Lewis* [1955] AC 549, [1955] 1 All ER 565, HL (cited in note 5 supra); *Nwabudike v Southwark London Borough Council* [1997] ELR 35, (1996) 140 Sol Jo LB 128; *Wilson v Governors of Sacred Heart Roman Catholic School* [1998] ELR 637, [1998] 1 FLR 663, CA; *Jenney (A Minor) v North Lincolnshire County Council* [2000] LGR 269, sub nom *J v North Lincolnshire County Council* [2000] ELR 245, CA.

## UPDATE

### 873 Supervision of pupils

NOTE 6--It is not foreseeable that a child who is permitted unsupervised access to a classroom will contaminate a teacher's drink: *Alexis v Newham LBC* [2009] EWHC 1323 (QB), [2009] ICR 1517, [2009] All ER (D) 130 (Jun).

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## **6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS**

### **(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES**

#### **(i) In general**

##### **874. Responsibilities.**

The Qualifications and Curriculum Authority<sup>1</sup> and the Qualifications, Curriculum and Assessment Authority for Wales<sup>2</sup> are non-departmental public bodies whose purposes are to act as guardians of standards in education and training in England and Wales. Their work includes maintaining and developing the school curriculum<sup>3</sup>, the National Curriculum<sup>4</sup> and associated assessments. These Authorities are also responsible for establishing a National Framework of Qualifications<sup>5</sup>, and accrediting and monitoring external qualifications to be included in that framework<sup>6</sup>.

1 As to the establishment and functions of the Qualifications and Curriculum Authority see PARAS 876-893 post.

2 As to the establishment and functions of the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 post. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 post.

3 As to the school curriculum in relation to England see PARAS 913-915 post; and as to the school curriculum in relation to Wales see PARAS 926-928 post.

4 As to the National Curriculum for England see PARAS 916-925 post; and as to the National Curriculum for Wales see PARAS 929-938 post.

5 As to the National Framework of Qualifications see PARA 970 post.

6 See PARAS 969-977 post.

#### **UPDATE**

##### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.



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### **875. Establishment.**

The Education Act 1997 established a body corporate known as the Qualifications and Curriculum Authority<sup>1</sup>. The Authority took over the functions of the School Curriculum and Assessment Authority and the National Council for Vocational Qualifications, which were dissolved with effect from 1 March 1998<sup>2</sup>. The Education Act 1997 also changed the name of the Curriculum and Assessment Authority for Wales (or 'Awdurdod Cwricwlwm ac Asesu Cymru')<sup>3</sup> to the Qualifications, Curriculum and Assessment Authority for Wales (or 'Awdurdod Cymwysterau, Cwricwlwm ac Asesu Cymru') as from 1 October 1997<sup>4</sup>.

Provision was made for the transfer of property<sup>5</sup> and staff<sup>6</sup> from the School Curriculum and Assessment Authority and the National Council for Vocational Qualifications to the Qualifications and Curriculum Authority, or to the Qualifications, Curriculum and Assessment Authority for Wales, as appropriate.

1 Education Act 1997 s 21(1). As to the Qualifications and Curriculum Authority see PARAS 876-893 post.

2 See *ibid* s 33 (repealed); and the Education Act 1997 (Commencement No 3 and Transitional Provisions) Order 1998, SI 1998/386, art 2, Sch 1 Pt I.

3 See the Education Act 1996 s 360 (repealed).

4 Education Act 1997 s 27(1); Education Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/1468, art 2(3), Sch 1 Pt III. As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 post.

On 1 April 2006 ('the transfer date'), all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239, arts 1(2), 2. As to the National Assembly for Wales see PARA 53 ante.

5 See the Education Act 1997 s 34 (repealed); and the Education (Qualifications and Curriculum Authority and Qualifications, Curriculum and Assessment Authority for Wales) (Transfer of Property and Designation of Staff) Order 1997, SI 1997/2172. As to any stamp duty chargeable in respect of any transfer effected by virtue of the Education Act 1997 s 34 see s 53.

6 See *ibid* s 35; and the Education (Qualifications and Curriculum Authority and Qualifications, Curriculum and Assessment Authority for Wales) (Transfer of Property and Designation of Staff) Order 1997, SI 1997/2172.

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

## **875 Establishment**

NOTE 4--1997 Act s 27 repealed: SI 2005/3239.

NOTE 6--1997 Act s 35 amended: SI 2005/3239, Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 20.



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## **(ii) The Qualifications and Curriculum Authority**

### **A. CONSTITUTION AND ADMINISTRATION**

#### **876. Constitution.**

The Qualifications and Curriculum Authority<sup>1</sup> consists of not less than 8 nor more than 13 members appointed by the Secretary of State<sup>2</sup>. Of the members of the Authority, the Secretary of State must appoint one as chairman, and may appoint another as deputy chairman<sup>3</sup>. The Secretary of State must include among the members of the Authority persons who appear to him:

- 1571 (1) to have experience of, and to have shown capacity in, the provision of education, or to have held, and to have shown capacity in, any position carrying responsibility for the provision of education<sup>4</sup>;
- 1572 (2) to have experience of, and to have shown capacity in, the provision of training or to have held, and to have shown capacity in, any position carrying responsibility for the provision of training<sup>5</sup>; and
- 1573 (3) to have experience of, and to have shown capacity in, industrial, commercial or financial matters or the practice of any profession<sup>6</sup>.

The Authority is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown, and the Authority's property is not to be regarded as property of, or property held on behalf of, the Crown<sup>7</sup>.

The Qualifications and Curriculum Authority, so far as it is a charity, is an exempt charity within the meaning of the Charities Act 1993<sup>8</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 Education Act 1997 s 21(2). As to the Secretary of State see PARA 52 ante.

3 Ibid s 21(3).

4 Ibid s 21(4)(a).

5 Ibid s 21(4)(b).

6 Ibid s 21(4)(c).

7 Ibid s 21(5), Sch 4 para 1.

8 See the Charities Act 1993 s 3(5)(a), Sch 2 para (da) (added by the Education Act 1993 s 307(1), Sch 19 para 175; continued in force by the Education Act 1996 s 582(1), Sch 37 para 120(2); and substituted with savings by the Education Act 1997 s 57(1), Sch 7 para 7(a)); and CHARITIES vol 8 (2010) PARA 315. For the meaning of 'charity' see the Charities Act 1993 s 96(1), (2) (as amended); and CHARITIES vol 8 (2010) PARA 1 (definition applied by the Education Reform Act 1988 s 125A(3) (as so added)).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **876A. The Office of Qualifications and Examinations Regulation.**

There is to be a body corporate known as the Office of Qualifications and Examinations Regulation ('Ofqual') and provision is made in relation to its constitution and proceedings: see Apprenticeships, Skills, Children and Learning Act 2009 s 127(1), Sch 9. Ofqual's objectives, which relate to 'regulated qualifications' (defined in s 130) and 'regulated assessment arrangements' (defined in s 131), in discharging its functions are (1) the qualifications standards objective; (2) the assessments standards objective; (3) the public confidence objective; (4) the awareness objective; and (5) the efficiency objective: s 128. In carrying out its functions Ofqual must, so far as is reasonably practicable, act in a way that is compatible with its objectives and which it considers most appropriate for the purposes of meeting those objectives: s 129. Ofqual must recognise awarding bodies in respect of specific qualifications or descriptions of qualification, or in respect of credits for components of qualifications, thereby confirming that the body is fit to award or authenticate the qualifications or qualifications of a description for which it is recognised: s 132. Ofqual has discretionary powers to set the criteria it will use to decide whether to recognise an awarding body (s 133), may impose general conditions on recognition (s 134), and may impose certain other conditions on recognition (s 135).

Ofqual may impose a fee capping condition limiting the amount of a particular fee if specified conditions are satisfied: s 136. There are limits on what Ofqual may require under an entry and inspection condition: s 137. It may decide that a certain qualification, or qualifications falling within a certain description, is or are subject to the accreditation requirement, so that a recognised body cannot award or authenticate any form of such a qualification unless the particular form is individually accredited (s 138), and provision is made for the process of accrediting particular forms of qualifications (s 139). Ofqual must publish the criteria for accreditation and any subsequent revisions of those criteria: s 140. The Secretary of State may make an order specifying the minimum requirements in respect of knowledge, skills or understanding that someone must be able to demonstrate to gain a particular qualification or a qualification of a particular description: s 141. Before making such an order, the Secretary of State must consult with Ofqual and with others as appropriate (s 142) and, when such an order has been made, Ofqual must set recognition criteria, recognition conditions, and/or accreditation criteria for the qualification or description of qualification to secure that the minimum requirements are met (s 143). The Secretary of State may by order revoke an order specifying minimum requirements: s 144. A recognised body which is offering a form of a relevant qualification must assign to it a number of hours of guided learning for the purposes of determining whether a person studying for the qualification is able to meet the requirement in the Education and Skills Act 2008 s 2(1)(c) (see PARA 1148A.1) for persons under 18 in full-time employment to participate in sufficient relevant education or training: s 145 (ss 145, 146 come into force on a day or days to be appointed). Ofqual must publish the criteria which recognised bodies must apply in order to determine whether they need to assign guided learning hours to a qualification, and if so the number of hours they should assign to a form of the qualification (s 146) and a recognised body may surrender recognition by giving notice to Ofqual (s 147). Ofqual must maintain a register of recognised bodies, and the details of the qualifications in respect of which they are recognised and the forms of those qualifications that they offer (s

148) (s 148 is in force in part: see SI 2010/1151), and may keep under review any connected activities of a recognised awarding body (s 149). Ofqual may also investigate complaints in respect of the award or authentication of a regulated qualification, or arrange for an independent party to do so (s 150), give directions, in specified circumstances, to a recognised body to secure compliance with a condition imposed on its recognition (s 151), and withdraw recognition in respect of some or all of the qualifications in respect of which a body is recognised if the body has breached a condition of recognition (s 152). Ofqual must publish a statement on how it will perform its monitoring and enforcement functions and guidance to recognised bodies in relation to the award and authentication of qualifications: s 153. It may keep under review all aspects of qualifications to which these provisions apply (s 154) and must keep under review any system used by the Secretary of State for allocating values to qualifications by reference to the level of attainment indicated by the qualifications and for the purposes of a qualifications-based performance management system (s 155) (s 155 comes into force on a day or days to be appointed). Ofqual may co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of any of its functions in connection with qualifications (s 156) and may provide information to a qualifications regulator elsewhere in the United Kingdom to support the qualifications functions of the other regulator (s 157).

Ofqual must keep under review all aspects of assessment arrangements in relation to each of the key stages of the national curriculum and the Early Years Foundation Stage ('EYFS') (s 161), and may require the Secretary of State, national curriculum responsible bodies and EYFS responsible bodies and Ofsted to provide it with the information it considers it needs to perform this role: s 162. Ofqual must notify the Secretary of State and any responsible body whose act or omission appears to Ofqual to have contributed to a significant failing if it considers that there is or is likely to be a significant failing in the assessment arrangements (s 163) and must publish and keep under regular review national curriculum assessments regulatory framework and EYFS assessments regulatory framework documents (ss 164, 165). Ofqual may provide services to other persons in connection with any of its functions (s 167) and carry out research in relation to qualifications that would be eligible for regulation or in relation to regulated assessment arrangements (s 169). It must, if requested to do so, provide the Secretary of State with information or advice relating to its functions (s 168) and must not impose or maintain unnecessary regulatory burdens (s 170). It must also publish an annual report and may prepare and publish other reports: s 171. The Secretary of State may transfer the staff and property of the Qualifications and Curriculum Agency to Ofqual: s 173, Sch 10.

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **876B. The Qualifications and Curriculum Development Agency.**

The Qualifications and Curriculum Authority is to be known as the Qualifications and Curriculum Development Agency ('QCDA') and provision is made in relation to its constitution and proceedings: Apprenticeships, Skills, Children and Learning Act 2009 s 175, Sch 11. The QCDA's objective is to promote quality and coherence in education and training in England (s 176) and the matters to which it must have regard in exercising its functions and pursuing its objective are specified (s 177). The qualifications that fall within the remit of the QCDA are defined and the Secretary of State may exclude qualifications from its remit: s 178. For the qualifications so excluded, see Qualifications and Curriculum Development Agency's Remit Order 2010, SI 2010/527. The QCDA must keep under review all aspects of qualifications within its remit, must provide advice or carry out research relating to such qualifications if requested to do so by the Secretary of State, and may publish information relating to qualifications within its remit: s 179. It must also assist the Office of Qualifications and Examinations Regulation (see PARA 876A) in relation to its qualifications functions if requested to do so: s 180 (s 180 is in force in part: see SI 2010/1151).

The QCDA has specified duties and powers with respect to (1) the curriculum in maintained schools in England for pupils who are of compulsory school age, and pupils in maintained nursery schools (s 181); (2) early learning goals and educational programmes (s 182); and (3) assessment arrangements within its remit (s 183). It may also provide services or other assistance in relation to specified matters (s 184), must advise the Secretary of State on any matters relating to education or training in England which the Secretary of State refers to it (s 185), and must carry out such ancillary activities relating to its functions as the Secretary of State may direct (s 186). The QCDA may co-operate or work jointly with other public bodies where it is appropriate for the efficient and effective performance of any of its functions: s 187. The Secretary of State may confer supplementary functions on the QCDA and may give directions to it as to the performance of any of its functions: ss 188, 189. In performing its functions, the QCDA must have regard to any guidance given by the Secretary of State: s 190.

### **UPDATE**

#### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **877. Chief officer.**

The Qualifications and Curriculum Authority<sup>1</sup> must have a chief officer<sup>2</sup>. Each chief officer must be appointed by the Authority<sup>3</sup> with the approval of the Secretary of State on such terms and conditions as the Authority may with the approval of the Secretary of State determine<sup>4</sup>. The chief officer is an ex officio member of the Authority<sup>5</sup>.

The Secretary of State may, on appointing a person to be the chairman of the Qualifications and Curriculum Authority, confer on him such additional functions<sup>6</sup> in relation to the Authority as may be specified in the appointment<sup>7</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 Education Act 1997 s 21(5), Sch 4 para 4(1).

3 The first chief officer was appointed by the Secretary of State on such terms and conditions as the Secretary of State determined: see *ibid* Sch 4 para 4(2). As to the Secretary of State see PARA 52 ante.

4 *Ibid* Sch 4 para 4(3).

5 *Ibid* Sch 4 para 4(4).

6 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 56(2).

7 *Ibid* Sch 4 para 5(1). The functions for the time being conferred by virtue of appointment as chief officer of the Authority do not include any function for the time being conferred under Sch 4 para 5(1) on the chairman of the Authority: Sch 4 para 5(2).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **878. Tenure of office.**

A person holds and vacates office as a member or as chairman or deputy chairman of the Qualifications and Curriculum Authority<sup>1</sup> in accordance with the terms of his appointment and, on ceasing to be a member, is eligible for re-appointment<sup>2</sup>. A person may at any time by notice in writing to the Secretary of State<sup>3</sup> resign his office as a member or as chairman or deputy chairman of the Authority<sup>4</sup>. The Secretary of State may, if satisfied that a member of the Authority:

- 1574 (1) has been absent from meetings of the Authority for a continuous period of more than six months without the permission of the Authority<sup>5</sup>; or
- 1575 (2) is unable or unfit to discharge the functions<sup>6</sup> of a member<sup>7</sup>,

remove him from office by giving him notice in writing upon which the office will become vacant<sup>8</sup>. If the chairman or deputy chairman of the Authority ceases to be a member of the Authority, he must also cease to be chairman or deputy chairman<sup>9</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 Education Act 1997 s 21(5), Sch 4 para 6(1).

3 As to the Secretary of State see PARA 52 ante.

4 Education Act 1997 Sch 4 para 6(2).

5 Ibid Sch 4 para 7(a).

6 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 56(2).

7 Ibid Sch 4 para 7(b).

8 Ibid Sch 4 para 7.

9 Ibid Sch 4 para 8.

### **UPDATE**

#### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.





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### **879. Payments to members.**

The Qualifications and Curriculum Authority<sup>1</sup> must pay to its members such salaries or fees, and such travelling, subsistence or other allowances, as the Secretary of State<sup>2</sup> may determine<sup>3</sup>. The Authority must, as regards any member in whose case the Secretary of State may so determine, pay, or make provision for the payment of, such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine<sup>4</sup>. If a person ceases to be a member of the Authority and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may direct the Authority to make to that person a payment of such amount as the Secretary of State may determine<sup>5</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Education Act 1997 s 21(5), Sch 4 para 9(1).

4 Ibid Sch 4 para 9(2).

5 Ibid Sch 4 para 9(3).

### **UPDATE**

#### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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## **880. Staff.**

Subject to the approval of the Secretary of State<sup>1</sup>, the Qualifications and Curriculum Authority<sup>2</sup> may appoint such number of employees, on such terms and conditions, as it may determine<sup>3</sup>, and must pay them such remuneration and allowances as it may determine<sup>4</sup>. Employment with the Authority is included among the kinds of employment to which a scheme, relating to the pensions, allowances or gratuities which are to be paid, or may be paid, by the Minister for the Civil Service<sup>5</sup>, under the Superannuation Act 1972<sup>6</sup> can apply<sup>7</sup>. The Authority must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase so attributable<sup>8</sup> in the sums payable under the Superannuation Act 1972 out of money provided by Parliament<sup>9</sup>. Where an employee of the Authority is, by reference to that employment, a participant in such a scheme<sup>10</sup> and is also a member of the Authority, the Secretary of State may determine that his service as such a member is to be treated for the purposes of the scheme as service as an employee of the Authority, whether or not any benefits are payable<sup>11</sup> to or in respect of him<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

3 Education Act 1997 s 21(5), Sch 4 para 10(a).

4 Ibid Sch 4 para 10(b).

5 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550.

6 Ie a scheme under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

7 Education Act 1997 Sch 4 para 11(1).

8 Ie attributable to ibid Sch 4 para 11.

9 Ibid Sch 4 para 11(2).

10 Ie a scheme under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

11 Ie whether any benefits are payable to or in respect of him by virtue of the Education Act 1997 Sch 4 para 9: see PARA 879 ante.

12 Ibid Sch 4 para 11(3).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch

4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **881. Finance.**

The Secretary of State<sup>1</sup> may make grants to the Qualifications and Curriculum Authority<sup>2</sup> of such amount as he thinks fit in respect of expenses incurred or to be incurred by the Authority in carrying out its functions<sup>3</sup>. The payment of such a grant is subject to the fulfilment of such conditions as the Secretary of State may determine<sup>4</sup>. The Secretary of State may also impose such requirements as he thinks fit in connection with the payment of such a grant<sup>5</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

3 Education Act 1997 s 21(5), Sch 4 para 12(1). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 56(2). As to the functions of the Authority see PARAS 886-893 post.

Any sums required for the payment by the Secretary of State of grants under the Education Act 1997 must be paid out of money provided by Parliament: see s 55.

4 Ibid Sch 4 para 12(2).

5 Ibid Sch 4 para 12(3).

### **UPDATE**

#### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/(ii) The Qualifications and Curriculum Authority/A. CONSTITUTION AND ADMINISTRATION/882. Committees.

## **882. Committees.**

The Qualifications and Curriculum Authority<sup>1</sup>: (1) may establish a committee for any purpose<sup>2</sup>; and (2) if so directed by the Secretary of State<sup>3</sup>, must establish a committee for such purpose as is specified in the direction<sup>4</sup>. The Authority is to determine the number of members which a committee so established is to have, and the terms on which they are to hold and vacate office<sup>5</sup>. Subject to such conditions as the Secretary of State may determine, a committee may include persons who are not members of the Authority<sup>6</sup>. The Authority must keep under review the structure of committees so established and the scope of each committee's activities<sup>7</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 Education Act 1997 s 21(5), Sch 4 para 13(1)(a).

3 As to the Secretary of State see PARA 52 ante.

4 Education Act 1997 Sch 4 para 13(1)(b).

5 Ibid Sch 4 para 13(2).

6 Ibid Sch 4 para 13(3).

7 Ibid Sch 4 para 13(4).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **883. Proceedings.**

The following persons are entitled to attend and take part in deliberations (but not in decisions) at meetings of the Qualifications and Curriculum Authority<sup>1</sup> or of any committee of the Authority<sup>2</sup>:

- 1576 (1) a representative of the Secretary of State<sup>3</sup>;
- 1577 (2) the chairman of the Qualifications, Curriculum and Assessment Authority for Wales<sup>4</sup>, or a representative of his<sup>5</sup>;
- 1578 (3) a representative of such other body as the Secretary of State may designate<sup>6</sup>; and
- 1579 (4) Her Majesty's Chief Inspector of Schools in England<sup>7</sup>, or a representative of his<sup>8</sup>.

The Qualifications and Curriculum Authority must provide the Secretary of State, the chairman of the Qualifications, Curriculum and Assessment Authority for Wales, any person falling within head (3) above and Her Majesty's Chief Inspector of Schools in England with such copies of any documents distributed to members of the Qualifications and Curriculum Authority or members of any of its committees as each of those persons may require<sup>9</sup>.

The validity of proceedings of the Qualifications and Curriculum Authority is not affected by a vacancy among the members or any defect in the appointment of a member<sup>10</sup>. The Qualifications and Curriculum Authority may regulate its own procedure and that of any of its committees<sup>11</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 Education Act 1997 s 21(5), Sch 4 para 15(1). As to the establishment of committees of the Authority see PARA 882 ante.

3 Ibid Sch 4 para 15(1)(a). As to the Secretary of State see PARA 52 ante.

4 As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 post.

5 Education Act 1997 Sch 4 para 15(1)(b).

6 Ibid Sch 4 para 15(1)(c).

7 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 et seq post.

8 Education Act 1997 Sch 4 para 15(1)(d).

9 Ibid Sch 4 para 15(2).

10 Ibid Sch 4 para 16.

11 Ibid Sch 4 para 17. This is expressed to be subject to Sch 4 paras 1-16 (see PARAS 876-882 ante, 892-893 post).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/(ii) The Qualifications and Curriculum Authority/A. CONSTITUTION AND ADMINISTRATION/884. Accounts.

## **884. Accounts.**

The Qualifications and Curriculum Authority<sup>1</sup> must:

- 1580 (1) keep proper accounts and proper records in relation to them<sup>2</sup>;
- 1581 (2) prepare a statement of accounts in respect of each financial year of the Authority<sup>3</sup>; and
- 1582 (3) send copies of the statement to the Secretary of State<sup>4</sup> and to the Comptroller and Auditor General<sup>5</sup> before the end of the month of August next following the financial year to which the statement relates<sup>6</sup>.

The statement of accounts must comply with any directions given by the Secretary of State with the approval of the Treasury<sup>7</sup> as to: (a) the information to be contained in it<sup>8</sup>; (b) the manner in which the information contained in it is to be presented<sup>9</sup>; or (c) the methods and principles according to which the statement is to be prepared<sup>10</sup>. The Comptroller and Auditor General must examine, certify and report on each so statement received by him and must lay copies of each statement and of his report before each House of Parliament<sup>11</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 Education Act 1997 s 21(5), Sch 4 para 18(1)(a).

3 Ibid Sch 4 para 18(1)(b).

4 As to the Secretary of State see PARA 52 ante.

5 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

6 Education Act 1997 Sch 4 para 18(1)(c).

7 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

8 Education Act 1997 Sch 4 para 18(2)(a).

9 Ibid Sch 4 para 18(2)(b).

10 Ibid Sch 4 para 18(2)(c).

11 Ibid Sch 4 para 18(3).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch



12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **885. Documents.**

The application of the seal of the Qualifications and Curriculum Authority<sup>1</sup> is authenticated by the signature of the chairman or some other person authorised either generally or specially by the Authority to act for that purpose<sup>2</sup>, and the signature of one other member<sup>3</sup>. Any document purporting to be an instrument made or issued by or on behalf of the Authority, and to be duly executed by a person authorised by the Authority in that behalf, is to be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown<sup>4</sup>.

1 As to the establishment of the Qualifications and Curriculum Authority see PARA 875 ante.

2 Education Act 1997 s 21(5), Sch 4 para 19(a).

3 Ibid Sch 4 para 19(b).

4 Ibid Sch 4 para 20. As to rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

### **UPDATE**

#### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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## **B. FUNCTIONS**

### **886. Duty to advance education and training.**

The functions<sup>1</sup> conferred on the Qualifications and Curriculum Authority<sup>2</sup> by Part V of the Education Act 1997<sup>3</sup> must be exercised by the Authority for the purpose of advancing education and training in England<sup>4</sup> and, so far as such functions are exercisable there, in Wales<sup>5</sup> and in Northern Ireland<sup>6</sup>. The Authority must exercise its functions under Part V of the Education Act 1997 with a view to promoting quality and coherence in education and training in relation to which it has functions under that Part<sup>7</sup>.

1 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 1997 s 56(2).

2 As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

3 I.e. the Education Act 1997 Pt V (ss 21-36) (as amended): see PARA 875 et seq ante.

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 For the meaning of 'Wales' see PARA 52 note 13 ante.

6 Education Act 1997 s 22(1).

7 Ibid s 22(2).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/(ii) The Qualifications and Curriculum Authority/B. FUNCTIONS/887. Curriculum and assessment.

### **887. Curriculum and assessment.**

The functions<sup>1</sup> of the Qualifications and Curriculum Authority<sup>2</sup> with respect to: (1) pupils<sup>3</sup> at maintained schools<sup>4</sup> in England<sup>5</sup> who have not ceased to be of compulsory school age<sup>6</sup>; (2) pupils at maintained nursery schools<sup>7</sup> in England<sup>8</sup>; and (3) children for whom funded nursery education<sup>9</sup> is provided in England otherwise than at a maintained school or maintained nursery school<sup>10</sup>, are:

- 1583 (a) to keep under review all aspects of the curriculum for maintained schools or maintained nursery schools<sup>11</sup> and all aspects of school examinations and assessment<sup>12</sup>;
- 1584 (b) to advise the Secretary of State<sup>13</sup> on such matters concerned with the curriculum for such schools or with school examinations and assessment as he may refer to it or as it may see fit<sup>14</sup>;
- 1585 (c) to advise the Secretary of State on, and if so requested by him assist him to carry out, programmes of research and development for purposes connected with the curriculum for such schools or with school examinations and assessment<sup>15</sup>;
- 1586 (d) to publish and disseminate, and assist in the publication and dissemination of, information relating to the curriculum for such schools or to school examinations and assessment<sup>16</sup>;
- 1587 (e) to make arrangements with appropriate bodies for auditing the quality of assessments made in pursuance of assessment arrangements<sup>17</sup>.

1 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 1997 s 56(2).

2 As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

3 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 1997 s 56(2).

4 For these purposes, 'maintained school' means any community, foundation or voluntary school, and any community or foundation special school: *ibid* s 23(5) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 207, 214(b)). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

5 For the meaning of 'England' see PARA 52 note 11 ante.

6 Education Act 1997 s 23(1)(a) (s 23(1)-(c) added by the Education Act 2002 s 189, Sch 17 para 1(1), (2)). As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of the Education Act 1997 s 56(2).

7 For the meaning of 'maintained nursery school' see PARA 36 note 6 ante; definition applied by virtue of *ibid* s 56(2).

8 *Ibid* s 23(1)(b) (as added: see note 6 supra).

9 For the meaning of 'funded nursery education' see PARA 913 note 11 post; definition applied by *ibid* s 23(5) (definition substituted by the Education Act 2002 Sch 17 para 1(1), (6)).

10 Education Act 1997 s 23(1)(c) (as added: see note 6 supra).

11 For these purposes, references to the curriculum for a maintained nursery school include references to the curriculum for any funded nursery education provided as mentioned in *ibid* s 23(1)(c) (as added) (see head (3) in the text): s 23(2A) (added by the Education Act 2002 Sch 17 para 1(1), (4)).

12 Education Act 1997 s 23(2)(a) (amended by the Education Act 2002 Sch 17 para 1(1), (3)(a)). 'Assessment' includes examination and test: Education Act 1997 s 23(5). References to assessment in schools include references to assessment in funded nursery education: s 23(2A) (as added: see note 11 supra).

13 As to the Secretary of State see PARA 52 ante.

14 Education Act 1997 s 23(2)(b).

15 *Ibid* s 23(2)(c).

16 *Ibid* s 23(2)(d).

17 *Ibid* s 23(2)(e).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

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### **888. External vocational and academic qualifications.**

In relation to England<sup>1</sup>, the functions<sup>2</sup> of the Qualifications and Curriculum Authority<sup>3</sup> with respect to external qualifications<sup>4</sup> are<sup>5</sup>:

- 1588 (1) to keep under review all aspects of such qualifications<sup>6</sup>;
- 1589 (2) to advise the Secretary of State<sup>7</sup> on such matters concerned with such qualifications as he may refer to it or as it may see fit<sup>8</sup>;
- 1590 (3) to advise the Secretary of State on, and if so requested by him assist him to carry out, programmes of research and development for purposes connected with such qualifications<sup>9</sup>;
- 1591 (4) to provide support and advice to persons providing courses leading to such qualifications with a view to establishing and maintaining high standards in the provision of such courses<sup>10</sup>;
- 1592 (5) to publish and disseminate, and assist in the publication and dissemination of, information relating to such qualifications<sup>11</sup>;
- 1593 (6) to develop and publish criteria<sup>12</sup> for the accreditation of such qualifications<sup>13</sup>;
- 1594 (7) to accredit, where it meets such criteria, any such qualifications submitted for accreditation<sup>14</sup>;
- 1595 (8) to make arrangements, whether or not with others, for the development, setting or administration of tests or tasks which fall to be undertaken with a view to obtaining external qualifications<sup>15</sup> and which fall within a prescribed<sup>16</sup> description<sup>17</sup>.

Except to the extent that<sup>18</sup> they are for the time being exercisable with respect to such qualifications solely by the Qualifications, Curriculum and Assessment Authority for Wales, the functions set out in heads (1) to (8) above are exercisable in relation to Wales by the Qualifications and Curriculum Authority<sup>19</sup>. Such functions are exercisable either solely by the Qualifications and Curriculum Authority<sup>20</sup>, or, if an order<sup>21</sup> so provides, by the Qualifications and Curriculum Authority concurrently with the Qualifications, Curriculum and Assessment Authority for Wales<sup>22</sup>.

Heads (1) to (5) above do not apply to qualifications awarded or authenticated by institutions within the higher education sector other than those which have been submitted for accreditation under head (7) above<sup>23</sup>.

1 For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 1997 s 56(2).

3 As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

4 For these purposes, 'external qualification' means: (1) any academic or vocational qualification authenticated or awarded by an outside person, except an academic qualification at first degree level or any

comparable or higher level; or (2) whether within head (1) supra or not, any National Vocational Qualification: Education Act 1997 s 24(6). For these purposes, a qualification is awarded by an outside person if the course of education or training leading to the qualification is provided by an institution or an employer and it is awarded by a person other than the institution or employer or a member of its or his staff; and a qualification is authenticated by an outside person if it is awarded by an institution or employer and is authenticated by a person other than the institution or employer or a member of its or his staff: s 24(7).

5 Ibid s 24(1).

6 Ibid s 24(2)(a).

7 As to the Secretary of State see PARA 52 ante.

8 Education Act 1997 s 24(2)(b).

9 Ibid s 24(2)(c).

10 Ibid s 24(2)(d).

11 Ibid s 24(2)(e).

12 For this purpose, 'criteria' includes criteria that are to be applied for the purpose of ensuring that the number of different accredited qualifications in similar subject areas or serving similar functions is not excessive; and ibid s 24(2)(g) (see head (7) in the text) is to be construed accordingly: s 24(2A) (added by the Education Act 2002 s 189, Sch 17 para 2).

13 Education Act 1997 s 24(2)(f).

14 Ibid s 24(2)(g).

15 As to external qualifications see PARAS 969-977 post.

16 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under the Education Act 1997: s 56(1). Any power of the Secretary of State to make orders or regulations under the Education Act 1997, except an order under s 25 (as amended) (advising and assisting the Secretary of State: see PARA 889 post) or s 31 (as amended) (advising and assisting the Qualifications, Curriculum and Assessment Authority for Wales: see PARA 907 post), is exercised by statutory instrument: s 54(1). A statutory instrument containing any such order or regulations, except an order under s 58 (as amended) (ie commencement orders), is subject to annulment in pursuance of a resolution of either House of Parliament: s 54(2). Any such order or regulations may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit: s 54(3). Without prejudice to the generality of s 54(3), any order or regulations under the Education Act 1997 may make in relation to Wales provision different from that made in relation to England: s 54(4). At the date at which this volume states the law, no regulations had been made under s 24 in relation to England.

17 Ibid s 24(2)(gg) (added by the Learning and Skills Act 2000 s 103(1), (2)).

18 Ie by virtue of an order under the Education Act 1997 s 30(1) (as amended) (Qualifications, Curriculum and Assessment Authority for Wales to have, in relation to Wales, such functions with respect to external qualifications as are for the time being conferred on the Qualifications and Curriculum Authority: see PARA 906 post). As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 post.

19 Ibid s 24(3) (amended by the Learning and Skills Act 2000 s 103(1), (3)). The functions set out in heads (1)-(7) in the text are also exercisable by the Qualifications and Curriculum Authority in relation to Northern Ireland but only with respect to National Vocational Qualifications: Education Act 1997 s 24(4).

20 Ibid s 24(3)(a). See note 19 supra.

21 Ie under ibid s 30(1) (as amended): see PARA 906 post.

22 Ibid s 24(3)(b). See note 19 supra. See also, in relation to Wales, PARA 906 post.

23 Ibid s 24(5).

## UPDATE

### 874-893 The Qualifications and Curriculum Authority

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

### **888 External vocational and academic qualifications**

NOTE 16--Education Act 1997 s 54(1) amended to remove the exception for orders under s 25 or s 31: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 22.



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### **889. Advising and assisting the Secretary of State.**

The Qualifications and Curriculum Authority<sup>1</sup> must advise the Secretary of State<sup>2</sup> on such matters connected with the provision of education or training in England as the Secretary of State may specify by order<sup>3</sup>. The Authority must carry out such ancillary activities<sup>4</sup> as the Secretary of State may direct<sup>5</sup>. The Authority must supply the Secretary of State with such reports and other information with respect to the carrying out of its functions<sup>6</sup> as the Secretary of State may require<sup>7</sup>. The Authority may supply any person designated by the Secretary of State with such information as the Authority thinks fit about any matter in relation to which it has a function<sup>8</sup>.

1 As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

2 As to the Secretary of State see PARA 52 ante.

3 Education Act 1997 s 25(1). Section 54(1) disappplies, in relation to s 25 (as amended), the general requirement in s 54 (see PARA 888 note 16 ante) that orders must be made by statutory instrument: s 54(1). As to the making of orders under the Education Act 1997 generally see PARA 888 note 16 ante. At the date at which this volume states the law, no such order had been made.

4 For these purposes, activities are ancillary activities in relation to the Authority if the Secretary of State considers it is appropriate for the Authority to carry out those activities for the purposes of or in connection with the carrying out by the Authority of any of its other functions under ibid Pt V (ss 21-36) (as amended) (see PARA 876 et seq ante): s 25(3).

5 Ibid s 25(2).

6 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 56(2).

7 Ibid s 25(4).

8 Ibid s 25(5) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 69). At the date at which this volume states the law, the amendment made by the Learning and Skills Act 2000 had not been brought into force in relation to Wales.

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

### **889 Advising and assisting the Secretary of State**

NOTE 3--Education Act 1997 s 54(1) amended: see PARA 888.

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### **890. Discharge of functions.**

In carrying out its functions<sup>1</sup> under Part V of the Education Act 1997<sup>2</sup> the Qualifications and Curriculum Authority<sup>3</sup> must:

- 1596 (1) comply with any directions given by the Secretary of State<sup>4</sup>;
- 1597 (2) act in accordance with any plans approved by him<sup>5</sup>; and
- 1598 (3) so far as relevant, have regard to the requirements of: (a) the statutory provision<sup>6</sup> relating to general duties in respect of the curriculum<sup>7</sup>; (b) industry, commerce, finance and the professions regarding education and training, including required standards of practical competence<sup>8</sup>; and (c) persons with special learning needs<sup>9</sup>.

In carrying out those functions the Authority must in addition have regard to information supplied to it by Her Majesty's Chief Inspector of Schools in England<sup>10</sup> or by any body designated by the Secretary of State for these purposes<sup>11</sup>.

Where in carrying out any of its functions under Part V of the Education Act 1997 the Authority accredits any qualification, it may do so on such terms, including terms as to payment, as it may determine<sup>12</sup>. Those conditions may in particular include conditions:

- 1599 (i) placing a limit on the amount of the fee that can be demanded in respect of any award or authentication of the qualification in question<sup>13</sup>; and
- 1600 (ii) requiring rights to enter premises<sup>14</sup> and to inspect and copy documents so far as necessary for the Authority to satisfy itself that the appropriate standards are being maintained, in relation to the award or authentication of the qualification in question, by the persons receiving the accreditation, or to determine whether to impose a condition falling within head (i) above and if so what that condition should be<sup>15</sup>.

<sup>1</sup> As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 1997 s 56(2).

<sup>2</sup> *Ibid* Pt V (ss 21-36) (as amended): see PARA 876 et seq ante.

<sup>3</sup> As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

<sup>4</sup> Education Act 1997 s 26(1)(a). As to the Secretary of State see PARA 52 ante.

<sup>5</sup> *Ibid* s 26(1)(b).

<sup>6</sup> *Ie* the Education Act 2002 s 78: see PARA 913 post.

<sup>7</sup> Education Act 1997 s 26(1)(c)(i) (amended by the Education Act 2002 s 215(1), Sch 21 para 69).

<sup>8</sup> Education Act 1997 s 26(1)(c)(ii).

9 Ibid s 26(1)(c)(iii). For these purposes, 'persons with special learning needs' means: (1) children with special educational needs; or (2) persons, other than children with special educational needs, who have a significantly greater difficulty in learning than the majority of persons of their age, or have a disability which either prevents or hinders them from making use of educational facilities of a kind generally provided for persons of their age: s 26(6). For the meaning of 'special educational needs' see PARA 984 post; definition applied by s 26(6).

10 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 et seq post.

11 Education Act 1997 s 26(2).

12 Ibid s 26(3) (amended by the Education Act 2002 s 189, Sch 17 para 3(1), (2), Sch 22 Pt 1). Where, in carrying out those functions, the Authority accredits any qualification, it may, at the time of accreditation or later, impose such conditions on accreditation or continued accreditation as it may determine: Education Act 1997 s 26(3A) (added by the Education Act 2002 Sch 17 para 3(1), (3)).

13 Education Act 1997 s 26(4)(a). Before exercising on any occasion its power to impose conditions falling within head (i) in the text, the Authority must obtain the consent of the Secretary of State as to such matters relating to the exercise of that power as he may determine: s 26(5).

14 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 56(2).

15 Ibid s 26(4)(b) (substituted by the Education Act 2002 Sch 17 para 3(1), (4)).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/(ii) The Qualifications and Curriculum Authority/B. FUNCTIONS/891. Power to give directions.

### **891. Power to give directions.**

If it appears to the Qualifications and Curriculum Authority<sup>1</sup>:

1601 (1) that any person ('the awarding body') who, either alone or jointly with others, awards or authenticates any qualification accredited by the Authority<sup>2</sup> has failed or is likely to fail to comply with any condition subject to which the accreditation has effect<sup>3</sup>; and

1602 (2) that the failure: (a) prejudices or would be likely to prejudice the proper award or authentication of the qualification<sup>4</sup>; or (b) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification<sup>5</sup>,

the Authority may direct the awarding body to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect<sup>6</sup>. It is the duty of the awarding body to comply with any such direction<sup>7</sup>. Such a direction is enforceable, on the application of the Qualifications and Curriculum Authority, by a mandatory order<sup>8</sup>.

1 As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

2 As to the Authority's functions in relation to accreditation see PARA 888 ante.

3 Education Act 1997 s 26A(1)(a) (s 26A added by the Education Act 2002 s 189, Sch 17 para 4).

4 Education Act 1997 s 26A(1)(b)(i) (as added: see note 3 supra).

5 Ibid s 26A(1)(b)(ii) (as added: see note 3 supra).

6 Ibid s 26A(1) (as added: see note 3 supra).

7 Ibid s 26A(2) (as added: see note 3 supra).

8 Ibid s 26A(3) (as added: see note 3 supra). As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/(ii) The Qualifications and Curriculum Authority/B. FUNCTIONS/892. Administrative functions.

## **892. Administrative functions.**

The Qualifications and Curriculum Authority<sup>1</sup> may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions<sup>2</sup>. In particular, the Authority may:

- 1603 (1) acquire or dispose of land<sup>3</sup> or other property<sup>4</sup>;
- 1604 (2) enter into contracts<sup>5</sup>;
- 1605 (3) form bodies corporate or associated or other bodies which are not bodies corporate<sup>6</sup>;
- 1606 (4) enter into joint ventures with other persons<sup>7</sup>;
- 1607 (5) subscribe for shares or stock<sup>8</sup>;
- 1608 (6) invest any sums not immediately required for the purpose of carrying out its functions<sup>9</sup>;
- 1609 (7) accept gifts of money, land or other property<sup>10</sup>; and
- 1610 (8) borrow money<sup>11</sup>.

The Authority may also authorise the Qualifications, Curriculum and Assessment Authority for Wales<sup>12</sup> to act as its agent in connection with the exercise of any of the Authority's functions in relation to Wales<sup>13</sup>. The consent of the Secretary of State is required for the exercise of any power conferred by head (3) or head (4) above, or of the power to authorise<sup>14</sup> the Qualifications, Curriculum and Assessment Authority for Wales to act as its agent<sup>15</sup>.

The Qualifications and Curriculum Authority may give to any person or body, whether or not in the United Kingdom<sup>16</sup>, such assistance as it may determine<sup>17</sup>. Assistance may be provided on such terms and subject to such conditions, if any, as the Authority may determine<sup>18</sup>. In particular, assistance may be provided free of charge or on such terms as to payment as the Authority may determine<sup>19</sup>. The power to provide assistance<sup>20</sup> does not extend to the giving of financial assistance, and the consent of the Secretary of State is required for any exercise of that power<sup>21</sup>.

1 As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

2 Education Act 1997 s 21(5), Sch 4 para 2(1). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 56(2). As to the functions of the Authority see PARAS 886-890 ante, 893 post.

3 As to the meaning of 'land' see PARA 1352 note 9 post; definition applied by virtue of ibid s 56(2).

4 Ibid Sch 4 para 2(2)(a).

5 Ibid Sch 4 para 2(2)(b).

6 Ibid Sch 4 para 2(2)(c).

7 Ibid Sch 4 para 2(2)(d).

8 Ibid Sch 4 para 2(2)(e).

- 9 Ibid Sch 4 para 2(2)(f).
- 10 Ibid Sch 4 para 2(2)(g).
- 11 Ibid Sch 4 para 2(2)(h).
- 12 As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 post.
- 13 Education Act 1997 Sch 4 para 2(3). For the meaning of 'Wales' see PARA 52 note 13 ante.
- 14 Ie under ibid Sch 4 para 2(3): see the text to notes 12-13 supra.
- 15 Ibid Sch 4 para 2(4).
- 16 For the meaning of 'United Kingdom' see PARA 63 note 3 ante.
- 17 Education Act 1997 Sch 4 para 3(1).
- 18 Ibid Sch 4 para 3(2).
- 19 Ibid Sch 4 para 3(3).
- 20 Ie the power conferred by ibid Sch 4 para 3.
- 21 Ibid Sch 4 para 3(4).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/(ii) The Qualifications and Curriculum Authority/B. FUNCTIONS/893. Delegation of functions.

### **893. Delegation of functions.**

The Qualifications and Curriculum Authority<sup>1</sup> may authorise the chairman, the deputy chairman, the chief officer<sup>2</sup> or any committee which has been established by the Authority<sup>3</sup> to carry out such of the Authority's functions<sup>4</sup> as it may determine<sup>5</sup>. This has effect without prejudice to any power to authorise an employee of the Authority to carry out any of the Authority's activities on behalf of the Authority<sup>6</sup>. The Secretary of State<sup>7</sup> may authorise any committee which has been established by the Authority under a direction of the Secretary of State<sup>8</sup> to carry out such of the Authority's functions as are specified in that direction<sup>9</sup>.

1 As to the establishment, constitution and administration of the Qualifications and Curriculum Authority see PARA 875 et seq ante.

2 As to the appointment of the chairman, the deputy chairman and the chief officer see PARAS 876-877 ante.

3 Ie established under the Education Act 1997 s 21(5), Sch 4 para 13: see PARA 882 ante.

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 56(2). As to the functions of the Authority see PARAS 886-892 ante.

5 Ibid Sch 4 para 14(1).

6 Ibid Sch 4 para 14(3).

7 As to the Secretary of State see PARA 52 ante.

8 Ie established under the Education Act 1997 Sch 4 para 13(1)(b): see PARA 882 ante.

9 Ibid Sch 4 para 14(2).

## **UPDATE**

### **874-893 The Qualifications and Curriculum Authority**

The Qualifications and Curriculum Authority has been renamed the Qualifications and Curriculum Development Agency ('QCDA') and the Education Act 1997 ss 21-26A, Sch 4 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 175(1), Sch 12 paras 13, 24, Sch 16 Pt 4. As to the revised constitution, proceedings and functions of the QCDA see PARA 876B. Provision has also been made for the establishment of the Office of Qualifications and Examinations Regulation ('Ofqual'), which has taken over the regulatory functions of the Qualifications and Curriculum Authority: see PARA 876A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/894. Constitution.

### **(iii) The Qualifications, Curriculum and Assessment Authority for Wales**

#### **A. CONSTITUTION AND ADMINISTRATION**

##### **894. Constitution.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> consists of not less than 10 nor more than 15 members appointed by the National Assembly for Wales<sup>2</sup>. Of the members of the Authority, the Assembly must appoint one as chairman, and may appoint another as deputy chairman<sup>3</sup>. The Assembly:

- 1611 (1) must include among the members of the Authority persons who appear to it to have relevant knowledge or experience in education<sup>4</sup>, and persons who appear to it to have relevant knowledge or experience in training<sup>5</sup>; and
- 1612 (2) may include among those members persons who appear to it to have experience of occupations, trades or professions having an interest in education or training<sup>6</sup>.

The Authority is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown, and the Authority's property is not to be regarded as property of, or property held on behalf of, the Crown<sup>7</sup>.

The Qualifications, Curriculum and Assessment Authority for Wales, so far as it is a charity, is an exempt charity within the meaning of the Charities Act 1993<sup>8</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante.

2 Education Act 1997 s 27(2). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Ibid s 27(3).

4 Ibid s 27(4)(a)(i).

5 Ibid s 27(4)(a)(ii).

6 Ibid s 27(4)(b).

7 Ibid s 27(5), Sch 5 para 1.

8 See the Charities Act 1993 s 3(5)(a), Sch 2 para (f) (substituted with savings by the Education Act 1997 s 57(1), Sch 7 para 7(b)); and CHARITIES vol 8 (2010) PARA 315. For the meaning of 'charity' see the Charities Act 1993 s 96(1), (2) (s 96(2) as amended); and CHARITIES vol 8 (2010) PARA 1 (definition applied by the Education Reform Act 1988 s 125A(3) (as so added)).

#### **UPDATE**

### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

### **894 Constitution**

TEXT AND NOTE 8--1993 Act Sch 2 para (f) repealed: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/895. Chief officer.

### **895. Chief officer.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> must have a chief officer who is to be appointed: (1) in the case of a person who is also chairman of the Authority, by the National Assembly for Wales<sup>2</sup>; and (2) in any other case, by the Authority with the approval of the Assembly<sup>3</sup>. The appointment of the chief officer is on such terms and conditions as the Assembly, or, as the case may be, the Authority with the approval of the Assembly, may determine<sup>4</sup>. The Assembly may appoint the chief officer, if appointed under head (2) above, to be a member of the Authority<sup>5</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 Education Act 1997 s 27(5), Sch 5 para 4(1)(a). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Ibid Sch 5 para 4(1)(b).

4 Ibid Sch 5 para 4(2).

5 Ibid Sch 5 para 4(3).

### **UPDATE**

#### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/896. Tenure of office.

### **896. Tenure of office.**

A person holds and vacates office as a member or as chairman or deputy chairman of the Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> in accordance with the terms of his appointment and, on ceasing to be a member, is eligible for re-appointment<sup>2</sup>. A person may at any time by notice in writing to the National Assembly for Wales<sup>3</sup> resign his office as a member or as chairman or deputy chairman of the Authority<sup>4</sup>. The Assembly may, if satisfied that a member of the Authority:

- 1613 (1) has been absent from meetings of the Authority for a continuous period of more than six months without the permission of the Authority<sup>5</sup>; or
- 1614 (2) is unable or unfit to discharge the functions<sup>6</sup> of a member<sup>7</sup>,

remove him from office by giving him notice in writing upon which the office becomes vacant<sup>8</sup>. If the chairman or deputy chairman of the Authority ceases to be a member of the Authority, he must also cease to be chairman or deputy chairman<sup>9</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 Education Act 1997 s 27(5), Sch 5 para 5(1).

3 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 Education Act 1997 Sch 5 para 5(2).

5 Ibid Sch 5 para 6(a).

6 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 56(2).

7 Ibid Sch 5 para 6(b).

8 Ibid Sch 5 para 6.

9 Ibid Sch 5 para 7.

### **UPDATE**

#### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/897. Payments to members.

### **897. Payments to members.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> must pay to its members such salaries or fees, and such travelling, subsistence or other allowances, as the National Assembly for Wales<sup>2</sup> may determine<sup>3</sup>. The Authority must, as regards any member in whose case the Assembly may so determine, pay, or make provision for the payment of, such sums by way of pension, allowances and gratuities to or in respect of him as the Assembly may determine<sup>4</sup>. If a person ceases to be a member of the Authority and it appears to the Assembly that there are special circumstances which make it right that he should receive compensation, the Assembly may direct the Authority to make to that person a payment of such amount as the Assembly may determine<sup>5</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Education Act 1997 s 27(5), Sch 5 para 8(1).

4 Ibid Sch 5 para 8(2).

5 Ibid Sch 5 para 8(3).

## **UPDATE**

### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/898. Staff.

### **898. Staff.**

Subject to the approval of the National Assembly for Wales<sup>1</sup>, the Qualifications, Curriculum and Assessment Authority for Wales<sup>2</sup> may appoint such number of employees, on such terms and conditions, as it may determine<sup>3</sup>, and must pay them such remuneration and allowances as it may determine<sup>4</sup>. Employment with the Authority continues to be included among the kinds of employment to which a scheme, relating to pensions, allowances or gratuities which are to be paid, or may be paid, by the Minister for the Civil Service<sup>5</sup> under the Superannuation Act 1972<sup>6</sup> can apply<sup>7</sup>. The Authority must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase so attributable<sup>8</sup> in the sums payable under the Superannuation Act 1972 out of money provided by Parliament<sup>9</sup>. Where an employee of the Authority is, by reference to that employment, a participant in such a scheme<sup>10</sup> and is also a member of the Authority, the Assembly may determine that his service as such a member is to be treated for the purposes of the scheme as service as an employee of the Authority, whether or not any benefits are payable<sup>11</sup> to or in respect of him<sup>12</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

3 Education Act 1997 s 27(5), Sch 5 para 9(a).

4 Ibid Sch 5 para 9(b).

5 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550.

6 Ie a scheme under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

7 Education Act 1997 Sch 5 para 10(1).

8 Ie attributable to ibid Sch 5 para 10.

9 Ibid Sch 5 para 10(2).

10 Ie a scheme under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

11 Ie whether or not any benefits are payable to or in respect of him by virtue of the Education Act 1997 Sch 5 para 8: see PARA 897 ante.

12 Ibid Sch 5 para 10(3).

### **UPDATE**

### **894-903 Constitution and Administration**



Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/899. Finance.

## **899. Finance.**

The National Assembly for Wales<sup>1</sup> may make grants to the Qualifications, Curriculum and Assessment Authority for Wales<sup>2</sup> of such amount as it thinks fit in respect of expenses incurred or to be incurred by the Authority in carrying out its functions<sup>3</sup>. The payment of such a grant is subject to the fulfilment of such conditions as the Assembly may determine<sup>4</sup>. The Assembly may also impose such requirements as it thinks fit in connection with the payment of such grants<sup>5</sup>.

1 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

3 Education Act 1997 s 27(5), Sch 5 para 11(1). Any sums required for the payment by the National Assembly for Wales of grants under the Education Act 1997 must be paid out of money provided by Parliament: see s 55.

4 Ibid Sch 5 para 11(2).

5 Ibid Sch 5 para 11(3).

## **UPDATE**

### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/900. Committees.

## **900. Committees.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup>: (1) may establish a committee for any purpose<sup>2</sup>; and (2) if so directed by the National Assembly for Wales<sup>3</sup>, must establish a committee for such purpose as is specified in the direction<sup>4</sup>. The Authority must determine the number of members which a committee so established is to have, and the terms on which they are to hold and vacate office<sup>5</sup>. Subject to such conditions as the Assembly may determine, a committee may include persons who are not members of the Authority<sup>6</sup>. The Authority must keep under review the structure of committees so established and the scope of each committee's activities<sup>7</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 Education Act 1997 s 27(5), Sch 5 para 12(1)(a).

3 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 Education Act 1997 Sch 5 para 12(1)(b).

5 Ibid Sch 5 para 12(2).

6 Ibid Sch 5 para 12(3).

7 Ibid Sch 5 para 12(4).

## **UPDATE**

### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/901. Proceedings.

## **901. Proceedings.**

The following persons are entitled to attend and take part in deliberations (but not in decisions) at meetings of the Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> or of any committee of the Authority<sup>2</sup>:

- 1615 (1) a representative of the National Assembly for Wales<sup>3</sup>;
- 1616 (2) the chairman of the Qualifications and Curriculum Authority<sup>4</sup>, or a representative of his<sup>5</sup>; and
- 1617 (3) Her Majesty's Chief Inspector of Education and Training in Wales<sup>6</sup>, or a representative of his<sup>7</sup>.

The Qualifications, Curriculum and Assessment Authority for Wales must provide the National Assembly for Wales, the chairman of the Qualifications and Curriculum Authority and Her Majesty's Chief Inspector of Education and Training in Wales with such copies of any documents distributed to members of the Qualifications, Curriculum and Assessment Authority for Wales or members of any of its committees as each of those persons may require<sup>8</sup>.

The validity of proceedings of the Qualifications, Curriculum and Assessment Authority for Wales is not affected by a vacancy among the members or any defect in the appointment of a member<sup>9</sup>. The Authority may regulate its own procedure and that of any of its committees<sup>10</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 Education Act 1997 s 27(5), Sch 5 para 14(1). As to the establishment of committees of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 900 ante.

3 Ibid Sch 5 para 14(1)(a). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 As to the Qualifications and Curriculum Authority see PARAS 876-893 ante.

5 Education Act 1997 Sch 5 para 14(1)(b).

6 Or 'Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru'. As to Her Majesty's Chief Inspector of Education and Training in Wales see PARA 1188 et seq post.

7 Education Act 1997 Sch 5 para 14(1)(c) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3) (a)).

8 Education Act 1997 Sch 5 para 14(2) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3) (a)).

9 Education Act 1997 Sch 5 para 15.

10 Ibid Sch 5 para 16. This is expressed to be subject to Sch 5 paras 1-15 (as amended) (see the text and notes 1-9 supra; and PARAS 894-900 ante, 910-911 post).

## **UPDATE**

### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/902. Accounts.

## **902. Accounts.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> must:

- 1618 (1) keep proper accounts and proper records in relation to them<sup>2</sup>;
- 1619 (2) prepare a statement of accounts in respect of each financial year of the Authority<sup>3</sup>; and
- 1620 (3) send copies of the statement to the National Assembly for Wales<sup>4</sup> and to the Auditor General for Wales<sup>5</sup> before the end of the month of August next following the financial year to which the statement relates<sup>6</sup>.

The statement of accounts must comply with any directions given by the Assembly with the approval of the Treasury<sup>7</sup> as to: (a) the information to be contained in it<sup>8</sup>; (b) the manner in which the information contained in it is to be presented<sup>9</sup>; or (c) the methods and principles according to which the statement is to be prepared<sup>10</sup>. The Auditor General for Wales must examine, certify and report on each statement so received by him and must lay copies of each statement and of his report before the Assembly<sup>11</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 Education Act 1997 s 27(5), Sch 5 para 17(1)(a).

3 Ibid Sch 5 para 17(1)(b).

4 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 The Education Act 1997 refers to the Comptroller and Auditor General, but his functions under Sch 5 para 17 are, in relation to statements of accounts for financial years beginning in and after 1999, transferred to the Auditor General for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726; and as to the Auditor General for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Education Act 1997 Sch 5 para 17(1)(c).

7 The Treasury approval requirement under ibid Sch 5 para 17(2) continues in effect: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

8 Education Act 1997 Sch 5 para 17(2)(a).

9 Ibid Sch 5 para 17(2)(b).

10 Ibid Sch 5 para 17(2)(c).

11 See ibid Sch 5 para 17(3); and the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1.

## **UPDATE**

### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/A. CONSTITUTION AND ADMINISTRATION/903. Documents.

### **903. Documents.**

The application of the seal of the Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> is authenticated by the signature of the chairman or deputy chairman and that of one other member<sup>2</sup>. Any document purporting to be an instrument made or issued by or on behalf of the Authority and to be duly executed under the Authority's seal<sup>3</sup>, or signed or executed by a person authorised by the Authority to act in that behalf<sup>4</sup>, is to be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown<sup>5</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 Education Act 1997 s 27(5), Sch 5 para 18.

3 Ibid Sch 5 para 19(a).

4 Ibid Sch 5 para 19(b).

5 Ibid Sch 5 para 19. As to rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

### **UPDATE**

#### **894-903 Constitution and Administration**

Education Act 1997 s 27, Sch 5 repealed; Qualifications, Curriculum and Assessment Authority for Wales now abolished and all functions transferred to National Assembly for Wales: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239 (prospectively amended by Education and Skills Act 2008 Sch 2).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/904. Duty to advance education and training.

## **B. FUNCTIONS**

### **904. Duty to advance education and training.**

The functions<sup>1</sup> conferred on the Qualifications, Curriculum and Assessment Authority for Wales<sup>2</sup> by Part V of the Education Act 1997<sup>3</sup> must be exercised by the Authority for the purpose of advancing education and training in Wales<sup>4</sup>. The Authority must exercise its functions under Part V of the Education Act 1997 with a view to promoting quality and coherence in education and training in relation to which it has functions under that Part<sup>5</sup>.

1 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 1997 s 56(2).

2 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

3 Ie the Education Act 1997 Pt V (ss 21-36) (as amended): see PARA 894 et seq ante.

4 Ibid s 28(1). For the meaning of 'Wales' see PARA 52 note 13 ante.

5 Ibid s 28(2).

## **UPDATE**

### **904 Duty to advance education and training**

TEXT AND NOTES--References to the Qualifications, Curriculum and Assessment Authority for Wales are now to the National Assembly for Wales: 1997 Act s 28 (amended by the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/905. Curriculum and assessment.

## **905. Curriculum and assessment.**

The functions<sup>1</sup> of the Qualifications, Curriculum and Assessment Authority for Wales<sup>2</sup> with respect to: (1) pupils<sup>3</sup> at maintained schools<sup>4</sup> in Wales<sup>5</sup> who have not ceased to be of compulsory school age<sup>6</sup>; (2) pupils at maintained nursery schools<sup>7</sup> in Wales<sup>8</sup>; and (3) children for whom funded nursery education<sup>9</sup> is provided in Wales otherwise than at a maintained school or maintained nursery school<sup>10</sup>, are:

- 1621 (a) to keep under review all aspects of the curriculum for maintained schools or maintained nursery schools<sup>11</sup> and all aspects of school examinations and assessment<sup>12</sup>;
- 1622 (b) to advise the National Assembly for Wales<sup>13</sup> on such matters concerned with the curriculum for such schools or with school examinations and assessment as it may refer to the Authority or as the Authority may see fit<sup>14</sup>;
- 1623 (c) to advise the Assembly on, and if so requested by it assist it to carry out, programmes of research and development for purposes connected with the curriculum for such schools or with school examinations and assessment<sup>15</sup>;
- 1624 (d) to publish and disseminate, and assist in the publication and dissemination of, information relating to the curriculum for such schools or to school examinations and assessment<sup>16</sup>;
- 1625 (e) to make arrangements with appropriate bodies for auditing the quality of assessments made in pursuance of assessment arrangements<sup>17</sup>.

The Authority has, in relation to Wales, the function of developing learning goals and related materials for children who are under compulsory school age<sup>18</sup>. In addition, the Authority has, in relation to Wales, functions in connection with baseline assessment schemes<sup>19</sup>.

<sup>1</sup> As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 1997 s 56(2).

<sup>2</sup> As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

<sup>3</sup> For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 1997 s 56(2).

<sup>4</sup> For the meaning of 'maintained school' see PARA 887 note 4 ante; definition applied by virtue of ibid s 29(5).

<sup>5</sup> For the meaning of 'Wales' see PARA 52 note 13 ante.

<sup>6</sup> Education Act 1997 s 29(1)(a) (s 29(1) amended by the Education Act 2002 s 189, Sch 17 para 5(1), (2)). As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of the Education Act 1997 s 56(2).

7 For the meaning of 'maintained nursery school' see PARA 36 note 6 ante; definition applied by virtue of *ibid* s 56(2).

8 *Ibid* s 29(1)(b) (as amended: see note 6 supra).

9 For the meaning of 'funded nursery education' see PARA 913 note 11 post; definition applied by *ibid* s 29(5) (definition added by the Education Act 2002 Sch 17 para 5(1), (6)).

10 Education Act 1997 s 29(1)(c) (as amended: see note 6 supra).

11 For these purposes, references to the curriculum for a maintained nursery school include references to the curriculum for any funded nursery education provided as mentioned in *ibid* s 29(1)(c) (as amended) (see head (3) in the text): s 29(2A) (added by the Education Act 2002 Sch 17 para 5(1), (4)).

12 Education Act 1997 s 29(2)(a) (amended by the Education Act 2002 Sch 17 para 5(1), (3)(a)). As to the meaning of 'assessment' see PARA 887 note 12 ante; definition applied by the Education Act 1997 s 29(5). References to assessment in schools include references to assessment in funded nursery education: s 29(2A) (as added: see note 11 supra).

13 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

14 Education Act 1997 s 29(2)(b).

15 *Ibid* s 29(2)(c).

16 *Ibid* s 29(2)(d).

17 *Ibid* s 29(2)(e).

18 *Ibid* s 29(3) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 207, 215). The Education Act 1997 s 29(3) (as amended) is repealed by the Education Act 2002 s 215(2), Sch 17 para 5(1), (5), Sch 22 Pt 2 as from a day to be appointed under s 216(3). At the date at which this volume states the law, no such day had been appointed.

19 Education Act 1997 s 29(4). The text refers to baseline assessment schemes within the meaning of Pt IV Ch I (ss 15-18) (as amended; repealed in relation to England; prospectively repealed in relation to Wales): see PARAS 939-941 post. The functions referred to in the text are:

- 94 (1) if designated by the National Assembly for Wales for the purpose, any function under Pt IV Ch I (as amended) of a designated body under the provisions relating to baseline assessments (s 29(4)(a)); and
- 95 (2) any other function which may be conferred on the Authority by the National Assembly for Wales (s 29(4)(b)).

The Education Act 1997 s 29(4) is repealed by the Education Act 2002 Sch 17 para 5(1), (5), Sch 22 Pt 2 as from a day to be appointed under s 216(3). At the date at which this volume states the law, no such day had been appointed.

## UPDATE

### 905 Curriculum and assessment

TEXT AND NOTE 2--For 'Qualifications, Curriculum and Assessment Authority for Wales' read 'National Assembly for Wales': 1997 Act s 29(1) (amended by the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239).

TEXT AND NOTES 14, 15--1997 Act s 29(2)(b), (c) repealed: SI 2005/3239.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/906. External vocational and academic qualifications.

## **906. External vocational and academic qualifications.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> has, in relation to Wales<sup>2</sup>, such functions<sup>3</sup> with respect to external qualifications<sup>4</sup> as are for the time being conferred on the Authority by an order made by the National Assembly for Wales<sup>5</sup>. The functions with respect to external qualifications which may be conferred on the Authority by such an order are functions<sup>6</sup> similar to those exercised in relation to England by the Qualifications and Curriculum Authority<sup>7</sup> with respect to external qualifications<sup>8</sup>, and the functions in question may be conferred so as to be exercisable either solely by the Qualifications, Curriculum and Assessment Authority for Wales<sup>9</sup>, or by the Authority concurrently with the Qualifications and Curriculum Authority<sup>10</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 For the meaning of 'Wales' see PARA 52 note 13 ante.

3 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 1997 s 56(2).

4 For the meaning of 'external qualification' see PARA 888 note 4 ante; definition applied by ibid s 30(5).

5 Ibid s 30(1) (amended by the Learning and Skills Act 2000 ss 103(1), (4)(a), 153, Sch 11). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of orders under the Education Act 1997 generally see PARA 888 note 16 ante. As to the orders made under s 30(1) see the Education (Qualifications, Curriculum and Assessment Authority for Wales) (Conferment of Functions) Order 1997, SI 1997/2140; and the Education (Qualifications, Curriculum and Assessment Authority for Wales) (Conferment of Function) Order 2001, SI 2001/3907. As to regulations made under the Education Act 1997 s 24(2)(gg) (as added and applied) see the Education (External Qualifications) (Description of Tests) (Wales) Regulations 2001, SI 2001/3901. In any order made under the Education Act 1997 s 30(1) (as amended) before 19 December 2002 (ie before the commencement of the Education Act 2002 s 189(1), Sch 17 para 6: see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 4) any reference to functions falling within the Education Act 1997 s 24(2)(f) (see PARA 888 ante) is to be taken to be a reference to those functions as extended by virtue of the Education Act 2002 s 189, Sch 17 para 2 (see PARA 888 note 12 ante): Education Act 2002 Sch 17 para 6.

Where an order under the Education Act 1997 s 30(1) (as amended) is made so as to come into force at any time after 1 October 1997 (ie the day on which s 30(1) (as amended) came into force: see the Education Act 1997 (Commencement No 2 and Transitional Provisions) Order 1997, SI 1997/1468, art 2(3), Sch 1 Pt III), the order may include provisions for: (1) the transfer of staff; and (2) the transfer of property, rights and liabilities held, enjoyed or incurred in connection with any function which, as a result of the order, is to be exercisable by the Authority, whether solely or concurrently: Education Act 1997 s 30(4). Stamp duty is not chargeable in respect of any transfer effected by virtue of s 30 (as amended): s 53(1). However, no instrument, other than a statutory instrument, made or executed in pursuance of s 30 (as amended) is to be treated as duly stamped unless it is stamped with the duty to which it would, but for s 53 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1)(Reissue) PARA 1093), be liable or it has, in accordance with the provisions of the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1)(Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Education Act 1997 s 53(2). A land transaction effected under or by virtue of s 30 (as amended) is also exempt from charge for the purposes of stamp duty

land tax: s 53A(1) (s 53A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 26). Relief under the Education Act 1997 s 53A (as added) must be claimed in a land transaction return or an amendment of such a return: s 53A(2) (as so added). For these purposes, 'land transaction' has the meaning given by the Finance Act 2003 s 43(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX); and 'land transaction return' has the meaning given by the Finance Act 2003 s 76(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX): Education Act 1997 s 53A(3) (as so added).

- 6    le the functions falling within *ibid* s 24(2)(a)-(gg) (as amended): see PARA 888 ante.
- 7    As to the Qualifications and Curriculum Authority see PARAS 876-893 ante.
- 8    Education Act 1997 s 30(2) (amended by the Learning and Skills Act 2000 s 103(1), (4)(b)).
- 9    Education Act 1997 s 30(2)(a).
- 10   Ibid s 30(2)(b).

## UPDATE

### 906 External vocational and academic qualifications

TEXT AND NOTES--1997 Act s 30(1) substituted, s 30(1A), (1B) added, s 30(4) repealed: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239; Education and Skills Act 2008 s 162(2)-(5). Now, the 1997 Act s 30 applies, with respect to external qualifications in relation to Wales, for the purposes of (1) keeping under review all aspects of such qualifications; (2) providing support and advice to persons providing courses leading to such qualifications with a view to establishing and maintaining high standards in the provision of such courses; (3) publishing and disseminating, and assisting in the publication and dissemination of, information relating to such qualifications; (4) developing and publishing criteria for the recognition of persons who, as outside persons, award or authenticate such qualifications or credits in respect of components of such qualifications; (5) recognising, where they meet such criteria, any such persons who apply to be recognised; (6) developing and publishing criteria for the accreditation of such qualifications where they are awarded or authenticated by persons recognised under head (5); (7) accrediting any such qualifications submitted for accreditation where they meet such criteria; (8) developing and publishing rules and procedures for dealing with the effect on the continued accreditation of such qualifications where any person awarding or authenticating them ceases to be recognised; and (9) making arrangements, whether or not with others, for the development, setting and administration of tests or tasks which fall to be undertaken with a view to obtaining such qualifications and which fall within a prescribed description: s 30(1) (as so substituted and amended) (head (8) in force 31 October 2009: see SI 2009/784). In head (4), 'criteria' includes criteria which are to be applied for the purpose of ensuring that the number of different accredited qualifications in similar subject areas or serving similar functions is not excessive, and head (7) is to be construed accordingly: s 30(1A). The following functions are exercisable solely by the Welsh Ministers (a) the functions set out in heads (4) and (5); and (b) the functions set out in the heads so far as they relate to external qualifications other than National Vocational Qualifications: s 30(1B). In exercise of the functions conferred by s 30(1), the Welsh Ministers have made the Functions in relation to External Qualifications (Wales) Order 2009, SI 2009/1220.

NOTE 5--SI 1997/2140, SI 2001/3907 revoked, SI 2001/3901 amended: SI 2005/3239.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/907. Advising and assisting the National Assembly for Wales.

### **907. Advising and assisting the National Assembly for Wales.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> must advise the National Assembly for Wales<sup>2</sup> on such matters connected with the provision of education or training in Wales<sup>3</sup> as the Assembly may specify by order<sup>4</sup>. The Authority must carry out such ancillary activities<sup>5</sup> as the Assembly may direct<sup>6</sup>. The Authority must supply the Assembly with such reports and other information with respect to the carrying out of the Authority's functions<sup>7</sup> as the Assembly may require<sup>8</sup>. In addition, the Authority may supply any person designated by the Assembly with such information as the Authority thinks fit about any matter in relation to which it has a function<sup>9</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For the meaning of 'Wales' see PARA 52 note 13 ante.

4 Education Act 1997 s 31(1). Section 54(1) disappplies, in relation to s 31 (as amended), the general requirement in s 54 (see PARA 888 note 16 ante) that orders must be made by statutory instrument: s 54(1). As to the making of orders under the Education Act 1997 generally see PARA 888 note 16 ante. At the date at which this volume states the law, no such order had been made.

5 For these purposes, activities are ancillary activities in relation to the Authority if the National Assembly for Wales considers it is appropriate for the Authority to carry out those activities for the purposes of or in connection with the carrying out by the Authority of any of its other functions under *ibid* Pt V (ss 21-36) (as amended) (see PARA 894 et seq ante): s 31(3).

6 *Ibid* s 31(2).

7 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 56(2).

8 *Ibid* s 31(4).

9 *Ibid* s 31(5) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 70).

## **UPDATE**

### **907 Advising and assisting the National Assembly for Wales**

TEXT AND NOTES--Education Act 1997 s 31 repealed: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239.

NOTE 4--Education Act 1997 s 54(1) amended: see PARA 888.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/908. Discharge of functions.

### **908. Discharge of functions.**

In carrying out its functions<sup>1</sup> under Part V of the Education Act 1997<sup>2</sup>, the Qualifications, Curriculum and Assessment Authority for Wales<sup>3</sup> must:

- 1626 (1) comply with any directions given by the National Assembly for Wales<sup>4</sup>;
- 1627 (2) act in accordance with any plans approved by the Assembly<sup>5</sup>; and
- 1628 (3) so far as relevant, have regard to the requirements of: (a) the provision<sup>6</sup> relating to general duties in respect of the curriculum<sup>7</sup>; (b) industry, commerce, finance and the professions regarding education and training, including required standards of practical competence<sup>8</sup>; and (c) persons with special learning needs<sup>9</sup>.

In carrying out those functions the Authority must in addition have regard to information supplied to it by Her Majesty's Chief Inspector of Education and Training in Wales<sup>10</sup> or by any body designated by the Assembly for these purposes<sup>11</sup>.

Where in carrying out any of its functions under Part V of the Education Act 1997 the Authority accredits any qualification, it may do so on such terms, including terms as to payment, as it may determine<sup>12</sup>. Those conditions may in particular include conditions:

- 1629 (i) placing a limit on the amount of the fee that can be demanded in respect of any award or authentication of the qualification in question<sup>13</sup>; and
- 1630 (ii) requiring right to enter premises<sup>14</sup> and to inspect and copy documents so far as necessary for the Authority to satisfy itself that the appropriate standards are being maintained, in relation to the award or authentication of the qualification in question, by the persons receiving the accreditation, or to determine whether to impose a condition falling within head (i) above and if so what that condition should be<sup>15</sup>.

<sup>1</sup> As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by the Education Act 1997 s 56(2).

<sup>2</sup> *Ibid* Pt V (ss 21-36) (as amended): see PARA 894 et seq ante.

<sup>3</sup> As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

<sup>4</sup> Education Act 1997 s 32(1)(a). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>5</sup> *Ibid* s 32(1)(b).

<sup>6</sup> *Ie* the Education Act 2002 s 99: see PARA 926 post.

<sup>7</sup> Education Act 1997 s 32(1)(c)(i) (amended by the Education Act 2002 s 215(1), Sch 21 para 70).

8 Education Act 1997 s 32(1)(c)(ii).

9 Ibid s 32(1)(c)(iii). For the meaning of 'persons with special learning needs' see PARA 890 note 9 ante; definition applied by s 32(6).

10 Or 'Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru'. As to Her Majesty's Chief Inspector of Education and Training in Wales see PARA 1188 et seq post.

11 Education Act 1997 s 32(2) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(a)).

12 Education Act 1997 s 32(3) (amended by the Education Act 2002 ss 189, 215(2), Sch 17 para 7(1), (2), Sch 22 Pt 2). Where in carrying out those functions the Authority accredits any qualification, it may, at the time of accreditation or later, impose such conditions on accreditation or continued accreditation as it may determine: Education Act 1997 s 32(3A) (added by the Education Act 2002 Sch 17 para 7(1), (3)).

13 Education Act 1997 s 32(4)(a). Before exercising on any occasion its power to impose conditions falling within head (i) in the text, the Authority must obtain the consent of the National Assembly for Wales as to such matters relating to the exercise of that power as it may determine: s 32(5).

14 For the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 56(2).

15 Ibid s 32(4)(b) (substituted by the Education Act 2002 Sch 17 para 7(1), (4)).

## UPDATE

### 908 Discharge of functions

TEXT AND NOTES--References to the Qualifications, Curriculum and Assessment Authority for Wales are now to the National Assembly for Wales: 1997 Act s 32 (amended by the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239).

1997 Act s 32 further amended: Education and Skills Act 2008 s 162(6)-(9).

TEXT AND NOTES 4, 5--1997 Act s 32(1)(a), (b) repealed: SI 2005/3239.

NOTE 13--1997 Act s 32(5) repealed: SI 2005/3239.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/909. Power to give directions.

### **909. Power to give directions.**

If it appears to the Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup>:

1631 (1) that any person ('the awarding body') who, either alone or jointly with others, awards or authenticates any qualification accredited by the Authority<sup>2</sup> has failed or is likely to fail to comply with any condition subject to which the accreditation has effect<sup>3</sup>; and

1632 (2) that the failure: (a) prejudices or would be likely to prejudice the proper award or authentication of the qualification<sup>4</sup>; or (b) prejudices or would be likely to prejudice persons who might reasonably be expected to seek to obtain the qualification<sup>5</sup>,

the Authority may direct the awarding body to take or refrain from taking specified steps with a view to securing compliance with the conditions subject to which the accreditation has effect<sup>6</sup>. It is the duty of the awarding body to comply with any such direction<sup>7</sup>. Such a direction is enforceable, on the application of the Qualifications, Curriculum and Assessment Authority for Wales, by a mandatory order<sup>8</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 As to the Authority's functions in relation to accreditation see PARA 906 ante.

3 Education Act 1997 s 32A(1)(a) (s 32A added by the Education Act 2002 s 189, Sch 17 para 8).

4 Education Act 1997 s 32A(1)(b)(i) (as added: see note 3 supra).

5 Ibid s 32A(1)(b)(ii) (as added: see note 3 supra).

6 Ibid s 32A(1) (as added: see note 3 supra).

7 Ibid s 32A(2) (as added: see note 3 supra).

8 Ibid s 32A(3) (as added: see note 3 supra). As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

## **UPDATE**

### **909 Power to give directions**

TEXT AND NOTES--Education Act 1997 s 32A substituted by Education and Skills Act 2008 s 162(10); s 32A(6) repealed by Apprenticeships, Skills, Children and Learning Act 2009 Sch 16 Pt 4.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/910. Administrative functions.

## **910. Administrative functions.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions<sup>2</sup>. In particular, the Authority may:

- 1633 (1) acquire or dispose of land or other property<sup>3</sup>;
- 1634 (2) enter into contracts<sup>4</sup>;
- 1635 (3) form bodies corporate or associated or other bodies which are not bodies corporate<sup>5</sup>;
- 1636 (4) enter into joint ventures with other persons<sup>6</sup>;
- 1637 (5) subscribe for shares or stock<sup>7</sup>;
- 1638 (6) invest any sums not immediately required for the purpose of carrying out its functions<sup>8</sup>;
- 1639 (7) accept gifts of money, land or other property<sup>9</sup>; and
- 1640 (8) borrow money<sup>10</sup>.

Where authorised to do so<sup>11</sup>, the Authority may act as agent for the Qualifications and Curriculum Authority<sup>12</sup> in connection with the exercise of any of that Authority's functions in relation to Wales<sup>13</sup>. The consent of the National Assembly for Wales is required for the exercise of any power conferred by head (3) or head (4) above<sup>14</sup>.

The Qualifications, Curriculum and Assessment Authority for Wales may give to any person or body, whether or not in the United Kingdom<sup>15</sup>, such assistance as it may determine<sup>16</sup>. Assistance may be provided on such terms and subject to such conditions, if any, as the Authority may determine<sup>17</sup>. In particular, assistance may be provided free of charge or on such terms as to payment as the Authority may determine<sup>18</sup>. The power conferred on the Authority to provide assistance<sup>19</sup> does not extend to the giving of financial assistance; and the consent of the Assembly is required for any exercise of that power<sup>20</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 Education Act 1997 s 27, Sch 5 para 2(1). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 56(2).

3 Ibid Sch 5 para 2(2)(a).

4 Ibid Sch 5 para 2(2)(b).

5 Ibid Sch 5 para 2(2)(c).

6 Ibid Sch 5 para 2(2)(d).

7 Ibid Sch 5 para 2(2)(e).

- 8 Ibid Sch 5 para 2(2)(f).
- 9 Ibid Sch 5 para 2(2)(g).
- 10 Ibid Sch 5 para 2(2)(h).
- 11 Ie under ibid s 21(5), Sch 4 para 2(3): see PARA 892 ante.
- 12 As to the Qualifications and Curriculum Authority see PARAS 876-893 ante.
- 13 Education Act 1997 Sch 5 para 2(3). For the meaning of 'Wales' see PARA 52 note 13 ante.
- 14 Ibid Sch 5 para 2(4). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 15 For the meaning of 'United Kingdom' see PARA 63 note 3 ante.
- 16 Education Act 1997 Sch 5 para 3(1).
- 17 Ibid Sch 5 para 3(2).
- 18 Ibid Sch 5 para 3(3).
- 19 Ie the power conferred by ibid Sch 5 para 3.
- 20 Ibid Sch 5 para 3(4).

## **UPDATE**

### **910 Administrative functions**

TEXT AND NOTES--1997 Act Sch 5 repealed: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/ (iii) The Qualifications, Curriculum and Assessment Authority for Wales/B. FUNCTIONS/911. Delegation of functions.

### **911. Delegation of functions.**

The Qualifications, Curriculum and Assessment Authority for Wales<sup>1</sup> may authorise the chairman, the deputy chairman, the chief officer<sup>2</sup> or any committee which has been established by the Authority<sup>3</sup> to carry out such of its functions<sup>4</sup> as the Authority may determine<sup>5</sup>. This has effect without prejudice to any power to authorise an employee of the Authority to carry out any of the Authority's activities on behalf of the Authority<sup>6</sup>. The National Assembly for Wales<sup>7</sup> may authorise any committee which has been established by the Authority under a direction of the Assembly<sup>8</sup> to carry out such of the Authority's functions as are specified in that direction<sup>9</sup>.

1 As to the establishment of the Qualifications, Curriculum and Assessment Authority for Wales see PARA 875 ante; and as to its constitution and administration see PARA 894 et seq ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

2 As to the appointment of the chairman, the deputy chairman and the chief officer see PARAS 894-895 ante.

3 Ie established under the Education Act 1997 s 27(5), Sch 5 para 12: see PARA 900 ante.

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 56(2).

5 Ibid Sch 5 para 13(1).

6 Ibid Sch 5 para 13(3).

7 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 Ie established under the Education Act 1997 Sch 5 para 12(1)(b): see PARA 900 ante.

9 Ibid Sch 5 para 13(2).

### **UPDATE**

#### **911 Delegation of functions**

TEXT AND NOTES--1997 Act Sch 5 repealed: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(1) THE QUALIFICATIONS AND CURRICULUM AUTHORITY AND THE QUALIFICATIONS, CURRICULUM AND ASSESSMENT AUTHORITY FOR WALES/(iv) Levies payable to the Authorities/912. Levy on bodies awarding qualifications accredited by relevant Authority.

#### **(iv) Levies payable to the Authorities**

##### **912. Levy on bodies awarding qualifications accredited by relevant Authority.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> provide for a levy to be payable to the relevant Authority<sup>3</sup> by persons who award vocational qualifications accredited by that Authority<sup>4</sup>. Such regulations must:

- 1641 (1) specify the rate of the levy or the method by which it is to be calculated, and may make different provision in relation to different cases<sup>5</sup>;
- 1642 (2) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy<sup>6</sup>; and
- 1643 (3) provide for the relevant Authority to withdraw its accreditation of a qualification in cases of non-payment of the levy<sup>7</sup>.

Any sums received by the relevant Authority in respect of the levy must be applied by it in giving such financial assistance to other bodies as the Secretary of State may specify with a view to assisting that Authority to secure the development and improvement of standards in relation to vocational qualifications<sup>8</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the making of regulations under the Education Act 1997 generally see PARA 888 note 16 ante. As to the regulations made under s 36 see the Education (QCA Levy) Regulations 2002, SI 2002/435 (amended by SI 2002/1331).

3 For these purposes, 'the relevant Authority' means: (1) the Qualifications and Curriculum Authority in the case of a qualification accredited by that Authority; and (2) the Qualifications, Curriculum and Assessment Authority for Wales in the case of a qualification accredited by that Authority: Education Act 1997 s 36(4). As to the Qualifications and Curriculum Authority see PARAS 876-893 ante; and as to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

4 Ibid s 36(1). As to accreditation of qualifications see PARA 970 post.

5 Ibid s 36(2)(a). This is expressed to be without prejudice to the generality of s 54(3) (regulations under the Education Act 1997 may make different provision for different cases, etc: see PARA 888 note 16 ante).

6 Ibid s 36(2)(b).

7 Ibid s 36(2)(c).

8 Ibid s 36(3).

#### **UPDATE**

##### **912 Levy on bodies awarding qualifications accredited by relevant [body]**

TEXT AND NOTES--1997 Act s 36 repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 21, Sch 16 Pt 4.

NOTE 2--SI 2002/435 revoked: SI 2008/923.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(i) The Curriculum in England/A. IN GENERAL/913. General duties in respect of the curriculum in England.

## **(2) CURRICULUM**

### **(i) The Curriculum in England**

#### **A. IN GENERAL**

##### **913. General duties in respect of the curriculum in England.**

The Secretary of State<sup>1</sup>, every local education authority<sup>2</sup> in England<sup>3</sup>, the governing body<sup>4</sup> and head teacher<sup>5</sup> must exercise their functions<sup>6</sup> with a view to securing that the curriculum for each maintained school<sup>7</sup> or maintained nursery school<sup>8</sup> satisfies the requirements<sup>9</sup> of being a balanced and broadly based curriculum<sup>10</sup> which: (1) promotes the spiritual, moral, cultural, mental and physical development of pupils<sup>11</sup> at the school and of society<sup>12</sup>; and (2) prepares pupils at the school for the opportunities, responsibilities and experiences of later life<sup>13</sup>.

The Secretary of State and every local education authority in England must also exercise their functions with a view to securing that the curriculum for any funded nursery education provided<sup>14</sup> otherwise than at a maintained school or maintained nursery school<sup>15</sup> satisfies the requirements<sup>16</sup> of being a balanced and broadly based curriculum<sup>17</sup> which: (a) promotes the spiritual, moral, cultural, mental and physical development of the pupils for whom the funded nursery education is provided and of society<sup>18</sup>; and (b) prepares those pupils for the opportunities, responsibilities and experiences of later life<sup>19</sup>.

The functions of the Secretary of State, the local education authority, the governing body and the head teacher described above<sup>20</sup> include in particular: (i) functions conferred by Part 6 of the Education Act 2002 in relation to the National Curriculum for England<sup>21</sup>; and (ii) except in relation to maintained nursery schools or the provision of funded nursery education otherwise than at a maintained school or maintained nursery school, functions relating to religious education and religious worship<sup>22</sup>.

In exercising any function which may affect the provision of sex education<sup>23</sup> in maintained schools every local education authority in England must have regard to the guidance issued<sup>24</sup> by the Secretary of State<sup>25</sup>.

<sup>1</sup> As to the Secretary of State see PARA 52 ante.

<sup>2</sup> As to local education authorities see PARA 20 ante.

<sup>3</sup> For the meaning of 'England' see PARA 52 note 11 ante.

<sup>4</sup> As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

<sup>5</sup> As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

<sup>6</sup> As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3). See further the text and notes 20-22 infra.

<sup>7</sup> For the purposes of ibid Pt 6 (ss 76-96) (as amended) (see PARA 914 et seq post), 'maintained school' means: (1) any community, foundation or voluntary school maintained by a local education authority in



England; or (2) except where otherwise stated, any community or foundation special school which is maintained by a local education authority in England and is not established in a hospital: s 76. As to community, foundation and voluntary and community or foundation special schools see PARA 102 et seq ante. In the case of a local education authority, the reference is to every maintained school which it maintains: s 79(2). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

8 For the purposes of ibid Pt 6 (as amended) (see PARA 914 et seq post), 'maintained nursery school' means a nursery school which is maintained by a local education authority in England and is not a special school: s 76. As to the meaning of 'nursery school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). In the case of a local education authority, the reference is to every maintained nursery school which it maintains: s 79(2).

9 Ibid s 79(1)(a), (2)(a), (3).

10 Ibid s 78(1).

11 For the purposes of ibid Pt 6 (as amended), 'pupil' includes a child for whom funded nursery education is provided: s 76. For the meaning of 'pupil' generally see PARA 16 note 4 ante; definition applied by virtue of s 212(2), (3). In Pt 6 (as amended), 'nursery education' means full-time or part-time education suitable for children who have not attained compulsory school age, whether provided at schools or elsewhere: s 77(1). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of s 212(2), (3). As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 212(2), (3). For the purposes of Pt 6 (as amended), nursery education is 'funded nursery education' in relation to a child if: (1) it is provided in a maintained school or a maintained nursery school (s 77(2)(a)); or (2) it is provided, by a person other than the governing body of any such school, under arrangements made with that person by a local education authority in England in pursuance of the duty imposed on the authority by the School Standards and Framework Act 1998 s 118 (see PARA 86 ante) and in consideration of financial assistance provided by the authority under those arrangements (Education Act 2002 s 77(2)(b)).

12 Ibid s 78(1)(a).

13 Ibid s 78(1)(b).

14 Ie, in the case of a local education authority, under arrangements made by it: ibid s 79(2)(b).

15 For the purposes of ibid Pt 6 (as amended), funded nursery education provided in relation to a child otherwise than at a maintained school or maintained nursery school is to be taken to be provided by the person with whom the arrangements referred to in s 77(2)(b) (see note 11 head (2) supra) are made by the local education authority: s 77(3).

16 Ibid s 79(1)(b), (2)(b). Any person providing funded nursery education under the arrangements mentioned in s 77(2)(b) (see note 11 head (2) supra) must also secure that the curriculum for that funded nursery education satisfies the requirements of heads (a) and (b) in the text: s 79(5).

17 Ibid s 78(2).

18 Ibid s 78(2)(a).

19 Ibid s 78(2)(b).

20 Ie in ibid s 79(1)-(3): see the text to notes 1-19 supra.

21 Ibid s 79(4)(a). As to the National Curriculum for England see PARA 916 et seq post.

22 Ibid s 79(4)(b). As to religious education and worship see PARAS 947-968 post.

23 As to the meaning of 'sex education' see PARA 914 note 8 post; definition applied by virtue of ibid s 212(2), (3).

24 Ie under Education Act 1996 s 403(1A) (as added): see PARA 942 post. As to the guidance issued see PARA 942 note 9 post.

25 Education Act 2002 s 79(6). Except to the extent provided, nothing in the Education Act 2002 s 79 is to be taken to impose duties on a local education authority with regard to sex education: s 79(7).

## UPDATE

### 913 General duties in respect of the curriculum in England

TEXT AND NOTES--2002 Act s 79(1), (2) substituted, s 79(4)(b) amended, ss 77, 78(2), 79(5) repealed: Childcare Act 2006 Sch 1 paras 4-6, Sch 3 Pt 1.

NOTE 11--Definition of 'pupil' in 2002 Act s 76 omitted: 2006 Act Sch 1 para 3(3), Sch 3 Pt 1.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(i) The Curriculum in England/A. IN GENERAL/914. Basic curriculum for every maintained school in England.

#### **914. Basic curriculum for every maintained school in England.**

The curriculum for every maintained school<sup>1</sup> in England<sup>2</sup> must comprise a basic curriculum which includes:

- 1644 (1) provision for religious education for all registered pupils<sup>3</sup> at the school<sup>4</sup>;
- 1645 (2) a curriculum for all registered pupils at the school who have attained the age of three but are not over compulsory school age<sup>5</sup> (known as 'the National Curriculum for England')<sup>6</sup>;
- 1646 (3) in the case of a secondary school<sup>7</sup>, provision for sex education<sup>8</sup> for all registered pupils at the school<sup>9</sup>; and
- 1647 (4) in the case of a special school, provision for sex education for all registered pupils at the school who are provided with secondary education<sup>10</sup>.

The Secretary of State may by order amend these provisions<sup>11</sup> so as to add further requirements, otherwise than in relation to religious education or sex education<sup>12</sup>.

1 For the meaning of 'maintained school' see PARA 913 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the meaning of 'pupil' see PARA 913 note 11 ante.

4 Ibid s 80(1)(a). The text refers to the provision for religious education in accordance with such of the provisions of the School Standards and Framework Act 1998 s 69, Sch 19 (as amended) (see PARAS 951-954 post) as apply in relation to the school: Education Act 2002 s 80(1)(a). Section 80(1)(a) does not apply: (1) in relation to a nursery class in a primary school; or (2) in the case of a maintained special school (provision as to religious education in special schools being made by regulations under the School Standards and Framework Act 1998 s 71(7) (see PARA 961 post)): Education Act 2002 s 80(2). As to the making of regulations generally under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'special school' see PARA 1027 post; definition applied by virtue of s 212(2), (3). As to compulsory collective worship see PARA 957 et seq post.

5 As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 212(2), (3).

6 Ibid s 80(1)(b). As to the National Curriculum for England see PARA 916 et seq post. The Secretary of State may by order amend s 80(1)(b) by substituting for the reference to compulsory school age (or to any age specified there by virtue of s 80(3)) a reference to such other age as may be specified in the order: s 80(3)(b). No order may be made by the Secretary of State under s 80(3) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: see s 210(3); and PARA 77 note 7 ante. As to the Secretary of State see PARA 52 ante. At the date at which this volume states the law, no order had been made under s 80.

7 For the meaning of 'secondary school' see PARA 81 ante; definition applied by virtue of ibid s 212(2), (3).

8 'Sex education' includes education about Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus and any other sexually transmitted disease: Education Act 1996 s 579(1) (definition added by the Education Act 2002 s 215(1), Sch 21 para 57(c)); applied by virtue of the Education Act 2002 s 212(2), (3).

9 Ibid s 80(1)(c).

10 Ibid s 80(1)(d). For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of s 212(2), (3). The Education Act 2002 s 80(1)(d) applies in relation to pupil referral units as it applies in relation to special schools: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 10. For the meaning of 'pupil referral unit' see PARA 457 ante.

11 Ie the Education Act 2002 s 80(1).

12 Ibid s 80(3)(a). The Secretary of State may by order also amend any provision included in s 80(1) by virtue of s 80(3)(a): s 80(3)(c). As to the making of such orders see further note 6 supra.

## **UPDATE**

### **914 Basic curriculum for every maintained school in England**

NOTE 4--2002 Act s 80(2) amended: Childcare Act 2006 Sch 1 para 7(3).

TEXT AND NOTE 6--2002 Act s 80(1)(b) amended: 2006 Act Sch 1 para 7(2).

NOTE 10--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 19.

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### **915. Careers education and guidance.**

During the period beginning at the same time as the school year in which the majority of pupils in a class attain the age of 14, and ending with the expiry of the school year in which the majority of pupils in a class attain the age of 16, the governing body<sup>1</sup> and the head teacher must secure that all registered pupils at community, foundation or voluntary schools, or community or foundation special schools<sup>2</sup>, other than those established in hospitals, are provided with a programme of careers education<sup>3</sup>.

Where a careers adviser has responsibilities in relation to pupils attending such a school, he must on request be provided with the name and address of every relevant pupil at the institution, and any information in the institution's possession about any such pupil which the careers adviser needs in order to be able to provide him with advice and guidance on decisions about his career or with other information relevant to such decisions<sup>4</sup>. Where a careers adviser has such responsibilities, he must on request be permitted to have, in the case of any relevant pupil specified by him, access to that person on the school's premises, and at a reasonable time, for the purpose of enabling him to provide that person with advice and guidance on decisions about his career and with any other information relevant to such decisions<sup>5</sup>. Persons attending such schools must be provided with access to both guidance materials, and a wide range of up to date reference materials, relating to careers education and career opportunities<sup>6</sup>.

1 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

2 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

3 See the Education Act 1997 s 43 (as amended); and PARA 1161 post. For the meaning of 'careers education' see PARA 1161 note 7 post.

4 See ibid s 44(1); and PARA 1162 post.

5 See ibid s 44(4); and PARA 1162 post.

6 See ibid s 45; and PARA 1163 post. As to the extension or modification of the provisions contained in ss 43-45 (as amended) (see PARAS 1161-1163 post) see s 46; and PARAS 1161-1162 post.

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## ***B. THE NATIONAL CURRICULUM FOR ENGLAND: IN GENERAL***

### **916. The National Curriculum for England.**

The National Curriculum for England<sup>1</sup> comprises the foundation stage<sup>2</sup> followed by four key stages<sup>3</sup>, and specifies:

- 1648 (1) 'assessment arrangements', which are arrangements for assessing<sup>4</sup> pupils<sup>5</sup> in respect of the relevant stage (foundation or key stage) for the purpose of ascertaining what they have achieved in relation to the early learning goals<sup>6</sup> (in the case of the foundation stage) or (in the case of a key stage) in relation to the attainment targets for that stage<sup>7</sup>;
- 1649 (2) 'attainment targets', which, in relation to a key stage, means the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of that stage<sup>8</sup>;
- 1650 (3) 'programmes of study', which, in relation to a key stage, means matters, skills and processes which are required to be taught to pupils of different abilities and maturities by the end of that stage<sup>9</sup>.

Independent schools may choose to adopt the National Curriculum for England but are under no obligation to do so<sup>10</sup>.

1 As to the curriculum in England generally see PARAS 913-915 ante.

2 For the meaning of the 'foundation stage' see PARA 917 post.

3 For the meaning of 'key stage' see PARA 918 post.

4 For the purposes of the Education Act 2002 Pt 6 (ss 76-96) (as amended), 'assess' includes examine and test; and related expressions must be construed accordingly: s 76.

5 As to the meaning of 'pupil' see PARA 913 note 11 ante.

6 For the meaning of 'early learning goals' see PARA 917 note 19 post.

7 Education Act 2002 s 76.

8 Ibid s 76.

9 Ibid s 76.

10 As to independent schools see PARA 465 et seq ante.

## **UPDATE**

### **916 The National Curriculum for England**

TEXT AND NOTES 4-7--Definition of 'assessment arrangements' in 2002 Act s 76 substituted by Childcare Act 2006 Sch 1 para 3(2) and amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 32(4), (5).

NOTE 4--Definition of 'assess' in 2002 Act s 76 amended: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 32(3).

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### **917. The National Curriculum for England for the foundation stage.**

For the purposes of Part 6 of the Education Act 2002<sup>1</sup>, the foundation stage<sup>2</sup> in relation to a pupil<sup>3</sup> is the period beginning with:

- 1651 (1) in the case of a child<sup>4</sup> who is provided with funded nursery education<sup>5</sup> before he attains the age of three, his third birthday<sup>6</sup>;
- 1652 (2) in the case of a child who is provided with funded nursery education after he attains that age, the time when he is first provided with such education<sup>7</sup>; and
- 1653 (3) in the case of a child who is not provided with any funded nursery education, the time when he first receives primary education<sup>8</sup> other than nursery education<sup>9</sup>,

and ending at the same time as the school year<sup>10</sup> in which he attains the age of five<sup>11</sup>.

For the foundation stage, the National Curriculum for England comprises the following 'areas of learning'<sup>12</sup>:

- 1654 (a) personal, social and emotional development<sup>13</sup>;
- 1655 (b) communication, language and literacy<sup>14</sup>;
- 1656 (c) mathematical development<sup>15</sup>;
- 1657 (d) knowledge and understanding of the world<sup>16</sup>;
- 1658 (e) physical development<sup>17</sup>; and
- 1659 (f) creative development<sup>18</sup>.

In relation to each area of learning, the National Curriculum for England may specify:

- 1660 (i) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of the foundation stage ('the early learning goals')<sup>19</sup>;
- 1661 (ii) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during the foundation stage ('educational programmes')<sup>20</sup>; and
- 1662 (iii) assessment arrangements<sup>21</sup>.

1 le the Education Act 2002 Pt 6 (ss 76-96) (as amended).

2 For the purposes of ibid Pt 6 (as amended), 'the foundation stage' has the meaning given by s 81: s 76.

3 As to the meaning of 'pupil' see PARA 913 note 11 ante.

4 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

5 For the meaning of 'funded nursery education' see PARA 913 note 11 ante.

6 Education Act 2002 s 81(1), (2)(a).



7 Ibid s 81(1), (2)(b).

8 For the meaning of 'primary education' see PARA 16 ante; definition applied by virtue of ibid s 212(2), (3).

9 Ibid s 81(1), (2)(c). For the meaning of 'nursery education' see PARA 913 note 11 ante.

10 For these purposes, 'school year', in relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first school term to begin after the following July; and has a corresponding meaning in relation to the provision of funded nursery education otherwise than at a school: ibid s 76. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

11 Ibid s 81(1).

12 Ibid s 83(2). The Secretary of State may by order amend s 83(2): s 83(3). No order may be made by the Secretary of State under s 83(3) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: see s 210(3); and PARA 77 note 7 ante. As to the Secretary of State see PARA 52 ante. As to the procedure for making orders under s 83(3) see PARA 921 post. At the date at which this volume states the law, no order had been made under s 83. As to the National Curriculum for England see PARA 916 ante.

13 Ibid s 83(2)(a).

14 Ibid s 83(2)(b).

15 Ibid s 83(2)(c).

16 Ibid s 83(2)(d).

17 Ibid s 83(2)(e).

18 Ibid s 83(2)(f).

19 Ibid s 83(1)(a). For the purposes of Pt 6 (as amended), 'early learning goals', in relation to the foundation stage, has the meaning given by s 83(1): s 76.

20 Ibid s 83(1)(b).

21 Ibid s 83(1)(c). For the meaning of 'assessment arrangements' see PARA 916 ante. As to baseline assessments, in relation to Wales, see PARA 930 post; and as to provisions relating to arrangements made under the National Curriculum for Wales for the foundation stage (not yet in force) see PARAS 939-941 post.

## UPDATE

### 917 The National Curriculum for England for the foundation stage

TEXT AND NOTES--2002 Act ss 81, 83 repealed: Childcare Act 2006 Sch 1 paras 8, 9, Sch 3 Pt 1.

NOTES 2, 19--Definitions of 'the foundation stage' and 'early learning goals' in 2002 Act s 76 omitted: 2006 Act Sch 1 para 3(3), Sch 3 Pt 1.

NOTE 10--Definition of 'school year' in 2002 Act s 76 amended: 2006 Act Sch 1 para 3(4), Sch 3 Pt 1.

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### **918. The National Curriculum for England for the key stages.**

There are four key stages in the National Curriculum for England<sup>1</sup>. The key stages in relation to a pupil<sup>2</sup> are:

- 1663 (1) the period beginning at the same time as the school year<sup>3</sup> in which he attains the age of six and ending at the same time as the school year in which the majority of pupils in his class<sup>4</sup> attain the age of seven ('the first key stage')<sup>5</sup>;
- 1664 (2) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of 11 ('the second key stage')<sup>6</sup>;
- 1665 (3) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of 12 and ending at the same time as the school year in which the majority of pupils in his class attain the age of 14 ('the third key stage')<sup>7</sup>; and
- 1666 (4) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of 15 and ending with the expiry of the school year in which the majority of pupils in his class cease to be of compulsory school age<sup>8</sup> ('the fourth key stage')<sup>9</sup>.

The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that the definitions of the four key stages have effect as if any reference to the school year in which the majority of pupils in that pupil's class attain a particular age were a reference to the school year in which that pupil attains that age<sup>10</sup>. If at any time, in the case of a pupil of compulsory school age, the definitions of the four key stages<sup>11</sup> do not<sup>12</sup> apply to determine the period within which that time falls, heads (1) to (4) above have effect as if:

- 1667 (a) in the case of heads (1) to (3) above, any reference to the school year in which the majority of pupils in that pupil's class attain a particular age were a reference to the school year in which that pupil attains that age<sup>13</sup>; and
- 1668 (b) in the case of head (4) above, the period were a period beginning at the same time as the school year in which he attains the age of 15 and ending when he ceases to be of compulsory school age<sup>14</sup>.

For the first, second and third key stages, the National Curriculum for England comprises the core subjects of mathematics<sup>15</sup>, English<sup>16</sup> and science<sup>17</sup>, and the other foundation subjects of design and technology<sup>18</sup>, information and communication technology<sup>19</sup>, physical education<sup>20</sup>, history<sup>21</sup>, geography<sup>22</sup>, art and design<sup>23</sup>, music<sup>24</sup>, and (in relation to the third key stage) citizenship<sup>25</sup> and a modern foreign language<sup>26</sup>. In relation to each of those subjects for each of those stages, the National Curriculum for England specifies attainment targets<sup>27</sup>, programmes of study<sup>28</sup> and assessment arrangements<sup>29</sup>.

For the fourth key stage, the National Curriculum for England comprises the core subjects of mathematics<sup>30</sup>, English<sup>31</sup> and science<sup>32</sup>, and the other foundation subjects of information and

communication technology<sup>33</sup>, physical education<sup>34</sup> and citizenship<sup>35</sup>, as well as elements of work-related learning<sup>36</sup>, and, in relation to any pupil who so elects, one subject from each of such one or more of the four 'entitlement areas' as the pupil may elect<sup>37</sup>, namely: (i) arts, comprising art and design<sup>38</sup>, music<sup>39</sup>, dance<sup>40</sup>, drama<sup>41</sup>, and media arts<sup>42</sup>; (ii) design and technology<sup>43</sup>; (iii) humanities, comprising geography<sup>44</sup> and history<sup>45</sup>; and (iv) modern foreign languages, comprising any modern foreign language specified in an order made by the Secretary of State<sup>46</sup> or, if the order so specifies, any modern foreign language<sup>47</sup>. The National Curriculum for England must specify programmes of study in relation to each of the core and other foundation subjects for the fourth key stage<sup>48</sup>.

The Secretary of State may by order amend any of the provisions relating to requirements for the fourth key stage<sup>49</sup>, or provide that, while the order remains in force, none of those provisions is to have effect<sup>50</sup>.

1 In the Education Act 2002 Pt 6 (ss 76-96) (as amended), 'key stage', or references to a particular key stage, must be construed in accordance with s 82 (see the text and notes 2-14 *infra*): s 76. As to the National Curriculum for England see PARA 916 *ante*.

2 As to the meaning of 'pupil' see PARA 913 note 11 *ante*.

3 For the meaning of 'school year' see PARA 917 note 10 *ante*. For the meaning of 'school' see PARA 81 *ante*; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 In *ibid* s 82, 'class', in relation to a particular pupil and a particular subject, means: (1) the teaching group in which he is regularly taught in that subject; or (2) where there are two or more such groups, such one of them as may be designated by the head teacher of the school: s 82(5). As to the meaning of 'head teacher' see PARA 93 note 13 *ante*; definition applied by virtue of s 212(2), (3).

5 *Ibid* s 82(1)(a). The Secretary of State may by order: (1) provide that, in relation to any subject specified in the order, s 82(1) is to have effect as if for the ages of seven and eight there specified there were substituted such other ages (less than 11 and 12 respectively) as may be specified in the order (s 82(4)(a)); and (2) amend s 82(1)-(3) (s 82(4)(b)). No order may be made by the Secretary of State under s 82(4)(b) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: see s 210(3); and PARA 77 note 7 *ante*. As to the Secretary of State see PARA 52 *ante*. As to the procedure for making orders under s 82(4) see PARA 921 *post*. At the date at which this volume states the law, no order had been made under s 82(4).

6 *Ibid* s 82(1)(b). See note 5 *supra*.

7 *Ibid* s 82(1)(c). See note 5 *supra*.

8 As to the meaning of 'compulsory school age' see PARA 15 *ante*; definition applied by virtue of *ibid* s 212(2), (3).

9 *Ibid* s 82(1)(d). See note 5 *supra*.

10 *Ibid* s 82(2). See note 5 *supra*.

11 *Ibid* s 82(1): see the text to notes 2-9 *supra*.

12 *Ibid* apart from *ibid* s 82(3): see the text to notes 13-14 *infra*.

13 *Ibid* s 82(3)(a). See note 5 *supra*.

14 *Ibid* s 82(3)(b). See note 5 *supra*.

15 *Ibid* s 84(1), (2)(a). The Secretary of State may by order amend s 84(2)-(5) (see the text to notes 16-26 *infra*): s 84(6). No order may be made by the Secretary of State under s 84(6) unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: see s 210(3); and PARA 77 note 7 *ante*. As to the procedure for making orders under s 84(6) see PARA 921 *post*. At the date at which this volume states the law, no order had been made under s 84(6).

16 *Ibid* s 84(1), (2)(b). See note 15 *supra*.

17 Ibid s 84(1), (2)(c). See note 15 supra.

18 Ibid s 84(1), (3)(a). See note 15 supra.

19 Ibid s 84(1), (3)(b). See note 15 supra.

20 Ibid s 84(1), (3)(c). See note 15 supra.

21 Ibid s 84(1), (3)(d). See note 15 supra.

22 Ibid s 84(1), (3)(e). See note 15 supra.

23 Ibid s 84(1), (3)(f). See note 15 supra.

24 Ibid s 84(1), (3)(g). See note 15 supra.

25 Ibid s 84(1), (3)(h)(i). See note 15 supra.

26 Ibid s 84(1), (3)(h)(ii). For the purposes of s 84, 'modern foreign language' means a modern foreign language specified in an order made by the Secretary of State or, if the order so provides, any modern foreign language: s 84(4). An order under s 84(4) may: (1) specify circumstances in which a language is not to be treated as a foundation subject; and (2) provide for the determination under the order of any question arising as to whether a particular language is a modern foreign language: s 84(5). See note 15 supra. In exercise of the power so conferred, the Secretary of State has made the Education (National Curriculum) (Modern Foreign Languages) (England) Order 2004, SI 2004/260, which specifies that a language is a modern foreign language for these purposes if: (a) the language is an official language of the European Union; or (b) the language is a modern foreign language taught at a school that also offers pupils in the third key stage (in respect of whom there is a requirement to study a modern foreign language as a foundation subject) the opportunity of studying one or more of the official languages of the European Union for the purposes of the National Curriculum at the third key stage: arts 1(2), 3. For the meaning of references to 'official language of the European Union' see art 1(2).

27 For the meaning of 'attainment targets' see PARA 916 ante.

28 For the meaning of 'programmes of study' see PARA 916 ante.

29 Education Act 2002 s 84(1). For the meaning of 'assessment arrangements' see PARA 916 ante.

30 Ibid s 85(1), (3)(a) (s 85 substituted by the Education (Amendment of the Curriculum Requirements for Fourth Key Stage) (England) Order 2003, SI 2003/2946, art 2).

31 Education Act 2002 s 85(1), (3)(b) (as substituted: see note 30 supra).

32 Ibid s 85(1), (3)(c) (as substituted: see note 30 supra).

33 Ibid s 85(1), (4)(a) (as substituted: see note 30 supra).

34 Ibid s 85(1), (4)(b) (as substituted: see note 30 supra).

35 Ibid s 85(1), (4)(c) (as substituted: see note 30 supra).

36 Ibid s 85(1), (5)(a) (as substituted: see note 30 supra). For this purpose, 'work-related learning' means planned activity designed to use the context of work to develop knowledge, skills and understanding useful in work, including learning through the experience of work, learning about work and working practices and learning the skills for work: s 85(10) (as so substituted). In the exercise of functions under Pt 6 (as amended) by virtue of s 85 (as substituted), a local education authority, governing body or head teacher must have regard to any guidance relating to work-related learning or the entitlement areas (see the text and notes 37-47 infra) which is issued from time to time by the Qualifications and Curriculum Authority: s 85(9) (as so substituted). As to local education authorities see PARA 20 ante; and as to the governing bodies of maintained schools in England see PARA 203 et seq ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 212(2), (3). As to the Qualifications and Curriculum Authority see PARA 875 et seq ante.

37 Ibid s 85(1), (5)(b) (as substituted: see note 30 supra). A pupil in the fourth key stage is, if he so elects, entitled to follow a course of study in a subject within each of the four entitlement areas specified in s 85(6) (as substituted) (see the text and notes 38-47 infra); but this entitlement is satisfied where one subject within each of those entitlement areas is made available to him by or on behalf of the school at which he is a registered pupil: s 85(8) (as so substituted). For this purpose, 'course of study' means a course of education or training which leads to a qualification approved under the Learning and Skills Act 2000 s 98 (see PARA 974 post), for the

purposes of s 96 (see PARA 972 post): Education Act 2002 s 85(10) (as so substituted). For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of s 212(2), (3).

38 Ibid s 85(1), (6)(a)(i) (as substituted: see note 30 supra).

39 Ibid s 85(1), (6)(a)(ii) (as substituted: see note 30 supra).

40 Ibid s 85(1), (6)(a)(iii) (as substituted: see note 30 supra).

41 Ibid s 85(1), (6)(a)(iv) (as substituted: see note 30 supra).

42 Ibid s 85(1), (6)(a)(v) (as substituted: see note 30 supra).

43 Ibid s 85(1), (6)(b) (as substituted: see note 30 supra).

44 Ibid s 85(1), (6)(c)(i) (as substituted: see note 30 supra).

45 Ibid s 85(1), (6)(c)(ii) (as substituted: see note 30 supra).

46 An order made under ibid s 85(6)(d) (as substituted) may: (1) specify circumstances in which a language is not to be treated as falling within s 85(6)(d) (as substituted); and (2) provide for the determination under the order of any question arising as to whether a particular language is a modern foreign language: s 85(7) (as substituted: see note 30 supra). At the date at which this volume states the law, no order had been made under s 85(6)(d) (as substituted).

47 Ibid s 85(1), (6)(d) (as substituted: see note 30 supra).

48 Ibid s 85(2) (as substituted: see note 30 supra).

49 Ie ibid s 85 (as substituted): see the text and notes 30-48 supra.

50 Ibid s 86. No order may be made by the Secretary of State under s 86 unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament: see s 210(3); and PARA 77 note 7 ante. In exercise of the power so conferred, the Secretary of State has made the Education (Amendment of the Curriculum Requirements for Fourth Key Stage) (England) Order 2003, SI 2003/2946 (see note 30 supra).

## UPDATE

### 918 The National Curriculum for England for the key stages

NOTE 26--The Education (National Curriculum) (Modern Foreign Languages) (England) Order 2008, SI 2008/1766, revokes SI 2004/260 and provides that for the purposes of the Education Act 2002 s 84(4) 'modern foreign language' means any modern foreign language.

NOTE 32--A pupil in the fourth key stage is entitled, if he so elects, to follow a course of study in science which leads to such qualification or set of qualifications as the governing body may choose from among those approved under the Learning and Skills Act 2000 s 98 (see PARA 974) for the purposes of s 96 (see PARA 972), and specified by the Secretary of State by order for the purposes of the 2002 Act s 85(3A) (s 85 modified by the Education and Inspections Act 2006 s 74(4)). As to the specified sets of qualifications for the purposes of the 2002 Act s 85(3A)(b), see the Education (National Curriculum) (Science at Key Stage 4) (England) Order 2007, SI 2007/2241.

NOTES 38-47--2002 Act s 85(6) amended: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 33.

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### **919. Establishment of the National Curriculum for England by order.**

In respect of the foundation stage<sup>1</sup>, the Secretary of State<sup>2</sup> may by order<sup>3</sup> specify in relation to the areas of learning<sup>4</sup> such early learning goals<sup>5</sup>, such educational programmes<sup>6</sup>, and such assessment arrangements<sup>7</sup>, as he considers appropriate<sup>8</sup>. In respect of the first, second and third key stages<sup>9</sup> and<sup>10</sup> the fourth key stage, the Secretary of State may by order specify in relation to each of the foundation subjects<sup>11</sup> such attainment targets<sup>12</sup>, such programmes of study<sup>13</sup>, and such assessment arrangements<sup>14</sup>, as he considers appropriate for that subject<sup>15</sup>. Such an order<sup>16</sup> may not require the allocation of any particular period or periods of time during the foundation stage or any key stage to the teaching of any educational programme or programme of study or any matter, skill or process forming part of it<sup>17</sup>, or the making in school timetables, or the timetables of any person providing funded nursery education, of provision of any particular kind for the periods to be allocated to such teaching during any such stage<sup>18</sup>. Such an order may, instead of containing the provisions to be made, refer to provisions in a document published as specified in the order and direct that those provisions are to have effect or, as the case may be, are to have effect as amended by the order<sup>19</sup>.

The Secretary of State must exercise these powers conferred on him to make orders<sup>20</sup> so as to: (1) establish a complete National Curriculum for England<sup>21</sup> for the foundation stage as soon as is reasonably practicable<sup>22</sup>; and (2) revise the National Curriculum for England for the foundation stage and the key stages whenever he considers it necessary or expedient to do so<sup>23</sup>.

Provision must be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and any such provision may be made by or under the order specifying the arrangements or, where the order specifies the person making the arrangements, in the arrangements themselves<sup>24</sup>.

1 As to the foundation stage see PARA 917 ante.

2 As to the Secretary of State see PARA 52 ante.

3 As to the making of orders under the Education Act 2002 generally see PARA 77 note 7 ante. As to the procedure for making orders under s 87(2)(a), (b) (see the text and notes 4-6 infra) or s 87(3)(a), (b) (see the text and notes 9-13 infra) see PARA 921 post.

4 As to the areas of learning for the foundation stage see PARA 917 ante.

5 Education Act 2002 s 87(2)(a). For the meaning of 'early learning goals' see PARA 917 note 19 ante. As to the early learning goals specified under s 87(2)(a) see the Education (National Curriculum) (Foundation Stage Early Learning Goals) (England) Order 2003, SI 2003/391. As to baseline assessments, which are still effective in relation to Wales, see PARAS 939-941 post.

6 Education Act 2002 s 87(2)(b). For the meaning of 'educational programmes' see PARA 917 ante. See also note 3 supra.

7 Ibid s 87(2)(c). For the meaning of 'assessment arrangements' see PARA 916 ante. An order under s 87(2)(c) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 210(5); and PARA 77 note 7 ante. An order under s 87(2)(c) may confer or impose such functions on: (1) the governing body and head teacher of a maintained school or a maintained nursery school; (2) a person providing funded nursery

education under the arrangements mentioned in s 77(2)(b) (see PARA 913 note 11 ante); (3) an early years development and childcare partnership; and (4) a local education authority, as appear to the Secretary of State to be required: s 87(6). Such an order may also specify such assessment arrangements as may for the time being be made by a person specified in the order: s 87(8). An order may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order, other than provision conferring or imposing functions as mentioned in s 87(6), as appear to the Secretary of State to be expedient; and any provisions made under such an order must, on being published as specified in the order, have effect for the purposes of Pt 6 (ss 76-96) (as amended) as if made by the order: s 87(11). As to the assessment arrangements specified under s 87(2)(c) see the Education (National Curriculum) (Foundation Stage Profile Assessment Arrangements) (England) Order 2003, SI 2003/1327 (amended by SI 2004/622). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the governing bodies of maintained schools in England see PARA 203 et seq ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'maintained school' see PARA 913 note 7 ante; for the meaning of 'maintained nursery school' see PARA 913 note 8 ante; and for the meaning of 'funded nursery education' see PARA 913 note 11 ante. As to early years development and childcare partnerships see PARA 87 ante. As to local education authorities see PARA 20 ante. As to baseline assessments, which are still effective in relation to Wales as the equivalent of the Foundation Stage Profile Assessment, see PARAS 939-941 post.

8 Ibid s 87(2).

9 As to the key stages see PARA 918 ante.

10 Ie subject to the Education Act 2002 s 86 (see PARA 918 ante).

11 As to the foundation subjects in relation to the key stages see PARA 918 ante.

12 Education Act 2002 s 87(3)(a). For the meaning of 'attainment targets' see PARA 916 ante. As to the attainment targets specified under s 87(3)(a) see the Education (National Curriculum) (Attainment Targets and Programmes of Study in Modern Foreign Languages in respect of the Third Key Stage) (England) (No 2) Order 2004, SI 2004/1793; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Design and Technology in respect of the First, Second and Third Key Stages) (England) (No 2) Order 2004, SI 2004/1794; and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Science in respect of the First, Second Third and Fourth Key Stages) (England) (No 2) Order 2004, SI 2004/1800. See also note 3 supra. The following orders, made under the Education Act 1996 s 356 (repealed), also have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 87(3)(a): the Education (National Curriculum) (Attainment Targets and Programmes of Study in Music) (England) Order 2000, SI 2000/1597; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics) (England) Order 2000, SI 2000/1598; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Information and Communication Technology) (England) Order 2000, SI 2000/1601; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Art and Design) (England) Order 2000, SI 2000/1602; the Education (National Curriculum) (Attainment Target and Programmes of Study in Citizenship) (England) Order 2000, SI 2000/1603; the Education (National Curriculum) (Attainment Targets and Programmes of Study in English) (England) Order 2000, SI 2000/1604; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Geography) (England) Order 2000, SI 2000/1605; the Education (National Curriculum) (Attainment Targets and Programmes of Study in History) (England) Order 2000, SI 2000/1606; and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education) (England) Order 2000, SI 2000/1607.

13 Education Act 2002 s 87(3)(b). For the meaning of 'programmes of study' see PARA 916 ante. As to the programmes of study specified under s 87(3)(b) see the Education (National Curriculum) (Attainment Targets and Programmes of Study in Modern Foreign Languages in respect of the Third Key Stage) (England) (No 2) Order 2004, SI 2004/1793; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Design and Technology in respect of the First, Second and Third Key Stages) (England) (No 2) Order 2004, SI 2004/1794; and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Science in respect of the First, Second Third and Fourth Key Stages) (England) (No 2) Order 2004, SI 2004/1800. See also note 3 supra. The following orders, made under the Education Act 1996 s 356 (repealed), also have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 87(3)(b): the Education (National Curriculum) (Attainment Targets and Programmes of Study in Music) (England) Order 2000, SI 2000/1597; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics) (England) Order 2000, SI 2000/1598; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Information and Communication Technology) (England) Order 2000, SI 2000/1601; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Art and Design) (England) Order 2000, SI 2000/1602; the Education (National Curriculum) (Attainment Target and Programmes of Study in Citizenship) (England) Order 2000, SI 2000/1603; the Education (National Curriculum) (Attainment Targets and Programmes of Study in English) (England) Order 2000, SI 2000/1604; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Geography) (England) Order 2000, SI 2000/1605; the

Education (National Curriculum) (Attainment Targets and Programmes of Study in History) (England) Order 2000, SI 2000/1606; and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education) (England) Order 2000, SI 2000/1607.

14 Education Act 2002 s 87(3)(c). An order under s 87(3)(c) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 210(5); and PARA 77 note 7 ante. An order under s 87(3)(c) may confer or impose such functions on: (1) the governing body and head teacher; and (2) the local education authority, as appear to the Secretary of State to be required: s 87(7). Such an order may also specify such assessment arrangements as may for the time being be made by a person specified in the order: s 87(8). An order may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order, other than provision conferring or imposing functions as mentioned in s 87(7), as appear to the Secretary of State to be expedient; and any provisions made under such an order must, on being published as specified in the order, have effect for the purposes of Pt 6 (as amended) as if made by the order: s 87(11). As to the assessment arrangements specified under s 87(3)(c) see the Education (National Curriculum) (Key Stage 2 Assessment Arrangements) (England) Order 2003, SI 2003/1038; the Education (National Curriculum) (Key Stage 3 Assessment Arrangements) (England) Order 2003, SI 2003/1039; and the Education (National Curriculum) (Key Stage 1 Assessment Arrangements) (England) Order 2004, SI 2004/2783.

15 Education Act 2002 s 87(3).

16 *Ibid* under *ibid* s 87(2) or (3) (see the text and notes 1-15 *supra*).

17 *Ibid* s 87(4)(a).

18 *Ibid* s 87(4)(b).

19 *Ibid* s 87(5). The Education (National Curriculum) (Attainment Targets and Programmes of Study in Music) (England) Order 2000, SI 2000/1597, refers to *Attainment Targets and Programmes of Study in Music* published by the Stationery Office (see *Music: The National Curriculum for England Key Stages 1-3* (1999) (ref: QCA/99/468)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics) (England) Order 2000, SI 2000/1598, refers to *Attainment Targets and Programmes of Study in Mathematics* published by the Stationery Office (see *Mathematics: The National Curriculum for England Key Stages 1-4* (1999) (ref: QCA/99/460)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in Information and Communication Technology) (England) Order 2000, SI 2000/1601, refers to *Programmes of Study and Attainment Targets in Information and Communication Technology* published by the Stationery Office (see *Information and Communication Technology: The National Curriculum for England Key Stages 1-4* (1999) (ref: QCA/99/463)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in Art and Design) (England) Order 2000, SI 2000/1602, refers to *Attainment Targets and Programmes of Study in Art and Design* published by the Stationery Office (see *Art and Design: The National Curriculum for England Key Stages 1-3* (1999) (ref: QCA/99/467)); the Education (National Curriculum) (Attainment Target and Programmes of Study in Citizenship) (England) Order 2000, SI 2000/1603, refers to *Attainment Targets and Programmes of Study in Citizenship* published by the Stationery Office (see *Citizenship: The National Curriculum for England Key Stages 3-4* (1999) (ref: QCA/99/470)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in English) (England) Order 2000, SI 2000/1604, refers to *Attainment Targets and Programmes of Study in English* published by the Stationery Office (see *English: The National Curriculum for England Key Stages 1-4* (1999) (ref: QCA/99/459)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in Geography) (England) Order 2000, SI 2000/1605, refers to *Attainment Targets and Programmes of Study in Geography* published by the Stationery Office (see *Geography: The National Curriculum for England Key Stages 1-3* (1999) (ref: QCA/99/465)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in History) (England) Order 2000, SI 2000/1606, refers to *Attainment Targets and Programmes of Study in History* published by the Stationery Office (see *History: The National Curriculum for England Key Stages 1-3* (1999) (ref: QCA/99/464)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education) (England) Order 2000, SI 2000/1607, refers to *Attainment Targets and Programmes of Study in Physical Education* published by the Stationery Office (see *Physical Education: The National Curriculum for England Key Stages 1-4* (1999) (ref: QCA/99/469)); the Education (National Curriculum) (Foundation Stage Early Learning Goals) (England) Order 2003, SI 2003/391, refers to *Curriculum guidance for the foundation stage* published by the Stationery Office (May 2000) (ref: QCA/00/587); the Education (National Curriculum) (Foundation Stage Profile Assessment Arrangements) (England) Order 2003, SI 2003/1327 (amended by SI 2004/622), refers to the Foundation Stage Profile Handbook published by the Department for Education and Skills and the Qualifications and Curriculum Authority (January 2003) (ref: QCA/03/1006); the Education (National Curriculum) (Attainment Targets and Programmes of Study in Modern Foreign Languages in respect of the Third Key Stage) (England) (No 2) Order 2004, SI 2004/1793, refers to *Modern Foreign Languages: the National Curriculum for England Key Stage 3* published by the Department for Education and Skills and the Qualifications and Curriculum Authority (see *Modern Foreign Languages: The National Curriculum for England Key Stages 1-4* (2004)); the Education (National Curriculum) (Attainment Targets and Programmes of Study in Design and Technology in respect of the First, Second and Third Key Stages) (England) (No 2) Order 2004, SI 2004/1794, refers to *Design and Technology: the National Curriculum for England Key Stages 1-4* published by the Department for Education and Skills and the Qualifications and Curriculum Authority (2004).



(ref: DfES/0119/2004); and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Science in respect of the First, Second Third and Fourth Key Stages) (England) (No 2) Order 2004, SI 2004/1800, refers to *Science: the National Curriculum for England Key Stages 1-4* published by the Department for Education and Skills and the Qualifications and Curriculum Authority (2004) (ref: DfES/0303/2004). As to the Qualifications and Curriculum Authority see PARAS 876-893 ante.

20 le the powers conferred by the Education Act 2002 s 87(2) or (3) (see the text and notes 1-15 supra).

21 As to the National Curriculum for England see PARA 916 ante.

22 Education Act 2002 s 87(1)(a).

23 Ibid s 87(1)(b).

24 Ibid s 87(9). In relation to persons exercising any power in pursuance of provision made by virtue of s 87(9), the duties that may be imposed by virtue of s 87(6) (see note 7 supra) or s 87(7) (see note 14 supra) include the duty to permit them: (1) to enter premises of the school or, as the case may be, premises on which the funded nursery education is being provided; (2) to observe implementation of the arrangements; and (3) to inspect, and take copies of, documents and other articles: s 87(10). As to the orders made see further note 14 supra. As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 212(2), (3).

## UPDATE

### 919 Establishment of the National Curriculum for England by order

TEXT AND NOTES--2002 Act s 87 amended: Childcare Act 2006 Sch 1 para 10, Sch 3 Pt 1, Apprenticeships, Skills, Children and Learning Act 2009 s 159, Sch 12 para 35 (s 159 is in force in part for certain purposes only: see SI 2010/1151).

NOTES 5, 19--SI 2003/391 amended: SI 2007/1836.

NOTES 12, 13, 19--SI 2000/1597 amended: SI 2007/2265, SI 2008/1761. SI 2000/1598 amended: SI 2007/2265, SI 2008/1759. SI 2000/1601 amended: SI 2007/2265, SI 2008/1758. SI 2000/1602 amended: SI 2007/2265, SI 2008/1752. SI 2000/1603 replaced by the Education (National Curriculum) (Attainment Targets and Programmes of Study in Citizenship in respect of the Third and Fourth Key Stages) (England) Order 2008, SI 2008/1753. SI 2000/1604 amended: SI 2007/1841, SI 2007/2265, SI 2008/1755. SI 2000/1605 amended: SI 2007/2265, SI 2008/1756. SI 2000/1606 amended: SI 2007/2265, SI 2008/1757. SI 2000/1607 amended: SI 2007/2265, SI 2008/1762. SI 2004/1793 replaced by the Education (National Curriculum) (Attainment Targets and Programme of Study in Modern Foreign Languages in respect of the Third Key Stage) (England) Order 2008, SI 2008/1760. SI 2004/1794 amended: SI 2007/2265, SI 2008/1754. SI 2004/1800 amended: SI 2007/2265, SI 2008/1763. See the Education (National Curriculum) (Attainment Targets and Programme of Study in Art and Design in respect of the Third Key Stage) (England) Order 2008, SI 2008/1752; the Education (National Curriculum) (Attainment Targets and Programme of Study in Design and Technology in respect of the Third Key Stage) (England) Order 2008, SI 2008/1754; the Education (National Curriculum) (Attainment Targets and Programmes of Study in English in respect of the Third and Fourth Key Stages) (England) Order 2008, SI 2008/1755; the Education (National Curriculum) (Attainment Targets and Programme of Study in Geography in respect of the Third Key Stage) (England) Order 2008, SI 2008/1756; the Education (National Curriculum) (Attainment Targets and Programme of Study in History in respect of the Third Key Stage) (England) Order 2008, SI 2008/1757; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Information and Communication Technology in respect of the Third and Fourth Key Stages) (England) Order 2008, SI 2008/1758; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics in respect of the Third and Fourth Key Stages) (England) Order 2008, SI 2008/1759; the Education (National Curriculum) (Attainment Targets and Programme of Study in Music in respect

of the Third Key Stage) (England) Order 2008, SI 2008/1761; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education in respect of the Third and Fourth Key Stages) (England) Order 2008, SI 2008/1762; and the Education (National Curriculum) (Attainment Targets and Programme of Study in Science in respect of the Third Key Stage) (England) Order 2008, SI 2008/1763.

NOTE 14--SI 2003/1038 amended: SI 2009/1585, SI 2010/290. SI 2003/1039 amended: SI 2008/3081, SI 2009/1585.

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## **920. Duty to secure implementation of the National Curriculum for England.**

In relation to any maintained school<sup>1</sup> and any school year<sup>2</sup>:

- 1669 (1) the local education authority<sup>3</sup> and the governing body<sup>4</sup> must exercise its functions<sup>5</sup> with a view to securing<sup>6</sup>; and  
1670 (2) the head teacher<sup>7</sup> must secure<sup>8</sup>,

that the National Curriculum for England<sup>9</sup> as subsisting at the beginning of that year is implemented<sup>10</sup>.

In relation to any maintained nursery school<sup>11</sup> and any school year:

- 1671 (a) the local education authority and the governing body must exercise its functions with a view to securing<sup>12</sup>; and  
1672 (b) the head teacher must secure<sup>13</sup>,

that the National Curriculum for England as subsisting at the beginning of that year, so far as it relates to the foundation stage<sup>14</sup>, is implemented<sup>15</sup>.

In relation to any school year, any person providing funded nursery education<sup>16</sup> must secure that the National Curriculum for England as subsisting at the beginning of that year is implemented, so far as it relates to the foundation stage, in respect of the pupils<sup>17</sup> for whom the funded nursery education is provided<sup>18</sup>. The local education authority with whom the arrangements for providing funded nursery education are made<sup>19</sup> and the early years development and childcare partnership<sup>20</sup> for the area of the authority must each exercise its functions with a view to securing that any person, other than the governing body of a maintained school or maintained nursery school, who provides funded nursery education complies with the obligation<sup>21</sup> to secure that the National Curriculum for England is implemented<sup>22</sup>.

1 For the meaning of 'maintained school' see PARA 913 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 For the meaning of 'school year' see PARA 917 note 10 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

5 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

6 Ibid s 88(a).

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 212(2), (3).

8 Ibid s 88(b).

- 9 As to the National Curriculum for England see PARA 916 ante.
- 10 Education Act 2002 s 88. As to the duty of teachers to deliver the National Curriculum see *Wandsworth London Borough Council v National Association of Schoolmasters/Union of Women Teachers* [1994] ICR 81, [1994] ELR 170, (1993) 92 LGR 91, CA (decided under previous legislation).
- 11 For the meaning of 'maintained nursery school' see PARA 913 note 8 ante.
- 12 Education Act 2002 s 89(1)(a).
- 13 Ibid s 89(1)(b).
- 14 As to the foundation stage of the National Curriculum for England see PARA 917 ante.
- 15 Education Act 2002 s 89(1).
- 16 Ie under the arrangements mentioned in ibid s 77(2)(b) (see PARA 913 note 11 ante). For the meaning of 'funded nursery education' see PARA 913 note 11 ante.
- 17 As to the meaning of 'pupil' see PARA 913 note 11 ante.
- 18 Education Act 2002 s 89(2).
- 19 Ie the arrangements mentioned in ibid s 77(2)(b) (see PARA 913 note 11 ante).
- 20 As to early years development and childcare partnerships see PARA 87 ante.
- 21 Ie the obligation imposed by the Education Act 2002 s 89(2) ( see the text and notes 16-18 supra).
- 22 Ibid s 89(3).

## UPDATE

### 920 Duty to secure implementation of the National Curriculum for England

TEXT AND NOTES 1-10--Education Act 2002 s 88 now s 88(1) (amended by Education and Skills Act 2008 s 156(1)). See further Education Act 2002 s 88(1A) (added by Education and Skills Act 2008 s 156(2)).

TEXT AND NOTES 12-22--2002 Act s 89 repealed: Childcare Act 2006 Sch 1 para 11, Sch 3 Pt 1.

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**921. Procedure for making certain orders and regulations in relation to the National Curriculum for England.**

Where the Secretary of State<sup>1</sup> proposes to make certain orders<sup>2</sup> or regulations<sup>3</sup> in relation to the National Curriculum for England, he must refer the proposal to the Qualifications and Curriculum Authority<sup>4</sup> and must give the authority directions as to the time within which it is to report to him<sup>5</sup>. The authority must give notice of the proposal to:

- 1673 (1) such associations of local education authorities<sup>6</sup>, bodies representing the interests of school governing bodies<sup>7</sup> and organisations representing school teachers as appear to the authority to be concerned<sup>8</sup>; and
- 1674 (2) any other persons with whom consultation appears to the authority to be desirable<sup>9</sup>,

and must give them a reasonable opportunity of submitting evidence and representations as to the issues arising<sup>10</sup>. The report of the authority to the Secretary of State must contain a summary of the views expressed during the consultations<sup>11</sup>, the authority's recommendations as to the proposal<sup>12</sup>, and such other advice relating to the proposal as the authority thinks fit<sup>13</sup>. The authority must, after submitting its report to the Secretary of State, arrange for the report to be published<sup>14</sup>.

Where the authority has reported to the Secretary of State, he must publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in education: (a) a draft of the proposed order or regulations and any associated document<sup>15</sup>; and (b) a statement explaining his reasons for any failure to give effect to the recommendations of the authority<sup>16</sup>, and he must send copies of the documents mentioned in head (a) and head (b) above to the authority and to each of the persons consulted by the authority<sup>17</sup>. The Secretary of State must allow a period of not less than one month for the submission of evidence and representations as to the issues arising<sup>18</sup>. When the period so allowed has expired, the Secretary of State may make the order or regulations, with or without modifications<sup>19</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Education Act 2002 s 96(1)(a). The text refers to an order under s 82(4) (see PARA 918 ante), s 83(3) (see PARA 917 ante), s 84(6) (see PARA 918 ante), s 87(2)(a), (b) or s 87(3)(a), (b) (see PARA 919 ante): s 96(1)(a).

3 Ibid s 96(1)(b). The text refers to regulations under s 91 (see PARA 923 post): s 368(1)(b).

4 As to the Qualifications and Curriculum Authority see PARA 875 et seq ante.

5 Education Act 2002 s 96(2). As to the National Curriculum for England see PARA 916 ante.

6 As to local education authorities see PARA 20 ante.

7 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

8 Education Act 2002 s 96(3)(a).

9 Ibid s 96(3)(b).

10 Ibid s 96(3).

11 Ibid s 96(4)(a).

12 Ibid s 96(4)(b).

13 Ibid s 96(4)(c).

14 Ibid s 96(5).

15 Ibid s 96(6)(a).

16 Ibid s 96(6)(b).

17 Ibid s 96(6).

18 Ibid s 96(7).

19 Ibid s 96(8). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3).

## **UPDATE**

### **921 Procedure for making certain orders and regulations in relation to the National Curriculum for England**

TEXT AND NOTES 1-17--2002 Act s 96(1)-(6) amended, s 96(6A), (6B) added: Childcare Act 2006 Sch 1 para 15, Sch 3 Pt 1, Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 37.

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### ***C. THE NATIONAL CURRICULUM FOR ENGLAND: SPECIAL CASES***

#### **922. Development work and experiments.**

For the purpose of enabling development work or experiments to be carried out, the Secretary of State<sup>1</sup> may direct in respect of a particular maintained school<sup>2</sup> or maintained nursery school<sup>3</sup> that, for such period as may be specified in the direction, the National Curriculum for England<sup>4</sup> does not apply<sup>5</sup>, or applies with such modifications as may be specified in the direction<sup>6</sup>. Such a direction may apply either generally or in such cases as may be specified in the direction<sup>7</sup>. In the case of a community, voluntary controlled or community special school<sup>8</sup> or a maintained nursery school, such a direction<sup>9</sup> must not be given except on an application<sup>10</sup>:

- 1675 (1) by the governing body<sup>11</sup> with the agreement of the local education authority<sup>12</sup>;
- 1676 (2) by the local education authority with the agreement of the governing body<sup>13</sup>; or
- 1677 (3) by the Qualifications and Curriculum Authority<sup>14</sup> with the agreement of both the local education authority and the governing body<sup>15</sup>.

In the case of a foundation, voluntary aided or foundation special school<sup>16</sup>, such a direction must not be given<sup>17</sup> except on an application by the governing body or by the Qualifications and Curriculum Authority with the agreement of the governing body<sup>18</sup>.

The Secretary of State may make it a condition of such a direction<sup>19</sup> that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Secretary of State on any matters specified by him<sup>20</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For the meaning of 'maintained school' see PARA 913 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 For the meaning of 'maintained nursery school' see PARA 913 note 8 ante.

4 As to the National Curriculum for England see PARA 916 et seq ante.

5 Education Act 2002 s 90(1)(a).

6 Ibid s 90(1)(b). The Secretary of State may by a direction under s 90(6) vary or revoke a direction under s 90(1): s 90(6). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3).

7 Ibid s 90(2).

8 As to community, voluntary and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

9 Ie under the Education Act 2002 s 90(1): see the text to notes 1-6 supra.

10 Ibid s 90(3).

- 11 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.
- 12 Education Act 2002 s 90(3)(a). As to local education authorities see PARA 20 ante.
- 13 Ibid s 90(3)(b).
- 14 As to the Qualifications and Curriculum Authority see PARA 874 et seq ante.
- 15 Education Act 2002 s 90(3)(c).
- 16 As to foundation and foundation special schools see PARA 102 et seq ante.
- 17 Ie under the Education Act 2002 s 90(1): see the text to notes 1-6 supra.
- 18 Ibid s 90(4).
- 19 Ie under ibid s 90(1): see the text to notes 1-6 supra.
- 20 Ibid s 90(5).

## **UPDATE**

### **922 Development work and experiments**

TEXT AND NOTES 1-15--2002 Act s 90(1), (3)-(5) amended, s 90(5A)-(5C) added: Childcare Act 2006 Sch 1 para 12, Sch 3 Pt 1, Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 36.



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### **923. Exceptions by regulations.**

Regulations<sup>1</sup> may provide that the National Curriculum for England<sup>2</sup>, or such of the provisions of the National Curriculum for England as may be specified in the regulations either do not apply<sup>3</sup>, or apply with such modifications<sup>4</sup> as may be specified in the regulations<sup>5</sup>, in such cases or circumstances as may be specified in the regulations<sup>6</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England): s 212(1). As to the Secretary of State see PARA 52 ante. For the meaning of 'England' see PARA 52 note 11 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 91 see the Education (National Curriculum) (Exceptions at Key Stage 4) (England) Regulations 2003, SI 2003/252 (amended by SI 2004/264).

2 As to the National Curriculum for England see PARA 916 et seq ante.

3 Education Act 2002 s 91(a).

4 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

5 Ibid s 91(b).

6 Ibid s 91. Where the Secretary of State proposes to make regulations under s 91, he must refer the proposal to the Qualifications and Curriculum Authority in order that it may prepare a report on the making of any such regulations: see s 96; and PARA 921 ante. As to the Qualifications and Curriculum Authority see PARA 875 et seq ante.

## **UPDATE**

### **923 Exceptions by regulations**

NOTE 1--SI 2003/252 revoked (subject to a saving): SI 2006/2495 (England).

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#### **924. Pupils with statements of special educational needs.**

The special educational provision<sup>1</sup> for any pupil<sup>2</sup> specified in a statement of his special educational needs<sup>3</sup> may include provision excluding the application of the National Curriculum for England<sup>4</sup>, or applying the National Curriculum for England with such modifications<sup>5</sup> as may be specified in the statement<sup>6</sup>.

1 For the meaning of 'special educational provision' see PARA 984 post; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 As to the meaning of 'pupil' see PARA 913 note 11 ante.

3 I.e. a statement under the Education Act 1996 s 324 (as amended): see PARA 996 post. For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 Ibid s 92(a). As to the National Curriculum for England see PARA 916 et seq ante.

5 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

6 Ibid s 92(b).

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## **925. Temporary exceptions for individual pupils.**

Regulations<sup>1</sup> may enable the head teacher<sup>2</sup> of a maintained school<sup>3</sup> or maintained nursery school<sup>4</sup>, in such cases or circumstances and subject to such conditions as may be prescribed<sup>5</sup>, to direct in respect of a registered pupil<sup>6</sup> at the school that, for such period as may be specified in the direction (the 'operative period' of the direction), the National Curriculum for England<sup>7</sup> does not apply<sup>8</sup>, or applies with such modifications<sup>9</sup> as may be specified in the direction<sup>10</sup>. The conditions prescribed by the regulations must, in particular, limit the operative period that may be specified in a direction to a maximum period specified in the regulations<sup>11</sup>. Any maximum period specified, whether in relation to directions given under the regulations or in relation to directions given under the regulations in circumstances specified in the regulations, must be either a fixed period not exceeding six months<sup>12</sup>, or a period determinable, in such manner as may be specified in the regulations, not later than six months from its beginning<sup>13</sup>. Any maximum period so specified may<sup>14</sup> differ according to whether or not the direction in question is given in respect of a period beginning<sup>15</sup> immediately after the end of the operative period of a previous direction<sup>16</sup>, or within such period after the end of the operative period of a previous direction as may be specified in the regulations<sup>17</sup>. The regulations may enable the head teacher of a maintained school or maintained nursery school, in such cases or circumstances and subject to such conditions as may be prescribed<sup>18</sup>, to revoke any direction given by him under the regulations<sup>19</sup>, and to vary such a direction, except so as to extend its operative period<sup>20</sup>. Before making any such regulations<sup>21</sup>, the Secretary of State must consult with any persons with whom consultation appears to him to be desirable<sup>22</sup>.

Where a head teacher gives or varies a direction under such regulations<sup>23</sup>, he must, in such manner as may be prescribed<sup>24</sup>, give the information mentioned in heads (1) to (3) below to the governing body<sup>25</sup>, and to the local education authority<sup>26</sup> by whom the school is maintained<sup>27</sup>, and must take such steps as may be prescribed to give that information also to a parent<sup>28</sup> of the pupil concerned<sup>29</sup>. That information which must be given is:

- 1678 (1) the fact that he has taken the action in question, its effect and his reasons for taking it<sup>30</sup>;
- 1679 (2) the provision that is being or is to be made for the pupil's education during the operative period of the direction<sup>31</sup>; and
- 1680 (3) either a description of the manner in which he proposes to secure the full implementation of the National Curriculum for England in relation to the pupil after the end of that period, or an indication that he has the opinion<sup>32</sup> that the pupil has or probably has special educational needs<sup>33</sup> by virtue of which the responsible authority<sup>34</sup> would be required to determine the special educational provision<sup>35</sup> that should be made for him, whether initially or on a review of any statement of his special educational needs which the authority is for the time being required<sup>36</sup> to maintain<sup>37</sup>.

Where the head teacher of a maintained school or maintained nursery school includes an indication of any such opinion in the information given<sup>38</sup>, and the local education authority by whom the school is maintained is not the responsible authority in relation to the pupil in question, the head teacher must also give that information, in such manner as may be prescribed, to the responsible authority<sup>39</sup>. Where the responsible authority receives

information<sup>40</sup> which includes an indication that the head teacher has the opinion that the pupil has or probably has special educational needs<sup>41</sup>, it must consider whether any action on its part is required<sup>42</sup> in the case of the pupil concerned<sup>43</sup>.

Where a head teacher:

- 1681 (a) gives, revokes or varies a direction under such regulations<sup>44</sup>;
- 1682 (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed by the regulations, by the parent of a registered pupil at the school<sup>45</sup>; or
- 1683 (c) following the making of such a request, fails within such period as may be prescribed by the regulations to give, revoke or vary such a direction in accordance with the request<sup>46</sup>,

the parent of the pupil concerned may appeal to the governing body<sup>47</sup>. On such an appeal, the governing body may confirm the head teacher's action<sup>48</sup>, or direct the head teacher to take such action authorised by the regulations as it considers appropriate in the circumstances<sup>49</sup>. The governing body must notify the appellant and the head teacher in writing of its decision on such an appeal<sup>50</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England): s 212(1). As to the Secretary of State see PARA 52 ante. For the meaning of 'England' see PARA 52 note 11 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under ss 93-95. However, the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000, SI 2000/2121, made under the Education Act 1996 ss 365-367 (repealed), have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 ss 93-95. See further notes 5, 10, 19-20, 47 infra.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 212(2), (3).

3 For the meaning of 'maintained school' see PARA 913 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 212(2), (3).

4 For the meaning of 'maintained nursery school' see PARA 913 note 8 ante.

5 'Prescribed' means prescribed by regulations (see note 1 supra): Education Act 2002 s 212(1). As to the cases and circumstances in which directions may be given see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000, SI 2000/2121, reg 3.

6 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the meaning of 'pupil' see PARA 913 note 11 ante.

7 *Ibid* s 93(1). As to the National Curriculum for England see PARA 916 et seq ante.

8 *Ibid* s 93(1)(a).

9 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 212(2), (3).

10 *Ibid* s 93(1)(b). As to the making of directions under s 93 see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000, SI 2000/2121, reg 4. As to the form and contents of directions under the Education Act 2002 s 93 see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000, SI 2000/2121, reg 5; and as to the requirement to keep records of relevant information see reg 6. As to further directions see regs 9-11. As to parental requests to the head teacher to give a direction or a further direction see regs 12-14.

11 Education Act 2002 s 93(2).

12 *Ibid* s 93(3)(a).

13 Ibid s 93(3)(b).

14 Ie without prejudice to the generality of ibid s 210(7) (see PARA 79 note 2 ante), which provides that regulations under the Education Act 2002 may make different provision for different cases or circumstances etc: s 93(4).

15 Ibid s 93(4).

16 Ibid s 93(4)(a).

17 Ibid s 93(4)(b).

18 Ibid s 93(5).

19 Ibid s 93(5)(a). As to the revocation of directions see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000, SI 2000/2121, regs 7-8.

20 Education Act 2002 s 93(5)(b). As to the variation of directions see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000, SI 2000/2121, reg 7.

21 Ie under the Education Act 2002 s 93.

22 Ibid s 93(6).

23 Ie under regulations made under ibid s 93: see the text and notes 1-22 supra.

24 See note 1 supra.

25 Education Act 2002 s 94(1)(a). As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

26 As to local education authorities see PARA 20 ante.

27 Education Act 2002 s 94(1)(b).

28 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 212(2), (3).

29 Ibid s 94(1).

30 Ibid s 94(2)(a).

31 Ibid s 94(2)(b).

32 Ibid s 94(2)(c).

33 For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of ibid s 212(2), (3).

34 For these purposes, 'the responsible authority', in relation to a pupil, means the local education authority responsible for him for the purposes of the Education Act 1996 Pt IV (ss 312-349) (as amended): Education Act 2002 s 94(6).

35 For the meaning of 'special educational provision' see PARA 984 post; definition applied by virtue of ibid s 212(2), (3).

36 Ie under the Education Act 1996 s 324 (as amended): see PARA 996 post.

37 Education Act 2002 s 94(3).

38 Ie under ibid s 94(1): see the text and notes 23-29 supra.

39 Ibid s 94(4).

40 Ie given to it under ibid s 94(1) (see the text and notes 23-29 supra) or s 94(4) (see the text and notes 38-39 supra): s 94(5).

41 Ie mentioned in ibid s 94(3): see the text and notes 33-37 supra.

42 le under the Education Act 1996 s 323 (as amended) (assessment of special educational needs: see PARA 988 post).

43 Education Act 2002 s 94(5).

44 Ibid s 95(1)(a). The text refers to regulations made under s 93: see the text and notes 1-22 supra.

45 Ibid s 95(1)(b).

46 Ibid s 95(1)(c).

47 Ibid s 95(1). See also the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (England) Regulations 2000, SI 2000/2121, reg 14.

48 Education Act 2002 s 95(2)(a).

49 Ibid s 95(2)(b). The head teacher must comply with any directions of the governing body given under s 95(2)(b): s 95(3).

50 Ibid s 95(4).

## **UPDATE**

### **925 Temporary exceptions for individual pupils**

TEXT AND NOTES 7-10, 18-20, 39--2002 Act ss 93(1), (5), 94(4) amended: Childcare Act 2006 Sch 1 paras 13, 14, Sch 3 Pt 1.

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## **(ii) The Curriculum in Wales**

### **A. IN GENERAL**

#### **926. General duties in respect of the curriculum in Wales.**

The National Assembly for Wales<sup>1</sup>, every local education authority<sup>2</sup> in Wales<sup>3</sup>, the governing body<sup>4</sup> and head teacher<sup>5</sup> must exercise their functions<sup>6</sup> with a view to securing that the curriculum for each maintained school<sup>7</sup> or maintained nursery school<sup>8</sup> satisfies the requirements<sup>9</sup> of being a balanced and broadly based curriculum<sup>10</sup> which: (1) promotes the spiritual, moral, cultural, mental and physical development of pupils<sup>11</sup> at the school and of society<sup>12</sup>; and (2) prepares pupils at the school for the opportunities, responsibilities and experiences of later life<sup>13</sup>.

The Assembly and every local education authority in Wales must also exercise their functions with a view to securing that the curriculum for any funded nursery education provided<sup>14</sup> otherwise than at a maintained school or maintained nursery school<sup>15</sup> satisfies the requirements<sup>16</sup> of being a balanced and broadly based curriculum<sup>17</sup> which: (a) promotes the spiritual, moral, cultural, mental and physical development of the pupils for whom the funded nursery education is provided and of society<sup>18</sup>; and (b) prepares those pupils for the opportunities, responsibilities and experiences of later life<sup>19</sup>.

The functions of the Assembly, the local education authority, the governing body and the head teacher described above<sup>20</sup> include in particular: (i) functions conferred by Part 7 of the Education Act 2002 in relation to the National Curriculum for Wales<sup>21</sup>; and (ii) except in relation to maintained nursery schools or the provision of funded nursery education otherwise than at a maintained school or maintained nursery school, functions relating to religious education and religious worship<sup>22</sup>.

In exercising any function which may affect the provision of sex education<sup>23</sup> in maintained schools every local education authority in Wales must have regard to the guidance issued<sup>24</sup> by the Assembly<sup>25</sup>.

<sup>1</sup> As to the National Assembly for Wales see PARA 53 ante.

<sup>2</sup> As to local education authorities see PARA 20 ante.

<sup>3</sup> For the meaning of 'Wales' see PARA 52 note 13 ante.

<sup>4</sup> As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

<sup>5</sup> As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

<sup>6</sup> As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 212(2), (3). See further the text and notes 20-22 infra.

<sup>7</sup> For the purposes of ibid Pt 7 (ss 97-118) (as amended), 'maintained school' means: (1) any community, foundation or voluntary school maintained by a local education authority in Wales; or (2) except where otherwise stated, any community or foundation special school which is maintained by a local education authority in Wales and is not established in a hospital: s 97. As to community, foundation and voluntary and

community or foundation special schools see PARA 102 et seq ante. In the case of a local education authority, the reference is to every maintained school which it maintains: s 100(2). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

8 For the purposes of ibid Pt 7 (as amended), 'maintained nursery school' means a nursery school which is maintained by a local education authority in Wales and is not a special school: s 97. As to the meaning of 'nursery school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). In the case of a local education authority, the reference is to every maintained nursery school which it maintains: s 100(2). Until a day is appointed for the coming into force of s 102 (see PARA 930 post), s 104 (see PARA 930 post) and s 108(2) (see PARA 932 post), the reference to maintained nursery schools in s 100(1)(a), (2)(a), (3)(a) is to be omitted: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (2).

9 Education Act 2002 s 100(1)(a), (2)(a), (3). As to transitional provisions in relation to maintained nursery schools see note 8 supra. See also note 22 infra.

10 Ibid s 99(1).

11 For the purposes of ibid Pt 7 (as amended), 'pupil' includes a child for whom funded nursery education is provided: s 97. For the meaning of 'pupil' generally see PARA 16 note 4 ante; definition applied by virtue of s 212(2), (3). For the purposes of Pt 7 (as amended), 'nursery education' means full-time or part-time education suitable for children who have not attained compulsory school age, whether provided at schools or elsewhere: s 98(1). For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of s 212(2), (3). As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 212(2), (3). For the purposes of Pt 7 (as amended), nursery education is 'funded nursery education' in relation to a child if: (1) it is provided in a maintained school or a maintained nursery school (s 98(2)(a)); or (2) it is provided, by a person other than the governing body of any such school, under arrangements made with that person by a local education authority in Wales in pursuance of the duty imposed on the authority by the School Standards and Framework Act 1998 s 118 (see PARA 86 ante) and in consideration of financial assistance provided by the authority under those arrangements (Education Act 2002 s 98(2)(b)).

12 Ibid s 99(1)(a).

13 Ibid s 99(1)(b).

14 Ie, in the case of a local education authority, under arrangements made by it: ibid s 100(2)(b).

15 For the purposes of ibid Pt 7 (as amended), funded nursery education provided in relation to a child otherwise than at a maintained school or maintained nursery school is to be taken to be provided by the person with whom the arrangements referred to in s 98(2)(b) (see note 11 head (2) supra) are made by the local education authority: s 98(3).

16 Ibid s 100(1)(b), (2)(b). Any person providing funded nursery education under the arrangements mentioned in s 98(2)(b) (see note 11 head (2) supra) must also secure that the curriculum for that funded nursery education satisfies the requirements of heads (a) and (b) in the text: s 100(5).

17 Ibid s 99(2).

18 Ibid s 99(2)(a).

19 Ibid s 99(2)(b).

20 Ie in ibid s 100(1)-(3): see the text to notes 1-19 supra.

21 Ibid s 100(4)(a). As to the National Curriculum for Wales see PARA 929 et seq post.

22 Ibid s 100(4)(b). As to religious education and worship see PARAS 947-968 post. Until a day is appointed for the coming into force of s 102 (see PARA 930 post), s 104 (see PARA 930 post) and s 108(2) (see PARA 932 post), s 100(4)(b) is substituted so as to refer simply to functions relating to religious education and religious worship: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (3).

23 As to the meaning of 'sex education' see PARA 914 note 8 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

24 Ie under Education Act 1996 s 403(1A) (as added): see PARA 942 post. As to the guidance issued see PARA 942 note 9 post.



25 Education Act 2002 s 100(6). Except to the extent provided, nothing in the Education Act 2002 s 100 is to be taken to impose duties on a local education authority with regard to sex education: s 100(7).

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## **927. Basic curriculum for every maintained school in Wales.**

The curriculum for every maintained school<sup>1</sup> in Wales<sup>2</sup> must comprise a basic curriculum which includes:

- 1684 (1) provision for religious education for all registered pupils<sup>3</sup> at the school<sup>4</sup>;
- 1685 (2) a curriculum for all registered pupils at the school who have attained the age of three but are not over compulsory school age<sup>5</sup> (known as 'the National Curriculum for Wales')<sup>6</sup>;
- 1686 (3) provision for personal and social education for all registered pupils at the school who are of compulsory school age<sup>7</sup>;
- 1687 (4) provision for work-related education for all registered pupils at the school during the fourth key stage<sup>8</sup>;
- 1688 (5) in the case of a secondary school<sup>9</sup>, provision for sex education<sup>10</sup> for all registered pupils at the school<sup>11</sup>; and
- 1689 (6) in the case of a special school, provision for sex education for all registered pupils at the school who are provided with secondary education<sup>12</sup>.

The National Assembly for Wales may by order amend these provisions<sup>13</sup> so as to add further requirements, otherwise than in relation to religious education or sex education<sup>14</sup>.

1 For the meaning of 'maintained school' see PARA 926 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 For the meaning of 'Wales' see PARA 52 note 13 ante.

3 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the meaning of 'pupil' see PARA 926 note 11 ante.

4 Ibid s 101(1)(a). The text refers to the provision for religious education in accordance with such of the provisions of the School Standards and Framework Act 1998 s 69, Sch 19 (as amended) (see PARAS 951-954 post) as apply in relation to the school: Education Act 2002 s 101(1)(a). Section 101(1)(a) does not apply: (1) in relation to a nursery class in a primary school; or (2) in the case of a maintained special school (provision as to religious education in special schools being made by regulations under the School Standards and Framework Act 1998 s 71(7) (see PARA 961 post)): Education Act 2002 s 101(2). As to the making of regulations generally under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). For the meaning of 'special school' see PARA 1027 post; definition applied by virtue of s 212(2), (3). As to compulsory collective worship see PARA 957 et seq post.

5 As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 212(2), (3).

6 Ibid s 101(1)(b). As to the National Curriculum for Wales see PARA 929 et seq post. Until a day is appointed for the coming into force of s 102 (see PARA 930 post), s 104 (see PARA 930 post) and s 108(2) (see PARA 932 post), s 101(1)(b) is substituted so as to refer to pupils who have attained compulsory school age instead of pupils who have attained the age of three but are not over compulsory school age: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (4). The National Assembly for Wales may by order amend the Education Act 2002 s 101(1)(b): (1) by substituting for the reference to the age of three (or to any age specified there by virtue of s 101(3)(a)) a reference to such other age as may be specified in the order (s 101(3)(b)(i)); or (2) by substituting for the reference to compulsory school age (or to any age specified there by virtue of s 101(3)(b)) a reference to such other age as may be specified in the order (s 101(3)(b)(ii)).

(b)(iii)). As to the National Assembly for Wales see PARA 53 ante. As to the making of orders under the Education Act 2002 generally see PARA 77 note 7 ante. At the date at which this volume states the law, no order had been made under s 101(3)(b).

7 Ibid s 101(1)(ba) (added by the Basic Curriculum for Wales (Amendment) Order 2003, SI 2003/932, art 2(1), (2)).

8 Education Act 2002 s 101(1)(bb) (added by the Basic Curriculum for Wales (Amendment) Order 2003, SI 2003/932, art 2(1), (3)). As to work-related education and the fourth key stage see PARA 931 post.

9 For the meaning of 'secondary school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

10 As to the meaning of 'sex education' see PARA 914 note 8 ante; definition applied by virtue of ibid s 212(2), (3).

11 Ibid s 101(1)(c).

12 Ibid s 101(1)(d). For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of s 212(2), (3).

13 Ie ibid s 101(1).

14 Ibid s 101(3)(a). The National Assembly for Wales may by order also amend any provision included in s 101(1) by virtue of s 101(3)(a): s 101(3)(c). In exercising any function which may affect the provision in maintained schools of education of a kind required by virtue of an order under s 101(3)(a), a local education authority in Wales or the governing body of a maintained school must have regard to any guidance from time to time given by the Assembly: s 100(8). The Basic Curriculum for Wales (Amendment) Order 2003, SI 2003/932, has been made under the Education Act 2002 s 101(3)(a): see the text and notes 7-8 supra. As to local education authorities see PARA 20 ante; and as to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

## UPDATE

### 927 Basic curriculum for every maintained school in Wales

TEXT AND NOTE 8--Education Act 2002 s 101(1)(bb) amended: SI 2008/1899.

NOTE 12--2002 Act s 101(1)(d) applies in relation to pupil referral units as it applies in relation to special schools: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 10.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(ii) The Curriculum in Wales/A. IN GENERAL/928. Careers education and guidance.

## **928. Careers education and guidance.**

During the period beginning at the same time as the school year in which the majority of pupils in a class attain the age of 14, and ending with the expiry of the school year in which the majority of pupils in a class attain the age of 16, the governing body<sup>1</sup> and the head teacher must secure that all registered pupils at community, foundation or voluntary schools, or community or foundation special schools<sup>2</sup>, other than those established in hospitals, are provided with a programme of careers education<sup>3</sup>.

Where a careers adviser has responsibilities in relation to pupils attending such a school, he must on request be provided with the name and address of every relevant pupil at the institution, and any information in the institution's possession about any such pupil which the careers adviser needs in order to be able to provide him with advice and guidance on decisions about his career or with other information relevant to such decisions<sup>4</sup>. Where a careers adviser has such responsibilities, he must on request be permitted to have, in the case of any relevant pupil specified by him, access to that person on the school's premises, and at a reasonable time, for the purpose of enabling him to provide that person with advice and guidance on decisions about his career and with any other information relevant to such decisions<sup>5</sup>. Persons attending such schools must be provided with access to both guidance materials, and a wide range of up to date reference materials, relating to careers education and career opportunities<sup>6</sup>.

1 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

2 As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

3 See the Education Act 1997 s 43 (as amended); and PARA 1161 post. For the meaning of 'careers education' see PARA 1161 note 7 post.

4 See ibid s 44(1); and PARA 1162 post.

5 See ibid s 44(4); and PARA 1162 post.

6 See ibid s 45; and PARA 1163 post. As to the extension or modification of the provisions contained in ss 43-45 (as amended) (see PARAS 1161-1163 post) see s 46; and PARAS 1161-1162 post.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(ii) The Curriculum in Wales/B. THE NATIONAL CURRICULUM FOR WALES: IN GENERAL/929. The National Curriculum for Wales.

## ***B. THE NATIONAL CURRICULUM FOR WALES: IN GENERAL***

### **929. The National Curriculum for Wales.**

The National Curriculum for Wales<sup>1</sup> comprises the foundation stage<sup>2</sup> followed by four key stages<sup>3</sup>, and specifies:

- 1690 (1) 'assessment arrangements', which are arrangements for assessing<sup>4</sup> pupils<sup>5</sup> in respect of the relevant stage (foundation or key stage) for the purpose of ascertaining what they have achieved in relation to the desirable outcomes<sup>6</sup> (in the case of the foundation stage) or (in the case of a key stage) in relation to the attainment targets for that stage<sup>7</sup>;
- 1691 (2) 'attainment targets', which, in relation to a key stage, means the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of that stage<sup>8</sup>;
- 1692 (3) 'programmes of study', which, in relation to a key stage, means matters, skills and processes which are required to be taught to pupils of different abilities and maturities by the end of that stage<sup>9</sup>.

The National Assembly for Wales<sup>10</sup> may incur expenses in connection with the commissioning by the Assembly of such work, including programmes of research, development and dissemination, as it may require to be carried out for the purpose of facilitating the discharge of any of the Assembly's functions in relation to the National Curriculum for Wales<sup>11</sup>.

Independent schools may choose to adopt the National Curriculum for Wales but are under no obligation to do so<sup>12</sup>.

1 As to the curriculum in Wales generally see PARAS 926-928 ante.

2 For the meaning of 'the foundation stage' see PARA 930 post.

3 For the meaning of 'key stage' see PARA 931 post.

4 For the purposes of the Education Act 2002 Pt 7 (ss 97-118) (as amended), 'assess' includes examine and test; and related expressions must be construed accordingly: s 97.

5 As to the meaning of 'pupil' see PARA 926 note 11 ante.

6 For the meaning of 'desirable outcomes' see PARA 930 post.

7 Education Act 2002 s 97.

8 Ibid s 97.

9 Ibid s 97.

10 As to the National Assembly for Wales see PARA 53 ante.

11 Education Act 2002 s 118. The text refers to the Assembly's functions under ss 102-108 only (see PARAS 930-932 post). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 212(2), (3).

12 As to independent schools see PARA 465 et seq ante.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(ii) The Curriculum in Wales/B. THE NATIONAL CURRICULUM FOR WALES: IN GENERAL/930. The National Curriculum for Wales for the foundation stage.

### **930. The National Curriculum for Wales for the foundation stage.**

As from a day to be appointed<sup>1</sup>, the foundation stage<sup>2</sup> in relation to a pupil<sup>3</sup> is such period as may be specified in an order<sup>4</sup> made by the National Assembly for Wales<sup>5</sup>.

For the foundation stage, the National Curriculum for Wales<sup>6</sup> must specify 'areas of learning' and, in relation to each area of learning, may specify:

- 1693 (1) the knowledge, skills and understanding which pupils of different abilities and maturities are expected to have by the end of the foundation stage ('desirable outcomes')<sup>7</sup>;
- 1694 (2) the matters, skills and processes which are required to be taught to pupils of different abilities and maturities during the foundation stage ('educational programmes')<sup>8</sup>; and
- 1695 (3) assessment arrangements<sup>9</sup>.

1 The Education Act 2002 ss 102, 104 are to come into force in accordance with provision made by the National Assembly for Wales by order under s 216(3). At the date at which this volume states the law, no such order had been made.

2 For the purposes of ibid Pt 7 (ss 97-118) (as amended), 'the foundation stage' has the meaning given by s 102 (not yet in force): s 97.

3 As to the meaning of 'pupil' see PARA 926 note 11 ante.

4 As to the making of orders under the Education Act 2002 generally see PARA 77 note 7 ante. At the date at which this volume states the law, no order had been made under s 102 (not yet in force).

5 Ibid s 102. See note 1 supra. As to the National Assembly for Wales see PARA 53 ante.

6 As to the National Curriculum for Wales see PARA 929 ante.

7 Education Act 2002 s 104(a). See note 1 supra. For the purposes of Pt 7 (as amended), 'desirable outcomes', in relation to the foundation stage, has the meaning given by s 104 (not yet in force): s 97.

8 Ibid s 104(b). See note 1 supra.

9 Ibid s 104(c). See note 1 supra. For the meaning of 'assessment arrangements' see PARA 929 ante. As to baseline assessments in relation to Wales see PARAS 939-941 post. These assessments will be replaced by arrangements under the National Curriculum for Wales for the foundation stage when provisions relating to the latter come into force.

## **UPDATE**

### **930 The National Curriculum for Wales for the foundation stage**

TEXT AND NOTE 1--Day appointed is 1 August 2008: SI 2008/1728.

NOTE 4--See the Education (National Curriculum) (Foundation Stage) (Wales) Order 2008, SI 2008/1732 (amended by SI 2008/2629).





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### **931. The National Curriculum for Wales for the key stages.**

There are four key stages in the National Curriculum for Wales<sup>1</sup>. The key stages in relation to a pupil<sup>2</sup> are:

- 1696 (1) the period beginning with his becoming of compulsory school age<sup>3</sup> and ending at the same time as the school year<sup>4</sup> in which the majority of pupils in his class<sup>5</sup> attain the age of seven ('the first key stage')<sup>6</sup>;
- 1697 (2) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of eight and ending at the same time as the school year in which the majority of pupils in his class attain the age of 11 ('the second key stage')<sup>7</sup>;
- 1698 (3) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of 12 and ending at the same time as the school year in which the majority of pupils in his class attain the age of 14 ('the third key stage')<sup>8</sup>; and
- 1699 (4) the period beginning at the same time as the school year in which the majority of pupils in his class attain the age of 15 and ending at the same time as the school year in which the majority of pupils in his class cease to be of compulsory school age ('the fourth key stage')<sup>9</sup>.

The head teacher of a school may elect, in relation to a particular pupil and a particular subject, that the definitions of the four key stages have effect as if any reference to the school year in which the majority of pupils in that pupil's class attain a particular age were a reference to the school year in which that pupil attains that age<sup>10</sup>. If at any time, in the case of a pupil of compulsory school age, the definitions of the four key stages<sup>11</sup> do not<sup>12</sup> apply to determine the period within which that time falls, heads (1) to (4) above have effect as if:

- 1700 (a) in the case of heads (1) to (3) above, any reference to the school year in which the majority of pupils in that pupil's class attain a particular age were a reference to the school year in which that pupil attains that age<sup>13</sup>; and
- 1701 (b) in the case of head (4) above, the period were a period beginning at the same time as the school year in which he attains the age of 15 and ending when he ceases to be of compulsory school age<sup>14</sup>.

For the first, second and third key stages, the National Curriculum for Wales comprises the core subjects of mathematics<sup>15</sup>, English<sup>16</sup>, science<sup>17</sup>, and, in relation to Welsh-speaking schools, Welsh<sup>18</sup>, and the other foundation subjects of technology<sup>19</sup>, physical education<sup>20</sup>, history<sup>21</sup>, geography<sup>22</sup>, art<sup>23</sup>, music<sup>24</sup>, Welsh (if the school is not a Welsh-speaking school)<sup>25</sup>, and (in relation to the third key stage) a modern foreign language<sup>26</sup>. In relation to each of those subjects for each of those stages, the National Curriculum for Wales specifies attainment targets<sup>27</sup>, programmes of study<sup>28</sup> and assessment arrangements<sup>29</sup>.

For the fourth key stage, the National Curriculum for Wales comprises the core subjects of mathematics<sup>30</sup>, English<sup>31</sup>, science<sup>32</sup>, and, in relation to Welsh-speaking schools, Welsh<sup>33</sup>, and the

other foundation subjects of physical education<sup>34</sup> and Welsh (if the school is not a Welsh-speaking school)<sup>35</sup>. The National Curriculum for Wales must specify attainment targets, programmes of study, and assessment arrangements in relation to each of the core and other foundation subjects for the fourth key stage<sup>36</sup>.

The National Assembly for Wales may by order amend any of the provisions relating to requirements for the fourth key stage<sup>37</sup>, or provide that, while the order remains in force, none of those provisions is to have effect<sup>38</sup>.

1 For the purposes of the Education Act 2002 Pt 7 (ss 97-118) (as amended), 'key stage', or references to a particular key stage, must be construed in accordance with s 103 (see the text and notes 2-14 infra): s 97. As to the National Curriculum for Wales see PARA 929 ante.

2 As to the meaning of 'pupil' see PARA 926 note 11 ante.

3 As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 For these purposes, 'school year', in relation to a school, means the period beginning with the first school term to begin after July and ending with the beginning of the first school term to begin after the following July; and has a corresponding meaning in relation to the provision of funded nursery education otherwise than at a school: *ibid* s 97. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'funded nursery education' see PARA 926 note 11 ante.

5 For the purposes of *ibid* s 103, 'class', in relation to a particular pupil and a particular subject, means: (1) the teaching group in which he is regularly taught in that subject; or (2) where there are two or more such groups, such one of them as may be designated by the head teacher of the school: s 103(5). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 212(2), (3).

6 *Ibid* s 103(1)(a). The National Assembly for Wales may by order: (1) provide that, in relation to any subject specified in the order, s 103(1) is to have effect as if for the ages of seven and eight there specified there were substituted such other ages (less than 11 and 12 respectively) as may be specified in the order (s 103(4)(a)); and (2) amend s 103(1)-(3) (see the text and notes 7-14 infra) (s 103(4)(b)). As to the National Assembly for Wales see PARA 53 ante. As to the procedure for making orders under s 103(4) see PARA 934 post. As to the making of orders under the Education Act 2002 generally see PARA 77 note 7 ante. At the date at which this volume states the law, no order had been made under s 103(4).

7 *Ibid* s 103(1)(b). See note 6 supra.

8 *Ibid* s 103(1)(c). See note 6 supra.

9 *Ibid* s 103(1)(d). See note 6 supra.

10 *Ibid* s 103(2). See note 6 supra.

11 *Ie* *ibid* s 103(1): see the text to notes 2-9 supra.

12 *Ie* apart from *ibid* s 103(3): see the text to notes 13-14 infra.

13 *Ibid* s 103(3)(a). See note 6 supra.

14 *Ibid* s 103(3)(b). See note 6 supra.

15 *Ibid* s 105(1), (2)(a). The National Assembly for Wales may by order amend s 105(2)-(5) (see the text to notes 16-26 infra): s 105(6). As to the procedure for making orders under s 105(6) see PARA 934 post. At the date at which this volume states the law, no order had been made under s 105(6).

16 *Ibid* s 105(1), (2)(b). See note 15 supra.

17 *Ibid* s 105(1), (2)(c). See note 15 supra.

18 *Ibid* s 105(1), (2)(d). See note 15 supra. For the purposes of s 105, a school is Welsh-speaking if more than one half of the following subjects are taught (wholly or partly) in Welsh: (1) religious education; and (2) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school: s 105(7). For the purposes of s 105, 'school' includes part of a school: s 105(8).

- 19 Ibid s 105(1), (3)(a). See note 15 supra.
- 20 Ibid s 105(1), (3)(b). See note 15 supra.
- 21 Ibid s 105(1), (3)(c). See note 15 supra.
- 22 Ibid s 105(1), (3)(d). See note 15 supra.
- 23 Ibid s 105(1), (3)(e). See note 15 supra.
- 24 Ibid s 105(1), (3)(f). See note 15 supra.
- 25 Ibid s 105(1), (3)(g). See note 15 supra.
- 26 Ibid s 105(1), (3)(h). For the purposes of s 105, 'modern foreign language' means a modern foreign language specified in an order made by the National Assembly for Wales or, if the order so provides, any modern foreign language: s 105(4). An order under s 105(4) may: (1) specify circumstances in which a language is not to be treated as a foundation subject for the third key stage; and (2) provide for the determination under the order of any question arising as to whether a particular language is a modern foreign language: s 105(5). See note 15 supra. At the date at which this volume states the law, no order had been made under s 105(4), (5). However, the Education (National Curriculum) (Modern Foreign Languages) (Wales) Order 2000, SI 2000/1980, made under the Education Act 1996 s 354 (repealed), has effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 105(4), (5).
- 27 For the meaning of 'attainment targets' see PARA 929 ante.
- 28 For the meaning of 'programmes of study' see PARA 929 ante.
- 29 Education Act 2002 s 105(1). For the meaning of 'assessment arrangements' see PARA 929 ante.
- 30 Ibid s 106(1), (2)(a).
- 31 Ibid s 106(1), (2)(b).
- 32 Ibid s 106(1), (2)(c).
- 33 Ibid s 106(1), (2)(d).
- 34 Ibid s 106(1), (3)(a).
- 35 Ibid s 106(1), (3)(b). For the purposes of s 106, a school is Welsh-speaking if more than one half of the following subjects are taught (wholly or partly) in Welsh: (1) religious education; and (2) the subjects other than English and Welsh which are foundation subjects in relation to pupils at the school: s 106(4). For the purposes of s 106, 'school' includes part of a school: s 106(5).
- 36 Ibid s 106(1).
- 37 Ie ibid s 106: see the text and notes 30-35 supra.
- 38 Ibid s 107.

## UPDATE

### 931 The National Curriculum for Wales for the key stages

TEXT AND NOTES 15-29--The requirements for the first key stage as set out in the 2002 Act s 105 (1), (2) and (3) are not to apply in relation to pupils at maintained schools during the school years 2010 to 2011 and 2011 to 2012: Education (Disapplication of the National Curriculum for Wales at Key Stage 1) (Wales) Regulations 2008, SI 2008/1736.

TEXT AND NOTES 15-26--Education Act 2002 s 105(3)(a), (e) amended, s 105(3)(aa) (information and communications technology) added: SI 2008/1899.

NOTE 26--The Education (National Curriculum) (Modern Foreign Languages) (Wales) Order 2008, SI 2008/1408, revokes SI 2000/1980 and provides that for the purposes of the Education Act 2002 s 105 'modern foreign language' means any modern foreign language and that any question of whether a foreign language is a modern foreign language is to be determined by the Welsh Ministers.

NOTE 37--See the Education (National Curriculum for Wales) (Disapplication of Science at Key Stage 4) Regulations 2006, SI 2006/1335; and Education (Local Curriculum for Pupils in Key Stage 4) (Wales) Regulations 2009, SI 2009/3256.

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### **932. Establishment of the National Curriculum for Wales by order.**

In respect of the foundation stage<sup>1</sup>, the National Assembly for Wales<sup>2</sup> must by order<sup>3</sup> specify the areas of learning<sup>4</sup> and may by order specify in relation to each of those areas such desirable outcomes<sup>5</sup>, such educational programmes<sup>6</sup>, and such assessment arrangements<sup>7</sup>, as it considers appropriate for that area<sup>8</sup>. In respect of the first, second and third key stages<sup>9</sup>, and<sup>10</sup> in respect of the fourth key stage, the Assembly may by order specify in relation to each of the foundation subjects<sup>11</sup> such attainment targets<sup>12</sup>, such programmes of study<sup>13</sup>, and such assessment arrangements<sup>14</sup>, as it considers appropriate for that subject<sup>15</sup>. Such an order<sup>16</sup> may not require the allocation of any particular period or periods of time during the foundation stage or any key stage to the teaching of any educational programme or programme of study or any matter, skill or process forming part of it<sup>17</sup>, or the making in school timetables, or the timetables of any person providing funded nursery education, of provision of any particular kind for the periods to be allocated to such teaching during any such stage<sup>18</sup>. Such an order may, instead of containing the provisions to be made, refer to provisions in a document published as specified in the order and direct that those provisions are to have effect or, as the case may be, are to have effect as amended by the order<sup>19</sup>.

The Assembly must exercise these powers conferred on it to make orders<sup>20</sup> so as to: (1) establish a complete National Curriculum for Wales<sup>21</sup> for the foundation stage as soon as is reasonably practicable<sup>22</sup>; and (2) revise the National Curriculum for Wales for the foundation stage and the key stages whenever the Assembly considers it necessary or expedient to do so<sup>23</sup>.

Provision must be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements are made; and any such provision may be made by or under the order specifying the arrangements or, where the order specifies the person making the arrangements, in the arrangements themselves<sup>24</sup>.

1 The provisions of the Education Act 2002 s 108 (as amended) which relate to the foundation stage (ie s 108(1)(a), (2), (6), and all references to them) come into force as from a day to be appointed under s 216(3). At the date at which this volume states the law, no such day had been appointed. The remaining provisions (ie s 108(1)(b), (3)-(5), (7)-(11)) came into force on 19 December 2002: see the Education Act 2002 (Commencement No 1) (Wales) Order 2002, SI 2002/3185, art 4, Schedule Pt I. As to the foundation stage see PARA 930 ante.

2 As to the National Assembly for Wales see PARA 52 ante.

3 As to the making of orders under the Education Act 2002 generally see PARA 77 note 7 ante.

4 Education Act 2002 s 108(2)(a). See note 1 supra. As to the areas of learning for the foundation stage see PARA 930 ante. As to the procedure for making orders under s 108(2)(a) (not yet in force) see PARA 934 post.

5 Ibid s 108(2)(b)(i). See note 1 supra. For the meaning of 'desirable outcomes' see PARA 930 ante. As to the procedure for making orders under s 108(2)(b)(i) (not yet in force) see PARA 934 post.

6 Ibid s 108(2)(b)(ii). See note 1 supra. For the meaning of 'educational programmes' see PARA 930 ante. As to the procedure for making orders under s 108(2)(b)(ii) (not yet in force) see PARA 934 post.

7 Ibid s 108(2)(b)(iii). See note 1 supra. For the meaning of 'assessment arrangements' see PARA 929 ante. An order under s 108(2)(b)(iii) (not yet in force) may confer or impose such functions on: (1) the governing body and head teacher of a maintained school or a maintained nursery school; (2) a person providing funded nursery education under the arrangements mentioned in s 98(2)(b) (see PARA 926 note 11 ante); (3) an early years development and childcare partnership; and (4) a local education authority, as appear to the National Assembly for Wales to be required: s 108(6). Such an order may also specify such assessment arrangements as may for the time being be made by a person specified in the order: s 108(8). An order may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order, other than provision conferring or imposing functions as mentioned in s 108(6) (not yet in force), as appear to the Assembly to be expedient; and any provisions made under such an order must, on being published as specified in the order, have effect for the purposes of Pt 7 (ss 97-118) (as amended) as if made by the order: s 108(11). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 212(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). For the meaning of 'maintained school' see PARA 926 note 7 ante; for the meaning of 'maintained nursery school' see PARA 926 note 8 ante; and for the meaning of 'funded nursery education' see PARA 926 note 11 ante. As to early years development and childcare partnerships see PARA 87 ante. As to local education authorities see PARA 20 ante. As to baseline assessments see PARAS 939-941 post.

8 Ibid s 108(2). See note 1 supra.

9 As to the key stages see PARA 931 ante.

10 Ie subject to the Education Act 2002 s 107 (see PARA 931 ante).

11 As to the foundation subjects in relation to the key stages see PARA 931 ante.

12 Education Act 2002 s 108(3)(a). See note 1 supra. For the meaning of 'attainment targets' see PARA 929 ante. As to the procedure for making orders under s 108(3)(a) see PARA 934 post. At the date at which this volume states the law, no order had been made under s 108(3)(a) but the following orders, made under the Education Act 1996 s 356 (repealed), have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 108(3)(a): the Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education) (Wales) Order 2000, SI 2000/1098; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Science) (Wales) Order 2000, SI 2000/1099; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics) (Wales) Order 2000, SI 2000/1100; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Welsh) Order 2000, SI 2000/1101; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Art) (Wales) Order 2000, SI 2000/1153; the Education (National Curriculum) (Attainment Targets and Programmes of Study in English) (Wales) Order 2000, SI 2000/1154; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Geography) (Wales) Order 2000, SI 2000/1155; the Education (National Curriculum) (Attainment Targets and Programmes of Study in History) (Wales) Order 2000, SI 2000/1156; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Modern Foreign Languages) (Wales) Order 2000, SI 2000/1157; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Music) (Wales) Order 2000, SI 2000/1158; and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Technology) (Wales) Order 2000, SI 2000/1159.

13 Education Act 2002 s 108(3)(b). See note 1 supra. For the meaning of 'programmes of study' see PARA 929 ante. As to the procedure for making orders under s 108(3)(b) see PARA 934 post. At the date at which this volume states the law, no order had been made under s 108(3)(b) but the following orders, made under the Education Act 1996 s 356 (repealed), have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 108(3)(b): the Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education) (Wales) Order 2000, SI 2000/1098; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Science) (Wales) Order 2000, SI 2000/1099; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics) (Wales) Order 2000, SI 2000/1100; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Welsh) Order 2000, SI 2000/1101; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Art) (Wales) Order 2000, SI 2000/1153; the Education (National Curriculum) (Attainment Targets and Programmes of Study in English) (Wales) Order 2000, SI 2000/1154; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Geography) (Wales) Order 2000, SI 2000/1155; the Education (National Curriculum) (Attainment Targets and Programmes of Study in History) (Wales) Order 2000, SI 2000/1156; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Modern Foreign Languages) (Wales) Order 2000, SI 2000/1157; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Music) (Wales) Order 2000, SI 2000/1158; and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Technology) (Wales) Order 2000, SI 2000/1159.

14 Education Act 2002 s 108(3)(c). See note 1 supra. An order under s 108(3)(c) may confer or impose such functions on: (1) the governing body and head teacher; and (2) the local education authority, as appear to the

National Assembly for Wales to be required: s 108(7). Such an order may also specify such assessment arrangements as may for the time being be made by a person specified in the order: s 108(8). An order may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order, other than provision conferring or imposing functions as mentioned in s 108(7), as appear to the National Assembly for Wales to be expedient; and any provisions made under such an order must, on being published as specified in the order, have effect for the purposes of Pt 7 (as amended) as if made by the order: s 108(11). As to the assessment arrangements specified under s 108(3)(c) see the National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order 2004, SI 2004/2915; and the National Curriculum (Key Stage 3 Assessment Arrangements) (Wales) Order 2005, SI 2005/1394. The Education (National Curriculum) (Assessment Arrangements for English, Welsh, Mathematics and Science) (Key Stage 1) (Wales) Order 2002, SI 2002/45, made under the Education Act 1996 s 356 (repealed), has effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 108(3)(c).

15 Ibid s 108(3). See note 1 supra.

16 Ie under ibid s 108(2) (not yet in force) or s 108(3) (see the text and notes 1-15 supra).

17 Ibid s 108(4)(a). See note 1 supra. Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see note 1 supra), s 108(4)(a) is amended so that the words 'the foundation stage or any key stage' are to be read simply as a reference to 'any key stage' and the words 'any educational programme or programme of study' are to be read simply as 'any programme of study': see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (5)(b).

18 Education Act 2002 s 108(4)(b). See note 1 supra. Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see note 1 supra), s 108(4)(b) is amended so as to omit the reference to the timetables of any person providing funded nursery education: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (5)(b).

19 Education Act 2002 s 108(5). See note 1 supra.

The Education (National Curriculum) (Attainment Targets and Programmes of Study in Physical Education) (Wales) Order 2000, SI 2000/1098, refers to the document *Physical Education in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Science) (Wales) Order 2000, SI 2000/1099, refers to the document *Science in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Mathematics) (Wales) Order 2000, SI 2000/1100, refers to the document *Mathematics in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Welsh) Order 2000, SI 2000/1101, refers to the document *Welsh in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Art) (Wales) Order 2000, SI 2000/1153, refers to the document *Art in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in English) (Wales) Order 2000, SI 2000/1154, refers to the document *English in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Geography) (Wales) Order 2000, SI 2000/1155, refers to the document *Geography in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in History) (Wales) Order 2000, SI 2000/1156, refers to the document *History in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Modern Foreign Languages) (Wales) Order 2000, SI 2000/1157, refers to the document *Modern Foreign Language in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; the Education (National Curriculum) (Attainment Targets and Programmes of Study in Music) (Wales) Order 2000, SI 2000/1158, refers to the document *Music in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales; and the Education (National Curriculum) (Attainment Targets and Programmes of Study in Technology) (Wales) Order 2000, SI 2000/1159, refers to the document *Information Technology in the National Curriculum in Wales* (January 2000), published by the Qualifications, Curriculum and Assessment Authority for Wales. As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 ante. The Education (National Curriculum) (Assessment Arrangements for English, Welsh, Mathematics and Science) (Key Stage 1) (Wales) Order 2002, SI 2002/45; the National Curriculum (Key Stage 2 Assessment Arrangements) (Wales) Order 2004, SI 2004/2915; and the National Curriculum (Key Stage 3 Assessment Arrangements) (Wales) Order 2005, SI 2005/1394, make reference to these documents collectively.

20 Ie the powers conferred by the Education Act 2002 s 108(2) (not yet in force) or s 108(3) (see the text and notes 1-15 supra).

21 As to the National Curriculum for Wales see PARA 929 ante.

22 Education Act 2002 s 108(1)(a). See note 1 supra.

23 Ibid s 108(1)(b). See note 1 supra. Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see note 1 supra), s 108(1)(b) is amended so that the words 'the foundation stage and the key stages' are to be read simply as a reference to 'the key stages': see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (5)(a).

24 Education Act 2002 s 108(9). See note 1 supra.

In relation to persons exercising any power in pursuance of provision made by virtue of s 108(9), the duties that may be imposed by virtue of s 108(6) (not yet in force) (see note 7 supra) or s 108(7) (see note 14 supra) include the duty to permit them: (1) to enter premises of the school or, as the case may be, premises on which the funded nursery education is being provided; (2) to observe implementation of the arrangements; and (3) to inspect, and take copies of, documents and other articles: s 108(10). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 212(2), (3). Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see note 1 supra), head (1) supra is amended so that it reads simply 'to enter premises of the school': see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (5)(e).

## **UPDATE**

### **932 Establishment of the National Curriculum for Wales by order**

TEXT AND NOTES 1-8--See the Education (National Curriculum) (Foundation Stage) (Wales) Order 2008, SI 2008/1732 (amended by SI 2008/2629).

NOTE 1--Education Act 2002 s 108(1)(a), (2), (6) in force 1 August 2008: SI 2008/1728.

TEXT AND NOTES 9-15--The requirements for the first key stage as set out in orders made under the 2002 Act s 108(3) are not to apply in relation to pupils at maintained schools during the school years 2010 to 2011 and 2011 to 2012: Education (Disapplication of the National Curriculum for Wales at Key Stage 1) (Wales) Regulations 2008, SI 2008/1736.

NOTES 12, 13, 19--SI 2000/1098, SI 2000/1099, SI 2000/1100, SI 2000/1101, SI 2000/1153, SI 2000/1154, SI 2000/1155, SI 2000/1156, SI 2000/1157, SI 2000/1158, SI 2000/1159 replaced by the Education (National Curriculum) (Attainment Targets and Programmes of Study) (Wales) Order 2008, SI 2008/1409 (amended by SI 2008/1787).

NOTES 14, 18--SI 2002/45, SI 2004/2915 amended: SI 2005/3239.

NOTES 14, 19--SI 2005/1394 amended: SI 2008/1899.



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### **933. Duty to secure implementation of the National Curriculum for Wales.**

In relation to any maintained school<sup>1</sup> and any school year<sup>2</sup>:

- 1702 (1) the local education authority<sup>3</sup> and the governing body<sup>4</sup> must exercise its functions<sup>5</sup> with a view to securing<sup>6</sup>; and
- 1703 (2) the head teacher<sup>7</sup> must secure<sup>8</sup>,

that the National Curriculum for Wales<sup>9</sup> as subsisting at the beginning of that year is implemented<sup>10</sup>.

As from a day to be appointed, the following provisions have effect<sup>11</sup>. In relation to any maintained nursery school<sup>12</sup> and any school year:

- 1704 (a) the local education authority and the governing body must exercise its functions with a view to securing<sup>13</sup>; and
- 1705 (b) the head teacher must secure<sup>14</sup>,

that the National Curriculum for Wales as subsisting at the beginning of that year, so far as it relates to the foundation stage, is implemented<sup>15</sup>. In relation to any school year, any person providing funded nursery education<sup>16</sup> must secure that the National Curriculum for Wales as subsisting at the beginning of that year is implemented, so far as it relates to the foundation stage, in respect of the pupils<sup>17</sup> for whom the funded nursery education is provided<sup>18</sup>. The local education authority with whom the arrangements for providing funded nursery education are made<sup>19</sup> and the early years development and childcare partnership<sup>20</sup> for the area of the authority must each exercise its functions with a view to securing that any person, other than the governing body of a maintained school or maintained nursery school, who provides funded nursery education complies with the obligation<sup>21</sup> to secure that the National Curriculum for Wales is implemented<sup>22</sup>.

1 For the meaning of 'maintained school' see PARA 926 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 For the meaning of 'school year' see PARA 931 note 4 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

6 Ibid s 109(a).

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 212(2), (3).

8 Ibid s 109(b).

9 As to the National Curriculum for Wales see PARA 929 ante.

10 Education Act 2002 s 109. As to the duty of teachers to deliver the National Curriculum see *Wandsworth London Borough Council v National Association of Schoolmasters/Union of Women Teachers* [1994] ICR 81, [1994] ELR 170, (1993) 92 LGR 91, CA (decided under previous legislation).

11 The Education Act 2002 s 110, which relates only to the implementation of the foundation stage of the National Curriculum for Wales (see PARA 930 ante), is to come into force as from a day to be appointed under s 216(3). At the date at which this volume states the law, no such day had been appointed.

12 For the meaning of 'maintained nursery school' see PARA 926 note 8 ante.

13 Education Act 2002 s 110(1)(a). See note 11 supra.

14 Ibid s 110(1)(b). See note 11 supra.

15 Ibid s 110(1). See note 11 supra.

16 Ie under the arrangements mentioned in ibid s 98(2)(b) (see PARA 926 note 11 ante). For the meaning of 'funded nursery education' see PARA 926 note 11 ante.

17 As to the meaning of 'pupil' see PARA 926 note 11 ante.

18 Education Act 2002 s 110(2). See note 11 supra.

19 Ie the arrangements mentioned in ibid s 98(2)(b) (see PARA 926 note 11 ante).

20 As to early years development and childcare partnerships see PARA 87 ante.

21 Ie the obligation imposed by the Education Act 2002 s 110(2) (not yet in force) (see the text and notes 16-18 supra).

22 Ibid s 110(3). See note 11 supra.

## **UPDATE**

### **933 Duty to secure implementation of the National Curriculum for Wales**

TEXT AND NOTE 11--Day appointed is 1 August 2008: SI 2008/1728.

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**934. Procedure for making certain orders and regulations in relation to the National Curriculum for Wales.**

Where the National Assembly for Wales<sup>1</sup> proposes to make certain orders<sup>2</sup> or regulations<sup>3</sup> in relation to the National Curriculum for Wales<sup>4</sup>, the Assembly must make such arrangements for consultation about the proposals as it considers appropriate<sup>5</sup>.

1 As to the National Assembly for Wales see PARA 52 ante.

2 I.e. an order under the Education Act 2002 s 103(4) (see PARA 931 ante), s 105(6) (see PARA 931 ante), or s 108(2)(a), s 108(2)(b)(i), s 108(2)(b)(ii), s 108(3)(a) or s 108(3)(b) (see PARA 932 ante).

3 I.e. regulations under ibid s 112 (see PARA 936 post).

4 As to the National Curriculum for Wales see PARA 929 ante.

5 Education Act 2002 s 117.

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### ***C. THE NATIONAL CURRICULUM FOR WALES: SPECIAL CASES***

#### **935. Development work and experiments.**

For the purpose of enabling development work or experiments to be carried out, the National Assembly for Wales<sup>1</sup> may direct in respect of a particular maintained school<sup>2</sup> or maintained nursery school<sup>3</sup> that, for such period as may be specified in the direction, the National Curriculum for Wales<sup>4</sup> does not apply<sup>5</sup>, or applies with such modifications as may be specified in the direction<sup>6</sup>. Such a direction may apply either generally or in such cases as may be specified in the direction<sup>7</sup>. In the case of a community, voluntary controlled or community special school<sup>8</sup> or a maintained nursery school, such a direction<sup>9</sup> must not be given except on an application<sup>10</sup>:

- 1706 (1) by the governing body<sup>11</sup> with the agreement of the local education authority<sup>12</sup>;
- 1707 (2) by the local education authority with the agreement of the governing body<sup>13</sup>; or
- 1708 (3) by the Qualifications, Curriculum and Assessment Authority for Wales<sup>14</sup> with the agreement of both the local education authority and the governing body<sup>15</sup>.

In the case of a foundation, voluntary aided or foundation special school<sup>16</sup>, such a direction must not be given<sup>17</sup> except on an application by the governing body or by the Qualifications, Curriculum and Assessment Authority for Wales with the agreement of the governing body<sup>18</sup>.

The Assembly may make it a condition of such a direction<sup>19</sup> that any person by whom or with whose agreement the request for the direction was made should, when so directed or at specified intervals, report to the Assembly on any matters specified by it<sup>20</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'maintained school' see PARA 926 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

3 For the meaning of 'maintained nursery school' see PARA 926 note 8 ante.

4 As to the National Curriculum for Wales see PARA 929 et seq ante.

5 Education Act 2002 s 111(1)(a).

6 Ibid s 111(1)(b). The National Assembly for Wales may by a direction under s 111(6) vary or revoke a direction under s 111(1): s 111(6). As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3).

Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see PARA 932 ante), s 111(1)(b) is amended so as to omit the reference to a maintained nursery school: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (2).

7 Education Act 2002 s 111(2).

8 As to community, voluntary and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

9 le under the Education Act 2002 s 111(1): see the text to notes 1-6 supra.

10 Ibid s 111(3).

Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see PARA 932 ante), s 111(3) is amended so as to omit the reference to a maintained nursery school: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (2).

11 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

12 Education Act 2002 s 111(3)(a). As to local education authorities see PARA 20 ante.

13 Ibid s 111(3)(b).

14 As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 ante.

15 Education Act 2002 s 111(3)(c).

16 As to foundation and foundation special schools see PARA 102 et seq ante.

17 le under the Education Act 2002 s 111(1): see the text to notes 1-6 supra.

18 Ibid s 111(4).

19 le under ibid s 111(1): see the text to notes 1-6 supra.

20 Ibid s 111(5).

## **UPDATE**

### **935 Development work and experiments**

TEXT AND NOTES 14, 15--Now, head (3) such a direction must not be given except on a proposal by the National Assembly for Wales with the agreement of both the local education authority and the governing body: 2002 Act s 111(3) (amended by the Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239).

TEXT AND NOTE 18--Omit words 'by the Qualifications, Curriculum and Assessment Authority for Wales': 2002 Act s 111(4) (amended by SI 2005/3239).

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### **936. Exceptions by regulations.**

Regulations<sup>1</sup> may provide that the National Curriculum for Wales<sup>2</sup>, or such of the provisions of the National Curriculum for Wales as may be specified in the regulations either do not apply<sup>3</sup>, or apply with such modifications<sup>4</sup> as may be specified in the regulations<sup>5</sup>, in such cases or circumstances as may be specified in the regulations<sup>6</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the National Assembly for Wales (in relation to Wales): s 212(1). As to the National Assembly for Wales see PARA 53 ante. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 112 see the Education (Disapplication of the National Curriculum at Key Stage 1) (Wales) Regulations 2005, SI 2005/1511. The following orders, made under the Education Act 1996 s 363 (repealed), have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 s 112: the Education (National Curriculum) (Exceptions) (Wales) Regulations 1991, SI 1991/1657; the Education (National Curriculum) (Exceptions in Welsh at Key Stage 4) Regulations 1994, SI 1994/1270; and the Education (National Curriculum) (Exceptions) (Wales) Regulations 1995, SI 1995/1574.

2 As to the National Curriculum for Wales see PARA 929 et seq ante.

3 Education Act 2002 s 112(a).

4 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

5 Ibid s 112(b).

6 Ibid s 112. Where the National Assembly for Wales proposes to make regulations under s 112, it must make arrangements for consultation about the proposals as it considers appropriate: see s 117; and PARA 934 ante.

### **UPDATE**

### **936 Exceptions by regulations**

NOTE 1--See also the Education (Disapplication of the National Curriculum for Wales at Key Stage 1) (Wales) Regulations 2008, SI 2008/1736.

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### **937. Pupils with statements of special educational needs.**

The special educational provision<sup>1</sup> for any pupil<sup>2</sup> specified in a statement of his special educational needs<sup>3</sup> may include provision excluding the application of the National Curriculum for Wales<sup>4</sup>, or applying the National Curriculum for Wales with such modifications<sup>5</sup> as may be specified in the statement<sup>6</sup>.

1 For the meaning of 'special educational provision' see PARA 984 post; definition applied by virtue of the Education Act 2002 s 212(2), (3).

2 As to the meaning of 'pupil' see PARA 926 note 11 ante.

3 In a statement under the Education Act 1996 s 324 (as amended): see PARA 996 post. For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 Ibid s 113(a). As to the National Curriculum for Wales see PARA 929 et seq ante.

5 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of ibid s 212(2), (3).

6 Ibid s 113(b).

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### **938. Temporary exceptions for individual pupils.**

Regulations<sup>1</sup> may enable the head teacher<sup>2</sup> of a maintained school<sup>3</sup> or maintained nursery school<sup>4</sup>, in such cases or circumstances and subject to such conditions as may be prescribed<sup>5</sup>, to direct in respect of a registered pupil<sup>6</sup> at the school that, for such period as may be specified in the direction (the 'operative period' of the direction), the National Curriculum for Wales<sup>7</sup> does not apply<sup>8</sup>, or applies with such modifications<sup>9</sup> as may be specified in the direction<sup>10</sup>. The conditions prescribed by the regulations must, in particular, limit the operative period that may be specified in a direction to a maximum period specified in the regulations<sup>11</sup>. Any maximum period specified, whether in relation to directions given under the regulations or in relation to directions given under the regulations in circumstances specified in the regulations, must be either a fixed period not exceeding six months<sup>12</sup>, or a period determinable, in such manner as may be specified in the regulations, not later than six months from its beginning<sup>13</sup>. Any maximum period so specified may<sup>14</sup> differ according to whether or not the direction in question is given in respect of a period beginning<sup>15</sup> immediately after the end of the operative period of a previous direction<sup>16</sup>, or within such period after the end of the operative period of a previous direction as may be specified in the regulations<sup>17</sup>. The regulations may enable the head teacher of a maintained school or maintained nursery school, in such cases or circumstances and subject to such conditions as may be prescribed<sup>18</sup>, to revoke any direction given by him under the regulations<sup>19</sup>, and to vary such a direction, except so as to extend its operative period<sup>20</sup>. Before making any such regulations<sup>21</sup>, the National Assembly for Wales must consult with any persons with whom consultation appears to it to be desirable<sup>22</sup>.

Where a head teacher gives or varies a direction under such regulations<sup>23</sup>, he must, in such manner as may be prescribed<sup>24</sup>, give the information mentioned in heads (1) to (3) below to the governing body<sup>25</sup>, and to the local education authority<sup>26</sup> by whom the school is maintained<sup>27</sup>, and must take such steps as may be prescribed to give that information also to a parent<sup>28</sup> of the pupil concerned<sup>29</sup>. That information which must be given is:

- 1709 (1) the fact that he has taken the action in question, its effect and his reasons for taking it<sup>30</sup>;
- 1710 (2) the provision that is being or is to be made for the pupil's education during the operative period of the direction<sup>31</sup>; and
- 1711 (3) either a description of the manner in which he proposes to secure the full implementation of the National Curriculum for Wales in relation to the pupil after the end of that period, or an indication that he has the opinion<sup>32</sup> that the pupil has or probably has special educational needs<sup>33</sup> by virtue of which the responsible authority<sup>34</sup> would be required to determine the special educational provision<sup>35</sup> that should be made for him, whether initially or on a review of any statement of his special educational needs which the authority has for the time being required<sup>36</sup> to maintain<sup>37</sup>.

Where the head teacher of a maintained school or maintained nursery school includes an indication of any such opinion in the information given<sup>38</sup>, and the local education authority by whom the school is maintained is not the responsible authority in relation to the pupil in question, the head teacher must also give that information, in such manner as may be prescribed, to the responsible authority<sup>39</sup>. Where the responsible authority receives



information<sup>40</sup> which includes an indication that the head teacher has the opinion that the pupil has or probably has special educational needs<sup>41</sup>, it must consider whether any action on its part is required<sup>42</sup> in the case of the pupil concerned<sup>43</sup>.

Where a head teacher:

- 1712 (a) gives, revokes or varies a direction under such regulations<sup>44</sup>;
- 1713 (b) refuses to give, revoke or vary such a direction in response to a request made, in such manner and circumstances as may be prescribed by the regulations, by the parent of a registered pupil at the school<sup>45</sup>; or
- 1714 (c) following the making of such a request, fails within such period as may be prescribed by the regulations to give, revoke or vary such a direction in accordance with the request<sup>46</sup>,

the parent of the pupil concerned may appeal to the governing body<sup>47</sup>. On such an appeal, the governing body may confirm the head teacher's action<sup>48</sup>, or direct the head teacher to take such action authorised by the regulations as it considers appropriate in the circumstances<sup>49</sup>. The governing body must notify the appellant and the head teacher in writing of its decision on such an appeal<sup>50</sup>.

1 'Regulations' means regulations made under the Education Act 2002 by the National Assembly for Wales (in relation to Wales): s 212(1). As to the National Assembly for Wales see PARA 53 ante. For the meaning of 'Wales' see PARA 52 note 13 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under ss 114-116. However, the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999, SI 1999/1815, made under the Education Act 1996 ss 365-367 (repealed), have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if made under the Education Act 2002 for these purposes. See further notes 5, 10, 19-20, 47 infra.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 212(2), (3).

3 For the meaning of 'maintained school' see PARA 926 note 7 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 212(2), (3).

4 For the meaning of 'maintained nursery school' see PARA 926 note 8 ante.

5 'Prescribed' means prescribed by regulations: Education Act 2002 s 212(1). As to the cases and circumstances in which directions may be given see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999, SI 1999/1815, reg 3.

6 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3). As to the meaning of 'pupil' see PARA 926 note 11 ante.

7 *Ibid* s 114(1). As to the National Curriculum for Wales see PARA 929 et seq ante.

Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see PARA 932 ante), s 114(1) is amended so as to omit the reference to a maintained nursery school: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (2).

8 Education Act 2002 s 114(1)(a).

9 As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of *ibid* s 212(2), (3).

10 *Ibid* s 114(1)(b). As to the making of directions under s 114 see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999, SI 1999/1815, reg 4. As to the form and contents of directions under the Education Act 2002 s 114 see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999, SI 1999/1815, reg 5; and as to the requirement to keep records of relevant information see reg 6. As to further directions see regs 9-11. As to parental requests to the head teacher to give a direction or a further direction see regs 12-14.

11 Education Act 2002 s 114(2).

- 12 Ibid s 114(3)(a).
- 13 Ibid s 114(3)(b).
- 14 Ie without prejudice to the generality of ibid s 210(7) (see PARA 79 note 2 ante), which provides that regulations under the Education Act 2002 may make different provision for different cases or circumstances etc: s 114(4).
- 15 Ibid s 114(4).
- 16 Ibid s 114(4)(a).
- 17 Ibid s 114(4)(b).
- 18 Ibid s 114(5). Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see PARA 932 ante), s 114(5) is amended so as to omit the reference to a maintained nursery school: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (2).
- 19 Education Act 2002 s 114(5)(a). As to the revocation of directions see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999, SI 1999/1815, regs 7-8.
- 20 Education Act 2002 s 114(5)(b). As to the variation of directions see the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999, SI 1999/1815, reg 7.
- 21 Ie under the Education Act 2002 s 114.
- 22 Ibid s 114(6).
- 23 Ie under regulations made under ibid s 114: see the text and notes 1-22 supra.
- 24 See note 1 supra.
- 25 Education Act 2002 s 115(1)(a). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.
- 26 As to local education authorities see PARA 20 ante.
- 27 Education Act 2002 s 115(1)(b).
- 28 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 212(2), (3).
- 29 Ibid s 115(1).
- 30 Ibid s 115(2)(a).
- 31 Ibid s 115(2)(b).
- 32 Ibid s 115(2)(c).
- 33 For the meaning of 'special educational needs' see PARA 984 post; definition applied by virtue of ibid s 212(2), (3).
- 34 For these purposes, 'the responsible authority', in relation to a pupil, means the local education authority responsible for him for the purposes of the Education Act 1996 Pt IV (ss 312-349) (as amended): Education Act 2002 s 115(6).
- 35 For the meaning of 'special educational provision' see PARA 984 post; definition applied by virtue of ibid s 212(2), (3).
- 36 Ie under the Education Act 1996 s 324 (as amended): see PARA 996 post.
- 37 Education Act 2002 s 115(3).
- 38 Ie under ibid s 115(1): see the text and notes 23-29 supra.

39 Ibid s 115(4). Until a day is appointed for the coming into force of s 102 (see PARA 930 ante), s 104 (see PARA 930 ante) and s 108(2) (see PARA 932 ante), s 114(5) is amended so as to omit the reference to a maintained nursery school: see the Education Act 2002 (Transitional Provisions) (Wales) Regulations 2002, SI 2002/3184, reg 5(1), (2).

40 Is given to it under the Education Act 2002 s 115(1) (see the text and notes 23-29 supra) or s 115(4) (see the text and notes 38-39 supra): s 115(5).

41 Is the opinion mentioned in ibid s 115(3) (see the text and notes 33-37 supra).

42 Is under the Education Act 1996 s 323 (as amended) (assessment of special educational needs): see PARA 988 post.

43 Education Act 2002 s 115(5).

44 Ibid s 116(1)(a). The text refers to regulations made under s 114: see the text and notes 1-22 supra.

45 Ibid s 116(1)(b).

46 Ibid s 116(1)(c).

47 Ibid s 116(1). See also the Education (National Curriculum) (Temporary Exceptions for Individual Pupils) (Wales) Regulations 1999, SI 1999/1815, reg 14.

48 Education Act 2002 s 116(2)(a).

49 Ibid s 116(2)(b). The head teacher must comply with any directions of the governing body given under s 116(2)(b): s 116(3).

50 Ibid s 116(4).

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### **(iii) Baseline Assessments in Wales**

#### **939. Adoption of baseline assessment schemes.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

A 'baseline assessment scheme' is a scheme designed to enable pupils at a maintained primary school<sup>2</sup> to be assessed for the purpose of assisting the future planning of their education and the measurement of their future educational achievements<sup>3</sup>. The governing body<sup>4</sup> of each maintained primary school with pupils<sup>5</sup> who are required to be assessed in accordance with such a scheme<sup>6</sup> must adopt a baseline assessment scheme for the school<sup>7</sup>. A baseline assessment scheme may be adopted if, and only if, the scheme has been accredited by a designated<sup>8</sup> body in accordance with criteria determined with the approval of the National Assembly for Wales, and published, by that body<sup>9</sup>. A local education authority<sup>10</sup> may prepare, and seek accreditation of, a baseline assessment scheme with a view to its being adopted by the governing bodies of primary schools maintained by the authority<sup>11</sup>. Each local education authority must select an accredited baseline assessment scheme which it considers suitable to be adopted, and which may be a scheme prepared by it<sup>12</sup>.

However, in the case of any particular maintained primary school, the baseline assessment scheme which is to be adopted for the school by its governing body must be such scheme accredited and published by a designated body in accordance with criteria determined with the approval of the Assembly<sup>13</sup> as is chosen by the head teacher<sup>14</sup> after consulting the governing body<sup>15</sup>, or if such a scheme is not so chosen by him within a reasonable time, by the governing body<sup>16</sup>. When choosing the scheme to be adopted for a maintained primary school, the head teacher or, as the case may be, the governing body must ensure that the scheme selected by the authority<sup>17</sup> is considered, whether on its own or with any other schemes<sup>18</sup>.

1 The Education Act 1997 ss 15-16 (as amended) are repealed by the Education Act 2002 ss 204, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 2 September 2002 (see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For these purposes, 'maintained primary school' means a primary school which is a community, foundation or voluntary school, or a community or foundation special school (other than one established in a hospital), or a maintained nursery school: Education Act 1997 s 15 (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 209). See note 1 supra. For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of the Education Act 1997 s 56(2). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 post. As to nursery education see PARA 85 et seq ante.

3 Ibid s 15. See note 1 supra.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 1997 s 56(2).

6 Ie required to be assessed under ibid s 17 (as amended): see PARA 940 post.

7 Ibid s 16(1). See note 1 supra. The scheme must be adopted in accordance with s 16(2)-(6) (as amended) (see the text and notes 8-18 infra): s 16(1). However, the Secretary of State may by order require the governing body of each maintained primary school with pupils who are required to be assessed under s 17 (as amended) (see PARA 940 post) to adopt for their school such baseline assessment scheme as is referred to in the order, and so long as any such order is in force the provisions of s 16(2)-(5) (as amended) (see the text and notes 8-18 infra) do not apply: s 16(6). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of orders generally under the Education Act 1997 see PARA 888 note 16 ante. At the date at which this volume states the law, no order had been made under s 16(6).

8 For these purposes, 'designated' means designated by the National Assembly for Wales: *ibid* s 15. See note 1 supra.

9 Ibid s 16(2). See note 1 supra.

10 As to local education authorities see PARA 20 ante.

11 Education Act 1997 s 16(3). See note 1 supra.

12 Ibid s 16(4). See note 1 supra.

13 I.e. such scheme to which *ibid* s 16(2) (see the text to notes 8-9 supra) applies: s 16(5). See note 1 supra.

14 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 56(2).

15 Ibid s 16(5)(a). See note 1 supra.

16 Ibid s 16(5)(b). See note 1 supra.

17 I.e. under *ibid* s 16(4): see the text to note 12 supra.

18 Ibid s 16(5) (amended by the School Standards and Framework Act 1998 Sch 30 para 210). See note 1 supra.

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#### **940. Assessment of pupils in accordance with scheme.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

All pupils<sup>2</sup> at a maintained primary school<sup>3</sup> who are at the relevant stage<sup>4</sup> of their education must be assessed in accordance with a baseline assessment scheme<sup>5</sup> adopted<sup>6</sup> for the school<sup>7</sup>. The assessment must be completed before the end of the prescribed period<sup>8</sup>. However, this does not apply to a pupil if it appears to the head teacher<sup>9</sup> from a record of such a previous assessment that such an assessment has already been carried out in relation to the pupil at another school<sup>10</sup>. Regulations may enable a head teacher of a maintained primary school, in such cases or circumstances and subject to such conditions as may be prescribed, to direct that: (1) the requirement to assess<sup>11</sup> is not to apply to a particular registered pupil<sup>12</sup> at the school<sup>13</sup>; or (2) for the purposes of such an assessment of a particular registered pupil at the school, the school's baseline assessment scheme is to have effect with such modifications<sup>14</sup> as are specified in the direction<sup>15</sup>. Where the head teacher gives such a direction he must notify the governing body<sup>16</sup>, and the local education authority<sup>17</sup> by whom the school is maintained<sup>18</sup> of:

- 1715 (a) the fact that the head teacher has given the direction in question and his reasons for doing so<sup>19</sup>;
- 1716 (b) in the case of a direction under head (2) above, the effect of the modifications specified in the direction<sup>20</sup>; and
- 1717 (c) whether the direction is to have permanent effect, and, if not, the period for which it is to have effect<sup>21</sup>.

He must also take such steps as are prescribed to notify a parent of the pupil concerned of those matters<sup>22</sup>.

In relation to any maintained primary school, the governing body and the local education authority must exercise their functions<sup>23</sup> with a view to securing<sup>24</sup>, and the head teacher must secure, the requirement<sup>25</sup> to assess is complied with<sup>26</sup>.

1 The Education Act 1997 s 17 (as amended) is repealed by the Education Act 2002 ss 204, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 2 September 2002 (see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 1997 s 56(2).

3 For the meaning of 'maintained primary school' see PARA 939 note 2 ante.

4 Regulations must prescribe the circumstances in which a pupil is to be regarded as being at the relevant stage of his education for these purposes, and any such circumstances may be framed by reference to, or to matters which include, the pupil's age: Education Act 1997 s 17(8). See note 1 supra. 'Regulations' means regulations made under the Education Act 1997: s 56(1). As to the making of regulations under the Education Act 1997 generally see PARA 888 note 16 ante. As to the circumstances in which a pupil is to be regarded as being at the relevant stage of his education see the Education (Baseline Assessment) (Wales) Regulations 1999, SI 1999/1188, reg 3.

5 For the meaning of 'baseline assessment scheme' see PARA 939 ante.

- 6    le adopted under the Education Act 1997 s 16 (as amended): see PARA 939 ante.
- 7    Ibid s 17(1). See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 56(2).
- 8    Ibid s 17(2). See note 1 supra. As to the timing of such an assessment see the Education (Baseline Assessment) (Wales) Regulations 1999, SI 1999/1188, reg 4.
- 9    As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the Education Act 1997 s 56(2).
- 10   Ibid s 17(3). See note 1 supra.
- 11   le under ibid s 17(1): see the text to notes 2-7 supra.
- 12   For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 56(2).
- 13   Ibid s 17(4)(a). See note 1 supra. As to the circumstances in which the requirement to assess may not apply see the Education (Baseline Assessment) (Wales) Regulations 1999, SI 1999/1188, reg 5.
- 14   As to the meaning of 'modifications' see PARA 43 note 7 ante; definition applied by virtue of the Education Act 1997 s 56(2).
- 15   Ibid s 17(4)(b). See note 1 supra.
- 16   Ibid s 17(5)(a). See note 1 supra. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.
- 17   As to local education authorities see PARA 20 ante.
- 18   Education Act 1997 s 17(5)(b) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 211(a)). See note 1 supra.
- 19   Education Act 1997 s 17(6)(a). See note 1 supra.
- 20   Ibid s 17(6)(b). See note 1 supra.
- 21   Ibid s 17(6)(c). See note 1 supra.
- 22   Ibid s 17(5). See note 1 supra.
- 23   As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 56(2). As to the functions of governing bodies and local education authorities see the Education (Baseline Assessment) (Wales) Regulations 1999, SI 1999/1188, regs 6, 8, Schedule Pt II paras 2-4, Schedule Pt IV paras 14-15. As to the functions of head teachers see the Education (Baseline Assessment) (Wales) Regulations 1999, SI 1999/1188, reg 7, Schedule Pt III paras 5-13.
- 24   Education Act 1997 s 17(7)(a) (amended by the School Standards and Framework Act 1998 s 140(3), Sch 30 para 211(b), Sch 31). See note 1 supra.
- 25   le under the Education Act 1997 s 17(1): see the text to notes 2-7 supra.
- 26   Ibid s 17(7)(b). See note 1 supra.

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#### **941. Regulations for purposes of schemes.**

Until a day to be appointed, the following provisions have effect in relation to Wales<sup>1</sup>.

The National Assembly for Wales<sup>2</sup> may by regulations<sup>3</sup> confer or impose such functions on the governing body<sup>4</sup> and the head teacher<sup>5</sup> of a maintained primary school<sup>6</sup>, on a local education authority<sup>7</sup>, and on a designated body<sup>8</sup>, as appear to it to be required in connection with any provision relating to baseline assessment schemes<sup>9</sup>. Such regulations may in particular make provision requiring:

- 1718 (1) the local education authority, or a designated body, to be notified<sup>10</sup>: (a) of the baseline assessment scheme for the time being adopted for any maintained primary school with pupils<sup>11</sup> who are required<sup>12</sup> to be assessed in accordance with such a scheme<sup>13</sup>; and (b) where any such assessment has been carried out at any such school, that it has been so carried out<sup>14</sup>;
- 1719 (2) the results of any such assessments carried out to be recorded and notified<sup>15</sup>: (a) to such persons as are specified in the regulations<sup>16</sup>; and (b) where the pupils in question transfer to other schools, to those other schools<sup>17</sup>.

Such regulations may also make provision requiring a local education authority to notify a designated body of any assessments notified to the authority in pursuance of regulations under head (1)(b) above<sup>18</sup>, and to collect other information relating to such assessments carried out at schools maintained by the authority and to forward such information to a designated body<sup>19</sup>.

1 The Education Act 1997 s 18 (as amended) is repealed by the Education Act 2002 ss 204, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 2 September 2002 (see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 'Regulations' means regulations made under the Education Act 1997: s 56(1). See note 2 supra. As to the making of regulations under the Education Act 1997 generally see PARA 888 note 16 ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante. As to the functions of governing bodies and local education authorities see the Education (Baseline Assessment) (Wales) Regulations 1999, SI 1999/1188, reg 6, Schedule Pt II paras 2-4.

5 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by the Education Act 1997 s 56(2).

6 Ibid s 18(1)(a). See note 1 supra. For the meaning of 'maintained primary school' see PARA 939 note 2 ante.

7 Ibid s 18(1)(b) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 212(a), Sch 31). See note 1 supra. As to local education authorities see PARA 20 ante.

8 Education Act 1997 s 18(1)(c). See note 1 supra. For the meaning of 'designated' see PARA 939 note 8 ante.

9 Ibid s 18(1). See note 1 supra. The text refers to any provision of Pt IV Ch I (ss 15-18) (as amended; prospectively repealed): see PARAS 939-940 ante.



10 Ibid s 18(2)(a) (amended by the School Standards and Framework Act 1998 Sch 30 para 212(b), Sch 31). See note 1 supra.

11 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 1997 s 56(2).

12 Ie under ibid s 17 (as amended; prospectively repealed); see PARA 940 ante.

13 Ibid s 18(2)(a)(i). See note 1 supra.

14 Ibid s 18(2)(a)(ii). See note 1 supra.

15 Ibid s 18(2)(b). See note 1 supra.

16 Ibid s 18(2)(b)(i). See note 1 supra.

17 Ibid s 18(2)(b)(ii). See note 1 supra.

18 Ibid s 18(3)(a). See note 1 supra.

19 Ibid s 18(3)(b). See note 1 supra.

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#### **(iv) Sex Education**

##### **942. Manner of provision.**

The governing body<sup>1</sup> and head teacher<sup>2</sup> must take such steps as are reasonably practicable to secure that where sex education<sup>3</sup> is given to any registered pupils<sup>4</sup> at a maintained school<sup>5</sup>, it is given in such a manner as to encourage those pupils to have due regard to moral considerations and the value of family life<sup>6</sup>. The Secretary of State<sup>7</sup> must issue guidance designed to secure that when sex education is given to registered pupils at maintained schools they: (1) learn the nature of marriage and its importance for family life and the bringing up of children<sup>8</sup>; and (2) are protected from teaching and materials which are inappropriate having regard to the age and the religious and cultural background of the pupils concerned<sup>9</sup>. The Secretary of State may at any time revise such guidance<sup>10</sup>. In discharging their functions as regards the manner of provision of sex education, governing bodies and head teachers must have regard to the Secretary of State's guidance<sup>11</sup>. Any such guidance must include guidance about any material which may be produced by NHS bodies<sup>12</sup> for use for the purposes of sex education in schools<sup>13</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

3 As to the meaning of 'sex education' see PARA 914 note 8 ante.

4 For the meaning of 'registered pupil' see PARA 512 ante.

5 For these purposes, 'maintained school' includes a community or foundation special school established in a hospital: Education Act 1996 s 403(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 102; and the Learning and Skills Act 2000 s 148(1), (5)). As to maintained schools see PARA 94 et seq ante. As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 post.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

6 Education Act 1996 s 403(1) (amended by the Learning and Skills Act 2000 ss 148(1), (3), 153, Sch 11).

7 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 Education Act 1996 s 403(1A)(a) (s 403(1A)-(1D) added by the Learning and Skills Act 2000 s 148(1), (4)). See note 9 infra.

9 Education Act 1996 s 403(1A)(b) (as added: see note 8 supra). See *Sex and Relationship Education Guidance* (July 2000) (ref: DfEE 0116/2000), which was published by the Department for Education and Employment before the coming into force of the Education Act 1996 s 403(1A)-(1D) (as added).

10 Ibid s 403(1D) (as added: see note 8 supra).

11 Ibid s 403(1B) (as added: see note 8 supra).

12 For these purposes, 'NHS body' has the same meaning as in the National Health Service Act 1977 s 22 (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 8); Education Act 1996 s 403(2) (definition amended by the Learning and Skills Act 2000 s 148(5)).

13 Education Act 1996 s 403(1C) (as added: see note 8 supra).

## **UPDATE**

### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

### **942 Manner of provision**

NOTE 12--Definition of 'NHS body' further amended: 1996 Act s 403(2) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 183).

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### **943. Statements of policy.**

The governing body<sup>1</sup> of a maintained school<sup>2</sup> must make, and keep up to date, a separate written statement of its policy with regard to the provision of sex education<sup>3</sup>, and make copies of the statement available for inspection, at all reasonable times, by parents<sup>4</sup> of registered pupils<sup>5</sup> at the school and provide a copy of the statement free of charge to any such parent who asks for one<sup>6</sup>. The statement must include a statement of the effect of the statutory provision<sup>7</sup> which confers a right on parents to withdraw their child from sex education<sup>8</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 For these purposes, 'maintained school' includes, in relation to pupils who are provided with secondary education, a community or foundation special school established in a hospital: Education Act 1996 s 404(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 103(a)). For the meaning of 'pupil' see PARA 16 note 4 ante. For the meaning of 'secondary education' see PARA 17 ante. As to maintained schools see PARA 94 et seq ante. As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

The Education Act 1996 s 404 (as amended) applies in relation to the teacher in charge of a pupil referral unit as it applies in relation to the governing body of a maintained school, but only in relation to pupils who are provided with secondary education at the unit: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 1. For the meaning of 'pupil referral unit' see PARA 457 ante.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 Education Act 1996 s 404(1)(a). As to the meaning of 'sex education' see PARA 914 note 8 ante.

4 As to the meaning of 'parent' see PARA 510 note 1 ante.

5 For the meaning of 'registered pupil' see PARA 512 ante.

6 Education Act 1996 s 404(1)(b).

7 *Idem* s 405: see PARA 944 post.

8 *Ibid* s 404(1A) (added by the Learning and Skills Act 2000 s 148(1), (6)).

### **UPDATE**

#### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

### **943 Statements of policy**

NOTE 1--1996 Act s 404 applies in relation to the teacher in charge of a pupil referral unit in Wales as it applies in relation to the governing body of a maintained school, but only in relation to pupils who are provided with secondary education at the unit: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 1.

NOTE 2--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 3.

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#### **944. Exemption from sex education.**

If the parent<sup>1</sup> of any pupil in attendance at a maintained school<sup>2</sup> requests that he may be wholly or partly excused from receiving sex education<sup>3</sup> at the school, the pupil must, except so far as such education is comprised in the National Curriculum<sup>4</sup>, be so excused accordingly until the request is withdrawn<sup>5</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante. As to maintained schools see PARA 94 et seq ante.

3 As to the meaning of 'sex education' see PARA 914 note 8 ante.

4 As to the National Curriculum for England see PARA 916 et seq ante; and as to the National Curriculum for Wales see PARA 929 et seq ante.

5 Education Act 1996 s 405.

The Education Act 1996 s 405 applies in relation to pupil referral units as it applies in relation to maintained schools with the modification that the words 'except so far as such education is comprised in the National Curriculum' are omitted: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 2. For the meaning of 'pupil referral unit' see PARA 457 ante.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

#### **UPDATE**

#### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

#### **944 Exemption from sex education**

NOTE 5--1996 Act s 405 applies, with modifications, in relation to pupil referral units in Wales: Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 2. SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 4.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(v) Politics/945. Political indoctrination.

## **(v) Politics**

### **945. Political indoctrination.**

The local education authority<sup>1</sup>, governing body<sup>2</sup> and head teacher<sup>3</sup> must forbid: (1) the pursuit of partisan political activities by any of those registered pupils<sup>4</sup> at a maintained school<sup>5</sup> who are junior pupils<sup>6</sup>; and (2) the promotion of partisan political views in the teaching of any subject in the school<sup>7</sup>. In the case of activities which take place otherwise than on the school premises<sup>8</sup>, head (1) above applies only where arrangements for junior pupils to take part in the activities are made by any member of the school's staff, in his capacity as such<sup>9</sup>, or anyone acting on behalf of the school or of a member of the school's staff, in his capacity as such<sup>10</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

4 For the meaning of 'registered pupil' see PARA 512 ante.

5 For these purposes, 'maintained school' includes a community or foundation special school established in a hospital: Education Act 1996 s 406(3) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 104). As to maintained schools see PARA 94 et seq ante. As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

6 Education Act 1996 s 406(1)(a). For the meaning of 'junior pupil' see PARA 16 note 4 ante.

Any function of a local education authority in England which is conferred by or under s 406 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (y). For the meaning of 'England' see PARA 52 note 11 ante.

7 Education Act 1996 s 406(1)(b).

8 As to the meaning of 'premises' see PARA 1352 note 3 post.

9 Education Act 1996 s 406(2)(a).

10 Ibid s 406(2)(b).

## **UPDATE**

**942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

#### **945 Political indoctrination**

NOTE 7--The Secretary of State may distribute partisan political films with appropriate guidance: *R (on the application of Dimmock) v Secretary of State for Education and Skills* [2007] EWHC 2288 (Admin), [2008] 1 All ER 367.



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#### **946. Duty to secure balanced treatment of political issues.**

The local education authority<sup>1</sup>, governing body<sup>2</sup> and head teacher<sup>3</sup> must take such steps as are reasonably practicable to secure that where political issues are brought to the attention of pupils<sup>4</sup> while they are in attendance at a maintained school<sup>5</sup> or taking part in extra-curricular activities which are provided or organised for registered pupils<sup>6</sup> at the school by or on behalf of the school<sup>7</sup>, they are offered a balanced presentation of opposing views<sup>8</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante.

5 Education Act 1996 s 407(1)(a). For these purposes, 'maintained school' includes a community or foundation special school established in a hospital: s 407(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 105). As to maintained schools see PARA 94 et seq ante. As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the day appointed is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

Any function of a local education authority in England which is conferred by or under s 407 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (z). For the meaning of 'England' see PARA 52 note 11 ante.

6 For the meaning of 'registered pupil' see PARA 512 ante.

7 Education Act 1996 s 407(1)(b).

8 Ibid s 407(1).

#### **UPDATE**

#### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/A. AGREED SYLLABUSES/947. Agreed syllabuses.

## **(vi) Religious Education and Worship**

### **A. AGREED SYLLABUSES**

#### **947. Agreed syllabuses.**

Subject to the provisions relating to agreed syllabuses of religious education generally<sup>1</sup>, any agreed syllabus<sup>2</sup> in force immediately before 1 November 1996<sup>3</sup> continues to have effect<sup>4</sup>. Every agreed syllabus must reflect the fact that the religious traditions in Great Britain<sup>5</sup> are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain<sup>6</sup>.

1    Ie the Education Act 1996 s 375, Sch 31 (as amended): see PARAS 948-950 post.

2    'Agreed syllabus' means a syllabus of religious education: (1) prepared before 1 November 1996 (ie the commencement date of the Education Act 1996: see s 583(2)) in accordance with the Education Act 1944 Sch 5 (repealed) or after 1 November 1996 in accordance with the Education Act 1996 Sch 31 (as amended) (see PARAS 948-950 post); and (2) adopted by a local education authority under Sch 31 (as amended), whether it is for use in all the schools maintained by it or for use in particular such schools or in relation to any particular class or description of pupils in such schools: s 375(2). Any reference in the Education Act 1996 to an agreed syllabus adopted by a local education authority includes a reference to an agreed syllabus deemed to be adopted by such an authority by virtue of the Education Act 1944 Sch 5 para 11 (repealed) or the Education Act 1996 Sch 31 para 14 (see PARA 950 post); and accordingly, in relation to an agreed syllabus deemed to be so adopted, any reference to the date on which an agreed syllabus was adopted is a reference to the date of deemed adoption specified by the Secretary of State in a direction under Sch 31 para 14: s 375(4). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. For the meaning of 'school' see PARA 81 ante. For the meaning of 'pupil' see PARA 16 note 4 ante. As to local education authorities see PARA 20 ante.

3    Ie the commencement date of the Education Act 1996: see s 583(2).

4    Ibid s 375(1). In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

5    For the meaning of 'Great Britain' see PARA 63 note 3 ante.

6    Education Act 1996 s 375(3). Section 375(3) does not apply to any agreed syllabus adopted before 29 September 1988: s 375(5).

### **UPDATE**

#### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/A. AGREED SYLLABUSES/948. Duty to convene conference to reconsider agreed syllabus.

#### **948. Duty to convene conference to reconsider agreed syllabus.**

Where the agreed syllabus<sup>1</sup> for the time being adopted by a local education authority<sup>2</sup> was adopted by it on or after 29 September 1988 but before 1 April 1994, the local education authority was required, within the period of five years beginning with the date on which it adopted the syllabus, to convene a conference for the purpose of reconsidering the syllabus<sup>3</sup>. A local education authority is required from time to time to cause further conferences to be convened for the purpose of reconsidering any agreed syllabus for the time being adopted by it, whether adopted before, on or after 1 April 1994<sup>4</sup>. No such conference must be convened later than the end of the period of five years beginning with the date, falling after 31 March 1994, on which the authority adopted the syllabus<sup>5</sup>, or the authority gave effect to a recommendation<sup>6</sup> that the syllabus should continue to be the agreed syllabus<sup>7</sup>. On receipt by a local education authority of written notification requiring the review of any agreed syllabus<sup>8</sup>, the authority must cause a conference to be convened for the purpose of reconsidering any agreed syllabus to which the requirement relates<sup>9</sup>.

1 For the meaning of 'agreed syllabus' see PARA 947 note 2 ante.

2 As to local education authorities see PARA 20 ante.

3 Education Act 1996 s 375, Sch 31 para 1(1). Schedule 31 para 1(1) does not apply where the authority has already convened such a conference on or after 1 April 1994 in pursuance of the Education Act 1944 Sch 5 para 12(3) (repealed): Education Act 1996 Sch 31 para 1(2).

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

4 Education Act 1996 Sch 31 para 2(1).

5 Ibid Sch 31 para 2(2)(a).

6 Ie under ibid Sch 31 para 10(2) (see PARA 950 post) or the Education Act 1944 Sch 5 para 13 (repealed).

7 Education Act 1996 Sch 31 para 2(2)(b).

8 Ie the review of any such requirement as is mentioned in ibid s 391(3): see PARA 963 post.

9 See ibid s 391(5), Sch 31 para 3.

#### **UPDATE**

#### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/A. AGREED SYLLABUSES/949. Constitution of conference.

#### **949. Constitution of conference.**

A conference convened to reconsider the agreed syllabus<sup>1</sup> must consist of such groups of persons (called 'committees') appointed by the local education authority<sup>2</sup> convening the conference as are required<sup>3</sup>. Those committees are:

- 1720 (1) a committee of persons representing such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area<sup>4</sup>;
- 1721 (2) except in the case of an area in Wales<sup>5</sup>, a committee of persons representing the Church of England<sup>6</sup>;
- 1722 (3) a committee of persons representing such associations representing teachers as, in the opinion of the authority, ought to be represented, having regard to the circumstances of the area<sup>7</sup>; and
- 1723 (4) a committee of persons representing the authority<sup>8</sup>.

Where a committee is required to be appointed by virtue of head (2) above, the committee required to be appointed by virtue of head (1) above must not include persons appointed to represent the Church of England<sup>9</sup>. The number of persons appointed under head (1) above to represent each denomination or religion required to be represented must, so far as is consistent with the efficient discharge of the committee's functions<sup>10</sup>, reflect broadly the proportionate strength of that denomination or religion in the area<sup>11</sup>. Any sub-committees appointed by the conference must each include at least one member of each of the committees constituting the conference<sup>12</sup>. On any question to be decided by the conference or by any sub-committee of the conference, a single vote must be given for each of the committees constituting the conference<sup>13</sup>. Before appointing a person to represent any religion, denomination or associations as a member of a committee, the local education authority must take all reasonable steps to assure itself that he is representative of the religion, denomination or associations in question<sup>14</sup>. No such proceedings will be invalidated on the ground that a member of a committee did not represent the religion, denomination or associations which he was appointed to represent, unless it is shown that the authority failed to take all reasonable steps to assure itself that he is representative of the religion, denomination or associations in question<sup>15</sup>.

A person appointed as a member of a committee may resign his membership<sup>16</sup>, or may be withdrawn from membership by the local education authority if, in its opinion, he ceases to be representative of the religion, denomination or associations which he was appointed to represent or, as the case may be, of the authority<sup>17</sup>. Where a person resigns or is withdrawn from a committee, the local education authority must appoint someone in his place in the same manner as that in which it made the original appointment<sup>18</sup>.

<sup>1</sup> ie convened under the Education Act 1996 s 375, Sch 31 (as amended). For the meaning of 'agreed syllabus' see PARA 947 note 2 ante.

<sup>2</sup> As to local education authorities see PARA 20 ante.

<sup>3</sup> Education Act 1996 Sch 31 para 4(1). In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s

410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

- 4 Education Act 1996 Sch 31 para 4(2)(a).
- 5 For the meaning of 'Wales' see PARA 52 note 13 ante.
- 6 Education Act 1996 Sch 31 para 4(2)(b).
- 7 Ibid Sch 31 para 4(2)(c).
- 8 Ibid Sch 31 para 4(2)(d).
- 9 Ibid Sch 31 para 4(3).
- 10 As to the meaning of 'functions' see PARA 14 note 5 ante.
- 11 Education Act 1996 Sch 31 para 4(4).
- 12 Ibid Sch 31 para 5.
- 13 Ibid Sch 31 para 6.
- 14 Ibid Sch 31 para 7(1).
- 15 Ibid Sch 31 para 7(2).
- 16 Ibid Sch 31 para 8(a).
- 17 Ibid Sch 31 para 8(b).
- 18 Ibid Sch 31 para 9.

## **UPDATE**

### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

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**950. Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body.**

Where a local education authority<sup>1</sup> causes a conference to be convened<sup>2</sup> for the purpose of reconsidering any agreed syllabus<sup>3</sup>:

- 1724 (1) if the conference unanimously recommends that the existing syllabus should continue to be the agreed syllabus<sup>4</sup>, or unanimously recommends a new syllabus to be adopted in substitution for the existing syllabus<sup>5</sup>; and
- 1725 (2) it appears to the local education authority that the syllabus or, as the case may be, the new syllabus, reflects the fact that the religious traditions in Great Britain<sup>6</sup> are in the main Christian while taking account of the teaching and practices of the other principal religions represented in Great Britain<sup>7</sup>,

the local education authority may give effect to the recommendation<sup>8</sup>. If, however:

- 1726 (a) the authority reports to the Secretary of State<sup>9</sup> that the conference is unable to reach unanimous agreement<sup>10</sup>; or
- 1727 (b) the conference unanimously recommends that the existing syllabus should continue to be the agreed syllabus but the local education authority considers that head (2) above prevents it from giving effect to the recommendation<sup>11</sup>; or
- 1728 (c) it appears to the Secretary of State that the authority has failed to exercise its power<sup>12</sup> to give effect to the unanimous recommendation of the conference<sup>13</sup>,

the Secretary of State must appoint a body of persons having experience in religious education to prepare a syllabus of religious education<sup>14</sup>. The appointed body must, so far as is practicable, be of a representative character which is the same as that required<sup>15</sup> in the case of a conference<sup>16</sup>. The appointed body must: (i) give the local education authority, the conference and every committee constituting the conference an opportunity of making representations to it<sup>17</sup>; (ii) after considering any such representations made to it, prepare a syllabus of religious education<sup>18</sup>; and (iii) transmit a copy of that syllabus to the authority and to the Secretary of State<sup>19</sup>. The syllabus prepared by the appointed body is deemed to be the agreed syllabus adopted for use in the schools<sup>20</sup> for which, or for the class or description of pupils<sup>21</sup> for which, it was prepared as from such date as the Secretary of State may direct<sup>22</sup>, and until a new syllabus is adopted<sup>23</sup> for use in those schools, or for pupils of that class or description<sup>24</sup>.

1 As to local education authorities see PARA 20 ante.

2 I.e. under the Education Act 1996 s 375, Sch 31 paras 1-3: see PARA 948 ante.

3 Ibid Sch 31 para 10(1). For the meaning of 'agreed syllabus' see PARA 947 note 2 ante.

4 Ibid Sch 31 para 10(2)(a)(i).

5 Ibid Sch 31 para 10(2)(a)(ii).



- 6 For the meaning of 'Great Britain' see PARA 63 note 3 ante.
- 7 Education Act 1996 Sch 31 para 10(2)(b).
- 8 Ibid Sch 31 para 10(2).
- 9 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 10 Education Act 1996 Sch 31 para 10(3)(a).
- 11 Ibid Sch 31 para 10(3)(b).
- 12 Ie under ibid Sch 31 para 10(2): see the text and notes 4-8 supra.
- 13 Ibid Sch 31 para 10(3)(c).
- 14 Ibid Sch 31 paras 10(3), 12(1).
- 15 Ie required by ibid Sch 31 para 4: see PARA 949 ante.
- 16 Ibid Sch 31 para 12(2).
- 17 Ibid Sch 31 para 13(1)(a). Subject to Sch 31 para 13(1)(a), the appointed body may conduct its proceedings in such manner as it thinks fit: Sch 31 para 13(2).
- 18 Ibid Sch 31 para 13(1)(b).
- 19 Ibid Sch 31 para 13(1)(c).
- 20 For the meaning of 'school' see PARA 81 ante. In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.
- 21 For the meaning of 'pupil' see PARA 16 note 4 ante.
- 22 Education Act 1996 Sch 31 para 14(a).
- 23 Ie in accordance with ibid Sch 31 (as amended): see PARAS 948-949 ante.
- 24 Ibid Sch 31 para 14(b).

## UPDATE

### **942-950 Manner of provision ... Reconsideration of agreed syllabus and the preparation of a new syllabus by appointed body**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

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## ***B. REQUIRED PROVISION FOR EDUCATION IN SCHOOLS***

### **951. Duty to secure due provision of religious education.**

Subject to certain exceptions and special arrangements<sup>1</sup>, in relation to any community, foundation or voluntary school<sup>2</sup> the local education authority<sup>3</sup> and the governing body<sup>4</sup> must exercise their functions<sup>5</sup> with a view to securing<sup>6</sup>, and the head teacher<sup>7</sup> must secure<sup>8</sup>, that religious education is given in accordance with the provision for such education included in the school's basic curriculum<sup>9</sup>.

1    le subject to the School Standards and Framework Act 1998 s 71 (as amended): see PARA 961 post.

2    As to community, foundation and voluntary schools see PARA 102 et seq ante.

3    As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 69 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (r). For the meaning of 'England' see PARA 52 note 11 ante.

4    As to the governing bodies of maintained schools see PARA 203 et seq ante.

5    As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6    Ibid s 69(1)(a).

7    As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

8    Ibid s 69(1)(b).

9    Ibid s 69(1). The text refers to such education included by virtue of the Education Act 2002 s 80(1)(a) (basic curriculum for every maintained school in England: see PARA 914 ante) or s 101(1)(a) (basic curriculum for every maintained school in Wales: see PARA 927 ante): School Standards and Framework Act 1998 s 69(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 104(1), (2)).

The School Standards and Framework Act 1998 Sch 19 (as amended) (required provision for religious education: see PARAS 952-954 post) has effect for determining the provision for religious education which is required by the Education Act 2002 s 80(1)(a) or s 101(1)(a) to be included in the basic curriculum of schools within each of the following categories: (1) community schools and foundation and voluntary schools which do not have a religious character; (2) foundation and voluntary controlled schools which have a religious character; and (3) voluntary aided schools which have a religious character: School Standards and Framework Act 1998 s 69(2) (amended by the Education Act 2002 Sch 21 para 104(1), (3)). For the purposes of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended), a foundation or voluntary school has a religious character if it is designated as a school having such a character by an order made by the Secretary of State: s 69(3). An order under s 69(3) must state, in relation to each school designated by the order, the religion or religious denomination in accordance with whose tenets religious education is, or may be, required to be provided at the school in accordance with Sch 19 (as amended) (see PARAS 952-954 post), or, as the case may be, each such religion or religious denomination: s 69(4). See PARA 42 note 15 ante. An order made under s 69(3) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 138(4) (as amended); and PARA 82 note 15 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of orders and regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante.

The following orders have been made under s 69(3), (4): the Designation of Schools Having a Religious Character (Wales) Order 1999, SI 1999/1814 (amended by SI 2004/1734); the Designation of Schools Having a Religious Character (England) Order 1999, SI 1999/2432 (amended by SI 2000/3080); the Designation of Schools Having a Religious Character (England) Order 2000, SI 2000/3080; the Designation of Schools Having a Religious Character (England) Order 2003, SI 2003/800; the Designation of Schools having a Religious Character (England) (No 2) Order 2003, SI 2003/2552; the Designation of Schools having a Religious Character (England) (No 3) Order 2003, SI 2003/2749; the Designation of Schools Having a Religious Character (Independent Schools) (England) Order 2003, SI 2003/3108; the Designation of Schools having a Religious Character (England) (No 1) Order 2004, SI 2004/1513; the Designation of Schools Having a Religious Character and Amendments (Wales) Order 2004, SI 2004/1734; the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2005, SI 2005/2993; and the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 3) Order 2005, SI 2005/3388. Other orders have been made under the School Standards and Framework Act 1998 s 69(3), (4) but they are local in nature, and are not dealt with in this work.

The procedure to be followed in connection with the designation of a school in an order under s 69(3), and the inclusion in such an order, in relation to a school, of the statement required by s 69(4), is to be specified in regulations: s 69(5). The following regulations have been made under s 69(5): the Religious Character of Schools (Designation Procedure) Regulations 1998, SI 1998/2535 (amended by SI 1999/2243; SI 1999/2262; SI 2003/1558; and further amended, in relation to Wales only, by SI 2005/2912); and the Education (New Schools) (Wales) Regulations 1999, SI 1999/2243 (largely revoked by SI 2005/2912).

The School Standards and Framework Act 1998 s 69(3)-(5) is applied, with modifications, in relation to an independent school with a religious character: see s 124B (as added); and PARA 473 ante.

## **UPDATE**

### **951 Duty to secure due provision of religious education**

NOTE 9--SI 1999/1814 (as amended) replaced: Designation of Schools Having a Religious Character (Wales) Order 2007, SI 2007/972. SI 1998/2535 further amended, in relation to England: SI 2007/958. See also the Designation of Schools Having a Religious Character (Independent Schools) (England) (No 2) Order 2008, SI 2008/2340; Designation of Schools Having a Religious Character (England) (No 2) Order 2008, SI 2008/3147; Designation of Schools Having a Religious Character (Independent Schools) (Wales) Order 2009, SI 2009/1218; Designation of Schools having a Religious Character (England) Order 2009, SI 2009/3273; Designation of Schools Having a Religious Character (Independent Schools) (England) (No 3) Order 2009, SI 2009/3276.

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**952. Community schools and foundation and voluntary schools without a religious character.**

In relation to any community school<sup>1</sup> and in relation to any foundation or voluntary school<sup>2</sup> which does not have a religious character<sup>3</sup>, the required provision for religious education<sup>4</sup> in the case of pupils at the school is provision for religious education in accordance with an agreed syllabus<sup>5</sup> adopted for the school or for those pupils<sup>6</sup>. Separate provision was made in relation to former grant-maintained schools<sup>7</sup>.

If the school is a secondary school<sup>8</sup> so situated that arrangements cannot conveniently be made for the withdrawal of pupils from it<sup>9</sup> to receive religious education elsewhere and the local education authority<sup>10</sup> is satisfied that:

1729 (1) the parents<sup>11</sup> of any pupils at the school desire those pupils to receive religious education in the school in accordance with the tenets of a particular religion or religious denomination<sup>12</sup>; and

1730 (2) satisfactory arrangements have been made for the provision of such education to those pupils in the school, and for securing that the cost of providing such education to those pupils in the school will not fall to be met from the school's budget share<sup>13</sup> or otherwise by the authority<sup>14</sup>,

the authority must, unless it is satisfied that because of any special circumstances it would be unreasonable to do so, provide facilities for the carrying out of those arrangements<sup>15</sup>. No agreed syllabus may provide for religious education to be given to pupils at such a school by means of any catechism or formulary which is distinctive of a particular religious denomination, but this is not to be taken as prohibiting provision in such a syllabus for the study of such catechisms or formularies<sup>16</sup>.

1 School Standards and Framework Act 1998 s 69, Sch 19 para 2(1)(a). As to community schools see PARA 102 et seq ante.

2 As to foundation and voluntary schools see PARA 102 et seq ante.

3 School Standards and Framework Act 1998 Sch 19 para 2(1)(b). As to references to schools having a religious character see PARA 951 note 9 ante.

4 For these purposes, 'the required provision for religious education', in relation to a school, means the provision for pupils at the school which is required by the Education Act 2002 s 80(1)(a) (basic curriculum for every maintained school in England: see PARA 914 ante) or s 101(1)(a) (basic curriculum for every maintained school in Wales: see PARA 927 ante) to be included in the school's basic curriculum: School Standards and Framework Act 1998 Sch 19 para 1(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 117(1), (2) (a)). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 142(8).

5 For the meaning of 'agreed syllabus' see PARA 947 note 2 ante; definition applied by virtue of ibid Sch 19 para 1(2) (amended by the Education Act 2002 Sch 21 para 117(1), (2)(b)).

6 School Standards and Framework Act 1998 Sch 19 para 2(2).

7 If immediately before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) the school was a grant-maintained school (within the meaning of the Education Act 1996), and in relation to the school or any pupils at the school the appropriate agreed syllabus (as defined by s 382 (repealed)) was a syllabus falling within s 382(1)(c) (repealed), then until the end of such period as the Secretary of State may by order prescribe, or such earlier date as the governing body may determine, the required provision for religious education in the case of the school or, as the case may be, those pupils is provision for religious education in accordance with that syllabus: School Standards and Framework Act 1998 Sch 19 para 2(4). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of orders under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. The prescribed period for the purposes of Sch 19 para 2(4) was five years commencing on 1 September 1999: see the Agreed Syllabus for Religious Education (Prescribed Period) Order 1999, SI 1999/1728, art 2. As to grant-maintained schools see PARAS 102 note 16, 104 et seq ante.

8 For the meaning of 'secondary school' see PARA 81 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

9 Ie in accordance with ibid s 71 (as amended): see PARA 961 post.

10 As to local education authorities see PARA 20 ante.

11 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

12 Ibid Sch 19 para 2(3)(a).

13 For the meaning of 'budget share' see PARA 312 ante.

14 School Standards and Framework Act 1998 Sch 19 para 2(3)(b).

15 Ibid Sch 19 para 2(3).

16 Ibid Sch 19 para 2(5).

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### **953. Foundation and voluntary controlled schools with a religious character.**

In relation to any foundation or voluntary controlled school<sup>1</sup> which has a religious character<sup>2</sup>, the required provision for religious education<sup>3</sup> in the case of pupils at the school is provision for religious education in accordance with any arrangements made by the foundation governors under the provision described below<sup>4</sup>, or subject to any such arrangements, provision in accordance with an agreed syllabus<sup>5</sup> adopted for the school or for those pupils<sup>6</sup>. Where the parents<sup>7</sup> of any pupils at the school request that they may receive religious education in accordance with any provisions of the trust deed<sup>8</sup> relating to the school<sup>9</sup> or, if provision for that purpose is not made by such a deed, in accordance with the tenets of the religion or religious denomination specified in relation to the school<sup>10</sup>, the foundation governors<sup>11</sup> must, unless they are satisfied that because of any special circumstances it would be unreasonable to do so, make arrangements for securing that such religious education is given to those pupils in the school during not more than two periods in each week<sup>12</sup>.

Separate provision was made in relation to former grant-maintained schools<sup>13</sup>.

1 As to foundation and voluntary controlled schools see PARA 102 et seq ante.

2 School Standards and Framework Act 1998 s 69, Sch 19 para 3(1). As to references to schools having a religious character see PARA 951 note 9 ante.

3 For the meaning of 'the required provision for religious education' see PARA 952 note 4 ante.

4 School Standards and Framework Act 1998 Sch 19 para 3(2)(a). The text refers to any arrangements made under Sch 19 para 3(3): see the text to notes 7-12 infra.

5 For the meaning of 'agreed syllabus' see PARA 947 note 2 ante; definition applied by virtue of ibid s 142(8).

6 Ibid Sch 19 para 3(2)(b).

7 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 142(8).

8 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of ibid s 142(8).

9 Ibid Sch 19 para 3(3)(a).

10 Ibid Sch 19 para 3(3)(b). The text refers to religion or religious denomination specified in relation to the school under s 69(4) (see PARA 951 ante). For the meaning of references to 'religion or religious denomination specified in relation to the school under s 69(4)' see PARA 42 note 15 ante.

11 For the meaning of 'foundation governor' see PARA 104 note 6 ante.

12 School Standards and Framework Act 1998 Sch 19 para 3(3).

13 If immediately before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) the school was a grant-maintained school (within the meaning of the Education Act 1996), and in relation to the school or any pupils at the school the appropriate agreed syllabus (as defined by s 382 (repealed)) was a syllabus falling within s 382(1)(c) (repealed), then until the end of such period as the Secretary of State may by order prescribe, or such earlier date as the governing body may determine, that syllabus must be treated for the purpose of the School Standards and Framework Act 1998 Sch 19 para 3(2)(b) (see the text to notes 5-6 supra) as an agreed syllabus adopted for the school or, as the case may be, those pupils: Sch 19 para 3(4). The prescribed period for the purposes of Sch 19 para 3(4) was five years commencing on 1 September 1999: see

the Agreed Syllabus for Religious Education (Prescribed Period) Order 1999, SI 1999/1728, art 2. As to the making of orders under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to grant-maintained schools see PARAS 102 note 16, 104 et seq ante. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

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#### **954. Voluntary aided schools with a religious character.**

In relation to any voluntary aided school<sup>1</sup> which has a religious character<sup>2</sup>, the required provision for religious education<sup>3</sup> in the case of pupils<sup>4</sup> at the school is provision for religious education in accordance with any provisions of the trust deed<sup>5</sup> relating to the school<sup>6</sup>, or where provision for that purpose is not made by such a deed, in accordance with the tenets of the religion or religious denomination specified in relation to the school<sup>7</sup>, or in accordance with any arrangements made by the governing body under the provision described below<sup>8</sup>. Where the parents<sup>9</sup> of any pupils at the school desire them to receive religious education in accordance with any agreed syllabus<sup>10</sup> adopted by the local education authority<sup>11</sup>, and cannot with reasonable convenience cause those pupils to attend a school<sup>12</sup> at which that syllabus is in use<sup>13</sup>, the governing body<sup>14</sup> must, unless it is satisfied that because of any special circumstances it would be unreasonable to do so, make arrangements for religious education in accordance with that syllabus to be given to those pupils in the school<sup>15</sup>. Religious education under any such arrangements must be given during the times set apart for the giving of religious education in the school in accordance with the provision for that purpose included in the school's basic curriculum<sup>16</sup>.

1 As to voluntary aided schools see PARA 102 et seq ante.

2 School Standards and Framework Act 1998 s 69, Sch 19 para 4(1). As to references to schools having a religious character see PARA 951 note 9 ante.

3 For the meaning of 'the required provision for religious education' see PARA 952 note 4 ante.

4 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of ibid s 142(8).

6 Ibid Sch 19 para 4(2)(a).

7 Ibid Sch 19 para 4(2)(b). The text refers to religion or religious denomination specified in relation to the school under s 69(4) (see PARA 951 ante). For the meaning of references to 'religion or religious denomination specified in relation to the school under s 69(4)' see PARA 42 note 15 ante.

8 Ibid Sch 19 para 4(2)(c). The text refers to arrangements made under Sch 19 para 4(3); see the text to notes 9-15 infra.

9 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 142(8).

10 For the meaning of 'agreed syllabus' see PARA 947 note 2 ante; definition applied by virtue of ibid s 142(8).

11 Ibid Sch 19 para 4(3)(a). As to local education authorities see PARA 20 ante.

12 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 142(8).

13 Ibid Sch 19 para 4(3)(b).

14 As to the governing bodies of maintained schools see PARA 203 et seq ante.



15 School Standards and Framework Act 1998 Sch 19 para 4(3). Any arrangements under Sch 19 para 4(3) must be made by the governing body, unless the local education authority is satisfied that the governing body is unwilling to make them, in which case they must be made by the authority: Sch 19 para 4(5). Subject to Sch 19 para 4(3), the religious education given to pupils at the school is under the control of the governing body: Sch 19 para 4(6).

16 Ibid Sch 19 para 4(4). The text refers to the provision for religious education included in the school's basic curriculum by virtue of the Education Act 2002 s 80(1)(a) (basic curriculum for every maintained school in England: see PARA 914 ante) or s 101(1)(a) (basic curriculum for every maintained school in Wales: see PARA 927 ante): School Standards and Framework Act 1998 Sch 19 para 4(4) (amended by the Education Act 2002 s 215(1), Sch 21 para 117(1), (3)).

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**955. Determination of question as to whether religious education is in accordance with trust deed.**

Where any trust deed<sup>1</sup> relating to a foundation or voluntary school<sup>2</sup> makes provision whereby a bishop or any other ecclesiastical or denominational authority has power to decide whether the religious education given in the school which purports to be in accordance with the provisions of the trust deed does or does not accord with those provisions, that question must be determined in accordance with the provisions of the trust deed<sup>3</sup>.

1 As to the meaning of 'trust deed' see PARA 104 note 6 ante.

2 As to foundation and voluntary schools see PARA 102 et seq ante.

3 Education Act 1996 s 399 (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 100).

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

**UPDATE**

**955 Determination of question as to whether religious education is in accordance with trust deed**

NOTE 3--In relation to Wales, appointed day is 1 August 2008: SI 2008/1728.

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## **956. Religious education in approved special schools.**

Regulations<sup>1</sup> must make provision for securing that, so far as practicable, every pupil<sup>2</sup> attending an approved<sup>3</sup> special school<sup>4</sup> receives religious education and attends religious worship<sup>5</sup>, or alternatively is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent<sup>6</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. In the exercise of the power conferred by s 342(6) (as substituted), the Education (Non-Maintained Special Schools) (England) Regulations 1999, SI 1999/2257 (amended by SI 2002/1982) have been made; and, by virtue of the Education Act 1996 s 582(3), Sch 39 Pt I para 1 and the Interpretation Act 1978 s 17(2)(b) (see STATUTES vol 44(1) (Reissue) PARA 1303), the Education (Special Schools) Regulations 1994, SI 1994/652, have effect (in relation to Wales only) as if so made. As to the meaning of 'parent' see PARA 510 note 1 ante.

2 For the meaning of 'pupil' see PARA 16 note 4 ante.

3 le approved under the Education Act 1996 s 342 (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 82).

4 For the meaning of 'school' see PARA 81 ante.

5 Education Act 1996 s 342(6)(a) (as substituted: see note 3 supra).

6 Ibid s 342(6)(b) (as substituted: see note 3 supra). The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appears to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations made under s 342 (as substituted): s 349(1). Such orders are not statutory instruments (see s 568 (as amended); and PARA 15 note 6 ante), and are not recorded in this work. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order: s 349(2). As to the making, revocation or variation of orders under the Education Act 1996 see PARA 15 note 6 ante.

## **UPDATE**

## **956 Religious education in approved special schools**

NOTE 1--SI 1994/652 amended: SI 2009/2544. SI 1999/2257 further amended: SI 2007/1088, SI 2008/1879, SI 2009/1924.

TEXT AND NOTES 5, 6--Education Act 1996 ss 342(6), 349(1) amended, s 349(1A) added: Education and Skills Act 2008 ss 143(3), 147(2), (3), Sch 2.

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### **C. REQUIREMENT FOR COLLECTIVE WORSHIP**

#### **957. Requirements relating to collective worship.**

Subject to certain exceptions and special arrangements<sup>1</sup>, each pupil<sup>2</sup> in attendance at a community, foundation or voluntary school<sup>3</sup> must on each school day<sup>4</sup> take part in an act of collective worship<sup>5</sup>. Subject to those exceptions and special arrangements, in relation to any community, foundation or voluntary school, the local education authority<sup>6</sup> and the governing body<sup>7</sup> must exercise their functions<sup>8</sup> with a view to securing<sup>9</sup>, and the head teacher<sup>10</sup> must secure<sup>11</sup>, that each pupil in attendance at such a school takes part, on each school day, in an act of collective worship<sup>12</sup>. Further provision is made<sup>13</sup> with respect to the collective worship so required, including provision relating to the arrangements which are to be made in connection with such worship<sup>14</sup>, and the nature of such worship<sup>15</sup>.

1    Ie subject to the School Standards and Framework Act 1998 s 71 (as amended): see PARA 961 post.

2    For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

3    As to community, foundation and voluntary schools see PARA 102 et seq ante.

4    For the meaning of 'school day' see PARA 533 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5    Ibid s 70(1). It has been held that '... when Parliament spoke of an 'act of collective worship', it was referring to the totality of events which happen on the occasion when pupils are assembled together for the purposes of collective worship rather than each of the successive incidents which take place during that assembly': *R v Secretary of State for Education, ex p R and D* [1994] ELR 495 at 499 per McCullough J. As to provision in the basic curriculum for religious education in relation to England see PARA 914 ante; and as to provision in the basic curriculum for religious education in relation to Wales see PARA 927 ante.

6    As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 s 70 and Sch 20 (see PARAS 958-960 post) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (s). For the meaning of 'England' see PARA 52 note 11 ante.

7    As to the governing bodies of maintained schools see PARA 203 et seq ante.

8    As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

9    Ibid s 70(2)(a).

10   As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

11   Ibid s 70(2)(b).

12   Ibid s 70(2).

13   Ie by ibid Sch 20: see PARAS 958-960 post.

14   Ibid s 70(3)(a).

15   Ibid s 70(3)(b).



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### **958. Arrangements for collective worship.**

In relation to any community, foundation or voluntary school<sup>1</sup>, the arrangements for the required collective worship<sup>2</sup> may, in respect of each school day<sup>3</sup>, provide for a single act of worship for all pupils<sup>4</sup> or for separate acts of worship for pupils in different age groups or in different school groups<sup>5</sup>. The arrangements for the required collective worship must be made:

- 1731 (1) if the school is a community school or a foundation school which does not have a religious character<sup>6</sup>, by the head teacher<sup>7</sup> after consulting the governing body<sup>8</sup>;
- 1732 (2) if the school is a foundation school which has a religious character or a voluntary school, by the governing body after consulting the head teacher<sup>9</sup>.

The required collective worship must take place on the school premises<sup>10</sup>. However, if the governing body of a community, foundation or voluntary school is of the opinion that it is desirable that any act of collective worship in the school<sup>11</sup> should, on a special occasion, take place elsewhere than on the school premises, it may, after consultation with the head teacher, make such arrangements for that purpose as it thinks appropriate<sup>12</sup>. The powers of a governing body to arrange for an act of collective worship to take place elsewhere than on the school premises<sup>13</sup> must not be exercised so as to derogate from the rule that the required collective worship must normally take place on the school premises<sup>14</sup>.

1 School Standards and Framework Act 1998 s 70, Sch 20 para 2(1). As to community, foundation and voluntary schools see PARA 102 et seq ante.

2 For these purposes, 'the required collective worship', in relation to a school, means the collective worship in that school which is required by ibid s 70 (see PARA 957 ante): Sch 20 para 1.

3 For the meaning of 'school day' see PARA 533 note 2 ante; definition applied by virtue of ibid s 142(8).

4 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

5 Ibid Sch 20 para 2(2). For these purposes, a 'school group' is any group in which pupils are taught or take part in other school activities: Sch 20 para 2(3). As to an 'act of collective worship' see PARA 957 note 5 ante.

6 As to references to schools having a religious character see PARA 951 note 9 ante.

7 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ibid Sch 20 para 2(4)(a). As to the governing bodies of maintained schools see PARA 203 et seq ante.

9 Ibid Sch 20 para 2(4)(b).

10 Ibid Sch 20 para 2(5). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 142(8).

11 Ie required by ibid s 70: see PARA 957 ante.

12 Ibid Sch 20 para 2(6).

13 Ie under ibid Sch 20 para 2(6): see the text to notes 11-12 supra.

14 Ibid Sch 20 para 2(7).

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**959. Nature of collective worship in community schools and foundation schools without a religious character.**

In relation to any community school<sup>1</sup> and any foundation school<sup>2</sup> which does not have a religious character<sup>3</sup>, the required collective worship<sup>4</sup> must be wholly or mainly of a broadly Christian character<sup>5</sup>. Not every act of collective worship<sup>6</sup> in the school<sup>7</sup> need be wholly or mainly of a broadly Christian character provided that, taking any school term as a whole, most such acts which take place in the school are<sup>8</sup>. However:

- 1733 (1) the extent to which, if at all, any acts of collective worship<sup>9</sup> which are not wholly or mainly of a broadly Christian character<sup>10</sup> take place in the school<sup>11</sup>;
- 1734 (2) the extent to which any act of collective worship in the school which is wholly or mainly of a broadly Christian character<sup>12</sup> reflects the broad traditions of Christian belief<sup>13</sup>; and
- 1735 (3) the ways in which those traditions are reflected in any such act of collective worship<sup>14</sup>,

must be such as may be appropriate having regard to any relevant considerations relating to the pupils concerned which fall to be taken into account<sup>15</sup>. Those considerations are any circumstances relating to the family backgrounds of the pupils which are relevant for determining the character of the collective worship which is appropriate in their case<sup>16</sup>, and their ages and aptitudes<sup>17</sup>.

While a determination by a standing advisory council on religious education<sup>18</sup> that it is not appropriate for the required collective worship to be wholly or mainly of a broadly Christian character<sup>19</sup> in the case of any community school, or any foundation school which does not have a religious character, or in the case of any class or description of pupils at any such school, has effect<sup>20</sup>:

- 1736 (a) that requirement for the collective worship to be wholly or mainly of a broadly Christian character<sup>21</sup> does not apply in relation to such a school or, as the case may be, the pupils in question<sup>22</sup>; and
- 1737 (b) the required collective worship<sup>23</sup> in the case of the school or pupils must not be distinctive of any particular Christian or other religious denomination<sup>24</sup>.

1 School Standards and Framework Act 1998 s 70, Sch 20 para 3(1)(a).

2 As to community and foundation schools see PARA 102 et seq ante.

3 School Standards and Framework Act 1998 Sch 20 para 3(1)(b). As to references to schools having a religious character see PARA 951 note 9 ante.

4 For the meaning of 'the required collective worship' see PARA 958 note 2 ante.

5 School Standards and Framework Act 1998 Sch 20 para 3(2). For the purposes of Sch 20 para 3(2), collective worship is of a broadly Christian character if it reflects the broad traditions of Christian belief without being distinctive of any particular Christian denomination: Sch 20 para 3(3). As to the nature of this



requirement in the context of multi-faith worship or the inclusion of non-Christian elements see *R v Secretary of State for Education, ex p R and D* [1994] ELR 495 at 498-503 per McCullough J.

6 References to acts of collective worship in the school include such acts which by virtue of the School Standards and Framework Act 1998 Sch 20 para 2(6) (see PARA 958 ante) take place otherwise than on the school premises: Sch 20 para 3(7). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 142(8). As to an 'act of collective worship' see PARA 957 note 5 ante.

7 Ie required by ibid s 70: see PARA 957 ante.

8 Ibid Sch 20 para 3(4).

9 Ie required by ibid s 70: see PARA 957 ante.

10 Ie do not comply with ibid Sch 20 para 3(2): see the text and notes 4-5 supra.

11 Ibid Sch 20 para 3(5)(a).

12 Ie which complies with ibid Sch 20 para 3(2): see the text and notes 4-5 supra.

13 Ibid Sch 20 para 3(5)(b).

14 Ibid Sch 20 para 3(5)(c).

15 Ibid Sch 20 para 3(5).

16 Ibid Sch 20 para 3(6)(a).

17 Ibid Sch 20 para 3(6)(b).

18 Ie under the Education Act 1996 s 394 (as amended): see PARA 964 post.

19 Ie the requirement imposed by the School Standards and Framework Act 1998 Sch 20 para 3(2): see the text and notes 4-5 supra.

20 Ibid Sch 20 para 4(1), (2).

21 Ie ibid Sch 20 para 3: see the text and notes 1-17 supra.

22 Ibid Sch 20 para 4(2)(a).

23 Ie the collective worship required by ibid s 70: see PARA 957 ante.

24 Ibid Sch 20 para 4(2)(b). Schedule 20 para 4(2)(b) must not be taken as preventing that worship from being distinctive of any particular faith: Sch 20 para 4(2).

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**960. Nature of collective worship in foundation schools with a religious character and voluntary schools.**

In the case of a foundation school<sup>1</sup> which has a religious character<sup>2</sup> or a voluntary school<sup>3</sup>, the required collective worship<sup>4</sup> must be:

- 1738 (1) in accordance with any provisions of the trust deed<sup>5</sup> relating to the school<sup>6</sup>;  
or  
1739 (2) where provision for that purpose is not made by such a deed<sup>7</sup>, and the school has a religious character<sup>8</sup>, in accordance with the tenets and practices of the religion or religious denomination specified in relation to the school<sup>9</sup>.

1 As to foundation schools see PARA 102 et seq ante.

2 As to references to schools having a religious character see PARA 951 note 9 ante.

3 As to voluntary schools see PARA 102 et seq ante.

4 For the meaning of 'the required collective worship' see PARA 958 note 2 ante.

5 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6 Ibid s 70, Sch 20 para 5(a).

7 Ibid Sch 20 para 5(b)(i).

8 Ibid Sch 20 para 5(b)(ii).

9 Ibid Sch 20 para 5(b). The text refers to religion or religious denomination specified in relation to the school under s 69(4) (see PARA 951 ante). For the meaning of references to 'religion or religious denomination specified in relation to the school under s 69(4)' see PARA 42 note 15 ante.

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### **961. Exceptions and special arrangements.**

If the parent<sup>1</sup> of a pupil<sup>2</sup> at a community, foundation or voluntary school<sup>3</sup> requests that the pupil may be wholly or partly excused: (1) from receiving religious education given in the school in accordance with the school's basic curriculum<sup>4</sup>; (2) from attendance at religious worship in the school<sup>5</sup>; or (3) both from receiving such education and from such attendance<sup>6</sup>, the pupil must be so excused until the request is withdrawn<sup>7</sup>. Where, accordingly, a pupil has been wholly or partly excused from receiving religious education or from attendance at religious worship and the local education authority<sup>8</sup> is satisfied that:

- 1740 (a) the parent of the pupil desires him to receive religious education of a kind which is not provided in the school during the periods of time during which he is so excused<sup>9</sup>;
- 1741 (b) the pupil cannot with reasonable convenience be sent to another community, foundation or voluntary school where religious education of the kind desired by the parent is provided<sup>10</sup>; and
- 1742 (c) arrangements have been made for him to receive religious education of that kind during school hours elsewhere<sup>11</sup>,

the pupil may be withdrawn from the school during such periods of time as are reasonably necessary for the purpose of enabling him to receive religious education in accordance with the arrangements<sup>12</sup>. A pupil may not be so withdrawn from school unless the local education authority is satisfied that the arrangements are such as will not interfere with the attendance of the pupil at school on any day except at the beginning or end of a school session, or if there is only one, the school session, on that day<sup>13</sup>.

Where the parent of a pupil who is a boarder<sup>14</sup> at a community, foundation or voluntary school requests that the pupil be permitted: (i) to receive religious education in accordance with the tenets of a particular religion or religious denomination outside school hours<sup>15</sup>; or (ii) to attend worship in accordance with such tenets on Sundays or other days exclusively set apart for religious observance by the religious body to which his parent belongs<sup>16</sup>, the governing body must make arrangements for giving the pupil reasonable opportunities for doing so<sup>17</sup>. Such arrangements may provide for making facilities for such education or worship available on the school premises, but any expenditure entailed by the arrangements must not be met from the school's budget share<sup>18</sup> or otherwise by the local education authority<sup>19</sup>.

Regulations<sup>20</sup> must make provision for securing that, so far as practicable, every pupil attending a community or foundation special school<sup>21</sup> receives religious education and attends religious worship<sup>22</sup>, or is withdrawn from receiving such education or from attendance at such worship in accordance with the wishes of his parent<sup>23</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 142(8).

3 As to community, foundation and voluntary schools see PARA 102 et seq ante.

4 School Standards and Framework Act 1998 s 71(1)(a). The reference to religious education given in accordance with the school's basic curriculum is a reference to such education given in accordance with the provision included in the school's basic curriculum by virtue of the Education Act 2002 s 80(1)(a) (basic curriculum for every maintained school in England: see PARA 914 ante) or s 101(1)(a) (basic curriculum for every maintained school in Wales: see PARA 927 ante): School Standards and Framework Act 1998 s 71(2)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 105).

5 School Standards and Framework Act 1998 s 71(1)(b). The reference to religious worship in the school includes religious worship which by virtue of Sch 20 para 2(6) (see PARA 958 ante) takes place otherwise than on the school premises: s 71(2)(b). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 142(8).

6 Ibid s 71(1)(c).

7 Ibid s 71(1). As to parents' rights to ensure that their children are educated in accordance with their wishes generally see PARA 13 ante.

8 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under ibid s 71 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 para (t). For the meaning of 'England' see PARA 52 note 11 ante.

9 School Standards and Framework Act 1998 s 71(3)(a).

10 Ibid s 71(3)(b).

11 Ibid s 71(3)(c).

12 Ibid s 71(3).

13 Ibid s 71(4).

14 As to the meaning of 'boarder' see PARA 26 note 16 ante; definition applied by virtue of ibid s 142(8).

15 Ibid s 71(5)(a).

16 Ibid s 71(5)(b).

17 Ibid s 71(5).

18 For the meaning of 'budget share' see PARA 312 ante.

19 School Standards and Framework Act 1998 s 71(6).

20 'Regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to provision in relation to religious education see the Education (Maintained Special Schools) (Wales) Regulations 1999, SI 1999/1780, reg 12; and the Education (Maintained Special Schools) (England) Regulations 1999, SI 1999/2212, reg 18.

21 As to community and foundation special schools see PARA 102 et seq ante. As to special schools generally see PARA 1027 post.

22 School Standards and Framework Act 1998 s 71(7)(a).

23 Ibid s 71(7)(b). As to the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), so far as it is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure see First Protocol (Paris, 20 March 1952; TS 46 (1954) Cmd 9221; Council of Europe, ETS no 9) art 2; the Human Rights Act 1998 s 15, Sch 3; and PARA 3 ante. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 166.

## UPDATE

## **961 Exceptions and special arrangements**

TEXT AND NOTES 1-7--In the case of a sixth-form pupil, it is for the pupil himself to request that he be excused from attendance at religious worship: 1998 Act s 71(1), (1A), (1B) (s 71(1) substituted, s 71(1A), (1B) added, by Education and Inspections Act 2006 s 55(2)). 'Sixth-form pupil' means any pupil who has ceased to be of compulsory school age, and is receiving education suitable to the requirements of pupils over compulsory school age: 1998 Act s 71(8) (added by 2006 Act s 55(9)).

TEXT AND NOTES 14-17--In the case of a sixth-form pupil who is a boarder, it is for the pupil himself to request that he be permitted to receive religious education outside school hours or to attend worship on a specified day or days: 1998 Act s 71(5), (5A) (s 71(5) amended, s 71(5A) added, by 2006 Act s 55(5), (6)).

NOTE 20--SI 1999/1780 reg 12 substituted: SI 2009/48. SI 1999/2212 reg 18 revoked: SI 2006/3346. Arrangements must be made to secure that, so far as practicable, every pupil attending a maintained special school (1) receives religious education unless withdrawn from receiving such education in accordance with the wishes of his parent; and (2) attends religious worship unless withdrawn from attendance at such worship, in the case of a sixth-form pupil, in accordance with his own wishes, and, in any other case, in accordance with the wishes of his parent: SI 2001/3455 reg 5A (added by SI 2006/3346; and substituted by SI 2007/1860).

TEXT AND NOTE 23--In the case of a sixth-form pupil, the reference is to his own wishes: 1998 Act s 71(7) (substituted by 2006 Act s 55(8)).

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## ***D. STANDING ADVISORY COUNCILS ON RELIGIOUS EDUCATION***

### **962. Constitution and membership of advisory councils.**

A local education authority<sup>1</sup> must constitute a standing advisory council on religious education for the purposes<sup>2</sup> of<sup>3</sup>:

- 1743 (1) advising the local education authority on such matters connected with religious worship in community schools or in foundation schools<sup>4</sup> which do not have a religious character<sup>5</sup>, and the religious education to be given in accordance with an agreed or other syllabus<sup>6</sup>, as the authority may refer to the council or as the council may see fit<sup>7</sup>; and
- 1744 (2) carrying out the functions<sup>8</sup> conferred on it<sup>9</sup>.

The matters referred to in head (1) above include, in particular, methods of teaching, the choice of materials and the provision of training for teachers<sup>10</sup>.

The council must consist of such groups of persons appointed by the authority as representative members (called 'representative groups') as are required<sup>11</sup>. The representative groups so required are:

- 1745 (a) a group of persons to represent such Christian denominations and other religions and denominations of such religions as, in the opinion of the authority, will appropriately reflect the principal religious traditions in the area<sup>12</sup>;
- 1746 (b) except in the case of an area in Wales<sup>13</sup>, a group of persons to represent the Church of England<sup>14</sup>;
- 1747 (c) a group of persons to represent such associations representing teachers as, in the opinion of the authority, ought to be represented, having regard to the circumstances of the area<sup>15</sup>; and
- 1748 (d) a group of persons to represent the authority<sup>16</sup>.

The council may also include co-opted members, that is persons co-opted as members of the council by members of the council who have not themselves been so co-opted<sup>17</sup>. Where a representative group is required by head (b) above, the representative group required by head (a) above must not include persons appointed to represent the Church of England<sup>18</sup>. The number of representative members appointed to any representative group under head (a) above to represent each denomination or religion required to be represented must, so far as consistent with the efficient discharge of the group's functions, reflect broadly the proportionate strength of that denomination or religion in the area<sup>19</sup>. On any question to be decided by the council only the representative groups on the council are entitled to vote, and each representative group has a single vote<sup>20</sup>.

Before appointing a person to represent any religion, denomination or associations as a member of the council<sup>21</sup>, the local education authority must take all reasonable steps to assure itself that he is representative of the religion, denomination or associations in question<sup>22</sup>. A member of the council who was appointed by the authority may be removed from membership

by the authority if, in its opinion, he ceases to be representative of the religion, denomination or associations which he was appointed to represent or, as the case may be, he ceases to be representative of the authority<sup>23</sup>. A person co-opted as a member of the council holds office on such terms as may be determined by the members co-opting him<sup>24</sup>. A member of the council may at any time resign his office<sup>25</sup>. Subject to the provision relating to voting<sup>26</sup>, the council and, in relation to any question falling to be decided by members of the council of any particular category, the members of that category, may regulate their own proceedings<sup>27</sup>. The validity of proceedings of the council or of the members of the council of any particular category is not affected by a vacancy in the office of any member of the council<sup>28</sup>, or on the ground that a member of the council appointed to represent any religion, denomination or associations does not at the time of the proceedings represent the religion, denomination or associations in question<sup>29</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 390 (as amended) (see the text and notes 2-20 *infra*) or s 392 (as amended) (see the text and notes 21-29 *infra*) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 paras (w), (x). For the meaning of 'England' see PARA 52 note 11 ante.

2 In the purposes mentioned in the Education Act 1996 s 391(1) (as amended): see heads (1)-(2) in the text.

3 Ibid s 390(1).

4 As to community and foundation schools see PARA 102 et seq ante. In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

5 As to references to schools having a religious character see PARA 951 note 9 ante; definition applied by the Education Act 1996 s 391(1)(a) (s 391(1)(a) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 94(1), (2)).

6 In accordance with the School Standards and Framework Act 1998 s 69, Sch 19 (as amended): see PARAS 951-954 ante.

7 Education Act 1996 s 391(1)(a) (as substituted: see note 5 *supra*).

8 As to the meaning of 'functions' see PARA 14 note 5 ante.

9 Education Act 1996 s 391(1)(b). The text refers to the functions conferred by s 394 (as amended): see PARA 964 post.

10 Ibid s 391(2).

11 Ibid s 390(2) (substituted by the School Standards and Framework Act 1998 Sch 30 para 93).

12 Education Act 1996 s 390(4)(a).

13 For the meaning of 'Wales' see PARA 52 note 13 ante.

14 Education Act 1996 s 390(4)(b).

15 Ibid s 390(4)(c).

16 Ibid s 390(4)(d).

17 Ibid s 390(3).

18 Ibid s 390(5).

19 Ibid s 390(6).

20 Ibid s 390(7).

21 For these purposes, 'the council' means the standing advisory council on religious education constituted by a local education authority under ibid s 390 (as amended): s 392(1). See the text and notes 1-20 supra.

22 Ibid s 392(2). See note 1 supra.

23 Ibid s 392(3).

24 Ibid s 392(5).

25 Ibid s 392(6).

26 Ie subject to ibid s 390(7): see the text to note 20 supra.

27 Ibid s 392(7).

28 Ibid s 392(8)(a). The text refers to any member of the council required by s 390(2) (as substituted): see the text to note 11 supra.

29 Ibid s 392(8)(b).

## **UPDATE**

### **962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.



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### **963. Functions of advisory councils.**

The representative groups<sup>1</sup> on the standing advisory council<sup>2</sup>, other than the group consisting of persons appointed to represent the local education authority<sup>3</sup>, may at any time require a review of any agreed syllabus<sup>4</sup> for the time being adopted by the authority<sup>5</sup>. Each representative group concerned has a single vote on the question of whether to require such a review<sup>6</sup>.

The council must in each year publish a report as to the exercise of its functions<sup>7</sup> and any action taken by representative groups on the council in relation to requiring a review of any agreed syllabus<sup>8</sup> during the last preceding year<sup>9</sup>. The council's report must in particular specify any matters in respect of which the council has given advice to the authority<sup>10</sup>; it must broadly describe the nature of the advice given<sup>11</sup>, and, where any such matter was not referred to the council by the authority, it must give the council's reasons for offering advice on that matter<sup>12</sup>. The council for an area in England must send a copy of each report so published by it to the Qualifications and Curriculum Authority<sup>13</sup>, and the council for an area in Wales must send a copy of each report so published by it to the Qualifications, Curriculum and Assessment Authority for Wales<sup>14</sup>.

1 For the meaning of 'representative groups' see PARA 962 ante.

2 Ie required by the Education Act 1996 s 390(4): see PARA 962 ante.

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'agreed syllabus' see PARA 947 note 2 ante.

5 Education Act 1996 s 391(3). In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

6 Education Act 1996 s 391(4). Schedule 31 para 3 (see PARA 948 ante) has effect to require the authority, on receiving written notification of any such requirement, to cause a conference constituted in accordance with Sch 31 (as amended) (see PARAS 948-950 ante) to be convened for the purpose of reconsidering any agreed syllabus to which the requirement relates: s 391(5).

7 As to the meaning of 'functions' see PARA 14 note 5 ante.

8 Ie under the Education Act 1996 s 391(3): see the text to notes 1-5 supra.

9 Ibid s 391(6).

10 Ibid s 391(7)(a).

11 Ibid s 391(7)(b).

12 Ibid s 391(7)(c).

13 Ibid s 391(10)(a) (s 39(10) amended by the Education Act 1997 s 57(1), Sch 7 para 29). As to the Qualifications and Curriculum Authority see PARAS 876-893 ante.

14 Education Act 1996 s 391(10)(b) (as amended: see note 13 supra). As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 ante.

## **UPDATE**

### **962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

### **963 Functions of advisory councils**

TEXT AND NOTE 13--Reference to Qualifications and Curriculum Authority is now to Qualifications and Curriculum Development Agency (see PARA 876B): Education Act 1996 s 391(10)(a) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 10).

TEXT AND NOTE 14--Reference to Qualifications, Curriculum and Assessment Authority for Wales is now to National Assembly for Wales: Education Act 1996 s 391(10)(b) (amended by SI 2005/3239).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/D. STANDING ADVISORY COUNCILS ON RELIGIOUS EDUCATION/964. Determination of cases in which requirement for Christian collective worship is not to apply.

**964. Determination of cases in which requirement for Christian collective worship is not to apply.**

The standing advisory council constituted by a local education authority<sup>1</sup> must, on an application made by the head teacher<sup>2</sup> of:

- 1749 (1) any community school maintained by the authority<sup>3</sup>; or
- 1750 (2) any foundation school<sup>4</sup> which has not been designated<sup>5</sup> by the Secretary of State<sup>6</sup> as having a religious character<sup>7</sup>,

consider whether it is appropriate for the requirement for Christian collective worship<sup>8</sup> to apply in the case of the school or in the case of any class or description of pupils<sup>9</sup> at the school<sup>10</sup>. Where an application is made under head (1) above in respect of a community school which becomes a foundation school<sup>11</sup> before the application is determined, it must, unless withdrawn by the head teacher, continue as if made under head (2) above<sup>12</sup>. Before making an application under head (1) or head (2) above, the head teacher of a school must consult the governing body<sup>13</sup>; and on being consulted by the head teacher, the governing body may if it thinks fit take such steps as it considers appropriate for consulting all persons appearing to it to be parents<sup>14</sup> of registered pupils<sup>15</sup> at the school<sup>16</sup>. An application must be made in such manner and form as the council may require<sup>17</sup>.

In determining whether it is appropriate for that requirement to apply the council must have regard to any circumstances relating to the family backgrounds of the pupils at the school, or of the pupils of the particular class or description in question, which are relevant for determining the character of the collective worship appropriate in their case<sup>18</sup>.

The council must give the head teacher written notification of its decision on the application<sup>19</sup>.

<sup>1</sup> I.e. under the Education Act 1996 s 390 (as amended): see PARA 962 ante. As to local education authorities see PARA 20 ante.

<sup>2</sup> As to the meaning of 'head teacher' see PARA 93 note 13 ante.

<sup>3</sup> Education Act 1996 s 394(1)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 97(1), (2)(a)). As to community schools see PARA 102 et seq ante. For the meaning of 'school maintained by a local education authority' in the School Standards and Framework Act 1998 see PARA 94 ante.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

<sup>4</sup> As to foundation schools see PARA 102 et seq ante.

<sup>5</sup> I.e. under the School Standards and Framework Act 1998 s 69(3): see PARA 951 ante.

<sup>6</sup> As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Education Act 1996 s 394(1)(b) (substituted by the School Standards and Framework Act 1998 Sch 30 para 97(1), (2)(b)).

8 le imposed by the School Standards and Framework Act 1998 s 70, Sch 20 para 3(2): see PARA 959 ante.

9 For the meaning of 'pupil' see PARA 16 note 4 ante.

10 Education Act 1996 s 394(1) (amended by the School Standards and Framework Act 1998 Sch 30 para 97(1), (2)(c)).

11 le by virtue of the School Standards and Framework Act 1998 s 35, Sch 8: see PARAS 113-116 ante.

12 Education Act 1996 s 394(8) (amended by the School Standards and Framework Act 1998 Sch 30 para 97(1), (4)).

13 Education Act 1996 s 394(5). As to the governing bodies of maintained schools see PARA 203 et seq ante.

14 As to the meaning of 'parent' see PARA 510 note 1 ante.

15 For the meaning of 'registered pupil' see PARA 512 ante.

16 Education Act 1996 s 394(6).

17 Ibid s 394(7).

18 Ibid s 394(2).

19 Ibid s 394(3). Where the council determines that it is not appropriate for the requirement to apply as mentioned in s 394(1) (as amended) (see the text and notes 1-10 supra), the determination must take effect for the purposes of the School Standards and Framework Act 1998 Sch 20 para 4 (disapplication of requirement for Christian collective worship: see PARA 959 ante) on such date as may be specified in the notification of the council's decision under the Education Act 1996 s 394(3): s 394(4) (amended by the School Standards and Framework Act 1998 Sch 30 para 97(1), (3)).

## UPDATE

### **962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

### **964 Determination of cases in which requirement for Christian collective worship is not to apply**

NOTE 11--In relation to England reference to School Standards and Framework Act 1998 s 35, Sch 8 is now to Education and Inspections Act 2006 ss 18-24: 1996 Act s 394(8), (9) (s 394(8) amended, s 394(9) added, by Education and Inspections Act 2006 Sch 3 para 9).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/D. STANDING ADVISORY COUNCILS ON RELIGIOUS EDUCATION/965. Review of determinations.

## **965. Review of determinations.**

Any determination by a standing advisory council<sup>1</sup> by virtue of which the requirement for Christian collective worship<sup>2</sup> does not for the time being apply in the case of a school or a class or description of pupils<sup>3</sup> at a school must be reviewed by the council<sup>4</sup>:

- 1751 (1) at any time on an application made by the head teacher<sup>5</sup>; and
- 1752 (2) in any event not later than the end of the period of five years beginning with the date on which the determination first took effect or, where it has since been reviewed, beginning with the effective date of the decision on the last review<sup>6</sup>.

On any review under head (2) above the council must give the head teacher an opportunity of making representations as to the determination under review<sup>7</sup>. On any such review under head (1) and head (2) above, the council may confirm the determination, with or without variation<sup>8</sup>, or revoke it, without prejudice to any further determination<sup>9</sup>.

The council must give the head teacher written notification of its decision, specifying the effective date of that decision for the purposes of head (2) above<sup>10</sup>.

1    Ie under the Education Act 1996 s 394 (as amended): see PARA 964 ante.

2    Ie the requirement imposed by the School Standards and Framework Act 1998 s 70, Sch 20 para 3(2): see PARA 959 ante.

3    For the meaning of 'pupil' see PARA 16 note 4 ante.

4    Education Act 1996 s 395(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 98). In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

5    Education Act 1996 s 395(1)(a). As to the meaning of 'head teacher' see PARA 93 note 13 ante. An application under head (1) in the text must be made in such manner and form as the council may require: s 395(8). The head teacher of a school must consult the governing body before making an application under head (1) in the text: s 395(6). On being consulted by the head teacher, the governing body may if it thinks fit take such steps as it considers appropriate for consulting all persons appearing to it to be parents of registered pupils at the school: s 395(7). As to the meaning of 'parent' see PARA 510 note 1 ante. For the meaning of 'registered pupil' see PARA 512 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

6    Ibid s 395(1)(b). Any determination which is required to be reviewed under head (2) in the text ceases to have effect, if not confirmed on such a review, at the end of the period there mentioned: s 395(5).

7    Ibid s 395(2). The head teacher of a school must consult the governing body before making any such representations: s 395(6). On being consulted by the head teacher, the governing body may if it thinks fit take such steps as it considers appropriate for consulting all persons appearing to it to be parents of registered pupils at the school: s 395(7).

8    Ibid s 395(3)(a).

9 Ibid s 395(3)(b). The text refers to any further determination under s 394 (as amended): see PARA 964 ante.

10 Ibid s 395(4).

## **UPDATE**

### **962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/D. STANDING ADVISORY COUNCILS ON RELIGIOUS EDUCATION/966. Power to direct advisory council to revoke determination or discharge duty.

#### **966. Power to direct advisory council to revoke determination or discharge duty.**

Where the Secretary of State<sup>1</sup> is satisfied, either on complaint by any person or otherwise, that any standing advisory council on religious education constituted by a local education authority<sup>2</sup>:

- 1753 (1) has acted, or is proposing to act, unreasonably in determining<sup>3</sup> whether it is appropriate for the requirement for Christian collective worship<sup>4</sup> to apply in the case of any school or any class or description of pupils<sup>5</sup> at a school<sup>6</sup>; or
- 1754 (2) has failed to discharge any duty imposed on it<sup>7</sup>,

he may give the council such directions as to the revocation of the determination, or the withdrawal of the proposed determination or, as the case may be, the discharge of the duty as appears to him to be expedient, and the council must comply with the directions<sup>8</sup>. Such directions may provide for the making by the council of a new determination to take effect in place of the determination or proposed determination to be revoked or withdrawn by it<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Education Act 1996 s 396(1). The text refers to an advisory council constituted under s 390 (as amended) (see PARA 962 ante). As to local education authorities see PARA 20 ante.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 Ie for the purposes of the Education Act 1996 s 394 (as amended) (see PARA 964 ante) or s 395 (as amended) (see PARA 965 ante).

4 Ie the requirement imposed by the School Standards and Framework Act 1998 s 70, Sch 20 para 3(2): see PARA 959 ante.

5 For the meaning of 'pupil' see PARA 16 note 4 ante.

6 Education Act 1996 s 396(1)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 99).

7 Education Act 1996 s 396(1)(b). The text refers to any duty imposed under s 394 (as amended) (see PARA 964 ante) or s 395 (as amended) (see PARA 965 ante).

8 Ibid s 396(1).

9 Ibid s 396(2).

#### **UPDATE**

**962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/D. STANDING ADVISORY COUNCILS ON RELIGIOUS EDUCATION/967. Access to meetings and documents.

## **967. Access to meetings and documents.**

In relation to any convened conference<sup>1</sup>, and any standing advisory council on religious education<sup>2</sup>, regulations<sup>3</sup> may make provision:

- 1755 (1) for meetings of conferences or councils to be open<sup>4</sup> to members of the public<sup>5</sup>;
- 1756 (2) requiring conferences or councils to give notice, in such manner as may be prescribed, of the time and place of such meetings<sup>6</sup>; and
- 1757 (3) requiring conferences or councils, at such time or times as may be prescribed to make available for inspection<sup>7</sup>, or to provide on payment of such fee as they think fit, not exceeding the cost of supply<sup>8</sup>, copies of the agendas and reports for such meetings to members of the public<sup>9</sup>.

Such regulations may apply to committees appointed by local education authorities<sup>10</sup>, sub-committees appointed by conferences<sup>11</sup>, and representative groups<sup>12</sup> on councils<sup>13</sup>, as they apply to conferences and councils<sup>14</sup>.

1 Education Act 1996 s 397(1)(a). The text refers to any conference convened under s 375, Sch 31 paras 1-3: see PARA 948 ante.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 Education Act 1996 s 397(1)(b). The text refers to any standing advisory council on religious education constituted under s 390 (as amended): see PARA 962 ante.

3 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under s 397 but, by virtue of s 582(3), Sch 39 para 1, the Religious Education (Meetings of Local Conferences and Councils) Regulations 1994, SI 1994/1304, have effect as if so made.

4 Ie subject to prescribed exceptions. 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1). See note 3 supra.

5 Ibid s 397(2)(a). As to the requirement for meetings to be held in public see the Religious Education (Meetings of Local Conferences and Councils) Regulations 1994, SI 1994/1304, reg 3. As to the prescribed exceptions see regs 1-2, 9.

6 Education Act 1996 s 397(2)(b). As to the giving of notice of the time and place of such meetings see the Religious Education (Meetings of Local Conferences and Councils) Regulations 1994, SI 1994/1304, reg 4.

7 Education Act 1996 s 397(2)(c)(i).

8 Ibid s 397(2)(c)(ii).

9 Ibid s 397(2)(c). As to the inspection of agendas and reports of meetings and the provision of copies of agendas and reports see the Religious Education (Meetings of Local Conferences and Councils) Regulations 1994, SI 1994/1304, regs 5-10.

10 Education Act 1996 s 397(3)(a). The text refers to committees appointed under Sch 31 para 4 (as amended) (see PARA 949 ante). As to local education authorities see PARA 20 ante.

11 Ibid s 397(3)(b). The text refers to sub-committees appointed under Sch 31 (as amended): see PARAS 948-950 ante.

12 For the meaning of 'representative groups' see PARA 962 ante.

13 Education Act 1996 s 397(3)(c). The text refers to representative groups appointed under s 390(4): see PARA 962 ante.

14 Ibid s 397(3).

## **UPDATE**

### **962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(2) CURRICULUM/(vi) Religious Education and Worship/E. NO REQUIREMENT OF ATTENDANCE AT SUNDAY SCHOOL/968. No requirement of attendance at Sunday school etc.

## ***E. NO REQUIREMENT OF ATTENDANCE AT SUNDAY SCHOOL***

### **968. No requirement of attendance at Sunday school etc.**

It must not be required, as a condition of a pupil<sup>1</sup> attending a maintained school<sup>2</sup>, or a person attending such a school to receive further education<sup>3</sup> or any training for members of the school workforce<sup>4</sup>, that he must attend or abstain from attending a Sunday school or a place of religious worship<sup>5</sup>.

1 For the meaning of 'pupil' see PARA 16 note 4 ante.

2 Education Act 1996 s 398(1)(a) (s 398(1) renumbered by the Education Act 2005 s 98, Sch 14 para 16(1), (3)).

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 For the meaning of 'further education' see PARA 18 ante.

4 Education Act 1996 s 398(1)(b) (as renumbered (see note 2 supra); and amended by the Education Act 2005 Sch 14 para 16(1), (2)). For this purpose, the reference to training for members of the school workforce is to be read in accordance with the Education Act 2005 s 75(5) (references to the school workforce: see PARA 793 note 4 ante) and s 96(1) (references to training for teachers or other members of the school workforce: see PARA 793 note 7 ante): Education Act 1996 s 398(2) (added by the Education Act 2005 Sch 14 para 16(1), (3)).

5 Education Act 1996 s 398(1) (as renumbered: see note 2 supra).

## **UPDATE**

### **962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/969. Obligation to enter pupils for public examinations.

### **(3) EXTERNAL QUALIFICATIONS**

#### **969. Obligation to enter pupils for public examinations.**

The governing body<sup>1</sup> of a maintained school<sup>2</sup> must secure that each registered pupil<sup>3</sup> at the school is entered, at such time as it considers appropriate, for each prescribed public examination<sup>4</sup> for which he is being prepared at the school at the time in question in each syllabus for that examination for which he is being so prepared<sup>5</sup>. However, the governing body is not required to secure that a pupil is entered for any examination, or for an examination in any syllabus for that examination, if either:

- 1758 (1) it considers that there are educational reasons in the case of that particular pupil for not entering him for that examination or, as the case may be, for not entering him for that examination in that syllabus<sup>6</sup>; or
- 1759 (2) the parent<sup>7</sup> of the pupil requests in writing that the pupil should not be entered for that examination or, as the case may be, for that examination in that syllabus<sup>8</sup>,

but, these exceptions do not apply to an examination which is part of the assessment arrangements<sup>9</sup> for the fourth key stage<sup>10</sup> and which applies in the case of that pupil<sup>11</sup>. Neither is the governing body required to secure that a pupil is entered for any examination in any syllabus for that examination if it has secured his entry for another prescribed public examination in a corresponding syllabus<sup>12</sup>. A pupil excluded from a school for violence may be allowed to sit examinations as a visitor, rather than be reinstated<sup>13</sup>.

As soon as practicable after determining whether or not to secure the entry of any pupil for a prescribed public examination in any syllabus for which he is being prepared at the school, the governing body must notify the pupil's parent in writing of its determination in relation to each such syllabus<sup>14</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 For these purposes, 'maintained school' includes a community or foundation special school established in a hospital: Education Act 1996 s 402(6)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 101). As to maintained schools see PARA 94 et seq ante. As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post.

In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. As to nursery schools see PARA 81 ante. For the meaning of 'primary school' see PARA 81 ante. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 For the meaning of 'registered pupil' see PARA 512 ante.

4 For the purposes of the Education Act 1996 s 402 (as amended), references to a prescribed public examination are to be construed in accordance with s 462 (see PARA 444 ante): s 402(6)(b). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act

1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the public examinations which have been prescribed see the Education (Prescribed Public Examinations) Regulations 1989, SI 1989/377, which have effect as if made under the Education Act 1996 s 402 (as amended) by virtue of s 582(3), Sch 39 para 1.

5 Ibid s 402(1).

6 Ibid s 402(2)(a).

7 As to the meaning of 'parent' see PARA 510 note 1 ante.

8 Education Act 1996 s 402(2)(b).

9 For these purposes, 'assessment arrangements', in relation to a school maintained by a local education authority in England, has the same meaning as in the Education Act 2002 Pt 6 (ss 76-96) (as amended) (the curriculum in England: see PARA 916 ante) and, in relation to a school maintained by a local education authority in Wales, has the same meaning as in Pt 7 (ss 97-118) (as amended) (the curriculum in Wales: see PARA 929 ante): Education Act 1996 s 402(6)(aa) (added by the Education Act 2002 s 215(1), Sch 21 para 45). As to local education authorities see PARA 20 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

10 For these purposes, 'fourth key stage', in relation to a school maintained by a local education authority in England, has the same meaning as in the Education Act 2002 Pt 6 (as amended) (the curriculum in England: see PARA 918 ante) and, in relation to a school maintained by a local education authority in Wales, has the same meaning as in Pt 7 (as amended) (the curriculum in Wales: see PARA 931 ante): Education Act 1996 s 402(6)(aa) (as added: see note 9 supra).

11 Ibid s 402(2).

12 Ibid s 402(3). For the purposes of s 402(3), a syllabus for a prescribed public examination is to be regarded as corresponding to a syllabus for another prescribed public examination if the same course of study is provided at the school in preparation for both syllabuses: s 402(4).

13 *R (on the application of MB) v Independent Appeal Panel of S Metropolitan Borough Council* [2002] EWHC 1509 (Admin), [2002] ELR 676. As to the exclusion and reinstatement of pupils see PARA 562 et seq ante.

14 Education Act 1996 s 402(5).

## UPDATE

### **962-969 Constitution and membership of advisory councils ... Obligation to enter pupils for public examinations**

In relation to Wales, appointed day for repeal of Education Act 1996 s 410 is 1 August 2008: SI 2008/1728.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/970. National framework of qualifications.

## **970. National framework of qualifications.**

The Qualifications and Curriculum Authority<sup>1</sup> and the Qualifications, Curriculum and Assessment Authority for Wales<sup>2</sup> are responsible for establishing a national framework of qualifications. This national framework comprises three main types of qualifications. These are:

- 1760 (1) general qualifications, such as the General Certificate in Secondary Education ('GCSE') and Advanced level ('A' level), which are about a particular subject;
- 1761 (2) vocationally related qualifications, such as vocational A levels ('Advanced General National Vocational Qualifications', or 'Advanced GNVQs'), which give a broad introduction to a particular sector of the economy; and
- 1762 (3) occupational qualifications, such as National Vocational Qualifications ('NVQs'), which test the skills and knowledge needed to do a specific job.

The Authorities are responsible for setting out the standards that such qualifications must meet, and determining which qualifications are included in the national framework according to these standards.

The Authorities are responsible for ensuring that such qualifications are assessed properly by the awarding bodies. There are three unitary awarding bodies<sup>3</sup> who are responsible for specification development, production of examination papers, centre approval, awarding qualifications and ensuring standardisation of marking. The Authorities are responsible for ensuring that the awarding bodies are capable of delivering qualifications effectively and that the qualifications are of good quality. If satisfied as to the awarding bodies' capability and the quality of the qualifications, the Authorities will accredit those qualifications which will then be included within the national framework.

The Secretary of State and the National Assembly for Wales have power, acting on the advice of the Authorities, to approve external qualifications to be provided at schools, institutions and by employers<sup>4</sup>. In order for such external qualifications to be approved they must first have been accredited to the national framework by the Authorities<sup>5</sup>.

<sup>1</sup> As to the establishment and functions of the Qualifications and Curriculum Authority see PARAS 876-893 ante.

<sup>2</sup> As to the establishment and functions of the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 ante.

<sup>3</sup> The former awarding bodies have been consolidated to form three unitary awarding bodies known as: (1) the Assessment and Qualifications Alliance; (2) the Edexcel Foundation; and (3) Oxford, Cambridge and RSA Examinations.

The former awarding bodies (or examination boards) which are now part of the Assessment and Qualifications Alliance are the Associated Examining Board, the Joint Matriculation Board, the Northern Examinations and Assessment Board, the Northern Examining Association, the South East Regional Examinations Boards, the South Western Examinations Board, the Southern Examining Group, the Southern Regional Examinations Board, and the Southern Universities Joint Board.

The former awarding bodies which are now part of the Edexcel Foundation are the Business and Technical Education Council, the Business Education Council, the Technical Education Council, and the University of London Examinations and Assessment Council.

The former awarding bodies which are now part of Oxford, Cambridge and RSA Examinations are the East Midland Regional Examinations Board, the Midland Examining Group, the Oxford and Cambridge Schools Examination Board, the RSA Examinations Board, the University of Cambridge Local Examinations Syndicate, the University of Oxford Delegacy of Local Examinations and the West Midlands Examinations Board.

4 As to the approval of external qualifications see PARAS 974, 976 post.

5 As to the functions of the Qualifications and Curriculum Authority and the Qualifications, Curriculum and Assessment Authority for Wales in advising on the approval of external qualifications see PARAS 888, 906 ante.

## **UPDATE**

### **970 National framework of qualifications**

NOTE 2--The Qualifications, Curriculum and Assessment Authority for Wales has been abolished and its functions, property and staff transferred to the National Assembly for Wales: see Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239; and PARA 894 et seq.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/971. Meaning of 'external qualification'.

### **971. Meaning of 'external qualification'.**

An external qualification is a qualification awarded or authenticated by an outside person, other than a qualification resulting from:

- 1763 (1) a course for the further training of teachers<sup>1</sup> or youth and community workers<sup>2</sup>;
- 1764 (2) a post-graduate course, including a higher degree course<sup>3</sup>;
- 1765 (3) a first degree course<sup>4</sup>;
- 1766 (4) a course for the Diploma of Higher Education<sup>5</sup>;
- 1767 (5) a course for the Certificate in Education<sup>6</sup>.

In relation to persons under 19, a qualification is awarded by an outside person if it is awarded by a person other than the school or institution or employer<sup>7</sup>, or a member of the staff of the school or institution or employer<sup>8</sup>. In relation to persons over 19, a qualification is awarded by an outside person if it is awarded by a person other than the institution or employer or a member of its or his staff<sup>9</sup>. In relation to persons under 19, a qualification is authenticated by an outside person if it is awarded by the school or institution or employer and is authenticated by a person other than the school or institution or employer<sup>10</sup>, or a member of the staff of the school or institution or employer<sup>11</sup>. In relation to persons over 19, a qualification is authenticated by an outside person if it is awarded by the institution or employer and is authenticated by a person other than the institution or employer or a member of its or his staff<sup>12</sup>.

1 As to the training of teachers see PARA 784 et seq ante.

2 Learning and Skills Act 2000 ss 96(5)(a), 97(4)(a).

3 Ibid ss 96(5)(b), 97(4)(b). As to higher education see PARA 646 et seq ante.

4 Ibid ss 96(5)(c), 97(4)(c).

5 Ibid ss 96(5)(d), 97(4)(d).

6 Ibid ss 96(5)(e), 97(4)(e).

7 Ibid s 96(6)(a).

8 Ibid s 96(6)(b).

9 Ibid s 97(5).

10 Ibid s 96(7)(a).

11 Ibid s 96(7)(b).

12 Ibid s 97(6).

### **UPDATE**

### **971 Meaning of 'external qualification'**



TEXT AND NOTES--Learning and Skills Act 2000 s 96(5)-(7) substituted: see PARA 972.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/972. Courses of education or training for persons under 19.

## **972. Courses of education or training for persons under 19.**

In relation to a course<sup>1</sup> of education or training:

- 1768 (1) which is provided, or proposed to be provided, by or on behalf of a school or institution or employer<sup>2</sup>;
- 1769 (2) which leads to an external qualification<sup>3</sup>; and
- 1770 (3) which is provided, or proposed to be provided, for pupils who are of compulsory school age<sup>4</sup> or for pupils who are above that age but have not attained the age of 19<sup>5</sup>,

unless the external qualification is approved<sup>6</sup>, the course must not be funded by an authorised body<sup>7</sup>, or provided by or on behalf of a maintained school<sup>8</sup>.

<sup>1</sup> The course may be one of two or more components leading to the same qualification: Learning and Skills Act 2000 s 96(4).

<sup>2</sup> Ibid s 96(1)(a).

<sup>3</sup> Ibid s 96(1)(b).

<sup>4</sup> As to the meaning of 'compulsory school age' under the Education Act 1996 see PARA 15 ante.

<sup>5</sup> Learning and Skills Act 2000 s 96(1)(c).

<sup>6</sup> ie approved under ibid s 98 in relation to England (see PARA 974 post) or s 99 in relation to Wales (see PARA 976 post).

<sup>7</sup> Ibid s 96(2)(a). In relation to England, the following are authorised bodies: (1) the Learning and Skills Council for England; (2) a local education authority; (3) a body specified by order by the Secretary of State for the purposes of s 100: s 100(1). In relation to Wales, the following are authorised bodies: (a) the National Council for Education and Training for Wales (s 100(2)(a)); (b) a local education authority (s 100(2)(b)); (c) a body specified by order by the National Assembly for Wales for the purposes of s 100 (s 100(2)(c)). At the date at which this volume states the law, no orders had been made under s 100. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the Learning and Skills Council for England see PARA 1072 et seq post. As to the National Council for Education and Training for Wales see PARA 1113 et seq post. As to the Secretary of State see PARA 52 ante. As to the National Assembly for Wales see PARA 53 ante. As to local education authorities see PARA 20 ante.

Any power to make an order or regulations under the Learning and Skills Act 2000 must be exercised by statutory instrument: s 152(1). A statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament if the instrument contains an order or regulations made by the Secretary of State under any provision of that Act: s 152(2). An order or regulations under that Act may make different provision for different purposes: s 152(5). An order or regulations under that Act may also contain such incidental, supplementary, saving or transitional provisions as the person making the order or regulations thinks fit: s 152(6).

<sup>8</sup> Ibid s 96(2)(b). For these purposes, 'maintained school' means a community, foundation or voluntary school or a community or foundation special school: s 96(8). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 post. In relation to a maintained school, the local education authority and the governing body must carry out their functions with a view to securing that s 96(2)(b) is not contravened: s 96(3).

As to the enforcement of s 96 in relation to England see PARA 975 post; and as to the enforcement of s 96 in relation to Wales see PARA 977 post.

**UPDATE****972 Courses of education or training for persons under 19**

TEXT AND NOTES--References to 'an external qualification' are now to 'a relevant qualification': Learning and Skills Act 2000 s 96(1)(b), (2) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 27(2), (3)). 'A relevant qualification' (1) in relation to England, means a qualification to which the 2009 Act Pt 7 (ss 127-174) applies; and (2) in relation to Wales, has the same meaning as in Education Act 1997 s 30 (PARA 906): Learning and Skills Act 2000 s 96(5) (substituted by Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 27(4)).

NOTE 7--Now head (a) the National Assembly for Wales: Learning and Skills Act 2000 s 100(2)(a) (substituted by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238). Learning and Skills Act 2000 s 152(2A), (2B) added: Further Education and Training Act 2007 Sch 1 para 15.

Learning and Skills Act 2000 s 152(2A) amended and s 152(2C), (2D) added: Education and Skills Act 2008 s 86(5)-(7). Learning and Skills Act 2000 s 100(1), (2) amended: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 46.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/973. Courses of education or training for persons over 19.

### **973. Courses of education or training for persons over 19.**

If an institution or employer receives financial resources from an authorised body<sup>1</sup>, and provides for persons who have attained the age of 19 a course<sup>2</sup> of education or training which leads to an external qualification<sup>3</sup>, the authorised body must carry out its functions with a view to securing that, unless the external qualification is approved<sup>4</sup>, the institution or employer does not make a payment which:

- 1771 (1) is a payment in respect of the qualification<sup>5</sup>;
- 1772 (2) is made to the outside person who awards or authenticates the qualification<sup>6</sup>; and
- 1773 (3) can reasonably be said to consist of or come from the financial resources received from the authorised body, or those resources and others<sup>7</sup>.

1 Learning and Skills Act 2000 s 97(1)(a). For the meaning of 'authorised body' see PARA 972 note 7 ante.

2 The course may be one of two or more components leading to the same qualification: ibid s 97(3).

3 Ibid s 97(1)(b). For the meaning of 'external qualification' see PARA 971 ante.

4 Ie approved under ibid s 98 in relation to England (see PARA 974 post) or s 99 in relation to Wales (see PARA 976 post).

5 Ibid s 97(2)(a). A payment in respect of a qualification includes a payment in respect of: (1) devising, administering, verifying or certifying the qualification; (2) setting or moderating examinations for the purposes of the qualification; and (3) registering, assessing or examining candidates: s 97(7).

6 Ibid s 97(2)(b).

7 Ibid s 97(2)(c). As to the enforcement of s 97 in relation to England see PARA 975 post; and as to the enforcement of s 97 in relation to Wales see PARA 977 post.

### **UPDATE**

### **973 Courses of education or training for persons over 19**

TEXT AND NOTES--Learning and Skills Act 2000 s 97 repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 43, Sch 16 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/974. Approved qualifications in England.

#### **974. Approved qualifications in England.**

A qualification is approved at a given time if: (1) it is then approved by the Secretary of State<sup>1</sup>; or (2) it is then approved by a body then designated by him for these purposes<sup>2</sup>. If the Secretary of State asks the Qualifications and Curriculum Authority<sup>3</sup> to do so, it must advise him on any approval under head (1) above<sup>4</sup> he proposes to give<sup>5</sup>. If a designated body asks the Qualifications and Curriculum Authority to do so, it must advise the body on any approval under head (2) above<sup>6</sup> the body proposes to give<sup>7</sup>. Approval may be given generally or in relation to particular cases<sup>8</sup>. An approval given by a designated body is ineffective unless the Secretary of State consents to the approval<sup>9</sup>. The Secretary of State may at any time revoke a designation<sup>10</sup>, or an approval given by him<sup>11</sup>, or an approval given by a designated body<sup>12</sup>. A designated body may also at any time revoke an approval given by it<sup>13</sup>.

1 Learning and Skills Act 2000 s 98(2)(a). Section 98 has effect for the purposes of s 96 (see PARA 972 ante) and s 97 (see PARA 973 ante) in their application to England: s 98(1). For the meaning of 'England' see PARA 52 note 11 ante. As to the Secretary of State see PARA 52 ante.

2 Ibid s 98(2)(b).

3 As to the Qualifications and Curriculum Authority see PARAS 876-893 ante.

4 Ie under the Learning and Skills Act 2000 s 98(2)(a): see the text to note 1 supra.

5 Ibid s 98(7).

6 Ie under ibid s 98(2)(b): see the text to note 2 supra.

7 Ibid s 98(8).

8 Ibid s 98(3).

9 Ibid s 98(4).

10 Ibid s 98(5)(a).

11 Ibid s 98(5)(b).

12 Ibid s 98(5)(c).

13 Ibid s 98(6).

#### **UPDATE**

#### **974 Approved qualifications in England**

TEXT AND NOTES 1-7--References to the Qualifications and Curriculum Authority are now to the Qualifications and Curriculum Development Agency (PARA 876B) or the Young People's Learning Agency for England (PARA 27A): Learning and Skills Act 2000 s 98(7), (8) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 28(3)). See also Learning and Skills Act 2000 s 98(2B), (2C) (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 28(2)).

NOTE 1--Reference to 2000 Act s 97 omitted: Learning and Skills Act 2000 s 98(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 44).

TEXT AND NOTES 2, 9--Learning and Skills Act 2000 s 98(4) repealed: Education and Skills Act 2008 s 159(3), Sch 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/975. Enforcement in England.

## **975. Enforcement in England.**

In relation to England<sup>1</sup>, if the Secretary of State<sup>2</sup> is satisfied that:

- 1774 (1) a local education authority<sup>3</sup> or specified body<sup>4</sup> has failed to comply with the provision prohibiting it from funding a course where the external qualification has not been approved<sup>5</sup>, or is proposing to do so<sup>6</sup>;
- 1775 (2) a local education authority or governing body has failed to comply with the provision requiring it to carry out its functions with a view to securing that a course where the external qualification has not been approved is not provided by or on behalf of a maintained school<sup>7</sup>, or is proposing to do so<sup>8</sup>; or
- 1776 (3) a local education authority or specified body has failed to comply with the provision prohibiting it from making payments where the external qualification has not been approved<sup>9</sup>, or is proposing to do so<sup>10</sup>,

the Secretary of State may give such directions to the authority or body as he thinks fit<sup>11</sup>. An authority or body must comply with any such directions given to it<sup>12</sup>.

1 For the meaning of 'England' see PARA 52 note 11 ante.

2 Ie for the purposes of the Learning and Skills Act 2000 ss 96-97 (see PARAS 972-973 ante) in their application to England: s 101(1). As to the Secretary of State see PARA 52 ante.

3 As to local education authorities see PARA 20 ante.

4 A specified body is a body specified under the Learning and Skills Act 2000 s 100(1)(c) (see PARA 972 note 7 ante): s 101(4).

5 Ie ibid s 96(2)(a): see PARA 972 ante.

6 Ibid s 101(1)(a).

7 Ie ibid s 96(3): see PARA 972 ante.

8 Ibid s 101(1)(b).

9 Ie ibid s 97(2): see PARA 973 ante.

10 Ibid s 101(1)(c).

11 Ibid s 101(2).

12 Ibid s 101(3).

## **UPDATE**

### **975 Enforcement in England**

TEXT AND NOTES 2, 9, 10--Head (3) and references to 2000 Act s 97 omitted: Learning and Skills Act 2000 s 101(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 47, Sch 16 Pt 2).





Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/976. Approved qualifications in Wales.

## **976. Approved qualifications in Wales.**

A qualification is approved at a given time if: (1) it is then approved by the National Assembly for Wales<sup>1</sup>; or (2) it is then approved by a body then designated by the Assembly for these purposes<sup>2</sup>. If the Assembly asks the Qualifications, Curriculum and Assessment Authority for Wales<sup>3</sup> to do so, it must advise the Assembly on any approval under head (1) above<sup>4</sup> the Assembly proposes to give<sup>5</sup>. If a designated body asks the Qualifications, Curriculum and Assessment Authority for Wales to do so, it must advise the body on any approval under head (2) above<sup>6</sup> the body proposes to give<sup>7</sup>. Approval may be given generally or in relation to particular cases<sup>8</sup>. An approval given by a designated body is ineffective unless the Assembly consents to the approval<sup>9</sup>. The Assembly may at any time revoke a designation<sup>10</sup>, or an approval, whether given by the Assembly<sup>11</sup> or by a designated body<sup>12</sup>. A designated body may also at any time revoke an approval given by it<sup>13</sup>.

1 Learning and Skills Act 2000 s 99(2)(a). Section 99 has effect for the purposes of s 96 (see PARAS 971-972 ante) and s 97 (see PARAS 971, 973 ante) in their application to Wales: s 99(1). For the meaning of 'Wales' see PARA 52 note 13 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Ibid s 99(2)(b).

3 As to the Qualifications, Curriculum and Assessment Authority for Wales see PARAS 894-911 ante. On 1 April 2006, all the functions of the Qualifications, Curriculum and Assessment Authority for Wales are transferred to the National Assembly for Wales: see PARA 875 note 4 ante.

4 Ie under the Learning and Skills Act 2000 s 99(2)(a): see the text to note 1 supra.

5 Ibid s 99(7).

6 Ie under ibid s 99(2)(b): see the text to note 2 supra.

7 Ibid s 99(8).

8 Ibid s 99(3).

9 Ibid s 99(4).

10 Ibid s 99(5)(a).

11 Ibid s 99(5)(b).

12 Ibid s 99(5)(c).

13 Ibid s 99(6).

## **UPDATE**

## **976 Approved qualifications in Wales**

NOTE 1--Reference to 2000 Act s 97 omitted: Learning and Skills Act 2000 s 99(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 45(2)).

TEXT AND NOTES 2, 9--Learning and Skills Act 2000 s 99(4) repealed: Education and Skills Act 2008 s 160(3), Sch 2 (not yet in force).

TEXT AND NOTES 3-7--2000 Act s 99(7), (8) repealed: Qualifications, Curriculum and Assessment Authority for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3239.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/6. CURRICULUM, ASSESSMENT AND EXTERNAL QUALIFICATIONS/(3) EXTERNAL QUALIFICATIONS/977. Enforcement in Wales.

### **977. Enforcement in Wales.**

In relation to Wales<sup>1</sup>, if the National Assembly for Wales<sup>2</sup> is satisfied that:

- 1777 (1) a local education authority<sup>3</sup> or specified body<sup>4</sup> has failed to comply with the provision prohibiting it from funding a course where the external qualification has not been approved<sup>5</sup>, or is proposing to do so<sup>6</sup>;
- 1778 (2) a local education authority or governing body has failed to comply with the provision requiring it to carry out its functions with a view to securing that a course where the external qualification has not been approved is not provided by or on behalf of a maintained school<sup>7</sup>, or is proposing to do so<sup>8</sup>; or
- 1779 (3) a local education authority or specified body has failed to comply with the provision prohibiting it from making payments where the external qualification has not been approved<sup>9</sup>, or is proposing to do so<sup>10</sup>,

the Assembly may give such directions to the authority or body as it thinks fit<sup>11</sup>. An authority or body must comply with any such directions given to it<sup>12</sup>.

1 For the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie for the purposes of the Learning and Skills Act 2000 ss 96, 97 (see PARAS 971-973 ante) in their application to Wales: s 102(1). As to the National Assembly for Wales see PARA 53 ante.

3 As to local education authorities see PARA 20 ante.

4 A specified body is a body specified under the Learning and Skills Act 2000 s 100(2)(c) (see PARA 972 note 7 ante): s 102(4).

5 Ie ibid s 96(2)(a): see PARA 972 ante.

6 Ibid s 102(1)(a).

7 Ie ibid s 96(3): see PARA 972 ante.

8 Ibid s 102(1)(b).

9 Ie ibid s 97(2): see PARA 973 ante.

10 Ibid s 102(1)(c).

11 Ibid s 102(2).

12 Ibid s 102(3).

### **UPDATE**

### **977 Enforcement in Wales**

TEXT AND NOTES 2, 9, 10--Head (3) and references to 2000 Act s 97 omitted: Learning and Skills Act 2000 s 102(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 48, Sch 16 Pt 2).



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#### **(4) SCHOOL PERFORMANCE TARGETS**

##### **978. School performance targets for performance of pupils.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make such provision as he considers appropriate for requiring the governing bodies of maintained schools<sup>3</sup> to secure that annual targets are set in respect of the performance of pupils<sup>4</sup>:

- 1780 (1) in public examinations<sup>5</sup> or in assessments for the purposes of the National Curriculum<sup>6</sup>, in the case of pupils of compulsory school age<sup>7</sup>; or
- 1781 (2) in public examinations or in connection with the attainment of other external qualifications<sup>8</sup>, in the case of pupils of any age over that age<sup>9</sup>.

Such regulations may require such targets<sup>10</sup>, and the past performance of pupils in the particular examinations or assessments, or in connection with the attainment of the particular qualifications, to which such targets relate<sup>11</sup>, to be published in such manner as is specified in the regulations<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made by the Secretary of State under the Education Act 1997: s 56(1). As to the making of regulations under the Education Act 1997 generally see PARA 888 note 16 ante. As to the regulations made under s 19 see the Education (School Performance Targets) (Wales) Regulations 1998, SI 1998/2196; the Education (School Performance and Unauthorised Absence Targets) (Wales) Regulations 1999, SI 1999/1811 (amended by SI 2004/2914; SI 2005/1396); and the Education (School Performance Targets) (England) Regulations 2004, SI 2004/2858 (amended by SI 2004/3323; SI 2005/2449).

3 For these purposes, 'maintained school' means a community, foundation or voluntary school, or a community or foundation special school, other than one established in a hospital: Education Act 1997 s 19(3) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 213). As to the governing bodies of maintained schools see PARA 203 et seq ante.

4 Education Act 1997 s 19(1). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 56(2). As to the targets set in respect of pupils, and the prohibition on the revision of such targets, see the Education (School Performance and Unauthorised Absence Targets) (Wales) Regulations 1999, SI 1999/1811, regs 4-6, 8, Sch 1 (reg 4 amended by SI 2004/2914; and the Education (School Performance and Unauthorised Absence Targets) (Wales) Regulations 1999, SI 1999/1811, reg 5 amended by SI 2005/1396); and the Education (School Performance Targets) (England) Regulations 2004, SI 2004/2858, regs 3-7 (reg 4 amended by SI 2004/3323; and the Education (School Performance Targets) (England) Regulations 2004, SI 2004/2858, regs 3-5 amended, and reg 7 substituted, by SI 2005/2449). As to unauthorised absence targets in relation to Wales see the Education (School Performance and Unauthorised Absence Targets) (Wales) Regulations 1999, SI 1999/1811, reg 7.

5 As to the obligation to enter pupils for examinations see PARA 969 ante.

6 As to the National Curriculum for England see PARA 916 et seq ante; and as to the National Curriculum for Wales see PARA 929 et seq ante.

7 Education Act 1997 s 19(1)(a). As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 56(2).

8 As to external qualifications see PARAS 969-977 ante.

9 Education Act 1997 s 19(1)(b).

10 Ibid s 19(2)(a).

11 Ibid s 19(2)(b).

12 Ibid s 19(2). As to the provision of information on performance targets to local education authorities in England see the Education (School Performance Targets) (England) Regulations 2004, SI 2004/2858, reg 8. As to the publication of performance information in Wales see the Education (School Performance and Unauthorised Absence Targets) (Wales) Regulations 1999, SI 1999/1811, reg 9, Schs 1-2 (reg 9 amended by SI 2004/2914; SI 2005/1396).

## **UPDATE**

### **978 School performance targets for performance of pupils**

NOTE 2--SI 1999/1811 further amended: SI 2006/125.

NOTE 4--SI 1999/1811 regs 7, 8 substituted: SI 2006/125. SI 2004/2858 reg 2 amended: SI 2007/2975, SI 2008/3086. SI 2004/2858 reg 3 further amended: SI 2007/2975. SI 2004/2858 reg 4 revoked: SI 2008/3086. SI 2004/2858 reg 5 further amended: SI 2006/3151, SI 2007/2975, SI 2008/3086, SI 2009/1596. SI 2004/2858 reg 6 amended: SI 2008/3086.

NOTE 12--SI 1999/1811 reg 9 further amended, Sch 2 amended: SI 2006/125.

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## **(5) PROVISION OF INFORMATION**

### **979. Provision of information.**

Regulations<sup>1</sup> may require, in relation to every maintained school<sup>2</sup>, the local education authority<sup>3</sup>, the governing body<sup>4</sup> or the head teacher<sup>5</sup> to make available either generally or to prescribed<sup>6</sup> persons, in such form and manner and at such times as may be prescribed such information<sup>7</sup> as may be prescribed<sup>8</sup>. This may include information as to:

- 1782 (1) the curriculum for maintained schools<sup>9</sup>;
- 1783 (2) the educational provision made by the school for pupils<sup>10</sup> at the school and any syllabuses to be followed by those pupils<sup>11</sup>;
- 1784 (3) the educational achievements of pupils at the school, including the results of any assessments<sup>12</sup> of those pupils<sup>13</sup> for the purpose of ascertaining those achievements<sup>14</sup>;
- 1785 (4) the educational achievements of such classes or descriptions of pupils as may be prescribed, including results of the kind mentioned in head (3) above<sup>15</sup>; and
- 1786 (5) arrangements relating to external qualifications<sup>16</sup> and courses leading to such qualifications<sup>17</sup>.

Before making any such regulations, the Secretary of State must consult any persons with whom consultation appears to him to be desirable<sup>18</sup>.

The regulations must not require information as to the results of an individual pupil's assessment<sup>19</sup> to be made available to any persons other than<sup>20</sup>:

- 1787 (a) the parents<sup>21</sup> of the pupil concerned<sup>22</sup>;
- 1788 (b) the pupil concerned<sup>23</sup>;
- 1789 (c) in the case of a pupil who has transferred to a different school, the head teacher of that school<sup>24</sup>;
- 1790 (d) the governing body of the school<sup>25</sup>; or
- 1791 (e) the local education authority<sup>26</sup>.

The regulations must not require such information to be made available to the governing body, the head teacher or the local education authority except where relevant for the purposes of the performance of any of their functions<sup>27</sup>.

Such regulations may authorise local education authorities, governing bodies and head teachers to make a charge, not exceeding the cost of supply, for any documents supplied by them in pursuance of the regulations<sup>28</sup>.

In relation to any maintained school, the local education authority and the governing body must exercise their functions with a view to securing that the head teacher complies with any regulations so made<sup>29</sup>.

<sup>1</sup> 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of

regulations generally under the Education Act 1996 see PARA 40 note 5 ante. As to the regulations made under s 408 (as amended) see the Education (School Information) (Wales) Regulations 1999, SI 1999/1812 (amended by SI 2001/1111; SI 2001/3710; SI 2002/1400; SI 2004/1736; SI 2004/2914; SI 2005/1396); the Education (School Performance Information) (England) Regulations 2001, SI 2001/3446 (amended by SI 2002/2017; SI 2002/3178; SI 2003/537; SI 2003/2135; SI 2004/2141; SI 2005/51; SI 2005/2338); the Education (School Information) (England) Regulations 2002, SI 2002/2897 (amended by SI 2005/845; SI 2005/2039; SI 2005/2152); the Education (School Performance Information) (Wales) Regulations 2004, SI 2004/1025 (amended by SI 2004/2914; SI 2005/1396); the Education (Pupil Information) (Wales) Regulations 2004, SI 2004/1026 (amended SI 2004/2914; SI 2005/1396); and the Education (Pupil Information) (England) Regulations 2005, SI 2005/1437. By virtue of the Education Act 1996 s 582(3), Sch 39 para 1, the following regulations have effect as if made under s 408 (as amended): the Education (School Curriculum and Related Information) Regulations 1989, SI 1989/954 (amended by SI 1989/1136; SI 1990/1109; SI 1991/1278; SI 1991/1582; SI 1992/1089; SI 1992/1296; SI 2003/2694); and the Education (Pupils' Attendance Records) Regulations 1991, SI 1991/1582.

2 For the purposes of the Education Act 1996 s 408 (as amended), 'maintained school' includes a maintained nursery school: s 408(9) (added by the Education Act 2002 s 215(1), Sch 21 para 46(1), (6)). The Education Act 1996 s 408(9) (as added) comes into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, that day is 1 September 2003 (see the Education Act 2002 (Commencement No 6 and Transitional and Saving Provisions) Order 2003, SI 2003/1667, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. In relation to Wales, nothing in the Education Act 1996 Pt V (ss 375-410) (as amended) applies in relation to a nursery school or in relation to a nursery class in a primary school: s 410. Section 410 is repealed by the Education Act 2002 ss 205, 215(2), Sch 22 Pt 3 as from a day to be appointed under s 216(4). In relation to England, the appointed day is 1 October 2002 (see the Education Act 2002 (Commencement No 2 and Savings and Transitional Provisions) Order 2002, SI 2002/2439, art 3) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to nursery schools see PARA 81 ante. As to the meaning of 'primary school' see PARA 81 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the governing bodies of maintained schools see PARA 203 et seq ante. As to the power of the Secretary of State to require information from governing bodies and proprietors of schools see the Education Act 1996 s 537 (as amended); *R v Secretary of State for Education and Employment, ex p Governing Body of West Horndon County Primary School and the National Association of Head Teachers* [1997] ELR 350; and PARA 60 ante.

5 As to the meaning of 'head teacher' see PARA 93 note 13 ante.

6 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1). See note 1 supra.

7 Ie including information as to the matters mentioned in heads (1)-(5) in the text, relevant for the purposes of any of the relevant provisions of ibid Pt V (as amended) (see PARA 942 et seq ante) or the Education Act 1997 Pt V (ss 21-36) (as amended) (see PARA 876 et seq ante) or the Learning and Skills Act 2000 s 96 (external qualifications for persons under 19: see PARA 972 ante) or the relevant provisions of the Education Act 2002: Education Act 1996 s 408(1)(a) (amended by the Education Act 1997 s 57(1), Sch 7 para 30(a); the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 57(1), (2); and the Education Act 2002 s 215(1), Sch 21 para 46(1), (2)). The relevant provisions of the Education Act 1996 Pt V (as amended) are: ss 390-392 (as amended) (constitution of standing advisory councils on religious education: see PARA 962 ante); ss 394-396 (as amended) (determinations by standing advisory councils: see PARAS 964-966 ante); s 398 (as amended) (no requirement of attendance at Sunday School: see PARA 968 ante); s 405 (exemption from sex education: see PARA 944 ante); and s 409 (as amended) (complaints and enforcement: see PARA 36 ante); s 408(4) (amended by the Education Act 1997 s 57(1), (4), Sch 7 para 30(b), Sch 8; the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 106(d), Sch 31; and the Education Act 2002 s 215, Sch 21 para 46(1), (3), Sch 22 Pt 3). The relevant provisions of the Education Act 2002 are: Pt 6 (ss 76-96) (as amended) (the curriculum in England: see PARA 913 et seq ante); and ss 97-117 (as amended) (the curriculum in Wales: see PARA 926 et seq ante); Education Act 1996 s 408(4A) (added by the Education Act 2002 Sch 21 para 46(1), (4)).

8 Education Act 1996 s 408(1) (amended by the School Standards and Framework Act 1998 Sch 30 para 106(a), Sch 31).

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 408 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (aa). For the meaning of 'England' see PARA 52 note 11 ante.

9 Education Act 1996 s 408(2)(a). As to the school curriculum in relation to England see PARAS 913-915 ante; and as to the school curriculum in relation to Wales see PARAS 926-928 ante.



- 10 For the meaning of 'pupil' see PARA 16 note 4 ante.
- 11 Education Act 1996 s 408(2)(b).
- 12 For the meaning of 'assessment' for the purposes of the Education Act 2002 Pt 6 (as amended) see PARA 916 note 4 ante.
- 13 Ie whether under the Education Act 1996 Pt V (as amended) (see PARA 942 et seq ante) or otherwise: see s 408(2)(c).
- 14 Ibid s 408(2)(c).
- 15 Ibid s 408(2)(d) (amended by the School Standards and Framework Act 1998 Sch 30 para 106(b)).
- 16 For the meaning of 'external qualifications' see PARA 971 ante; definition applied by the Education Act 1996 s 408(2)(e) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 57(1), (3)). The Education Act 1996 s 408(2)(e) (as added) comes into force as from a day to be appointed under the Learning and Skills Act 2000 s 154(3), (4). At the date at which this volume states the law, no such day had been appointed.
- 17 Education Act 1996 s 408(2)(e) (prospectively added: see note 16 supra).
- 18 Ibid s 408(5).
- 19 Ie whether under the Education Act 2002 Pt 6 (as amended) (the curriculum in England: see PARA 913 et seq ante) or Pt 7 (ss 97-118) (as amended) (the curriculum in Wales: see PARA 926 et seq ante) or otherwise: Education Act 1996 s 408(6) (amended by the Education Act 2002 Sch 21 para 46(1), (5)).
- 20 Education Act 1996 s 408(6) (as amended: see note 19 supra).
- 21 As to the meaning of 'parent' see PARA 510 note 1 ante.
- 22 Education Act 1996 s 408(6)(a).
- 23 Ibid s 408(6)(b).
- 24 Ibid s 408(6)(c).
- 25 Ibid s 408(6)(d).
- 26 Ibid s 408(6)(e).
- 27 Ibid s 408(6). As to the meaning of 'functions' see PARA 14 note 5 ante.
- 28 Ibid s 408(7).
- 29 Ibid s 408(8).

## UPDATE

### 979 Provision of information

NOTES--As to the exercise of the Secretary of State's powers under the Education Act 1996 s 408, in relation to securing the provision of special needs information, see PARA 1021A.

NOTE 1--SI 1999/1812 further amended: see PARA 60 NOTE 9. SI 2001/3446 replaced: Education (School Performance Information) (England) Regulations 2007, SI 2007/2324 (amended by SI 2008/364, SI 2008/1727, SI 2009/646; modified by SI 2007/2979). SI 2002/2897 replaced: School Information (England) Regulations 2008, SI 2008/3093. SI 2004/1025 further amended: SI 2005/3239, SI 2007/3564. SI 2004/1026 further amended: SI 2005/3239, SI 2007/3563. SI 2005/1437 amended: SI 2007/3224, SI 2008/1747.

NOTE 2--In relation to Wales, appointed day is 1 August 2008: SI 2008/1728.

NOTE 7--Education Act 1996 s 408(4) amended to delete reference to s 409 (repealed): Apprenticeships, Skills, Children and Learning Act 2009 s 223(1)(a), Sch 16 Pt 7 (in force in part: see SI 2010/303, SI 2010/1151). Education Act 1996 s 408(1)(a) amended to add information relevant for the purposes of the Apprenticeships, Skills, Children and Learning Act 2009 Pts 7 (ss 127-174), 8 (ss 175-192): Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 11(2).

TEXT AND NOTES 16, 17--Head (5). For 'external qualification' read 'relevant qualification': Education Act 1996 s 408(2)(e) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 11(3)).

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## **(6) FUNDING OF LIFELONG LEARNING**

### **980. Individual Learning Accounts.**

The Individual Learning Account scheme was devised in order to encourage lifelong learning by providing financial support for education and training<sup>1</sup>. Although the scheme applies to both England and Wales, the scheme has not operated in England since 2001 and it now operates in Wales as Individual Learning Accounts Wales<sup>2</sup>.

Individual Learning Accounts take the form of 'qualifying accounts'<sup>3</sup> or 'qualifying arrangements'<sup>4</sup>. In addition, the National Assembly for Wales may authorise grants to be paid to or in respect of persons in connection with their education or training<sup>5</sup>.

1 See the Learning and Skills Act 2000 ss 104-109; and PARAS 981-983 post.

The Individual Learning Account system allows persons over the age of 18 to register with a central provider in order to qualify for financial assistance. After registration, various discounts on the cost of learning are available, including discounts in relation to course fees, course registration, examination fees and other associated costs, provided that they are part of the course fees claimed by the learning provider.

2 Individual Learning Accounts Wales began operating on 21 July 2003.

3 Ie under the Learning and Skills Act 2000 s 104: see PARA 981 post.

4 Ie under ibid s 105: see PARA 982 post.

5 As to the payment of such grants see ibid ss 108-109; and PARA 983 post.

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### **981. Qualifying accounts.**

In order to be a 'qualifying account', the account must satisfy the conditions specified by the Secretary of State<sup>1</sup> in regulations<sup>2</sup> (or satisfy them at the time concerned)<sup>3</sup>. Conditions which may be included are conditions:

- 1792 (1) as to the description of individual who may hold an account<sup>4</sup>;
- 1793 (2) as to the description of institution with which an account may be held<sup>5</sup>;
- 1794 (3) requiring an account not to be a joint one, or not to be held on behalf of a person other than the holder, or not to be held with another account of a specified description, or not to be connected with another account<sup>6</sup>;
- 1795 (4) requiring an account to be identified by a specified name<sup>7</sup>.

Conditions as to the description of institution with which an account may be held may themselves specify the description or may allow the Secretary of State to specify it in a way he thinks fit<sup>8</sup>. The regulations may provide that a specification of a description of institution with which an account may be held may include a requirement for institutions to have the benefit of approvals which have been given by the Secretary of State and not withdrawn<sup>9</sup>. The regulations may contain provision securing that an individual may not simultaneously hold more than one account which qualifies<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. The Individual Learning Account scheme now operates only in Wales: see PARA 980 ante.

2 In regulations made under the Learning and Skills Act 2000 s 104. At the date at which this volume states the law, no such regulations had been made. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.

3 See *ibid* s 104(1)-(2).

4 *Ibid* s 104(3)(a).

5 *Ibid* s 104(3)(b).

6 *Ibid* s 104(3)(c).

7 *Ibid* s 104(3)(d).

8 *Ibid* s 104(4).

9 *Ibid* s 104(5).

10 *Ibid* s 104(6).

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## **982. Qualifying arrangements.**

In order to be 'qualifying arrangements', the arrangements must satisfy the conditions specified by the Secretary of State<sup>1</sup> in regulations<sup>2</sup> (or to satisfy them at the time concerned)<sup>3</sup>. Conditions which may be included are conditions:

- 1796 (1) as to the description of individual who may enter into arrangements<sup>4</sup>;
- 1797 (2) as to the description of body with which arrangements may be made<sup>5</sup>;
- 1798 (3) as to the nature of the arrangements and the way they are to be made<sup>6</sup>;
- 1799 (4) requiring the arrangements to be identified by a specified name<sup>7</sup>.

Conditions as to the description of body with which arrangements may be made may themselves specify the description or may allow the Secretary of State to specify it in a way he thinks fit<sup>8</sup>. The regulations may provide that a specification of a description of body with which arrangements may be made may include a requirement for bodies to have the benefit of approvals which have been given by the Secretary of State and not withdrawn<sup>9</sup>.

The Secretary of State, or a person designated by him, may make arrangements with a body in connection with the making by that body of qualifying arrangements<sup>10</sup>. These further arrangements may include provision for the remuneration of a body and the payment of its expenses<sup>11</sup>. Such arrangements may include provision for a person designated by the Secretary of State to carry out on his behalf such of his functions under the arrangements as he specifies<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. The Individual Learning Account scheme now operates only in Wales: see PARA 980 ante.

2 See the Individual Learning Accounts Wales Regulations 2003, SI 2003/918, regs 1-5, 10, Schedule (regs 1, 4 amended, and Schedule added, by SI 2005/1722). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. The Individual Learning Accounts (England) Regulations 2000, SI 2000/2146, have also been made under the Learning and Skills Act 2000 s 105 but the Individual Learning Account scheme no longer operates in England: see PARA 980 ante.

3 See the Learning and Skills Act 2000 s 105(1), (2). As to corresponding provision in relation to Northern Ireland see ss 106, 107(5), (6).

4 Ibid s 105(3)(a).

5 Ibid s 105(3)(b).

6 Ibid s 105(3)(c).

7 Ibid s 105(3)(d).

8 Ibid s 105(4).

9 Ibid s 105(5). The regulations may contain provision securing that an individual may not simultaneously be a party to more than one set of arrangements which qualify under s 105 (see the text and notes 1-8 supra), or be a party to arrangements which qualify under s 105 and to arrangements falling within s 105(7): s 105(6). Arrangements fall within s 105(7) if they are arrangements which qualify under such provision of the law of Scotland as in the opinion of the Secretary of State corresponds to s 105, or arrangements which qualify under s 106 (see note 3 supra): s 105(7).

10 Ibid s 107(1). The Secretary of State may pay to a person designated by him under s 107(1) remuneration or amounts to meet the person's expenses: s 107(4).

11 Ibid s 107(2).

12 Ibid s 107(3). The Secretary of State may pay to a person designated by him under s 107(3) remuneration or amounts to meet the person's expenses: s 107(4).

## **UPDATE**

### **982 Qualifying arrangements**

NOTE 2--SI 2003/918 reg 1 further amended: SI 2005/3238. SI 2003/918 Schedule amended: SI 2008/1879.

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### 983. Grants.

The Secretary of State<sup>1</sup> may make regulations authorising grants to be paid to or in respect of individuals in connection with their education or training<sup>2</sup>. The regulations must provide that grants may be paid only to or in respect of individuals who:

- 1800 (1) hold qualifying accounts<sup>3</sup>;
- 1801 (2) are parties to qualifying arrangements<sup>4</sup>; or
- 1802 (3) hold such accounts and are parties to such arrangements<sup>5</sup>.

The regulations may provide that grants may not be paid unless other specified conditions are satisfied<sup>6</sup>. Conditions which may be included are conditions:

- 1803 (a) as to the way the qualifying accounts<sup>7</sup> are operated (including conditions requiring them to contain a specified balance)<sup>8</sup>;
- 1804 (b) as to the way the qualifying arrangements<sup>9</sup> are conducted<sup>10</sup>;
- 1805 (c) as to the employment or self-employment of individuals<sup>11</sup>;
- 1806 (d) requiring individuals not to be receiving or to have received specified benefits<sup>12</sup>;
- 1807 (e) as to the kinds of education or training which qualify<sup>13</sup>.

The regulations may also provide:

- 1808 (i) that the amounts of grants, and when and how they are paid, are to be decided by the Secretary of State<sup>14</sup>;
- 1809 (ii) that grants may be paid on such terms as the Secretary of State decides and that the terms may include terms requiring repayment in specified circumstances<sup>15</sup>;
- 1810 (iii) that if grants are payable under the regulations they may be paid to persons providing education or training<sup>16</sup>;
- 1811 (iv) that if grants are payable under the regulations they may be paid by the Secretary of State or by other persons under arrangements made with him<sup>17</sup>;
- 1812 (v) that if such arrangements are made the Secretary of State may pay the persons concerned remuneration or amounts to meet their expenses<sup>18</sup>.

The regulations may provide that a specification of the kinds of education or training which qualify may include a requirement for the education or training to be provided by persons for the time being approved by the Secretary of State<sup>19</sup>, or if he so decides, by a person who, at the time of the approval, is designated by the Secretary of State<sup>20</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. The Individual Learning Account scheme now operates only in Wales: see PARA 980 ante.

2 Learning and Skills Act 2000 s 108(1). As to the corresponding provision in relation to Northern Ireland see s 109. As to regulations concerning the payment of such grants see the Individual Learning Accounts Wales Regulations 2003, SI 2003/918, regs 6-9. As to the making of regulations under the Learning and Skills Act 2000

generally see PARA 972 note 7 ante. The Individual Learning Accounts (England) Regulations 2000, SI 2000/2146, have also been made under the Learning and Skills Act 2000 s 108 but the Individual Learning Account scheme no longer operates in England: see PARA 980 ante.

3 Learning and Skills Act 2000 s 108(2)(a). The text refers to accounts which qualify under s 104: see PARA 981 ante.

4 Ibid s 108(2)(b). The text refers to arrangements which qualify under s 105: see PARA 982 ante.

5 Ibid s 108(2)(c).

6 Ibid s 108(3).

7 Ie accounts qualifying under ibid s 104: see PARA 981 ante.

8 Ibid s 108(4)(a).

9 Ie arrangements qualifying under ibid s 105: see PARA 982 ante.

10 Ibid s 108(4)(b).

11 Ibid s 108(4)(c).

12 Ibid s 108(4)(d).

13 Ibid s 108(4)(e). Conditions as to the kinds of education or training which qualify may include provision for the kinds to be specified by the Secretary of State in a way he thinks fit, or if he so decides, by a person who, at the time of the specification, is designated by him and who specifies in a way the he stipulates: s 108(6).

14 Ibid s 108(5)(a). See *R (on the application of Amraf Training plc) v Department for Education and Employment* [2001] EWCA Civ 914, (2001) Times, 28 June, [2001] All ER (D) 276 (May), CA (grant withdrawn on the basis that course did not provide value for money).

15 Learning and Skills Act 2000 s 108(5)(b).

16 Ibid s 108(5)(c).

17 Ibid s 108(5)(d).

18 Ibid s 108(5)(e).

19 Ibid s 108(7)(a).

20 Ibid s 108(7)(b).



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## **7. SPECIAL EDUCATIONAL NEEDS**

### **(1) IDENTIFICATION AND ASSESSMENT OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS**

#### **(i) Identification of Children with Special Educational Needs**

##### **984. Meaning of 'special educational needs', 'special educational provision' and 'learning difficulty'.**

A child<sup>1</sup> has 'special educational needs' for the purposes of the Education Act 1996 if he has a learning difficulty which calls for special educational provision<sup>2</sup> to be made for him<sup>3</sup>. A child has a 'learning difficulty' for these purposes<sup>4</sup> if:

- 1813 (1) he has a significantly greater difficulty in learning than the majority of children of his age<sup>5</sup>;
- 1814 (2) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the local education authority<sup>6</sup>; or
- 1815 (3) he is under compulsory school age<sup>7</sup> and is, or would be if special educational provision were not made for him, likely to fall within head (1) or head (2) above when of that age<sup>8</sup>.

However, a child is not to be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of a language) which has at any time been spoken in his home<sup>9</sup>.

'Special educational provision' means: (a) in relation to a child who has attained the age of two, educational provision<sup>10</sup> which is additional to, or otherwise different from, the educational provision made generally for children of his age in schools maintained by the local education authority (other than special schools)<sup>11</sup>; and (b) in relation to a child under that age, educational provision of any kind<sup>12</sup>.

1 For the meaning of 'child' see PARA 16 note 2 ante. For the purposes of the Education Act 1996 Pt IV (ss 312-349) (as amended), 'child' also includes any person who has not attained the age of 19 and is a registered pupil at a school: s 312(5). See also *S v Essex County Council* [2000] ELR 718; *Wakefield Metropolitan District Council v E* [2001] EWHC Admin 508, [2002] ELR 203, [2001] All ER (D) 94 (Jul). For the meaning of 'registered pupil' see PARA 512 ante. For the meaning of 'pupil' see PARA 16 note 4 ante. For the meaning of 'school' see PARA 81 ante.

2 For the meaning of 'special educational provision' see the text and notes 10-12 infra.

3 Education Act 1996 s 312(1).

4 Ibid s 312(2). This provision is expressed to be subject to s 312(3) (see the text and note 9 infra) and does not apply for the purposes of s 15A (as added and amended) (local education authority functions in respect of full-time education for 16 to 18 year olds: see PARA 27 ante) or s 15B (as added) (local education authority

functions in respect of education for persons over 19: see PARA 28 ante): s 312(2) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 56).

5 Education Act 1996 s 312(2)(a). A learning difficulty might, for example, result from a need for speech therapy (*R v Lancashire County Council, ex p M* [1989] 2 FLR 279, 87 LGR 567, CA; although cf *R v Oxfordshire Education Authority, ex p W* [1987] 2 FLR 193), or from dyslexia (*R v Hampshire Education Authority, ex p J* (1985) 84 LGR 547). See also *R v Secretary of State for Education, ex p C* [1996] ELR 93 (the fact that a child's exceptionally high intelligence enabled him to compensate for dyslexia did not mean that the child did not have special educational needs). However, this is not authority for the proposition that 'giftedness' of itself can constitute a learning difficulty: *R v Portsmouth City Council, ex p Faludy* [1998] 3 FCR 271, [1998] ELR 619; and see [1999] ELR 115, CA (refusing leave to appeal). See also note 6 infra.

6 Education Act 1996 s 312(2)(b). Exceptional academic ability is not a disability within the meaning of s 312(2)(b): *S v Special Educational Needs Tribunal* [2005] EWHC 196 (Admin), [2005] ELR 443, [2005] All ER (D) 76 (Feb). As to local education authorities see PARA 20 ante.

7 As to the meaning of 'compulsory school age' see PARA 15 ante.

8 Education Act 1996 s 312(2)(c) (amended by the Education Act 1997 s 57(1), (4), Sch 7 para 23, Sch 8).

9 Education Act 1996 s 312(3). The domestic circumstances in which a child lives would only give the child a learning difficulty for these purposes where there was a direct relationship between the circumstances and the learning difficulty: *G v Wakefield Metropolitan Borough Council* (1998) 96 LGR 69.

10 The following have been held not to amount to educational provision: provision of a lift to ensure a disabled child's access to first floor facilities (*R v Lambeth London Borough Council, ex p MBM* [1995] ELR 374, 94 LGR 22), provision of nursing care to enable a severely disabled child to be safe at school (*Bradford Metropolitan Council v A* [1997] ELR 417), and provision of occupational therapy and physiotherapy (*B v Isle of White Council* [1997] ELR 279). However, a combination of occupational therapy, physiotherapy and speech therapy together has been held to amount to educational provision (*Bromley London Borough Council v Special Educational Needs Tribunal* [1999] 3 All ER 587, [1999] ELR 260, CA), as has speech therapy alone (*R v Lancashire County Council, ex p M* [1989] 2 FLR 279, (1989) 87 LGR 567, CA).

11 Education Act 1996 s 312(4)(a) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 71(a), Sch 31). In the Education Act 1996 Pt IV (ss 312-349) (as amended), 'maintained school' means any community, foundation or voluntary school or any community or foundation special school not established in a hospital: s 312(5) (definition substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 71(b)). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 ante. As to special schools see PARA 1027 post.

12 Education Act 1996 s 312(4)(b).

## UPDATE

### 984 Meaning of 'special educational needs', 'special educational provision' and 'learning difficulty'

NOTE 4--Further, the 1996 Act s 312(2) does not apply for the purposes of s 507B (see PARA 556): s 312(2) (amended by the Education and Inspections Act 2006 Sch 1 para 3).

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### **985. Children for whom local education authority is responsible.**

For the purposes of Part IV of the Education Act 1996<sup>1</sup> a local education authority<sup>2</sup> is responsible for a child<sup>3</sup> if he is in its area<sup>4</sup> and:

- 1816 (1) he is a registered pupil<sup>5</sup> at a maintained school<sup>6</sup> or maintained nursery school<sup>7</sup>;
- 1817 (2) education is provided for him at a school<sup>8</sup> which is not a maintained school or maintained nursery school but is so provided at the expense of the authority<sup>9</sup>;
- 1818 (3) he does not come within head (1) or head (2) above but is a registered pupil at a school and has been brought to the authority's attention as having (or probably having) special educational needs<sup>10</sup>; or
- 1819 (4) he is not a registered pupil at a school but is not under the age of two or over compulsory school age<sup>11</sup> and has been brought to its attention as having (or probably having) special educational needs<sup>12</sup>.

1 le the Education Act 1996 Pt IV (ss 312-349) (as amended).

2 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 321 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (h). For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the meaning of 'child' for these purposes see PARA 984 note 1 ante.

4 Education Act 1996 s 321(3). As to local education authority areas see PARA 20 ante.

5 For the meanings of 'registered' and 'registered pupil' see PARA 512 ante.

6 For the meaning of 'maintained school' for these purposes see PARA 984 note 11 ante.

7 Education Act 1996 s 321(3)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 76(a); and the Education Act 2002 s 215(1), Sch 21 para 42). For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

8 For the meaning of 'school' see PARA 81 ante.

9 Education Act 1996 s 321(3)(b) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 76(b); and the Education Act 2002 Sch 21 para 42).

10 Education Act 1996 s 321(3)(c). For the meaning of 'special educational needs' see PARA 984 ante.

11 As to the meaning of 'compulsory school age' see PARA 15 ante.

12 Education Act 1996 s 321(3)(d).

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**986. General duty of local education authority towards children for whom it is responsible.**

A local education authority<sup>1</sup> must exercise its powers with a view to securing that, of the children<sup>2</sup> for whom it is responsible<sup>3</sup>, it identifies those children who have special educational needs<sup>4</sup> and in relation to whom it is necessary for the authority to determine the special educational provision<sup>5</sup> for which any learning difficulty<sup>6</sup> each child may have calls<sup>7</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 321 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (h). For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 As to the children for whom the local education authority is responsible see PARA 985 ante.

4 Education Act 1996 s 321(1), (2)(a). For the meaning of 'special educational needs' see PARA 984 ante.

5 For the meaning of 'special educational provision' see PARA 984 ante.

6 For the meaning of 'learning difficulty' see PARA 984 ante.

7 Education Act 1996 s 321(1), (2)(b). As to the liability of local education authorities in failing to diagnose learning difficulties see PARA 1025 post.

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### **987. Duties of health service bodies to notify parent of special educational needs.**

Where a health authority<sup>1</sup>, primary care trust<sup>2</sup> or National Health Service trust<sup>3</sup> or NHS foundation trust<sup>3a</sup>, in the course of exercising any of its functions<sup>4</sup> in relation to a child<sup>5</sup> who is under compulsory school age<sup>6</sup>, forms the opinion that he has (or probably has) special educational needs<sup>7</sup>, it must: (1) inform the child's parent<sup>8</sup> of its opinion and of its duty under head (2) below<sup>9</sup>; and (2) after giving the parent an opportunity to discuss that opinion with an officer of the authority or trust, bring it to the attention of the appropriate local education authority<sup>10</sup>. If the authority or trust is of the opinion that a particular voluntary organisation is likely to be able to give the parent advice or assistance in connection with any special educational needs that the child may have, it must inform the parent accordingly<sup>11</sup>.

1 As to health authorities see the National Health Service Act 1977 s 8 (as substituted); and HEALTH SERVICES vol 54 (2008) PARA 75 et seq.

2 As to primary care trusts see ibid ss 16A, 16B (both as added); and HEALTH SERVICES vol 54 (2008) PARA 111 et seq.

3 As to National Health Service trusts see the National Health Service and Community Care Act 1990 s 5 (as amended); HEALTH SERVICES vol 54 (2008) PARA 94 et seq.

3 As to National Health Service foundation trusts see the Health and Social Care (Community Health and Standards) Act 2003 Pt 1 (ss 1-40); and HEALTH SERVICES vol 54 (2008) PARA 174 et seq.

4 As to the meaning of 'functions' see PARA 14 note 5 ante.

5 As to the meaning of 'child' see PARA 984 note 1 ante.

6 As to the meaning of 'compulsory school age' see PARA 15 ante.

7 Education Act 1996 s 332(1) (amended by the Education Act 1997 s 57(1), Sch 7 para 24; the Health and Social Care (Community Health and Standards) Act 2003 s 34, Sch 4 paras 104, 105; and the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 32(1), (3)). For the meaning of 'special educational needs' see PARA 984 ante.

8 As to the meaning of 'parent' see PARA 510 note 1 ante.

9 Education Act 1996 s 332(2)(a).

10 Ibid s 332(2)(b). As to local education authorities see PARA 20 ante.

11 Ibid s 332(3).

### **UPDATE**

### **987 Duties of health service bodies to notify parent of special educational needs**

NOTES--1996 Act s 332(1) further amended, s 332(2), (3) amended: References to Health Authorities Order 2007, SI 2007/961.



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## **(ii) Assessment of Special Educational Needs**

### **988. Assessment of educational needs.**

Where a local education authority<sup>1</sup> is of the opinion that a child<sup>2</sup> for whom it is responsible<sup>3</sup> is, or probably is: (1) a child who has special educational needs<sup>4</sup>; and (2) a child in relation to whom it is necessary for the authority to determine the special educational provision<sup>5</sup> for which any learning difficulty<sup>6</sup> he may have calls<sup>7</sup>, the authority must serve a notice<sup>8</sup> on the child's parent<sup>9</sup> informing him<sup>10</sup>:

- 1820 (a) that it is considering whether to make an assessment of the child's educational needs<sup>11</sup>;
- 1821 (b) of the procedure to be followed in making the assessment<sup>12</sup>;
- 1822 (c) of the name of the officer of the authority from whom further information may be obtained<sup>13</sup>; and
- 1823 (d) of the parent's right to make representations, and submit written evidence, to the authority within such period<sup>14</sup> as may be specified in the notice<sup>15</sup>.

Where a local education authority has served such a notice and the period specified in the notice has expired<sup>16</sup>, and the authority remains of the opinion, after taking into account any representations made and any evidence submitted to it in response to the notice, that the child falls, or probably falls, within heads (1) and (2) above<sup>17</sup>, it must make an assessment of his educational needs<sup>18</sup>. Where an authority decides to make such an assessment, it must give notice in writing to the child's parent of that decision and of its reasons for making it<sup>19</sup>.

Where, at any time after serving such a notice, an authority decides not to assess the educational needs of the child concerned it must give notice in writing to the child's parent of its decision<sup>20</sup>.

Regulations<sup>21</sup> make provision as to the manner in which assessments are to be conducted<sup>22</sup> and in connection with such other matters relating to the making of assessments as the Secretary of State considers appropriate<sup>23</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 323 (as amended) and Sch 26 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (j). For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 As to the children for whom the local education authority is responsible see PARA 985 ante.

4 Education Act 1996 s 323(1), (2)(a). For the meaning of 'special educational needs' see PARA 984 ante.

5 For the meaning of 'special educational provision' see PARA 984 ante.

6 For the meaning of 'learning difficulty' see PARA 984 ante.

7 Education Act 1996 s 323(1), (2)(b).

8 Regulations may provide that where a local education authority is under a duty under *ibid* s 323 (as amended) to serve any notice, the duty must be performed within the prescribed period (s 323(5), Sch 26 para 3(3)(a) (Sch 26 para 3(3), (4) substituted by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt I para 14(1), (3)), and that, where an authority has served a notice under the Education Act 1996 s 323(1) (as amended) on a child's parent, it must decide within the prescribed period whether or not to make an assessment of the child's educational needs (Sch 26 para 3(3)(b) (as so substituted)). Provision made under Sch 26 para 3(3) (as substituted) may be subject to prescribed exceptions, and does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period: Sch 26 para 3(4) (as so substituted). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. Provision for the service of notices is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4-5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4-5.

9 As to the meaning of 'parent' see PARA 510 note 1 ante.

10 Education Act 1996 s 323(1). Where an authority serves notice on a child's parent that it is considering whether to make an assessment, provision for the content and service of that notice, and for the service of further notifications concerning the assessment, is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 6(1)-(3), 12(1)-(5) (reg 6(2) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 6(1)-(3), 12(1)-(5).

11 Education Act 1996 s 323(1)(a) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 para 11(1)).

12 Education Act 1996 s 323(1)(b).

13 *Ibid* s 323(1)(c).

14 The period must not be less than 29 days beginning with the date on which the notice is served: *ibid* s 323(1)(d).

15 *Ibid* s 323(1)(d). When making an assessment of special educational needs an education authority is required to take into consideration any representations made by, and any evidence submitted by or at the request of, the child's parent under s 323(1)(d): see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 11(a), (b); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 11(a), (b).

16 Education Act 1996 s 323(3)(a). The text refers to the expiry of the period of notice specified in accordance with head (d) in the text: s 323(3)(a).

17 *Ibid* s 323(3)(b).

18 *Ibid* s 323(3). Regulations may provide that where a local education authority is under a duty to make an assessment, the duty must be performed within the prescribed period: Sch 26 para 3(3)(d) (as substituted: see note 8 *supra*). Provision made under Sch 26 para 3(3) (as substituted) may be subject to prescribed exceptions, and does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period: Sch 26 para 3(4) (as so substituted). When making an assessment, an authority must take into consideration any representations made by the child's parent under s 323(1)(d) (see head (d) in the text) or s 329A(3)(d) (as added) (see PARA 995 post); any evidence submitted by or at the request of the child's parent under either of those provisions, and the advice obtained, in relation to England, under the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7 (as amended), or, in relation to Wales, under the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7 (see PARA 989 post); see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 11(a)-(c); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 11(a)-(c). As to the documents which must be served where an authority has made an assessment of the educational needs of a child see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(1); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(1).

If an education authority forms the opinion that at the time in question it is not necessary to determine the child's special educational needs because progress appears to be made by remedial measures privately paid for, that is not a failure on the authority's part to perform its statutory duties; rather, it is the performance of those duties in a particular way; the initiation of an assessment is only required where and when the authority is of the opinion that the child falls within the Education Act 1996 s 323(3), including being of the opinion that it



is necessary for it to determine special educational provision required in the child's case. The fact that the authority is not of that opinion is not a failure to perform its duty: *C v Lambeth London Borough Council and the Special Educational Needs Tribunal* [1999] ELR 350 at 355 per Keene J. See also *H v Kent County Council and the Special Educational Needs Tribunal* [2000] ELR 660 at 672 (a failure to carry out an assessment does not amount to a breach of the right to education under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969), First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 166)).

19 Education Act 1996 s 323(4). Provision for the content and service of notices under s 323(4), and for the time limit within which the assessment must be completed, is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4, 6(1)-(3), 12(6)-(11) (regs 6(2), 12(7) (e), (8)-(10) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4, 6(1)-(3), 12(6)-(11).

20 Education Act 1996 s 323(6). The time limits within which such a decision must be notified to the child's parents are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 12(1), (5)-(7) (reg 12(7)(e) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 12(1), (5)-(7).

21 See notes 8, 10, 15, 18-20 *supra*.

22 Education Act 1996 Sch 26 para 3(1)(a).

23 *Ibid* Sch 26 para 3(1)(c).

## UPDATE

### 988 Assessment of educational needs

NOTES--See Application 57325/00 *DH v Czech Republic* (2007) 23 BHRC 526, ECtHR (discrimination claim based on alleged disproportionate placement of Roma children in special schools).

NOTE 8--1992 Act Sch 26 para 3(3)(a) amended: Education and Inspections Act 2006 s 174(2).

NOTES 10, 18--SI 2001/3455 reg 12 amended: SI 2008/2683.

NOTES 10, 19--SI 2001/3455 reg 6(1) amended: SI 2006/3346.

NOTES 10, 20--SI 2001/3455 reg 12(1) amended: SI 2006/3346.

NOTE 10--SI 2001/3455 reg 12(3) substituted, reg 12(4) amended: SI 2006/3346.

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### **989. Advice in connection with the making of assessments.**

Regulations<sup>1</sup> must make provision as to the advice which a local education authority<sup>2</sup> is to seek in making assessments<sup>3</sup> and must require the authority, except in such circumstances as may be prescribed<sup>4</sup>, to seek medical, psychological and educational advice and such other advice as may be prescribed<sup>5</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations made under s 323(5), Sch 26 (as amended) see note 5 infra.

2 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 323 (as amended) and Sch 26 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (j). For the meaning of 'England' see PARA 52 note 11 ante.

3 Education Act 1996 Sch 26 para 2(1). 'Assessment' means an assessment of a child's educational needs under s 323 (as amended) (see PARA 988 ante): Sch 26 para 1. As to the meaning of 'child' see PARA 984 note 1 ante.

4 'Prescribed' means prescribed by regulations: *ibid* s 579(1). See note 5 infra.

5 *Ibid* Sch 26 para 2(2). As to the advice to be sought by an authority for the purposes of making an assessment see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7 (as amended); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7.

As to advice from the child's parent see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7(1)(a); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7(1)(a). As to educational advice from the child's head teacher or other person responsible for his educational provision see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 7(1)(b), 8; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 7(1)(b), 8. As to medical advice from the health authority, which must obtain the advice from a fully registered medical practitioner, see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 7(1)(c), 9 (regs 7(1)(c), 9 amended by SI 2002/2469); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 7(1)(c), 9 (reg 9 amended by SI 2002/3135). As to psychological advice from an educational psychologist see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 7(1)(d), 10; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 7(1)(d), 10. As to advice from the social services authority see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7(1)(e); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7(1)(e). As to any other advice which the local education authority considers appropriate for the purpose of arriving at a satisfactory assessment see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7(1)(f), and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7(1)(f). 'Any other advice' under reg 7(1)(f) may include further medical advice which allows an authority to plug gaps in advice already given under regs 7(1)(c), 9: *R v Comr for Local Administration, ex p S* [1999] ELR 102.

Provision is also made as to the nature and source of the advice required to be sought and the circumstances in which it is required to be sought: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7(2)-(5); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7(2)-(5).

### **UPDATE**

**989 Advice in connection with the making of assessments**

NOTE 5--SI 2001/3455 reg 8 amended: SI 2006/3346.

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### **990. Attendance at examinations.**

Where a local education authority<sup>1</sup> is considering whether to make an assessment<sup>2</sup>, it may serve a notice<sup>3</sup> on the parent<sup>4</sup> of the child<sup>5</sup> concerned requiring the child's attendance for examination in accordance with the provisions of the notice<sup>6</sup>. Such a notice must:

- 1824 (1) state the purpose of the examination<sup>7</sup>;
- 1825 (2) state the time and place at which the examination will be held<sup>8</sup>;
- 1826 (3) name an officer of the authority from whom further information may be obtained<sup>9</sup>;
- 1827 (4) inform the parent that he may submit such information to the authority as he may wish<sup>10</sup>; and
- 1828 (5) inform the parent of his right<sup>11</sup> to be present at the examination<sup>12</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 323 (as amended) and Sch 26 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (j). For the meaning of 'England' see PARA 52 note 11 ante.

2 I.e. an assessment of a child's educational needs: see PARA 989 note 3 ante.

3 Provision for the service of notices is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4-5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4-5.

4 As to the meaning of 'parent' see PARA 510 note 1 ante.

5 As to the meaning of 'child' see PARA 984 note 1 ante.

6 Education Act 1996 s 323(5), Sch 26 para 4(1) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt I para 11(2)). Any parent who fails without reasonable excuse to comply with any requirements of a notice served on him under the Education Act 1996 Sch 26 para 4 (as amended) commits an offence if the notice relates to a child who is not over compulsory school age at the time stated in it as the time for holding the examination: Sch 26 para 5(1). As to the meaning of 'compulsory school age' see PARA 15 ante. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale: Sch 26 para 5(2). As to the standard scale see PARA 481 note 4 ante.

7 Ibid Sch 26 para 4(3)(a).

8 Ibid Sch 26 para 4(3)(b).

9 Ibid Sch 26 para 4(3)(c).

10 Ibid Sch 26 para 4(3)(d).

11 The parent of a child examined under ibid Sch 26 para 4 (as amended) has the right to be present at the examination if he so desires: Sch 26 para 4(2).

12 Ibid Sch 26 para 4(3)(e).

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### **991. Assessment of educational needs of children under two.**

Where a local education authority<sup>1</sup> is of the opinion that a child<sup>2</sup> in its area<sup>3</sup> who is under the age of two is, or probably is: (1) a child who has special educational needs<sup>4</sup>; and (2) a child in relation to whom it is necessary for the authority to determine the special educational provision<sup>5</sup> for which any learning difficulty<sup>6</sup> he may have calls<sup>7</sup>, the authority may, with the consent of the child's parent<sup>8</sup>, make an assessment of the child's educational needs<sup>9</sup>, and must make such an assessment if requested to do so by the parent<sup>10</sup>. After making such an assessment, the authority may, in such manner as it considers appropriate, make a statement of the child's special educational needs<sup>11</sup>, and may maintain that statement<sup>12</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 331 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (r). For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 As to local education authority areas see PARA 20 ante.

4 Education Act 1996 s 331(1), (2)(a). For the meaning of 'special educational needs' see PARA 984 ante.

5 For the meaning of 'special educational provision' see PARA 984 ante.

6 For the meaning of 'learning difficulty' see PARA 984 ante.

7 Education Act 1996 s 331(1), (2)(b).

8 As to the meaning of 'parent' see PARA 510 note 1 ante.

9 Education Act 1996 s 331(1)(a). An assessment must be made in such manner as the authority considers appropriate: s 331(3). However, when making an assessment, an authority must take into consideration any representations made by the child's parent under s 323(1)(d) (see PARA 988 ante) or s 329A(3)(d) (as added) (see PARA 995 post), any evidence submitted by or at the request of the child's parent under either of those provisions, and the advice obtained, in relation to England, under the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7 (as amended), or, in relation to Wales, under the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7 (see PARA 989 ante); see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 11(a)-(c); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 11(a)-(c).

10 Education Act 1996 s 331(1)(b). See note 9 supra.

11 Ibid s 331(4)(a). As to statements of special educational needs see PARA 996 et seq post.

12 Ibid s 331(4)(b).

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## **992. Assessment of persons above compulsory school age.**

The Secretary of State<sup>1</sup> may at any time arrange for an assessment<sup>2</sup> to be conducted of a person: (1) who is in his last year of compulsory schooling or who is over compulsory school age<sup>3</sup> but has not attained the age of 25<sup>4</sup>; (2) who appears to the Secretary of State to have a learning difficulty<sup>5</sup>; and (3) who is receiving, or in the Secretary of State's opinion is likely to receive, post-16 education or training<sup>6</sup> or higher education<sup>7</sup>. A local education authority<sup>8</sup> must send to the Secretary of State on his request a copy of a statement of the child's special educational needs maintained<sup>9</sup> by it<sup>10</sup>.

If a local education authority maintains a statement of a person's special educational needs<sup>11</sup>, and the Secretary of State believes that the person will leave school at the end of his last year of compulsory schooling to receive post-16 education or training or higher education<sup>12</sup>, the Secretary of State must arrange for an assessment of the person to be conducted at some time during the person's last year of compulsory schooling<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante. The Secretary of State's functions under the Learning and Skills Act 2000 s 140 are exercisable in relation to Wales by the National Assembly for Wales and, in relation to Wales, references to the Secretary of State are to be taken as references to the Assembly: see s 150(1). As to the National Assembly for Wales see PARA 53 ante.

2 Ie an assessment resulting in a written report of the person's educational and training needs and the provision required to meet them: *ibid* s 140(4).

3 As to the meaning of 'compulsory school age' see PARA 15 ante.

4 Learning and Skills Act 2000 s 140(3)(a).

5 *Ibid* s 140(3)(b). In relation to England, 'learning difficulty' means a learning difficulty within the meaning of s 13 (see PARA 1091 note 6 post): s 140(3)(b). In relation to Wales, 'learning difficulty' means a learning difficulty within the meaning of s 41 (see PARA 1131 note 5 post): s 140(3)(b), (6)(b).

6 In relation to England, this refers to post-16 education or training within the meaning of *ibid* Pt I (ss 1-29) (as amended) (see PARAS 1088-1089 post): s 140(3)(c). In relation to Wales, this refers to post-16 education or training within the meaning of Pt II (ss 30-51) (as amended) (see s 32(6)-(7); and PARA 1127 note 12 post): s 140(3)(c), (6)(a).

7 *Ibid* s 140(3)(c). 'Higher education' means higher education within the meaning of the Education Reform Act 1988 (see s 120(1); and PARA 19 ante): Learning and Skills Act 2000 s 140(3)(c).

8 As to local education authorities see PARA 20 ante.

9 Ie a statement maintained under the Education Act 1996 s 324 (as amended) (see PARA 996 post). For the meaning of 'special educational needs' see PARA 984 ante.

10 Learning and Skills Act 2000 s 140(5). As to provision for the service of documents see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 5; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 5.

11 Learning and Skills Act 2000 s 140(1)(a).

12 *Ibid* s 140(1)(b).

13 *Ibid* s 140(2).

## **UPDATE**

### **992 Assessment of persons above compulsory school age**

TEXT AND NOTES--Learning and Skills Act 2000 s 140 amended so as to apply only to assessments relating to learning difficulties in Wales: Education and Skills Act 2008 Sch 1 para 77.

As to assessments relating to learning difficulties in England see Learning and Skills Act 2000 ss 139A-139C (added by Education and Skills Act 2008 s 80); and PARA 992A.

NOTES 5, 6--Learning and Skills Act 2000 s 140(6) repealed: Education and Skills Act 2008 Sch 2.

NOTE 2--See *R (on the application of A) v Bromley BC* [2008] All ER (D) 86 (Sep) (local education authority failed to meet requirement that word 'provision' had to be actually and practically available).

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**992A. Assessments relating to learning difficulties: England.**

If a local education authority in England (1) maintains a statement of special educational needs for a person, and (2) believes that the person will leave school, at the end of his last year of compulsory schooling, to receive post-16 education or training or higher education, the authority must arrange for an assessment of the person to be conducted at some time during his last year of compulsory schooling: Learning and Skills Act 2000 s 139A(1), (2) (s 139A-139C added by Education and Skills Act 2008 s 80). A statement of special educational needs is a statement maintained under the Education Act 1996 s 324 (see PARA 996): Learning and Skills Act 2000 s 139B(2). A person's last year of compulsory schooling is the last school year at his school during the whole or part of which he is of compulsory school age; and in the application of s 139A(6) to a person who is receiving education at an institution other than a school, that institution is to be treated for the purpose of determining his last year of compulsory schooling as though it were a school: s 139B(5). 'School year' has the meaning given in the Education Act 1996 s 579(1) (see PARA 15): Learning and Skills Act 2000 s 139B(8). 'Post-16 education or training' means post-16 education or post-16 training within the meaning of Pt 1: s 139B(7). 'Higher education' is education provided by means of a course of any description mentioned in the Education Reform Act 1988 Sch 6 (see PARA 726): Learning and Skills Act 2000 s 139B(6). An assessment of a person is an assessment, resulting in a written report, of the person's educational and training needs, and the provision required to meet them: s 139B(3). If a local education authority in England (a) maintains a statement of special educational needs for a person who is over compulsory school age, and (b) believes that the person will leave school, during or at the end of the current school year, to receive post-16 education or training or higher education, the authority must arrange for an assessment of the person to be conducted at some time during the current school year: Learning and Skills Act 2000 s 139A(3), (4). A local education authority in England may at any time arrange for an assessment to be conducted of a person who is within s 139A(6), and for whom the authority is responsible: s 139A(5). A person within s 139A(6) is one who (i) is in his last year of compulsory schooling, or is over compulsory school age but has not attained the age of 25, (ii) appears to the authority to have a learning difficulty within the meaning of the Learning and Skills Act 2000 s 13 (see PARA 1091), and (iii) is receiving, or in the opinion of the authority is likely to receive, post-16 education or training or higher education: s 139A(6). A local education authority is responsible for (A) a person who is receiving education or training in its area; (B) a person who is not receiving education or training, but who is normally resident in its area; (C) a person who is not receiving education or training, and who is not normally resident in its area or that of another authority, but who is otherwise within its area and, in its opinion, likely to receive post-16 education or training or higher education: s 139B(4). In exercising its functions under s 139A an authority must have regard to any guidance issued by the Secretary of State: s 139A(7).

See further Learning and Skills Act 2000 s 139C which applies the assessment provisions to those being educated at home.



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### **993. Assessment of educational needs at request of child's parent.**

Where:

1829 (1) the parent<sup>1</sup> of a child<sup>2</sup> for whom a local education authority<sup>3</sup> is responsible<sup>4</sup> but for whom no statement of special educational needs<sup>5</sup> is maintained<sup>6</sup> asks the authority to arrange for an assessment of special educational needs to be made<sup>7</sup> in respect of the child<sup>8</sup>;

1830 (2) no such assessment has been made within the period of six months ending with the date on which the request is made<sup>9</sup>; and

1831 (3) it is necessary for the authority to make such an assessment<sup>10</sup>,

the authority must comply with the request<sup>11</sup>.

If in any case where heads (1) and (2) above apply the authority determines not to comply with the request, it must give notice in writing of that fact to the child's parent<sup>12</sup> and the parent may appeal against the determination to the Tribunal<sup>13</sup>. The Tribunal may either dismiss the appeal<sup>14</sup> or order the authority to arrange for an assessment to be made in respect of the child<sup>15</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante.

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 326A (as added and amended), s 329 (as amended) and Sch 26 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 paras (j), (p), (n). For the meaning of 'England' see PARA 52 note 11 ante.

4 As to the children for whom a local education authority is responsible see PARA 985 ante.

5 For the meaning of 'special educational needs' see PARA 984 ante.

6 Ie under the Education Act 1996 s 324 (as amended) (see PARA 996 post).

7 Ie under ibid s 323 (as amended) (see PARA 988 ante).

8 Ibid s 329(1)(a).

9 Ibid s 329(1)(b).

10 Ibid s 329(1)(c).

11 Ibid s 329(1). Regulations may provide that where a request has been made to a local education authority under s 329(1), it must decide within the prescribed period whether or not to comply with the request: s 323(5), Sch 26 para 3(3)(c) (Sch 26 para 3(3), (4) substituted by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt I para 14(1), (3)). Provision made under the Education Act 1996 Sch 26 para 3(3) (as substituted) may be subject to prescribed exceptions, and does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period: Sch 26 para 3(4) (as so substituted).

'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the

Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. Where a child's parent asks an authority to arrange for an assessment and no assessment has been made for that child within the period of six months ending with the date on which the request is made, provision for the giving of notices by the authority is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4, 6(2), (4), 12(2), (5) (reg 6(2) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4, 6(2), (4), 12(2), (5).

See also *H v Kent County Council and the Special Educational Needs Tribunal* [2000] ELR 660 at 672 per Grigson J (a failure to carry out an assessment requested under the Education Act 1996 s 329 (as amended) does not amount to a breach of the right to education under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969), First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 166)).

12 Education Act 1996 s 329(2)(a) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 1, 8(1)). A notice under the Education Act 1996 s 329(2)(a) (as amended) must inform the parent of the right of appeal under s 329(2)(b) (see the text and note 13 infra) and must contain such other information as may be prescribed: s 329(2A) (added by the Special Educational Needs and Disability Act 2001 Sch 8 paras 1, 8(2)).

Regulations may provide that where a local education authority is under a duty under the Education Act 1996 s 329 (as amended) to serve a notice, the duty must be performed within the prescribed period (Sch 26 para 3(3) (a) (as substituted: see note 11 supra). Provision made under Sch 26 para 3(3) (as substituted) may be subject to prescribed exceptions, and does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period: Sch 26 para 3(4) (as so substituted). As to the service of notices under s 329(2) (as amended) see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4, 12(2), (5), 17(2), (9); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4, 12(2), (5), 17(2), (9).

13 Education Act 1996 s 329(2)(b). As to the role of parallel judicial review proceedings in such cases see *R v Worcestershire County Council, ex p S* [1999] ELR 46. For the purposes of the Education Act 1996 Pt IV (ss 312-349) (as amended) (except ss 333-336 (as amended): see PARAS 1032-1034 post), 'the Tribunal', in relation to an appeal, means: (1) where the local education authority concerned is in England, the Special Educational Needs and Disability Tribunal; and (2) where the local education authority concerned is in Wales, the Special Educational Needs Tribunal for Wales: s 313(5) (substituted by the Education Act 2002 s 195, Sch 18 paras 1, 2). For the meaning of 'Wales' see PARA 52 note 13 ante. As to the Special Educational Needs and Disability Tribunal and the Special Educational Needs Tribunal for Wales see PARAS 1032-1035 post.

In the case of an appeal under the Education Act 1996 s 329 (as amended), the local education authority must make an assessment of the child's educational needs before the end of the prescribed period: s 326A(4)(b) (s 326A added by the Special Educational Needs and Disability Act 2001 s 5). For the purposes of the Education Act 1996 s 326A (as added and amended), 'prescribed' means prescribed by regulations made: (1) in relation to an appeal to the Special Educational Needs and Disability Tribunal, by the Secretary of State; and (2) in relation to an appeal to the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales: s 326A(6) (substituted by the Education Act 2002 Sch 18 paras 1, 3).

14 Education Act 1996 s 329(3)(a). As to appeals from Tribunal decisions see PARA 1035 post.

15 Ibid s 329(3)(b). If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made: s 336A(1) (s 336A added by the Special Educational Needs and Disability Act 2001 s 4). For the purposes of the Education Act 1996 s 336A(1) (as added), 'prescribed' means prescribed by regulations made: (1) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State; (2) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State: s 336A(2) (as so added; and substituted by the Education Act 2002 Sch 18 paras 1, 6). Provision governing compliance with orders of the Tribunal is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 25; and by the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 3. For an attempt to compel compliance with an order via mandatory order see *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal), ex p AF* [2000] ELR 550.

If the parent of a child has appealed to the Tribunal under the Education Act 1996 s 329 (as amended) against a decision of a local education authority, and the authority notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal, the appeal is treated as having been determined in favour of the appellant; and if an appeal is treated as so determined, the Tribunal is not required to make any order: s 326A(1)-(3) (as added: see note 13 supra). If an appeal to the Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must make an assessment of educational needs within four weeks: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 26; and the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 4.

## **UPDATE**

### **993 Assessment of educational needs at request of child's parent**

NOTES 11, 12--SI 2001/3455 regs 12(2), 17 amended: SI 2008/2683.

TEXT AND NOTES 13-15--References to 'the Tribunal' and 'the Special Educational Needs and Disability Tribunal' now refer to the First-tier Tribunal and the Special Educational Needs Tribunal for Wales: Education Act 1996 ss 313(5), 326A(6), 336A(2) (amended by SI 2008/2833).

NOTE 13--1996 Act s 313(5) further amended: Education and Skills Act 2008 Sch 1 para 7 (not yet in force).

NOTE 15--SI 2001/3455 reg 25 amended: SI 2006/3346, SI 2008/2683.

If an appeal to the First-tier Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must within four weeks notify the child's parent under the 1996 Act s 323(4) (see PARA 988) or, as the case may be, s 329A(7) (see PARA 995) that they will make an assessment: SI 2001/3455 reg 26 (amended by SI 2006/3346, SI 2008/2683).

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#### **994. Reviews of educational needs.**

Regulations may prescribe<sup>1</sup> the frequency with which assessments of educational needs<sup>2</sup> are to be repeated in respect of children<sup>3</sup> for whom statements of special educational needs<sup>4</sup> are maintained<sup>5</sup>.

Where:

1832 (1) the parent<sup>6</sup> of a child for whom a statement is maintained asks the local education authority<sup>7</sup> to arrange for an assessment to be made in respect of the child<sup>8</sup>;

1833 (2) no assessment has been made within the period of six months ending with the date on which the request is made<sup>9</sup>; and

1834 (3) it is necessary for the authority to make a further assessment<sup>10</sup>,

the authority must comply with the request<sup>11</sup>. If in any case where heads (1) and (2) above apply, the authority determines not to comply with the request it must give notice in writing<sup>12</sup> of that fact to the child's parent<sup>13</sup> and the parent may appeal against the determination to the Tribunal<sup>14</sup>. The Tribunal may either dismiss the appeal<sup>15</sup> or order the authority to arrange for an assessment to be made in respect of the child<sup>16</sup>.

A statement of special educational needs must be reviewed by the local education authority on the making of an assessment in respect of the child concerned<sup>17</sup>, and in any event, within the period of 12 months beginning with the making of the statement or, as the case may be, with the previous review<sup>18</sup>. Regulations may make provision as to the manner in which reviews of such statements are to be conducted<sup>19</sup>, as to the participation in such reviews of such persons as may be prescribed<sup>20</sup>, and in connection with such other matters relating to such reviews as the Secretary of State considers appropriate<sup>21</sup>.

1 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations having effect for these purposes see note 5 infra.

2 Ie under ibid s 323 (as amended) (see PARA 988 ante).

3 As to the meaning of 'child' see PARA 984 note 1 ante.

4 For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq post.

5 Education Act 1996 s 328(1). Statements of special educational needs are maintained under s 324 (as amended) (see PARA 996 post). Provision as to the frequency with which the educational needs of a child in respect of whom a statement is maintained are reviewed, and as to the procedure for such reviews, is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 18, 20-22 (reg 18 amended by SI 2002/2469; SI 2003/537); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 18, 20-22 (reg 18 amended by SI 2003/1717).

6 As to the meaning of 'parent' see PARA 510 note 1 ante.

7 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 326A (as added and amended), s 328 (as amended) or Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 paras (k) (n), (o). For the meaning of 'England' see PARA 52 note 11 ante.

8 Education Act 1996 s 328(2)(a).

9 Ibid s 328(2)(b).

10 Ibid s 328(2)(c).

11 Ibid s 328(2). Where a child's parent asks an authority to arrange for an assessment and no assessment has been made for that child within the period of six months ending with the date on which the request is made, provision for the giving of notices by the authority is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4, 6(2), (4), 12(2) (reg 6(2) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4, 6(2), (4), 12(2).

12 Provision for the service of notices is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4-5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4-5.

13 Education Act 1996 s 328(3)(a) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 1, 7(1)). A notice under the Education Act 1996 s 328(3)(a) (as amended) must inform the parent of the right of appeal under s 328(3)(b) (see the text and note 14 infra) and contain such other information as may be prescribed: s 328(3A) (s 328(3A), (3B) added by the Special Educational Needs and Disability Act 2001 Sch 8 paras 1, 7(2)). Regulations may also provide that where a local education authority is under a duty under the Education Act 1996 s 328 (as amended) to serve any notice, the duty must be performed within the prescribed period: s 328(3B) (as so added).

14 Ibid s 328(3)(b). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante. In the case of an appeal under s 328 (as amended), the local education authority must make an assessment of the child's educational needs before the end of the prescribed period: s 326A(4) (b) (s 326A added by the Special Educational Needs and Disability Act 2001 s 5). For the purposes of the Education Act 1996 s 326A (as added and amended), 'prescribed' means prescribed by regulations made: (1) in relation to an appeal to the Special Educational Needs and Disability Tribunal, by the Secretary of State; and (2) in relation to an appeal to the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales: s 326A(6) (substituted by the Education Act 2002 s 195, Sch 18 paras 1, 3).

15 Education Act 1996 s 328(4)(a). As to appeals from Tribunal decisions see PARA 1035 post.

16 Ibid s 328(4)(b). If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made: s 336A(1) (s 336A added by the Special Educational Needs and Disability Act 2001 s 4). For the purposes of the Education Act 1996 s 336A(1) (as added), 'prescribed' means prescribed by regulations made: (1) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State; (2) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State: s 336A(2) (as so added; and substituted by the Education Act 2002 s 195, Sch 18 paras 1, 6). Provision governing compliance with orders of the Tribunal is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 25; and by the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 3. For an attempt to compel compliance with an order via mandatory order see *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal)*, ex p AF [2000] ELR 550.

If the parent of a child has appealed to the Tribunal under the Education Act 1996 s 328 (as amended) against a decision of a local education authority, and the authority notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal, the appeal is treated as having been determined in favour of the appellant; and if an appeal is treated as so determined, the Tribunal is not required to make any order: s 326A(1)-(3) (as added: see note 14 supra). If an appeal to the Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must make an assessment of educational needs within four weeks: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 26; and the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 4.

17 Education Act 1996 s 328(5)(a). Such a review is called a 're-assessment review': s 324(7), Sch 27 para 1 (substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 2). If, following such

a review, a local education authority proposes to amend a statement, it must serve on the parent of the child concerned a copy of the proposed amended statement: Education Act 1996 Sch 27 para 2A(2) (Sch 27 para 2A added by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 3). The copy of the proposed amended statement must not specify any prescribed matter nor any matter in pursuance of the Education Act 1996 s 324(4) (see PARA 996 post): Sch 27 paras 2(3), (4), 2A(3) (Sch 27 para 2(3), (4) substituted by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 3; and the Education Act 1996 Sch 27 para 2A(3) as so added).

When serving a copy of a proposed amended statement under the Education Act 1996 Sch 27 para 2A (as added), the local education authority must also serve on the parent a written notice explaining (to the extent that they are applicable) the arrangements under Sch 27 para 3 (as amended) for enabling the parent to express a preference as to his choice of school (see PARA 1006 post), the parent's right to make representations to the authority as to the content of the proposed statement (ie the effect of Sch 27 para 4 (as amended) (see PARA 1005 post)), and the provisions for appealing against the contents of a statement (ie under s 326 (as amended) (see PARA 1004 post)), and containing such other information as may be prescribed: Sch 27 para 2B(1)(b), (2), (3) (Sch 27 para 2B added by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 3). The notice which must be served by an authority on a parent pursuant to the Education Act 1996 Sch 27 para 2B(2) (as added) to accompany a copy of a proposed statement must contain information relating to the advice given to the authority during assessment for the statement; the procedure by which the parents may discuss the statement with the authority; lists of the maintained primary or secondary schools in the area and of approved non-maintained and independent schools; the procedure to be followed if the parents nominate a school; and the consultation process generally: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 14(a), Sch 1 Pt A; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 14(a), Sch 1 Pt A. The time limits within which notice must be served under the Education Act 1996 Sch 27 para 2A (as added) or Sch 27 para 2B(2) (as added) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(1)-(4), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(1)-(4), (9). As to provision for the service of documents see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 5; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 5.

For the right of a parent on whom a copy of a proposed amended statement has been served to make representations as to the content of the statement see PARA 1005 post.

Regulations may make provision requiring the local education authority, where, after conducting an assessment under the Education Act 1996 s 323 (as amended) (see PARA 988 ante) of the educational needs of a child for whom a statement of special educational needs is maintained under s 324 (as amended) (see PARA 996 post), it determines not to amend the statement, to serve on the parent of the child a notice giving the prescribed information: s 323(5), Sch 26 para 3(1)(b). This does not apply to a determination made following the service of notice under Sch 27 para 2A (as added) of a proposal to amend the statement: Sch 26 para 3(2) (amended by the Special Educational Needs and Disability Act 2001 Sch 8 para 14(1), (2)). At the date at which this volume states the law, no such regulations had been made.

18 Education Act 1996 s 328(5)(b). Such a review is called a 'periodic review': Sch 27 para 1 (as substituted: see note 17 supra). If, following such a review, a local education authority proposes to amend a statement, it must serve on the parent of the child concerned a copy of the existing statement, and an amendment notice: Sch 27 para 2A(4) (as added: see note 17 supra). An 'amendment notice' is a notice in writing giving details of the amendments to the statement proposed by the authority: Sch 27 paras 1, 2A(6) (Sch 27 para 1 as so substituted, Sch 27 para 2A(6) as so added). When serving an amendment notice under Sch 27 para 2A (as added), the authority must also serve on the parent a written notice explaining (to the extent that they are applicable) the arrangements under Sch 27 para 3 (as amended) for enabling the parent to express a preference as to his choice of school (see PARA 1006 post), the parent's right to make representations to the authority as to the content of the proposed statement (ie the effect of Sch 27 para 4 (as amended) (see PARA 1005 post)), and the provisions for appealing against the contents of a statement (ie under s 326 (as amended) (see PARA 1004 post)), and containing such other information as may be prescribed: Sch 27 para 2B(1)(c), (2), (3) (as added: see note 17 supra). As to the time limits within which a statement must be amended following the service of a notice under Sch 27 para 2A(4) (as added) see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(6)-(7), (9); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(6)-(7), (9).

For the right of a parent on whom an amendment notice has been served to make representations as to the proposed amendment see PARA 1005 post.

19 Education Act 1996 s 328(6)(a).

20 Ibid s 328(6)(b). At the request of the local education authority, the governing body, head teacher and staff of non-maintained special schools must participate in any review conducted by the authority pursuant to s 328 (as amended) of a statement under s 324 (as amended), which relates to any registered pupil at the school, making no charge to the authority for such participation: see the Education (Non-Maintained Special Schools) (England) Regulations 1999, SI 1999/2257, reg 4, Schedule para 19(2); and the Education (Special

Schools) Regulations 1994, SI 1994/652, reg 5, Schedule para 19(2) (applied in relation to Wales by virtue of the Education Act 1996 s 582(3), Sch 39 para 1; and the Interpretation Act 1978 s 17(2)(b)). Similar provision is made (in relation to England and Wales) in connection with the proprietor, head teacher and professional staff of independent schools: see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, reg 4, Sch 2 para 8(5), (6) (applied by virtue of the Education Act 1996 s 582(3), Sch 39 para 1; and the Interpretation Act 1978 s 17(2)(b)).

21 Education Act 1996 s 328(6)(c).

## **UPDATE**

### **994 Reviews of educational needs**

NOTES 11, 16-18--SI 2001/3455 regs 12, 17 amended: SI 2008/2683.

TEXT AND NOTES 14-16--References to 'the Tribunal' and 'the Special Educational Needs and Disability Tribunal' now refer to the First-tier Tribunal and the Special Educational Needs Tribunal for Wales: Education Act 1996 (ss 326A(6), 336A(2) amended by SI 2008/2833).

NOTE 16--SI 2001/3455 reg 25 amended: SI 2006/3346, SI 2008/2683.

If an appeal to the First-tier Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must within four weeks notify the child's parent under the 1996 Act s 323(4) (see PARA 988) or, as the case may be, s 329A(7) (see PARA 995) that they will make an assessment: SI 2001/3455 reg 26 (amended by SI 2006/3346, SI 2008/2683).

NOTE 17--SI 2001/3455 Sch 1 Pt A substituted by SI 2006/3346, and amended by SI 2008/2683.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(1) IDENTIFICATION AND ASSESSMENT OF CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/ (ii) Assessment of Special Educational Needs/995. Review or assessment of educational needs at request of responsible body.

**995. Review or assessment of educational needs at request of responsible body.**

If:

- 1835 (1) a child<sup>1</sup> is a registered pupil<sup>2</sup> at a maintained school<sup>3</sup>, a maintained nursery school<sup>4</sup>, a pupil referral unit<sup>5</sup>, an independent school<sup>6</sup>, or an approved school<sup>7</sup> (whether or not he is a child in respect of whom a statement of special educational needs<sup>8</sup> is maintained)<sup>9</sup>;
- 1836 (2) the responsible body<sup>10</sup> asks the local education authority to arrange for an assessment of educational needs<sup>11</sup> to be made in respect of the child<sup>12</sup>; and
- 1837 (3) no such assessment has been made within the period of six months ending with the date on which the request is made<sup>13</sup>,

then, if it is necessary for the authority to make an assessment or further assessment of educational needs, it must comply with the request<sup>14</sup>. Before deciding whether to comply with the request, the authority must serve on the child's parent a notice<sup>15</sup> informing him:

- 1838 (a) that it is considering whether to make an assessment of the child's educational needs<sup>16</sup>;
- 1839 (b) of the procedure to be followed in making the assessment<sup>17</sup>;
- 1840 (c) of the name of its officer from whom further information may be obtained<sup>18</sup>; and
- 1841 (d) of the parent's right to make representations<sup>19</sup>, and submit written evidence<sup>20</sup>, to the authority before the end of the period specified in the notice<sup>21</sup>.

If a local education authority decides<sup>22</sup> to make an assessment of educational needs, it must give written notice to the child's parent and to the responsible body which made the request, of the decision and of its reasons for making it<sup>23</sup>. If, however, after serving the required notice<sup>24</sup>, the authority decides not to assess the educational needs of the child, it must give written notice of the decision and of its reasons for making it to the child's parent and to the responsible body which made the request<sup>25</sup>, and the parent may appeal against the decision to the Tribunal<sup>26</sup>. The Tribunal may either dismiss the appeal<sup>27</sup> or order the authority to arrange for an assessment to be made in respect of the child<sup>28</sup>.

1 As to the meaning of 'child' see PARA 984 note 1 ante.

2 For the meaning of 'registered pupil' see PARA 512 ante. For the meaning of 'pupil' see PARA 16 note 4 ante. The Education Act 1996 s 329A (as added) applies to a child for whom relevant nursery education is provided as it applies to a child who is a registered pupil at a relevant school (ie at any of the types of schools mentioned in the text and notes 3-7 infra): s 329A(11), (12) (s 329A added by the Special Educational Needs and Disability Act 2001 s 8). For the meaning of 'school' see PARA 81 ante. 'Relevant nursery education' means nursery education which is provided by a local education authority, or by any other person who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of the School Standards and Framework Act 1998 s 120(2) (a) (see PARA 88 ante): s 123(4); definition applied by the Education Act 1996 s 329A(14) (as so added). For the meaning of 'nursery education' see PARA 85 ante. As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under s 326A (as added and



amended), s 329A (as added and amended) or Sch 26 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 paras (j), (n), (q). For the meaning of 'England' see PARA 52 note 11 ante.

3 For the meaning of 'maintained school' see PARA 984 note 11 ante.

4 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

5 For the meaning of 'pupil referral unit' see PARA 457 ante.

6 As to independent schools see PARA 465 ante.

7 Ie a special school approved under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 post).

8 For the meaning of 'special educational needs' see PARA 984 ante.

9 Education Act 1996 s 329A(1)(a), (12) (as added: see note 2 supra). Statements of special educational needs are maintained under s 324 (as amended) (see PARA 996 post).

10 For these purposes, 'the responsible body' means: (1) in relation to a maintained nursery school or a pupil referral unit, the head teacher; (2) in relation to any other relevant school (ie any other of the schools mentioned in ibid s 329A(12) (as added) (see the text and notes 1-9 supra), the proprietor or head teacher; and (3) in relation to a provider of relevant nursery education, the person or body of persons responsible for the management of the provision of that nursery education: s 329A(13) (as added (see note 2 supra); and amended by the Education Act 2002 s 215(1), Sch 21 para 44). For the meaning of 'proprietor' see PARA 60 note 7 ante. As to the meaning of 'head teacher' see PARA 93 note 13 ante.

11 Ie under the Education Act 1996 s 323 (as amended) (see PARA 988 ante).

12 Ibid s 329A(1)(b) (as added: see note 2 supra).

13 Ibid s 329A(1)(c) (as added: see note 2 supra).

14 Ibid s 329A(2) (as added: see note 2 supra). Where a responsible body asks an authority to arrange for an assessment and no assessment has been made for that child within the period of six months ending with the date on which the request is made, provision for the giving of notices by the authority is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4, 6(2), (5)-(6) (reg 6(2) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4, 6(2), (5)-(6). When making an assessment an authority must take into consideration any representations made by the child's parent under the Education Act 1996 s 323(1)(d) (see PARA 988 ante) or s 329A(3)(d) (as added) (see the text and notes 19-21 infra), together with any evidence submitted by or at the request of the child's parent under either of those provisions, and the advice obtained, in relation to England, under the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 7 (as amended), or, in relation to Wales, under the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 7 (see PARA 989 ante): see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 11(a)-(c); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 11(a)-(c).

15 Regulations may provide that where a local education authority is under a duty under the Education Act 1996 s 329A (as added and amended) to serve any notice, the duty must be performed within the prescribed period (s 323(5), Sch 26 para 3(3)(a) (Sch 26 para 3(3), (4) substituted by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt I para 14(1), (3)), and that where a local education authority has served a notice under the Education Act 1996 s 329A(3) (as added) on a child's parent, it must decide within the prescribed period whether or not to make an assessment of the child's educational needs (Education Act 1996 Sch 26 para 3(3)(b) (as so substituted)). Provision made under Sch 26 para 3(3) (as substituted) may be subject to prescribed exceptions, and does not relieve the authority of the duty to serve a notice, or make a decision or assessment, which has not been served or made within the prescribed period: Sch 26 para 3(4) (as so substituted). 'Prescribed' means prescribed by regulations; and, in relation to England, 'regulations' means regulations made by the Secretary of State: s 579(1). In relation to Wales, 'prescribed' means prescribed in regulations made by the National Assembly for Wales: s 329A(15) (as added: see note 2 supra), s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to provision for the service of notices see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4-5; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4-5.

16 Education Act 1996 s 329A(3)(a) (as added: see note 2 supra). Where an authority serves on a child's parent notice that it is considering whether to make an assessment, provision for the content and service of that notice is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4, 6(1)-(3), 12(3)-(5) (reg 6(2) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4, 6(1)-(3), 12(3)-(5).

17 Education Act 1996 s 329A(3)(b) (as added: see note 2 supra).

18 Ibid s 329A(3)(c) (as added: see note 2 supra).

19 The authority must take into account any representations made, and any evidence submitted, to it in response to the notice: *ibid* s 329A(6) (as added: see note 2 supra).

20 See note 18 supra.

21 Education Act 1996 s 329A(3)(d) (as added: see note 2 supra). The period specified in the notice must not be less than 29 days beginning with the date on which the notice is served (s 329A(4) (as so added)), and the authority may not decide whether to comply with the request until the specified period has expired (s 329A(5) (as so added)).

When making an assessment of special educational needs an education authority is required to take into consideration any representations made by, and any evidence submitted by or at the request of, the child's parent under s 329A(3)(d) (as added): see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 11(a), (b); the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 11(a), (b); and *PARA* 988 ante.

22 *Ie* as a result of the Education Act 1996 s 329A (as added).

23 Ibid s 329A(7) (as added: see note 2 supra). Where no notice has been given in relation to a particular assessment and an authority serves notice on a child's parent that it is considering whether to make an assessment, provision for the content and service of that notice, and for the time limit within which the assessment must be completed, is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4, 6(1)-(3), 12(6)-(11) (regs 6(2), 12(7)(e), (8)-(10) amended by SI 2002/2469); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4, 6(1)-(3), 12(6)-(11).

24 *Ie* under the Education Act 1996 s 329A(3) (as added): see the text and notes 15-21 supra.

25 Ibid s 329A(8)(a) (as added: see note 2 supra). A notice given under s 329A(8)(a) (as added) to the child's parent must inform the parent of his right to appeal, and must contain such other information (if any) as may be prescribed: s 329A(9) (as so added). Provision in this regard is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 12(3)-(5); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 12(3)-(5).

26 Education Act 1996 s 329A(8)(b) (as added: see note 2 supra). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see *PARA* 993 note 13 ante. In the case of an appeal under s 329A (as added), the local education authority must make an assessment of the child's educational needs before the end of the prescribed period: s 326A(4)(b) (s 326A added by the Special Educational Needs and Disability Act 2001 s 5). For the purposes of the Education Act 1996 s 326A (as added and amended), 'prescribed' means prescribed by regulations made: (1) in relation to an appeal to the Special Educational Needs and Disability Tribunal, by the Secretary of State; and (2) in relation to an appeal to the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales: s 326A(6) (substituted by the Education Act 2002 s 195, Sch 18 paras 1, 3). At the date at which this volume states the law, no such regulations had been made.

27 Education Act 1996 s 329A(10)(a) (as added: see note 2 supra). As to appeals from Tribunal decisions see *PARA* 1035 post.

28 Ibid s 329A(10)(b) (as added: see note 2 supra). If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made: s 336A(1) (s 336A added by the Special Educational Needs and Disability Act 2001 s 4). For the purposes of the Education Act 1996 s 336A(1) (as added), 'prescribed' means prescribed by regulations made: (1) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State; (2) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State: s 336A(2) (as so added; and substituted by the Education Act 2002 s 195, Sch 18 paras 1, 6). Provision governing compliance with orders of the Tribunal is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 25; and by the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 3. For an

attempt to compel compliance with an order via mandatory order see *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal)*, ex p AF [2000] ELR 550.

If the parent of a child has appealed to the Tribunal under the Education Act 1996 s 328 (as amended) against a decision of a local education authority, and the authority notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal, the appeal is treated as having been determined in favour of the appellant, and if an appeal is treated as so determined, the Tribunal is not required to make any order: s 326A(1)-(3) (as added: see note 26 supra). If an appeal to the Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must make an assessment of educational needs within four weeks: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 26; and the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 4.

## UPDATE

### **995 Review or assessment of educational needs at request of responsible body**

NOTES 2, 10--1996 Act s 329A(11) amended, s 329A(13) further amended: Childcare Act 2006 Sch 2 para 22 (in force in relation to England: SI 2008/2261).

NOTE 14--SI 2001/3455 reg 6(6) amended: SI 2006/3346.

NOTES 16, 23--SI 2001/3455 reg 6(1) amended: SI 2006/3346.

NOTES 16, 25--SI 2001/3455 reg 12(3), (4) amended: SI 2006/3346.

TEXT AND NOTES 26-28--References to 'the Tribunal' and 'the Special Educational Needs and Disability Tribunal' now refer to the First-tier Tribunal and the Special Educational Needs Tribunal for Wales: Education Act 1996 (ss 326A(6), 336A(2) amended by SI 2008/2833).

NOTE 28--SI 2001/3455 reg 25 amended: SI 2006/3346, SI 2008/2683.

If an appeal to the First-tier Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must within four weeks notify the child's parent under the 1996 Act s 323(4) (see PARA 988) or, as the case may be, s 329A(7) (see NOTE 23) that they will make an assessment: SI 2001/3455 reg 26 (amended by SI 2006/3346, SI 2008/2683).

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## **(2) STATEMENTS OF SPECIAL EDUCATIONAL NEEDS**

### **996. Statement of special educational needs.**

If, in the light of an assessment<sup>1</sup> of any child's<sup>2</sup> educational needs and of any representations made by the child's parent<sup>3</sup>, it is necessary for the local education authority<sup>4</sup> to determine the special educational provision<sup>5</sup> for which any learning difficulty<sup>6</sup> he may have calls, the authority must make and maintain a statement of his special educational needs<sup>7</sup>. The statement must be in such form and contain such information as may be prescribed<sup>8</sup> and, in particular, must give details of the authority's assessment of the child's special educational needs<sup>9</sup> and specify the special educational provision to be made for the purpose of meeting those needs<sup>10</sup>. The statement must:

- 1842 (1) specify the type of school<sup>11</sup> or other institution which the local education authority considers would be appropriate for the child<sup>12</sup>;
- 1843 (2) if it is not required<sup>13</sup> to specify the name of any school in the statement, specify the name of any school<sup>14</sup> or institution (whether in the United Kingdom<sup>15</sup> or elsewhere) which it considers would be appropriate for the child and should be specified in the statement<sup>16</sup>; and
- 1844 (3) specify any special educational provision otherwise than in schools for the child for which it makes arrangements<sup>17</sup> and which it considers should be specified in the statement<sup>18</sup>.

Where a local education authority maintains a statement of a child's special educational needs, then:

- 1845 (a) unless the child's parent has made suitable arrangements<sup>19</sup>, the authority must arrange that the special educational provision specified in the statement is made for the child<sup>20</sup>, and may arrange that any non-educational provision specified in the statement is made for him in such manner as it considers appropriate<sup>21</sup>; and
- 1846 (b) if the name of a maintained school or maintained nursery school is specified in the statement, the governing body of the school must admit the child to the school<sup>22</sup>.

1    Ie under the Education Act 1996 s 323 (as amended) (see PARA 988 ante).

2    As to the meaning of 'child' see PARA 984 note 1 ante.

3    Ie in pursuance of the Education Act 1996 s 324(7), Sch 27 (as amended). As to the meaning of 'parent' see PARA 510 note 1 ante.

4    As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under ibid s 324 (as amended) and Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

5    For the meaning of 'special educational provision' see PARA 984 ante.

6    For the meaning of 'learning difficulty' see PARA 984 ante.

7 Education Act 1996 s 324(1). For the meaning of 'special educational needs' see PARA 984 ante. The local education authority has a wide discretion as to whether a statement is needed (see eg *R v Secretary of State for Education and Science, ex p Lashford* [1988] 1 FLR 72, (1987) 86 LGR 13, CA; *R v Isle of Wight County Council, ex p S* (1992) Times, 2 November, CA) although it must have regard to the code of practice made under the Education Act 1996 s 313 (as amended) (see s 313(2)(a); and PARA 1036 post). As to the parental right of appeal against the content of a statement see PARA 1033 post.

8 Education Act 1996 s 324(2). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. A statement of special educational needs must be in a form substantially corresponding to that set out, in relation to England, in the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16, Sch 2 and, in relation to Wales, in the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16, Sch 2: Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(a); Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16(a). A statement must contain the specified information (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(b); Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16(b)), arranged into six parts:

- 96 (1) Introduction: the name of the local education authority making the statement, particulars of the child and the child's parent or person responsible, and details of the advice taken into consideration by the authority in assessing the child's needs (see PARA 989 ante) (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Sch 2 Pt 1, Appendices A-G; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Sch 2 Pt 1, Appendices A-G);
- 97 (2) Special Educational Needs: the special educational needs of the child calling for special educational provision, as assessed by the authority (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Sch 2 Pt 2; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Sch 2 Pt 2);
- 98 (3) Special Educational Provision: the objectives which the special educational provision for the child should aim to meet, the educational provision considered appropriate to meet those needs and objectives, and the arrangements to be made for monitoring the proposed educational provision (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Sch 2 Pt 3; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Sch 2 Pt 3);
- 99 (4) Placement: the type of school (or the name of the school) considered appropriate for the child's needs (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Sch 2 Pt 4; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Sch 2 Pt 4);
- 100 (5) Non-educational Needs: the non-educational needs of the child for which the authority considers provision is appropriate if the child is to properly benefit from the special educational provision specified in head (3) supra (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Sch 2 Pt 5; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Sch 2 Pt 5); and
- 101 (6) Non-educational Provision: any non-educational provision proposed to be made available to the child, including the arrangements for its provision, the objectives of the provision, and the arrangements for monitoring progress in meeting those objectives (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Sch 2 Pt 6; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Sch 2 Pt 6).

Additionally, the statement must be dated and authenticated by the signature of a duly authorised officer of the authority concerned (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(c); Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16(c)), and it must set out whether it is the first statement made by the authority for the child or a subsequent statement (Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(d); Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16(d)). It must indicate on the front page if it is: (a) amended pursuant to an annual review, and the date of any such annual review; or (b) whether it is amended pursuant to a review other than an annual review, and the date of any such review; or (c) whether it is amended pursuant to an order of the Tribunal (ie, in relation to England, the Special Educational Needs and Disability Tribunal and, in relation to Wales, the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante), and the date of any such order; or (d) whether it is amended

pursuant to a direction of the Secretary of State or the National Assembly for Wales, as the case may be, and the date of any such direction: Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(e); Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16(e).

In relation to heads (2) and (3) *supra*, it was held in *G v Barnet London Borough Council and the Special Educational Needs Tribunal* [1998] ELR 480 at 483 per Ognall J that a child's religious and cultural background does not constitute a special educational need in its own right. However, in *A v Special Educational Needs and Disability Tribunal* [2003] EWHC 3368 (Admin), [2004] ELR 293, a decision maker was required to take account of a child's religious and cultural background (in this case, Jewishness) in assessing how special educational needs should be met.

In relation to head (3) *supra*, provision is not required to be made for matters of background and comment, nor even for needs which do not amount to educational needs: *W v Leeds City Council* [2005] EWCA Civ 988, [2005] ELR 617. Further to head (3) *supra*, the regulations require the statement to specify, in particular, any appropriate facilities and equipment, staffing arrangements and curriculum: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Sch 2 Pt 3; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Sch 2 Pt 3. The courts have approached this by acknowledging the importance of flexibility: see eg *R v Cumbria County Council, ex p P* [1995] ELR 337 at 348, where Schiemann J concluded that it would not be appropriate to issue a declaration that where speech therapy was required the number and length of weekly sessions should be specified in the statement, because there was 'a whole spectrum of help which any individual child can receive from variously qualified and unqualified persons so as to help him achieve the maximum of what he is capable of achieving'. See also *L v Clarke and Somerset County Council* [1998] ELR 129 at 136, where Laws J observed: 'A requirement that the help to be given should be specified in a statement in terms of hours per week is not an absolute and universal precondition of the legality of the statement . . . There will be some cases where flexibility should be retained', although he concluded (at 137): 'The real question . . . in relation to any particular statement is whether it is so specific and so clear as to leave no room for doubt as to what has been decided is necessary in the individual case. Very often a specification of hours per week will no doubt be necessary and there will be a need for that to be done'. This guidance has been considered in *C v Special Educational Needs Tribunal* [1999] ELR 5 at 11 per Richards J; *C v Buckinghamshire County Council and the Special Educational Needs Tribunal* [1999] ELR 179 at 189, CA, per Thorpe LJ; *Bromley London Borough Council v Special Educational Needs Tribunal* [1999] 3 All ER 587 at 597, [1999] ELR 260 at 297, CA, per Sedley LJ; *H v Leicestershire County Council* [2000] ELR 471 at 484-485 per Dyson J; *S v City and Council of Swansea and Confrey* [2000] ELR 315 at 327-328 per Sullivan J; *E v Rotherham Metropolitan Borough Council* [2001] EWHC Admin 432 at [25], [2002] ELR 266 at [25] per Bell J; *E v Flintshire County Council* [2002] EWHC 388 (Admin) at [19], [2002] ELR 378 at [19] per Newman J; *E v Newham London Borough Council* [2002] EWHC 915 (Admin) at [24], [2002] ELR 453 at [24] per Stanley Burnton J (affd [2003] EWCA Civ 09, [2003] LGR 547, [2003] ELR 286); *R (on the application of IPSEA Ltd) v Secretary of State for Education and Skills* [2002] EWCA Civ 07 at [14], [2003] ELR 393 at [14] per Hale LJ (any flexibility built into a statement must meet needs of the child not the system). As to the requirement that a statement be sufficiently specific so as to enable a child's particular needs to be met see also *R (on the application of W) v Bedfordshire County Council and B* [2001] ELR 645; *E v Newham London Borough Council* *supra* at [36] per Stanley Burnton J. As to doubts expressed regarding the lawfulness of delegating the decision as to the final content of the provision under head (3) *supra* see *C v Special Educational Needs Tribunal* *supra* at 13 per Richards J; cf *Bromley London Borough Council v Special Educational Needs Tribunal* *supra*; *S v Hackney London Borough Council* [2001] EWHC Admin 572, [2002] ELR 45.

Where educational provision is appropriate, it should be included within part 3 of the statement (see head (3) *supra*); but there is no reason why, if it was considered necessary, part 4 of the statement (see head (4) *supra*) should not contain a reference to the provision as the measure that is appropriate for the time being, and a reference to the type of school to which a placement would be appropriate in the event that a vacancy should arise: *Wandsworth London Borough Council v K* [2003] EWHC 1424 (Admin), [2003] ELR 554.

9 Education Act 1996 s 324(3)(a).

10 Ibid s 324(3)(b). The educational provision to be specified includes the particulars required by s 324(4) (see heads (1)-(3) in the text): s 324(3)(b). The precise nature of the requirement to specify the special educational provision to be made for the purpose of meeting the child's needs' (see s 324(3)(b)) was considered in *R v Secretary of State for Education and Science, ex p E* [1993] 2 FCR 753, [1992] 1 FLR 377, CA (specified provision must address each of the needs specified in the statement). See also *R v Mid-Glamorgan County Council, ex p B* [1995] ELR 168; *R v Kingston upon Thames London Borough Council and Hunter* [1997] ELR 223. However, a cautious approach is needed. It has been held that *R v Secretary of State for Education, ex p E* *supra* does not justify a detailed comparison between the parts of a statement in support of a challenge to its sufficiency: see *Re L* [1994] ELR 16 at 22 per Leggatt LJ, CA. The Tribunal is entitled to take account of evidence from the local education authority as to how it intends to implement a commitment in the statement which leaves some room for doubt (*Joyce v Dorset County Council* [1997] ELR 26) or as to how the authority has classified provision to be made (for example, as educational or non-educational) (*C v Special Educational Needs Tribunal* [1997] ELR 390, applying *Re L* *supra*). See also *B v Isle of Wight Council* [1997] ELR 279; *R v Northamptonshire County Council, ex p Marshall* [1998] Ed CR 262; *C v Special Educational Needs Tribunal and*

*Greenwich London Borough Council* [1999] ELR 5; *R v Hackney London Borough Council, ex p GC* [1996] ELR 142, CA. See also note 17 infra.

The authority's duty is to make suitable provision, not necessarily the best possible provision: *R v Surrey County Council, ex p H* (1984) 83 LGR 219, CA. In relation to that case it has been said: 'it is . . . fair to read that case . . . as endorsing the limitation of the authority's duty under [the Education Act 1996 s 324] to the selection of an appropriate school. Although the statutory regard to cost is relevant only as a constraint on parental choice . . . there is nothing in the statutory scheme which calls upon the local education authority to specify the optimum available provision and much in its general duty of financial husbandry to entitle it to choose the least expensive of the appropriate options': *R v Cheshire County Council, ex p C* [1998] ELR 66 at 78 per Sedley J.

In order to comply with the Education Act 1996 s 324(3), an authority may not specify either directly or indirectly that parents are to supply some or all of the needs: *R(A) v Cambridgeshire County Council* [2002] EWHC 2391 (Admin), [2003] ELR 464; *DM & KC v Essex County Council* [2003] EWHC 135 (Admin), [2003] ELR 419 (parents did not consent to the regime being proposed). However, there is no offence against this principle if the parent is required to co-operate and liaise with those providing the child's educational programme when the child is at home during times of non-educational care: *R (on the application of KW) v Special Educational Needs Tribunal and Rochdale MBC* [2003] EWHC 1770 (Admin), [2003] ELR 566.

11 For the meaning of 'school' see PARA 81 ante. Naming a boarding school is not likely to contravene the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 8 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 149-155): *CB v Merton London Borough Council* [2002] ELR 441 at [19] per Sullivan J.

12 Education Act 1996 s 324(4)(a); Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(b), Sch 2 Pt 4; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16(b), Sch 2 Pt 4. See note 8 head (4) supra.

13 Ie under the Education Act 1996 Sch 27 (as amended).

14 If a local education authority is considering specifying the name of a maintained school or maintained nursery school in a statement, it must serve a copy of the proposed statement on, and consult, each affected body: *ibid* s 324(7), Sch 27 para 3A(1)(a), (2) (Sch 27 para 3A added by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 7; and the Education Act 1996 Sch 27A para 3A(1)(a) amended by the Education Act 2002 s 215(1), Sch 21 para 58(a)). For these purposes, 'affected body' means the governing body of any school which the local education authority is considering specifying and, if a school which the authority is considering specifying is maintained by another local education authority, that authority: Education Act 1996 Sch 27 para 3A(3) (as so added). For the meaning of 'maintained school' see PARA 984 note 11 ante. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

Provision for the service of documents is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 5.

15 For the meaning of 'United Kingdom' see PARA 63 note 3 ante.

16 Education Act 1996 s 324(4)(b); Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(b), Sch 2 Pt 4; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 16(b), Sch 2 Pt 4. See note 8 head (4) supra. This does not, however, require the name of a school or institution to be specified if the child's parent has made suitable arrangements for the special educational provision specified in the statement to be made for the child: Education Act 1996 s 324(4A) (added by the Special Educational Needs and Disability Act 2001 s 9). As to what comprises 'suitable arrangements' see note 19 infra. A local education authority is only required to specify the name of a school in a statement if it considers the school appropriate and that it should be specified; in other words, the authority has a discretion as to whether or not to name a school in a statement: *Richardson v Solihull Metropolitan Borough Council, White v Ealing London Borough Council, Hereford and Worcester County Council v Lane* [1999] 1 FCR 356, [1998] ELR 319, CA. See also *R v Kent County Council, ex p AMS* [2000] ELR 209.

17 Ie under the Education Act 1996 s 319 (see PARA 1011 post). See also *Tottman v Hertfordshire County Council* [2004] EWCA Civ 927, [2005] LGR 262, [2004] All ER (D) 370 (Jun) (once the Tribunal had found that the child's special educational needs could be met at a local authority school, it had no obligation to specify what should occur outside the school working day); *J v Special Educational Needs and Disability Tribunal* [2005] All ER (D) 125 (Dec) (Tribunal entitled to conclude that a claimant's statement of special educational needs could be met appropriately by a school without prescribing a continuation of 'applied behaviour analysis' (ABA), which had been undertaken largely at home).

18 Education Act 1996 s 324(4)(c); Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 16(b), Sch 2 Pt 4; Education (Special Educational Needs) (Wales)

Regulations 2002, SI 2002/152, reg 16(b), Sch 2 Pt 4. See note 8 head (4) *supra*. Local education authorities must not fetter their discretion in determining the provision to be made: *R v Newham London Borough Council, ex p R* [1995] ELR 156. It is not, however, unlawful to have a policy to guide the authority in the exercise of its discretion as to whether or not to make a statement: *R v Cumbria County Council* [1995] ELR 337; *R v Cumbria County Council, ex p B* [1995] 3 FCR 252, sub nom *R v Cumbria County Council, ex p NB* [1996] ELR 65.

19 'If the parents make suitable arrangements they effectively relieve the local education authority of its duty': *R v Governors of Hasmorean High School, ex p N* [1994] ELR 343 at 355, CA, per Glidewell LJ. 'The question of 'suitable arrangements' is a question of funding the necessary schooling': *G v Barnet London Borough Council* [1998] ELR 480 at 486 per Ognall J. In *White v Ealing London Borough Council, Richardson v Solihull Metropolitan Borough Council, Solihull Metropolitan Borough Council v Finn* [1998] ELR 203, the parents of an autistic child had raised funds in order to send the child to an independent residential school of their choice, which was meeting his needs; however, it was held that this did not mean that the parents had made 'suitable arrangements' since such arrangements had to include arrangements for funding for a reasonable period of time: 'It would have been unreasonable to decide that suitable arrangements had been made because the parents would be able to finance [the child's] schooling by future fund raising. Quite apart from the worrying uncertainty of relying on the kinds of activities in which the parents had engaged in order to get [the child] started at the school as a source of finance, it is unreasonable for an authority to seek to relieve itself of its statutory duties by relying on parents to raise finance in this way' (at 225 per Dyson J). See also *R v Hackney London Borough Council, ex p GC* [1996] ELR 142, CA. The Education Act 1996 s 324(5) (as amended) has been used as the basis for a decision allowing the Family Court to make other suitable arrangements for a child's education, even if the Tribunal takes a different view: *X County Council v DW, PW and SW* [2005] EWHC 162 (Fam), [2005] 2 FLR 508 (Family Court was in no worse a position than a parent under the Education Act 1996 s 324(5) (as amended)).

20 Education Act 1996 s 324(5)(a)(i). See *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal), ex p AF* [2000] ELR 550. A local education authority in England may assist an approved city college for the purpose of securing that the statemented provision for a relevant child is made: see the Education Act 1996 s 483A (as added and amended); the Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071; and PARA 1010 post.

21 Education Act 1996 s 324(5)(a)(ii). '[Section 324(5)(a)] differentiates explicitly between special educational provision and 'non-educational provision'. It thus anticipates that both will appear in the statement, and it prescribes a duty on the LEA to arrange for the former and a discretion in the LEA to arrange for the latter': *Bromley London Borough Council v Special Educational Needs Tribunal* [1999] ELR 260 at 291, CA, per Sedley LJ. The distinction between 'educational' and 'non-educational provision' for this purpose was explained thus: 'there is between the unequivocally educational and the unequivocally non-educational a shared territory of provision which can be intelligibly allocated to either . . . The potentially large intermediate area of provision which is capable of ranking as educational or non-educational is not made the subject of any statutory prescription precisely because it is for the local educational authority, and if necessary the [Tribunal], to exercise a case-by-case judgment which no prescriptive legislation could ever hope to anticipate': *Bromley London Borough Council v Special Educational Needs Tribunal* *supra* at 295-296 per Sedley LJ. See also *Bradford Metropolitan Council v A* [1997] ELR 417 (a local education authority was justified in regarding the provision in a statement for a nurse for a pupil with special educational needs as non-educational provision).

22 Education Act 1996 s 324(5)(b) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 77(a); and the Education Act 2002 s 215(1), Sch 21 para 43). The Education Act 1996 s 324(5)(b) (as amended) has effect regardless of any duty imposed on the governing body of a school by the School Standards and Framework Act 1998 s 1(6) (limits on class sizes: see PARA 405 ante) (Education Act 1996 s 324(5A) (added by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 77(b))), and does not affect any power to exclude from a school a pupil who is already a registered pupil there (Education Act 1996 s 324(6)). For the meaning of 'pupil' see PARA 16 note 4 ante. For the meaning of 'registered pupil' see PARA 512 ante. The duty under s 324(5)(b) (as amended) to admit the child to the school specified in the child's statement is mandatory: *R v Chair of Governors and Headteacher of A and S School, ex p T* [2000] ELR 274.

## UPDATE

### 996 Statement of special educational needs

NOTE 8--Head (1). SI 2001/3455 Sch 2 Pt 1 amended: SI 2006/3346. Head (6) SI 2001/3455 Sch 2 Pt 6 amended: SI 2006/3346. SI 2001/3455 reg 16(e) amended: SI 2008/2683.

See *Way v Poole BC* [2007] EWCA Civ 1145, [2007] All ER (D) 263 (Jan) (statement lacking specificity in relation to child's need for intervention had to be amended).



Additionally the statement must have appended to it, in SI 2001/3455 Sch 2 Pt 1 Appendix G, together with the advice about the child obtained by the authority since the first assessment of the child was made under the 1996 Act s 323 (1) in the case of a statement falling within head (a): (i) where the review was one to which SI 2001/3455 reg 20 or reg 21 applied, a copy of the report prepared by the head teacher for the purposes of reg 18(3), reg 20(2) or reg 21(2) as the case may be, a copy of the written record of the decisions of the authority and any written recommendations for amendment to a transition plan, made under reg 20(13) or reg 21(13), as the case may be; (ii) where the review was one to which reg 22 applied, a copy of the report prepared by the authority under reg 22(2), (7), a copy of the written recommendations, new transition plan, where the review is the first commenced after the child has commenced his tenth year of compulsory education, or where a plan exists, the plan as may have been amended, under reg 22(9); (2) in the case of a statement falling within head (b), the advice and information which the authority has relied on in reviewing the statement; (3) in the case of a statement falling within head (c), a copy of the order of the First-tier Tribunal; and (4) in the case of a statement falling within head (d), a copy of the direction of the Secretary of State: reg 16(f) (added by SI 2006/3346, amended by SI 2008/2683).

NOTES 11, 12--See *R (on the application of M) v Sutton LBC* [2007] EWCA Civ 1205, [2008] ELR 123 (nomination of particular school which is also parents' preferred placement if, but only if, they accept responsibility for transport, because other schools of specified type and closer to child's home that can meet his needs, sufficient to comply with 1996 Act s 324(4)(a)).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(2) STATEMENTS OF SPECIAL EDUCATIONAL NEEDS/997. Copy of proposed statement of child's special educational needs.

### **997. Copy of proposed statement of child's special educational needs.**

Before making a statement of special educational needs<sup>1</sup>, a local education authority<sup>2</sup> must serve on the parent<sup>3</sup> of the child<sup>4</sup> concerned a copy of the proposed statement<sup>5</sup>. When serving the copy, the authority must also serve on the parent a written notice explaining (to the extent that they are applicable) the arrangements for enabling the parent to express a preference as to his choice of school<sup>6</sup>, the parent's right to make representations to the authority as to the content of the proposed statement<sup>7</sup>, and the provisions for appealing against a statement<sup>8</sup>, and containing such other information as may be prescribed<sup>9</sup>.

<sup>1</sup> I.e. a statement under the Education Act 1996 s 324 (as amended) (see PARA 996 ante): s 324(7), Sch 27 para 1 (substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 2). For the meaning of 'special educational needs' see PARA 984 ante.

<sup>2</sup> As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 324 (as amended) and Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

<sup>3</sup> As to the meaning of 'parent' see PARA 510 note 1 ante.

<sup>4</sup> As to the meaning of 'child' see PARA 984 note 1 ante.

<sup>5</sup> Education Act 1996 Sch 27 para 2(1) (Sch 27 para 2 substituted by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 3). Provision for the service of documents is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 5, and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 5.

The copy of the proposed statement must not specify any prescribed matter or any matter in pursuance of the Education Act 1996 s 324(4) (see PARA 996 ante): Sch 27 para 2(2)-(4) (as so substituted). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. The time limits within which notice must be served under Sch 27 para 2(1) (as substituted) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(1), (3), (4), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(1), (3), (4), (9). For the right of a parent, on whom a copy of a proposed statement has been served, to make representations as to the content of the statement see PARA 1005 post.

<sup>6</sup> I.e. arrangements under the Education Act 1996 Sch 27 para 3 (as amended): see PARA 1006 post.

<sup>7</sup> I.e. the effect of *ibid* Sch 27 para 4 (as amended) (see PARA 1005 post), which enables parents to make representations (or further representations) to the authority about the content of the proposed statement or the statement as it will have effect if amended in the way proposed by the authority, and to require the authority to arrange a meeting between him and an officer of the authority at which the proposed statement or the statement as it will have effect if amended in the way proposed by the authority can be discussed.

<sup>8</sup> *Ibid* Sch 27 para 2B(1)(a), (2) (Sch 27 para 2B added by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 3). Provision for appealing against the content of a statement is made by the Education Act 1996 s 326 (as amended): see PARA 1004 post.

<sup>9</sup> *Ibid* Sch 27 para 2B(3) (as added: see note 8 *supra*). The notice which must be served by an authority on a parent pursuant to Sch 27 para 2B(2) (as added) to accompany a copy of a proposed statement served under Sch 27 para 2(1) (as substituted) must contain the information specified in the required Notice to Parent,

including the procedure by which the parents may discuss the statement with the authority, lists of the maintained primary or secondary schools in the area and lists of approved non-maintained and independent schools, the procedure to be followed if the parents nominate a school, and the consultation process generally: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 14(a), Schedule 1 Pt A; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 14(a), Schedule 1 Pt A. Copies of all the advice given to the authority during the child's assessment for the statement must also be attached to the Notice to Parent: Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, Schedule 1 Pt A; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, Schedule 1 Pt A. The time limits within which notice must be served under the Education Act 1996 Sch 27 para 2B(2) (as added) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(1)-(2), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(1)-(2), (9).

## **UPDATE**

### **997 Copy of proposed statement of child's special educational needs**

NOTES 5, 9--SI 2001/3455 reg 17 further amended: SI 2008/2683.

NOTE 9--SI 2001/3455 Sch 1 Pt A substituted by SI 2006/3346, amended by SI 2008/2683.

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### **998. Time limit for making the statement of child's special educational needs.**

Regulations<sup>1</sup> may provide that where a local education authority<sup>2</sup> is under a duty<sup>3</sup> to make a statement of special educational needs<sup>4</sup>, the duty, or any step required to be taken for performance of the duty, must, subject to prescribed<sup>5</sup> exceptions, be performed within the prescribed period<sup>6</sup>. Such provision must not relieve the authority of the duty to make a statement, or take any step, which has not been performed or taken within that period<sup>7</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations which have been made in pursuance of this power see note 6 infra.

2 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 324 (as amended) and Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

3 Ie subject to compliance with the Education Act 1996 s 324(7), Sch 27 paras 1, 2, 2A, 2B, 3, 3A, 4 (Sch 27 paras 1-2 as substituted; Sch 27 paras 2A-2B as added; Sch 27 para 3A as added and amended; Sch 27 paras 3, 4 as amended) (see PARA 999 et seq post).

4 Ie a statement under ibid s 324 (as amended) (see PARA 996 ante); Sch 27 para 1 (substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 2). For the meaning of 'special educational needs' see PARA 984 ante.

5 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1). See note 1 supra.

6 Ibid Sch 27 para 5(3). The time limits for the performance of local education authority duties in this regard are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17. See PARAS 993-994, 997 ante, 1000-1001, 1003, 1007 post.

7 Education Act 1996 Sch 27 para 5(4).

### **UPDATE**

### **998 Time limit for making the statement of child's special educational needs**

TEXT AND NOTE 6--1992 Act Sch 27 para 5(3) substituted: Education and Inspections Act 2006 s 174(3)(a). SI 2001/3455 reg 17 further amended: SI 2008/2683.

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### **999. Service of statement of child's special educational needs.**

Where a local education authority<sup>1</sup> makes or amends a statement of special educational needs<sup>2</sup> it must serve a copy<sup>3</sup> of the statement, or the amended statement, on the parent<sup>4</sup> of the child<sup>5</sup> concerned<sup>6</sup>. At the same time, the authority must give the parent written notice<sup>7</sup> of the right to appeal<sup>8</sup> against the description in the statement of the authority's assessment of the child's special educational needs<sup>9</sup>, the special educational provision<sup>10</sup> specified in the statement (including the name of the school<sup>11</sup> specified in the statement)<sup>12</sup>, or, if no school is named in the statement, that fact<sup>13</sup>. The notice must also contain such other information as may be prescribed<sup>14</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 324 (as amended) and Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

2 I.e. a statement under the Education Act 1996 s 324 (as amended) (see PARA 996 ante): s 324(7), Sch 27 para 1 (substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 2). As to the making of statements see PARA 998 ante; and as to amending statements see PARA 1000 post.

3 Provision for the service of documents is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 5.

4 As to the meaning of 'parent' see PARA 510 note 1 ante.

5 As to the meaning of 'child' see PARA 984 note 1 ante.

6 Education Act 1996 s 324(7), Sch 27 para 6(1) (Sch 27 para 6 substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 14). The time limits for the performance of local education authority duties in connection with the service of notices under the Education Act 1996 Sch 27 para 6(1) (as added) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(3)-(4), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(3)-(4), (9). As to the making of regulations see also note 14 infra.

7 Provision for the service of notices is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4-5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4-5.

8 I.e. under the Education Act 1996 s 326(1) (as substituted) (see PARA 1004 post).

9 Education Act 1996 Sch 27 para 6(2)(a) (as substituted: see note 6 supra). For the meaning of 'special educational needs' see PARA 984 ante.

10 For the meaning of 'special educational provision' see PARA 984 ante.

11 For the meaning of 'school' see PARA 81 ante.

12 Education Act 1996 Sch 27 para 6(2)(b) (as substituted: see note 6 supra).

13 Ibid Sch 27 para 6(2)(c) (as substituted: see note 6 supra). The time limits for the performance of local education authority duties in connection with the service of notices under the Education Act 1996 Sch 27 para 6(2) (as added) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(3)-(4), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(3)-(4), (9). As to the making of regulations see further note 14 infra.

14 Education Act 1996 Sch 27 para 6(3) (as substituted: see note 6 supra). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made in pursuance of this power.

## **UPDATE**

### **999 Service of statement of child's special educational needs**

NOTES 6, 13--SI 2001/3455 reg 17 further amended: SI 2008/2683.

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### **1000. Amendments to a statement.**

A local education authority<sup>1</sup> must not amend a statement of special educational needs<sup>2</sup> except in compliance with an order of the Tribunal<sup>3</sup>, as directed by the Secretary of State<sup>4</sup>, or in accordance with the appropriate procedure<sup>5</sup>. Subject to certain provisions relating to proposed amendments to statements following reviews of educational needs<sup>6</sup>, if an authority proposes to amend a statement, it must serve<sup>7</sup> on the parent of the child concerned a copy of the existing statement and an amendment notice<sup>8</sup>. When serving an amendment notice, the authority must also serve on the parent a written notice explaining (to the extent that they are applicable) the arrangements for enabling the parent to express a preference as to his choice of school<sup>9</sup>, the parent's right to make representations to the authority as to the content of the proposed statement<sup>10</sup> and the provisions for appealing against a statement<sup>11</sup>, and containing such other information as may be prescribed<sup>12</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 324 (as amended) and Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

2 I.e. a statement under the Education Act 1996 s 324 (as amended) (see PARA 996 ante): s 324(7), Sch 27 para 1 (substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 2). For the meaning of 'special educational needs' see PARA 984 ante. An authority is required to amend a statement before 15 February in the calendar year of the child's transfer between phases of his schooling: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 19; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 19.

3 Education Act 1996 Sch 27 para 2A(1)(a) (Sch 27 para 2A added by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 3). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante. For the powers of the Tribunal to order that amendments be made to statements, and for the requirements as to compliance, see PARAS 1001 notes 9-10, 1004 notes 16-17, 1034 post.

4 Education Act 1996 Sch 27 para 2A(1)(b) (as added: see note 3 supra). The text refers to a direction under s 442(4): see PARA 519 ante. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 Ibid Sch 27 para 2A(1)(c) (as added: see note 3 supra). The appropriate procedure is that laid down in Sch 27 (as amended). As to the parental right of appeal when a statement is amended see PARA 1005 post.

Where a local education authority amends a statement it must serve a copy of the amended statement on the parent of the child concerned: Sch 27 para 6(1) (Sch 27 para 6 substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 14). As to the meaning of 'parent' see PARA 510 note 1 ante. As to the meaning of 'child' see PARA 984 note 1 ante.

6 I.e. under the Education Act 1996 s 328(5)(a) or (b) (see PARA 994 ante).

7 Provision for the service of documents is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 5.

8 Education Act 1996 Sch 27 para 2A(4), (5) (as added: see note 3 supra). An 'amendment notice' is a notice in writing giving details of the amendments to the statement proposed by the authority: Sch 27 para 2A(6) (as so added).

If a local education authority is considering amending a statement: (1) if no school was specified in the statement before the amendment, so that a maintained school or maintained nursery school will be specified in it; or (2) if a school was specified in the statement before the amendment, so that a different school, which is a maintained school or maintained nursery school, will be specified in it, the authority must serve a copy of the proposed amended statement, or of the existing statement and of the amendment notice, on each affected body, and must consult each affected body: Sch 27 para 3A(1)(b), (2) (Sch 27 para 3A added by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 7; and the Education Act 1996 Sch 27 para 3A(1)(b) amended by the Education Act 2002 s 215(1), Sch 21 para 58). For these purposes, 'affected body' means the governing body of any school which the local education authority is considering specifying and, if a school which the authority is considering specifying is maintained by another local education authority, that authority: Education Act 1996 Sch 27 para 3A(3) (as so added). For the meaning of 'maintained school' see PARA 984 note 11 ante. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

For the right of a parent on whom an amendment notice has been served to make representations as to the proposed amendment see PARA 1005 post.

9 le arrangements under ibid Sch 27 para 3 (as amended): see PARA 1006 post.

10 The notice must explain the effect of ibid Sch 27 para 4 (as amended) (see PARA 1005 post), which enables a parent to make representations (or further representations) to the authority about the content of the proposed statement or the statement as it will have effect if amended in the way proposed by the authority, and to require the authority to arrange a meeting between him and an officer of the authority at which the proposed statement or the statement as it will have effect if amended in the way proposed by the authority can be discussed.

11 Ibid Sch 27 para 2B(1)(c), (2) (Sch 27 para 2B added by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 3). Provision for appealing against the contents of a statement is made by the Education Act 1996 s 326 (as amended): see PARA 1004 post.

12 Ibid Sch 27 para 2B(3) (as added: see note 11 supra). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. The notice which must be served by an authority on a parent pursuant to Sch 27 para 2B(2) (as added) to accompany an amendment notice must contain the information specified in the required Notice to Parent, including information relating to the existing statement of special educational needs, the proposed amendment, the procedure by which the parents may discuss the statement with the authority, lists of the maintained primary or secondary schools in the area and lists of approved non-maintained and independent schools, the procedure to be followed if the parents nominate a school, the consultation process generally, and the provision for appealing against the final amended statement: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 14(a), Schedule 1 Pt A; and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 14(a), Schedule 1 Pt A. The time limits within which notice must be served under the Education Act 1996 Sch 27 para 2A (as added) or Sch 27 para 2B(2) (as added) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(1)-(4), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(1)-(4), (9).

## **UPDATE**

### **1000 Amendments to a statement**

NOTE 2--SI 2001/3455 reg 19 amended: SI 2006/3346.

NOTE 12--SI 2001/3455 reg 17, Sch 1 Pt A further amended: SI 2008/2683.



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### **1001. Procedure for ceasing to maintain a statement of child's special educational needs.**

A local education authority<sup>1</sup> may not cease to maintain a statement of special educational needs<sup>2</sup> unless it is no longer necessary to maintain it<sup>3</sup>. Where an authority determines to cease to maintain a statement<sup>4</sup> it must give notice in writing of that fact to the child's<sup>5</sup> parent<sup>6</sup>, and the parent may appeal against the determination to the Tribunal<sup>7</sup>. The Tribunal may dismiss the appeal<sup>8</sup>, or order the local education authority to continue to maintain the statement in its existing form or with such amendments of the description in the statement of the authority's assessment of the child's special educational needs, or the special educational provision<sup>9</sup> specified in the statement, and such other consequential amendments, as the Tribunal may determine<sup>10</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 324 (as amended) and Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

2 For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

3 Education Act 1996 s 324(7), Sch 27 paras 9(1), 11(1) (Sch 27 para 9(1) amended by the Special Educational Needs and Disability Act 2001 ss 10, 42(6), Sch 1 paras 1, 16(g), Sch 9). However, the general prohibition on ceasing to maintain a statement under the Education Act 1996 Sch 27 para 9(1) (as amended) does not apply where the local education authority: (1) ceases to maintain a statement for a child who has ceased to be a child for whom it is responsible (Sch 27 para 9(2)(a) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 16(h))); or (2) is ordered to cease to maintain a statement under the Education Act 1996 s 326(3)(c) (see PARA 1004 post) (Sch 27 para 9(2)(c)). The necessity to maintain a statement by way of exception to Sch 27 para 9(1) (as amended) may arise only in accordance with Sch 27 para 11 (as amended) (see the text and notes 4-10 infra): Sch 27 para 9(1) (as so amended). As to the meaning of 'child' see PARA 984 note 1 ante; and see note 5 infra. As to the children for whom the local education authority is responsible see PARA 985 ante. As to the application of Sch 27 para 9(2)(a) (as amended) (see head (1) supra) see *Wakefield Metropolitan District Council v E* [2001] EWHC Admin 508, [2002] ELR 203 (per curiam); and as to circumstances in which an authority may not cease to maintain a statement see *R (on the application of Wilson) v Blaenau Gwent County Borough Council* [2003] EWHC 2880 (Admin), [2004] ELR 152.

4 Except where the parent appeals to the Tribunal (see note 7 infra) under the Education Act 1996 Sch 27 para 11 (as amended), a local education authority may only cease to maintain a statement under Sch 27 para 11 (as amended) within the prescribed period beginning with the service of the notice under Sch 27 para 11(2) (as amended) (see the text and notes 5-6 infra): Sch 27 para 11(4). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. The time limits within which the local authority may cease to maintain statement following service of a notice under Sch 27 para 11(1) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(8)-(9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(8)-(9).

The rationale and effect of the Education Act 1996 Sch 27 para 11(4) were explained in *R v Oxfordshire County Council, ex p Roast* [1996] ELR 381; but see the Education Act 1996 Sch 27 para 11(5) (as added) (cited in note 7 infra), which followed in the wake of that case.

5 For the purposes of the Education Act 1996 Sch 27 para 11 (as amended), 'child' means a child who was the subject of a statement of special educational needs at the time when the local education authority decided

to give notice to determine to cease maintaining that statement: *S v Essex County Council* [2000] ELR 718 at 729 per Turner J; cf *Wakefield Metropolitan District Council v E* [2001] EWHC Admin 508, [2002] ELR 203.

6 Education Act 1996 Sch 27 para 11(2)(a) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 1, 10(1)). As to the meaning of 'parent' see PARA 510 note 1 ante. A notice under the Education Act 1996 Sch 27 para 11(2)(a) (as amended) must inform the parent of the right of appeal under Sch 27 para 11(2)(b) (see the text and note 7 infra) and contain such other information as may be prescribed: Sch 27 para 11(2A) (added by the Special Educational Needs and Disability Act 2001 Sch 8 paras 1, 10(2)). The time limits for the performance by the local authority of its duties under the Education Act 1996 Sch 27 para 11(2) (as amended) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(2), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(2), (9).

7 Education Act 1996 Sch 27 para 11(2)(b). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante. A local education authority may not under Sch 27 para 11 (as amended) cease to maintain a statement if the parent of the child has appealed under Sch 27 para 11 (as amended) against the authority's determination to cease to maintain the statement, and the appeal has not been determined by the Tribunal or withdrawn: Sch 27 para 11(5) (added by the Special Educational Needs and Disability Act 2001 s 6).

8 Education Act 1996 Sch 27 para 11(3)(a). As to appeals from Tribunal decisions see PARA 1035 post.

9 For the meaning of 'special educational provision' see PARA 984 ante.

10 Education Act 1996 Sch 27 para 11(3)(b). If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made: s 336A(1) (s 336A added by the Special Educational Needs and Disability Act 2001 s 4). For the purposes of the Education Act 1996 s 336A(1) (as added), 'prescribed' means prescribed by regulations made: (1) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State; (2) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State: s 336A(2) (as so added; and substituted by the Education Act 2002 s 195, Sch 18 paras 1, 6). Provision governing compliance with orders of the Tribunal is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 25; and by the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 3. For an attempt to compel compliance with an order via mandatory order see *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal)*, ex p AF [2000] ELR 550.

## UPDATE

### 1001 Procedure for ceasing to maintain a statement of child's special educational needs

NOTES 4, 6--SI 2001/3455 reg 17 further amended: SI 2008/2683.

NOTE 6--Where the local education authority determine to cease to maintain a statement following a periodic review or a re-assessment review, regulations may provide that a notice under the 1996 Act Sch 27 para 11(2)(a) must be given within the prescribed period beginning with the date of the review: Sch 27 para 11(2B) (added by the Education and Inspections Act 2006 s 174(3)(b)). See also s 180.

NOTE 7--See *Wolverhampton City Council v Special Educational Needs and Disability Tribunal* [2007] EWHC 1117 (Admin), [2007] ELR 418.

NOTE 10--SI 2001/3455 reg 25 amended: SI 2006/3346, SI 2008/2683.

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### **1002. Keeping, disclosure and transfer of statements of child's special educational needs.**

Regulations<sup>1</sup> may make provision as to the keeping and disclosure of statements of special educational needs<sup>2</sup> and, where a local education authority<sup>3</sup> becomes responsible for a child<sup>4</sup> for whom a statement is maintained by another authority, regulations may make provision for the transfer of the statement to it and for the provisions relating to children with special educational needs<sup>5</sup> to have effect as if the duty to maintain the transferred statement were its duty<sup>6</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations which have been made in pursuance of this power see notes 2, 6 infra.

2 Ibid s 324(7), Sch 27 paras 1, 7(1). For the meaning of 'special educational needs' see PARA 984 ante. As to the making of statements see PARA 998 ante. Provision restricting the disclosure of statements of special educational needs without the consent of the child concerned is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 24; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 24.

3 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 324 (as amended) and Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

4 As to the meaning of 'child' see PARA 984 note 1 ante. As to the children for whom a local education authority is responsible see PARA 985 ante.

5 Ie the Education Act 1996 Pt IV (ss 312-349) (as amended).

6 Ibid Sch 27 para 7(2). Provision for the transfer of a statement where a child in respect of whom a statement is maintained moves from the area of the authority which maintains the statement into that of another is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 23; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 23.

### **UPDATE**

### **1002 Keeping, disclosure and transfer of statements of child's special educational needs**

NOTE 2--SI 2001/3455 reg 24 amended: SI 2006/3346, SI 2007/603.

NOTE 6--The old authority, within 15 working days beginning with the day on which they are informed of the move, must transfer the statement to the new authority: SI 2001/3455 reg 23 (amended by SI 2006/3346).

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### **1003. Appeal against decision not to make statement.**

If, after making an assessment of the educational needs<sup>1</sup> of any child<sup>2</sup> for whom no statement of special educational needs<sup>3</sup> is maintained<sup>4</sup>, the local education authority<sup>5</sup> does not propose to make such a statement, it must give notice in writing of its decision to the child's parent<sup>6</sup>. In such a case, the child's parent<sup>7</sup> may appeal against the decision to the Tribunal<sup>8</sup>. The Tribunal may dismiss the appeal<sup>9</sup>, order the local education authority to make and maintain a statement<sup>10</sup>, or remit the case to the authority for it to reconsider whether, having regard to any observations made by the Tribunal, it is necessary for the authority to determine the special educational provision<sup>11</sup> for which any learning difficulty<sup>12</sup> the child may have calls<sup>13</sup>.

1    le under the Education Act 1996 s 323 (as amended): see PARA 988 ante.

2    As to the meaning of 'child' see PARA 984 note 1 ante.

3    For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

4    le under the Education Act 1996 s 324 (as amended): see PARA 996 ante.

5    As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under *ibid* s 325 (as amended) or s 326A (as added and amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 paras (l), (n). For the meaning of 'England' see PARA 52 note 11 ante.

6    Education Act 1996 s 325(1) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), (6), Sch 8 paras 1, 6(1), Sch 9). As to the meaning of 'parent' see PARA 510 note 1 ante. Provision for the service of notices is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4-5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4-5. A notice under the Education Act 1996 s 325(1) (as amended) must inform the parent of the right of appeal under s 325(2) (see the text and notes 7-8 *infra*) and contain such other information as may be prescribed: s 325(2A) (s 325(2A), (2B) added by the Special Educational Needs and Disability Act 2001 Sch 8 paras 1, 6(2)). Regulations may provide that where a local education authority is under a duty under the Education Act 1996 s 325 (as amended) to serve any notice, the duty must be performed within the prescribed period: s 325(2B) (as so added). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. The time limits within which notice must be served under s 325(1) (as amended) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(1), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(1), (9).

7    A foster-parent can be a parent for this purpose: *Fairpo v Humberside County Council* [1997] ELR 12. The child has no right of appeal and is not a party to it: *S (A Minor) v Special Educational Needs Tribunal* [1996] 2 All ER 286, [1996] 1 WLR 382, [1996] ELR 228, CA. The child may nevertheless attend the hearing and the Tribunal may permit the child to give evidence and to address the Tribunal on the subject matter of the appeal: Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 30(2)(a), (7).

8    Education Act 1996 s 325(2). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante. There is nothing in the language or the structure of s 325 (as amended) to shut out the apparent right of appeal merely because an intervening appeal resulted in remission requiring a fresh decision; the Tribunal's safeguard lies in its power under the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 44 (see PARA 1034 post) to strike out appeals which are scandalous,

frivolous or vexatious: *O v Harrow London Borough Council* [2001] EWCA Civ 2046, [2002] 1 WLR 928, [2002] ELR 195 (a single assessment of a child's educational needs may found successive appeals where an authority has failed to make a statement following an earlier appeal).

In the case of an appeal under the Education Act 1996 s 325 (as amended), the local education authority must make a statement under s 324 of the child's educational needs before the end of the prescribed period and must maintain the statement under that provision: s 326A(4)(a), (5) (s 326A added by the Special Educational Needs and Disability Act 2001 s 5). For the purposes of the Education Act 1996 s 326A (as added and amended), 'prescribed' means prescribed by regulations made: (1) in relation to an appeal to the Special Educational Needs and Disability Tribunal, by the Secretary of State; and (2) in relation to an appeal to the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales: s 326A(6) (substituted by the Education Act 2002 s 195, Sch 18 paras 1, 3). At the date at which this volume states the law, no regulations had been made in pursuance of this power.

9 Education Act 1996 s 325(3)(a). As to appeals from Tribunal decisions see PARA 1035 post.

10 Ibid s 325(3)(b). If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made: s 336A(1) (s 336A added by the Special Educational Needs and Disability Act 2001 s 4). For the purposes of the Education Act 1996 s 336A(1) (as added), 'prescribed' means prescribed by regulations made: (1) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State; (2) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State: s 336A(2) (as so added; and substituted by the Education Act 2002 s 195, Sch 18 paras 1, 6). Provision governing compliance with orders of the Tribunal is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 25; and by the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 3. For an attempt to compel compliance with an order via mandatory order see *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal)*, ex p AF [2000] ELR 550.

If the parent of a child has appealed to the Tribunal under the Education Act 1996 s 325 (as amended) against a decision of a local education authority, and the authority notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal, the appeal is treated as having been determined in favour of the appellant; and if an appeal is treated as so determined, the Tribunal is not required to make any order: s 326A(1)-(3) (as added: see note 8 supra). If an appeal to the Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must make an assessment of educational needs within five weeks: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 26; and the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 4.

11 For the meaning of 'special educational provision' see PARA 984 ante.

12 For the meaning of 'learning difficulty' see PARA 984 ante.

13 Education Act 1996 s 325(3)(c).

## UPDATE

### 1003 Appeal against decision not to make statement

NOTE 6--SI 2001/3455 reg 17 further amended: SI 2008/2683.

TEXT AND NOTES 7-10--References to 'the Tribunal' and 'the Special Educational Needs and Disability Tribunal' now refer to the First-tier Tribunal and the Special Educational Needs Tribunal for Wales: Education Act 1996 (ss 326A(6), 336A(2) amended by SI 2008/2833).

NOTE 10--SI 2001/3455 reg 25 amended: SI 2006/3346, SI 2008/2683.

If an appeal to the First-tier Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must serve a proposed statement within five weeks: SI 2001/3455 reg 26 (amended by SI 2006/3346, SI 2008/2683).

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#### **1004. Appeal against contents of statement.**

The parent<sup>1</sup> of a child<sup>2</sup> for whom a local education authority<sup>3</sup> maintains a statement of special educational needs<sup>4</sup> may:

- 1847 (1) when the statement is first made<sup>5</sup>;
- 1848 (2) if an amendment is made to the statement<sup>6</sup>; or
- 1849 (3) if, after conducting an assessment of the educational needs of the child<sup>7</sup>, the authority determines not to amend the statement<sup>8</sup>,

appeal to the Tribunal<sup>9</sup> against any of the following:

- 1850 (a) the description in the statement of the authority's assessment of the child's special educational needs<sup>10</sup>;
- 1851 (b) the special educational provision<sup>11</sup> specified in the statement (including the name of a school<sup>12</sup> so specified)<sup>13</sup>; or
- 1852 (c) if no school is so specified, that fact<sup>14</sup>.

The Tribunal may dismiss the appeal<sup>15</sup>, order the authority to amend the statement, so far as it describes the authority's assessment of the child's special educational needs or specifies the special educational provision, and make such other consequential amendments to the statement as the Tribunal thinks fit<sup>16</sup>, or order the authority to cease to maintain the statement<sup>17</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante.

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 326 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (m). For the meaning of 'England' see PARA 52 note 11 ante.

4 Ie under the Education Act 1996 s 324 (as amended) (see PARA 996 ante). For the meaning of 'special educational needs' see PARA 984 ante.

5 Ibid s 326(1)(a) (s 326(1) substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 18, 19). As to the making of statements see PARA 996 et seq ante.

6 Education Act 1996 s 326(1)(b) (as substituted: see note 5 supra). As to the amendment of statements see PARA 1000 ante. Section 326(1)(b) (as substituted) does not apply where the amendment is made in pursuance of Sch 27 para 8 (as amended) (change of named school: see PARA 1007 post), or Sch 27 para 11(3)(b) (amendment ordered by Tribunal: see PARA 1001 note 10 ante), or directions under s 442 (revocation of school attendance order: see PARA 519 ante): s 326(2)(a), (b).

7 Ie under ibid s 323 (as amended) (see PARA 988 ante).

8 Ibid s 326(1)(c) (as substituted: see note 5 supra). Section 326(1)(c) (as substituted) does not apply to a determination made following the service of notice under Sch 27 para 2A (as added) (amendment by local education authority: see PARA 994 ante) of a proposal to amend the statement: s 326(2) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 18, 20).

9 Education Act 1996 s 326(1) (as substituted: see note 5 supra). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante. Before determining any such appeal the Tribunal may, with the agreement of the parties, correct any deficiency in the statement: s 326(5).

10 Ibid s 326(1A)(a) (s 326(1A) added by the Special Educational Needs and Disability Act 2001 Sch 1 paras 18, 19).

11 For the meaning of 'special educational provision' see PARA 984 ante.

12 For the meaning of 'school' see PARA 81 ante.

13 Education Act 1996 s 326(1A)(b) (as added: see note 10 supra). In *R (on the application of S) v Norfolk County Council* [2004] EWHC 404 (Admin), [2004] ELR 259, the local education authority had proposed to discontinue funding a child's college placement after allegations that staff had committed offences against children at the college; notwithstanding the prospective criminal proceedings, an interim injunction was granted compelling the authority to continue the funding for a limited period, pending an appeal lodged by the child's mother against amendments made to the school specified in the child's statement. As to the naming of schools in a statement subject to appeal see further note 16 infra.

14 Education Act 1996 s 326(1A)(c) (as added: see note 10 supra). As to the naming of schools in a statement subject to appeal see further note 16 infra.

15 Ibid s 326(3)(a). As to appeals from Tribunal decisions see PARA 1035 post.

16 Ibid s 326(3)(b). If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made: s 336A(1) (s 336A added by the Special Educational Needs and Disability Act 2001 s 4). In the Education Act 1996 s 336A(1) (as added), 'prescribed' means prescribed by regulations made: (1) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State; (2) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State: s 336A(2) (as so added; and substituted by the Education Act 2002 s 195, Sch 18 paras 1, 6). Provision governing compliance with orders of the Tribunal is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 25; and by the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 3. In *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal), ex p AF* [2000] ELR 550, an attempt was made via mandatory order to compel a local education authority to implement the special educational provisions set out in the statement but it failed as a local education authority normally has no power to direct the school as to implementation.

The Tribunal must not order the local education authority to specify the name of any school in the statement (either in substitution for an existing name or in a case where no school is named) unless the parent has expressed a preference for the school in pursuance of arrangements under the Education Act 1996 Sch 27 para 3 (as amended) (see PARA 1006 post), or in the proceedings the parent, the authority, or both, have proposed the school: s 326(4). 'Proposed' should be construed as including an acceptance of a suggested school rather than as a reference to a proposal made unprompted: see *Manchester City Council v Special Educational Needs Tribunal and P* [2000] ELR 144.

As to the date from which funding consequent on an amendment ordered by the Tribunal should be provided see *R v Barnet London Borough Council, ex p G* [1998] ELR 281, CA; cf *R v Kent County Council, ex p W* [1995] 2 FCR 342, [1995] ELR 362, 94 LGR 271. The Tribunal could conceivably order provision that is less than that proposed by the local education authority or sought by the parent: see *Re A* [2000] ELR 639.

In *Camden London Borough Council v Hodin and White* [1996] ELR 430, the court refused to impose a stay to prevent implementation of the Tribunal's decision that a statement should be amended pending an appeal against that decision. See also *R v Mid-Glamorgan County Council, ex p B* [1995] ELR 168. There is no right of appeal to the Tribunal against a statement which has already been amended in accordance with an order of the Tribunal, as to give such a right would defeat the legislative purpose of the scheme: *D v East Sussex County Council* [2005] EWCA Civ 323, [2005] ELR 388.

In ordering that a statement is to be amended, it is not open for the Tribunal to range freely over the statement; its power is limited in its application to cases where an amendment is necessary for the resolution of an issue that is before the Tribunal: see *M v Essex County Council* [2001] EWHC Admin 956, [2001] All ER (D) 45 (Nov). In *W v Leeds City Council* [2005] EWCA Civ 988, [2005] ELR 617, [2005] All ER (D) 487 (Jul), the Court of Appeal agreed that it had been within the proper ambit of the Tribunal's control over its own process to agree a late proposal for an amendment to the statement and that it had not curtailed proper analysis of the child's needs.

17 Education Act 1996 s 326(3)(c). See also *Wilkin v Goldthorpe* [1998] ELR 345.

**UPDATE**

**1004 Appeal against contents of statement**

NOTE 16--SI 2001/3455 reg 25 amended: SI 2006/3346, SI 2008/2683.



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### **1005. Right of parent to make representations as to statements and proposed amendments.**

A parent<sup>1</sup> on whom there has been served a copy of a proposed statement of special educational needs<sup>2</sup>, a proposed amended statement<sup>3</sup>, or an amendment notice<sup>4</sup>, may<sup>5</sup> make representations (or further representations) to the local education authority<sup>6</sup> about the content of the proposed statement or the statement as it will have effect if amended in the way proposed by the authority<sup>7</sup>, and may require the authority to arrange a meeting<sup>8</sup> between him and an officer of the authority at which the proposed statement or the statement as it will have effect if amended in the way proposed by the authority can be discussed<sup>9</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante.

2 Is a statement under the Education Act 1996 s 324 (as amended) (see PARA 996 ante): s 324(7), Sch 27 para 1 (substituted by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 2). For the meaning of 'special educational needs' see PARA 984 ante. Copies of proposed statements are required to be served under the Education Act 1996 Sch 27 para 2 (as substituted): see PARA 997 ante.

3 Copies of proposed amended statements are required to be served under *ibid* Sch 27 para 2A(2) (as added): see PARA 994 note 17 ante. If a local education authority amends a statement following service of a proposed amended statement under Sch 27 para 2A(2) (as added), the amended statement made may be in the form proposed or in a form modified in the light of the representations made by the parent: Sch 27 para 5(2A) (Sch 27 para 5(2A), (2B) added by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 13).

4 For the meaning of 'amendment notice' see PARA 1000 note 8 ante. Amendment notices are required to be served under the Education Act 1996 Sch 27 para 2A(2) (as added): see PARA 994 ante. If a local education authority amends a statement following service of an amendment notice, the amendments may be those proposed in the notice or amendments modified in the light of the representations made by the parent: Sch 27 para 5(2B) (as added: see note 3 *supra*).

When amending a statement in a case where there is a real prospect of appeal, a local education authority is not bound to consider whether it would be better not to name a school rather than name a school so as to avoid any delay which might arise whilst it was seeking to find whether a particular school was appropriate or available: *R v Kent County Council, ex p AMS* [2000] ELR 209.

5 Education Act 1996 Sch 27 para 4(1) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 8(a)).

6 As to local education authorities see PARA 20 ante.

7 Education Act 1996 Sch 27 para 4(1)(a) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 8(b)). Any such representations must be made within the period of 15 days beginning with the date on which the written notice mentioned in the Education Act 1996 Sch 27 para 2B (as added) (see PARAS 994, 997, 1000 ante) was served on the parent, or, if a meeting has (or meetings have) been arranged under Sch 27 para 4(1)(b) (as amended) or Sch 27 para 4(2) (as amended) (see the text and notes 8-9 *infra*), with the date fixed for that meeting (or the last of those meetings): Sch 27 para 4(4) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 10).

Where representations are made to a local education authority under the Education Act 1996 Sch 27 para 4(1) (a) (as amended), the authority may not make or amend the statement until it has considered the representations and the period or the last of the periods allowed by Sch 27 para 4 (as amended) for making requirements or further representations (see notes 8-9 *infra*) has expired: Sch 27 para 5(1) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 11). If an authority makes a statement, it may be in the form originally proposed (except as to the matters required to be excluded from the copy of the proposed statement) or in a form modified in the light of the representations: Education Act 1996 Sch 27 para

5(2) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 12). If the authority changes its view about making a statement after issuing a draft it does not necessarily act unlawfully: *R v Isle of Wight County Council, ex p RS and AS* [1994] 1 FCR 641, sub nom *R v Isle of Wight County Council, ex p RS, R v Isle of Wight County Council, ex p AS* [1993] 1 FLR 634, CA.

8 Such a requirement must be made within the period of 15 days beginning with the date on which the written notice mentioned in the Education Act 1996 Sch 27 para 2B (as added) (see PARAS 994, 997, 1000 ante) was served on the parent: Sch 27 para 4(5) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 10).

Education Act 1996 Sch 27 para 4(1)(b) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 8(b)). Where a parent, having attended a meeting arranged by a local education authority under the Education Act 1996 Sch 27 para 4(1)(b) (as amended) in relation to a proposed statement or an amendment proposed following a re-assessment review, disagrees with any part of the assessment in question, he may require the authority to arrange such meeting or meetings as it considers will enable him to discuss the relevant advice with the appropriate person or persons: Sch 27 para 4(2) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 Pt 1 paras 1, 9). Such a requirement must be made within the period of 15 days beginning with the date fixed for the meeting arranged under the Education Act 1996 Sch 27 para 4(1)(b) (as amended): Sch 27 para 4(6). For the purposes of Sch 27 para 4 (as amended), 'relevant advice' means such of the advice given to the authority in connection with the assessment as it considers to be relevant to that part of the assessment with which the parent disagrees; and 'appropriate person' means the person who gave the relevant advice or any other person who, in the opinion of the authority, is the appropriate person to discuss it with the parent: Sch 27 para 4(3). 'Re-assessment review' means a review under s 328(5)(a) (see PARA 994 ante): Sch 27 para 1 (as substituted: see note 2 supra).

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### **1006. Choice of school.**

Every local education authority<sup>1</sup> must make arrangements for enabling a parent<sup>2</sup> upon whom has been served a copy of a proposed statement of special educational needs<sup>3</sup>, a copy of a proposed amended statement<sup>4</sup>, or an amendment notice<sup>5</sup> containing a proposed amendment<sup>6</sup> to be specified in a statement<sup>7</sup>, to express a preference as to the maintained school<sup>8</sup> at which he wishes education to be provided for his child<sup>9</sup> and to give reasons for his preference<sup>10</sup>.

Where a local education authority makes a statement in a case where the parent of the child concerned has expressed a preference in pursuance of such arrangements as to the school<sup>11</sup> at which he wishes education to be provided for his child, it must, unless the school is unsuitable to the child's age, ability or aptitude or to his special educational needs<sup>12</sup>, or the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources<sup>13</sup>, specify the name of that school in the statement<sup>14</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (k). For the meaning of 'England' see PARA 52 note 11 ante.

2 Education Act 1996 s 324(7), Sch 27 para 3(1) (amended by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 4). As to the meaning of 'parent' see PARA 510 note 1 ante.

3 Education Act 1996 Sch 27 para 3(1)(a) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 4). The text refers to a statement under the Education Act 1996 s 324 (as amended) (see PARA 996 ante); Sch 27 para 1 (substituted by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 2). Copies of proposed statements are required to be served under the Education Act 1996 Sch 27 para 2 (as substituted): see PARA 997 ante. For the meaning of 'special educational needs' see PARA 984 ante.

4 Ibid Sch 27 para 3(1)(b) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 4). Copies of proposed amended statements are required to be served under the Education Act 1996 Sch 27 para 2A (as added): see PARA 994 ante.

5 For the meaning of 'amendment notice' see PARA 1000 note 8 ante.

6 The proposed amendment must, for this purpose, be about the type or name of a school or institution, or the provision made for the child concerned under arrangements made under the Education Act 1996 s 319 (special educational provision otherwise than in schools: see PARA 1011 post): Sch 27 para 3(1)(c) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 4).

7 Education Act 1996 Sch 27 para 3(1)(c) (as amended: see note 6 supra). The text refers to amendment notices which are required to be served under Sch 27 para 2A (as added): see PARA 994 ante.

8 For the meaning of 'maintained school' under the School Standards and Framework Act 1998 see PARA 94 ante.

9 As to the meaning of 'child' see PARA 984 note 1 ante.

10 Education Act 1996 Sch 27 para 3(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 186(1), (2)(a)). Any such preference must be expressed or made within the period of 15 days beginning with the date on which the written notice mentioned in the Education Act 1996 Sch 27 para 2B (as added) (see PARAS 997, 1000 ante) was served on the parent, or if a meeting has (or meetings have) been arranged under Sch 27 para 4(1)(b) (as amended) or Sch 27 para 4(2) (as amended) (see PARA 1005 ante),

with the date fixed for that meeting (or the last of those meetings): Sch 27 para 3(2) (amended by the Special Educational Needs and Disability Act 2001 Sch 1 paras 1, 5).

11 For the meaning of 'school' see PARA 81 ante.

12 Education Act 1996 Sch 27 para 3(3)(a).

13 Ibid Sch 27 para 3(3)(b).

14 Ibid Sch 27 para 3(3). Where the parents and the local education authority cannot agree on the school to be named, but one alternative would result in significant additional expenditure, then provided both schools are appropriate for the child's special educational needs, the authority is entitled to justify sending the child to a school other than that of the parents' choice: *Surrey County Council v P* [1997] ELR 516 at 523 per Kay J. When deciding whether the parent's choice or its choice should prevail, the local education authority may have regard to its own resources but should balance the disadvantages to its resources with the advantages to the child of attending the school chosen by the parents: *F v Harrow London Borough Council* (1997) Times, 29 December. Under the Education Act 1996, the scheme for special educational provision was for children for whom an authority was 'responsible' (ie the children in its area: see s 321(3) (as amended); and PARA 985 ante); this indicates that the resources concerned for the purposes of Sch 27 para 3(3) are those of the responsible local education authority: *B v Harrow London Borough Council* [2000] 1 All ER 876 at 881-882, [2000] 1 WLR 223 at 228-229, [2000] ELR 109 at 115, HL, per Lord Slynn of Hadley (the fact that the admission of a child to the school of the parents' choice would mean that the school was above its approved admission limit was held to be a legitimate ground for not naming that school contrary to the parents' wishes).

The House of Lords in *B v Harrow London Borough Council* supra also considered the relevance of the Education Act 1996 s 9 (as amended) (general principle of adherence to parental wishes: see PARA 13 ante), and held that s 9 (as amended) did not mean that parental preference was to prevail unless it involved unreasonable public expenditure ('In dealing with special schools, the authority must also observe the specific provisions of para 3(3) of Sch 27. This does not mean that the parent loses the right to express a preference. A preference may be expressed but is subject to the qualifications set out in PARA 3(3), one of which is the efficient use of resources': *B v Harrow London Borough Council* supra at 882-883, at 229, and at 116 per Lord Slynn of Hadley). See also *R (on the application of MH) v Special Educational Needs and Disability Tribunal* [2004] EWCA Civ 770, [2004] LGR 844, [2004] ELR 424 (parents had the right to insist on a particular school, except where either the 'unsuitability' or 'incompatibility' condition in the Education Act 1996 Sch 27 para 3(3) applied). As to the principle of adherence to parental wishes in the making of special educational provision see further *R (on the application of Oxfordshire County Council) v GB* [2001] EWCA Civ 1358, [2002] LGR 279, [2002] ELR 8. As to the interaction between the Education Act 1996 Sch 27 para 3 (as amended) and s 316 (as substituted) (duty to educate children with special educational needs in mainstream schools: see PARA 1008 post) see *R (on the application of MH) v Special Educational Needs and Disability Tribunal* supra.

The Education Act 1996 Sch 27 para 3 (as amended) applies only to maintained schools but local education authorities (and, on appeal, the Tribunal: see PARAS 1032-1035 post) must take into account the general principle of adherence to parental preference under s 9 (as amended) in relation to all preferred schools, including independent schools: *B v Gloucestershire County Council* [1998] ELR 539. See also *R v West Sussex County Council, ex p S* [1999] ELR 40; *S and S v Bracknell Forest Borough Council and the Special Educational Needs Tribunal* [1999] ELR 51; *C v Buckinghamshire County Council and the Special Educational Needs Tribunal* [1999] ELR 179, CA; *W-R v Solihull Metropolitan Borough Council* [1999] ELR 528; *S v Metropolitan Borough of Dudley* [2000] ELR 330.

As to the extent to which the right to education in accordance with the parents' religious and philosophical convictions under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) extends to choice of school or provision in relation to children with special educational needs see PARA 3 ante.

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### **1007. Request for change of named school.**

Where:

1853 (1) the parent<sup>1</sup> of a child<sup>2</sup> for whom a statement of special educational needs<sup>3</sup> is maintained<sup>4</sup> which specifies the name of a school<sup>5</sup> or institution asks the local education authority to substitute for that name the name of a maintained school<sup>6</sup> or maintained nursery school<sup>7</sup> specified by the parent<sup>8</sup>; and

1854 (2) the request is not made less than 12 months after whichever is the later of: (a) an earlier request for the substitution of a name<sup>9</sup>; (b) the service of a copy of a statement or amended statement<sup>10</sup>; or (c) if the parent has appealed to the Tribunal<sup>11</sup>, the date when the appeal was concluded<sup>12</sup>,

the local education authority must comply with the request unless the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources<sup>13</sup>.

Where the local education authority determines not to comply with the request, it must give notice in writing of that fact to the child's parent<sup>14</sup>, and the parent may appeal against the determination to the Tribunal<sup>15</sup>. The Tribunal may dismiss the appeal<sup>16</sup>, or order the local education authority to substitute for the name of the school or other institution specified in the statement the name of the school specified by the parent<sup>17</sup>.

1 As to the meaning of 'parent' see PARA 510 note 1 ante.

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

4 Ie by a local education authority under the Education Act 1996 s 324 (as amended) (see PARA 996 ante). As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under s 326A (as added and amended) or Sch 27 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 paras (k) (n). For the meaning of 'England' see PARA 52 note 11 ante.

5 For the meaning of 'school' see PARA 81 ante.

6 For the meaning of 'maintained school' see PARA 984 note 11 ante.

7 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

8 Education Act 1996 s 324(7), Sch 27 para 8(1)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 186(3); and the Education Act 2002 s 215(1), Sch 21 para 58(b)).

9 Education Act 1996 Sch 27 para 8(1)(b)(i). The text refers to a request under Sch 27 para 8 (as amended).

10 Ibid Sch 27 para 8(1)(b)(ii) (amended by the Special Educational Needs and Disability Act 2001 s 10, Sch 1 paras 1, 15(e)). The text refers to service made under the Education Act 1996 Sch 27 para 6 (as substituted) (see PARA 999 ante).

11 le under ibid s 326 (as amended) (see PARA 1004 ante) or Sch 27 para 8 (as amended). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante.

12 Ibid Sch 27 para 8(1)(b)(iv).

13 Ibid Sch 27 para 8(2). Regulations may provide that, where a local education authority is under a duty to comply with a request under Sch 27 para 8 (as amended), the duty must, subject to prescribed exceptions, be performed within the prescribed period: Sch 27 para 8(5). Such provision must not relieve the authority of the duty to comply with such a request which has not been complied with within that period: Sch 27 para 8(6). 'Regulations' means regulations made by the Secretary of State; and 'prescribed' means prescribed by regulations: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. The time limits within which a request under Sch 27 para 8(1) (as amended) must be responded to are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(5), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(5), (9).

The Education Act 1996 Sch 27 para 8 (as amended) has a very limited scope, being concerned only with a change in the name of the school specified in part 4 of an existing statement (see PARA 996 note 8 head (4) ante); the power to change the name of the school does not carry with it a power to change the type of school: *Slough Borough Council v C* [2004] EWHC 1759 (Admin), [2004] ELR 546. As to the interaction between the Education Act 1996 Sch 27 para 8 (as amended) and the process set out in s 316(3) (as substituted) (duty to educate children with special educational needs in mainstream schools: see PARA 1008 post) see *Slough Borough Council v C* supra; *R (on the application of MH) v Special Educational Needs and Disability Tribunal* [2004] EWCA Civ 770, [2004] LGR 844, [2004] ELR 424.

14 Education Act 1996 Sch 27 para 8(3)(a) (amended by the Special Educational Needs and Disability Act 2001 Sch 8 paras 1, 9(1)). Provision for the service of notices is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, regs 4-5; and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, regs 4-5. A notice under the Education Act 1996 Sch 27 para 8(3)(a) (as amended) must inform the parent of the right of appeal under Sch 27 para 8(3)(b) (see the text and note 15 infra) and must contain such other information as may be prescribed: Sch 27 para 8(3A) (added by the Special Educational Needs and Disability Act 2001 Sch 8 paras 1, 9(2)). The time limits within which notice must be given under the Education Act 1996 Sch 27 para 8(3) (as amended) are prescribed by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 17(5), (9); and by the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 17(5), (9).

15 Education Act 1996 Sch 27 para 8(3)(b). In the case of an appeal under Sch 27 para 8(3) against a determination of the local education authority not to comply with the parent's request, the local education authority must comply with the request before the end of the prescribed period: s 326A(4)(c) (s 326A added by the Special Educational Needs and Disability Act 2001 s 5). For the purposes of the Education Act 1996 s 326A (as added and amended), 'prescribed' means prescribed by regulations made: (1) in relation to an appeal to the Special Educational Needs and Disability Tribunal, by the Secretary of State; and (2) in relation to an appeal to the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales: s 326A(6) (substituted by the Education Act 2002 s 195, Sch 18 paras 1, 3). See note 14 supra.

16 Education Act 1996 Sch 27 para 8(4)(a). As to appeals from Tribunal decisions see PARA 1035 post.

17 Ibid Sch 27 para 8(4)(b). If the Tribunal makes an order, the local education authority concerned must comply with the order before the end of the prescribed period beginning with the date on which it is made: s 336A(1) (s 336A added by the Special Educational Needs and Disability Act 2001 s 4). For the purposes of the Education Act 1996 s 336A(1) (as added), 'prescribed' means prescribed by regulations made: (1) as to orders of the Special Educational Needs and Disability Tribunal, by the Secretary of State; (2) as to orders of the Special Educational Needs Tribunal for Wales, by the National Assembly for Wales with the agreement of the Secretary of State: s 336A(2) (as so added; and substituted by the Education Act 2002 s 195, Sch 18 paras 1, 6). Provision governing compliance with orders of the Tribunal is made by the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 25; and by the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 3. For an attempt to compel compliance with an order via mandatory order see *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal)*, ex p AF [2000] ELR 550. As to the influence of the costs to be taken into account by the Tribunal when determining compliance with a parental preference see *Wardle-Heron v Newham London Borough Council* [2002] EWHC 2086 (Admin), [2004] ELR 68; *S v Somerset County Council* [2002] EWHC 1808 (Admin), [2003] ELR 78; and see PARA 13 note 6 ante.

If the parent of a child has appealed to the Tribunal under the Education Act 1996 Sch 27 para 8(3) (as amended) against a decision of a local education authority, and the authority notifies the Tribunal that it has determined that it will not, or will no longer, oppose the appeal, the appeal is treated as having been determined in favour of the appellant, and if an appeal is treated as so determined, the Tribunal is not required

to make any order: s 326A(1)-(3) (as added: see note 15 supra). If an appeal to the Tribunal is treated in this way as having been determined in favour of the parent making the appeal, the authority must comply with the parent's request within two weeks: see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 26; and the Special Educational Needs Tribunal (Time Limits) (Wales) Regulations 2001, SI 2001/3982, reg 4.

## **UPDATE**

### **1007 Request for change of named school**

NOTES 13, 14--SI 2001/3455 reg 17 amended: SI 2008/2683.

TEXT AND NOTES 14-17--References to 'the Tribunal' and 'the Special Educational Needs and Disability Tribunal' now refer to the First-tier Tribunal and the Special Educational Needs Tribunal for Wales: Education Act 1996 (ss 326A(6), 336A(2) amended by SI 2008/2833).

NOTE 16--See *H v East Sussex CC* [2009] EWCA Civ 249, [2009] ELR 161, [2009] All ER (D) 304 (Mar) (appeal against statement of special educational needs).

NOTE 17--SI 2001/3455 reg 25 amended: SI 2006/3346, SI 2008/2683. SI 2001/3455 reg 26 amended: SI 2008/2683.

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### **(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS**

#### **(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

##### **1008. Children with special educational needs generally to be educated in mainstream schools.**

A child<sup>1</sup> with special educational needs<sup>2</sup> who should be educated in a school<sup>3</sup> must be educated in a mainstream school<sup>4</sup> if no statement of the child's special educational needs is maintained<sup>5</sup> for the child<sup>6</sup>. If such a statement is maintained<sup>7</sup>, the child must be educated in a mainstream school unless that is incompatible with either the wishes of his parent<sup>8</sup> or the provision of efficient education for other children<sup>9</sup>. These requirements do not, however, prevent a child from being educated in an independent school<sup>10</sup> which is not a mainstream school, or an approved special school<sup>11</sup>, if the cost is met otherwise than by a local education authority<sup>12</sup>; nor do they affect the operation of certain provisions relating to the making of special educational provision at non-maintained schools<sup>13</sup> or enabling parents to express a preference as to the maintained school at which they wish education to be provided for their child<sup>14</sup>. An authority<sup>15</sup> must have regard to guidance about these requirements<sup>16</sup> issued for England, by the Secretary of State, and for Wales, by the National Assembly for Wales<sup>17</sup>.

1 As to the meaning of 'child' see PARA 984 note 1 ante.

2 For the meaning of 'special educational needs' see PARA 984 ante.

3 Education Act 1996 s 316(1) (s 316 substituted by the Special Educational Needs and Disability Act 2001 s 1). For the meaning of 'school' see PARA 81 ante.

4 'Mainstream school' means any school other than: (1) a special school; or (2) an independent school which is not a city technology college, a city college for the technology of the arts, or an academy: Education Act 1996 s 316(4) (as substituted (see note 3 supra); and amended by the Education Act 2002 s 65(3), Sch 7 Pt 2 para 6(1), (3)). As to special schools see PARA 1027 post. As to independent schools see PARA 465 ante. As to city technology colleges and city colleges for the technology of the arts see PARA 496 ante; and as to city colleges and academies see further PARA 1010 post.

5 le by a local education authority under the Education Act 1996 s 324 (as amended) (see PARA 996 ante). As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under s 316 (as substituted) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (b). For the meaning of 'England' see PARA 52 note 11 ante.

6 Education Act 1996 s 316(2) (as substituted: see note 3 supra). This does not, however, require a child to be educated in a mainstream school during any period in which: (1) he is admitted to a special school for the purposes of an assessment under s 323 (as amended) (see PARA 988 ante) of his educational needs and his admission to that school is with the agreement of the local education authority, the head teacher of the school (or, if the school is in Wales, its governing body), the child's parent, and any person whose advice is to be sought in accordance with regulations made under s 323(5), Sch 26 para 2 (see PARA 989 ante); (2) he remains admitted to a special school, in prescribed circumstances, following an assessment under s 323 (as amended)



at that school; (3) he is admitted to a special school, following a change in his circumstances, with the agreement of the local education authority, the head teacher of the school (or, if the school is in Wales, its governing body), and his parent; or (4) he is admitted to a community or foundation special school which is established in a hospital: s 316A(2) (s 316A added by the Special Educational Needs and Disability Act 2001 s 1). 'Prescribed' means prescribed by regulations made by the Secretary of State, except in relation to Wales, where it means prescribed in regulations made by the National Assembly for Wales: Education Act 1996 s 316A(10) (as so added), s 579(1). As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. If a child without a statement has been admitted to a special school for the purposes of an assessment, as provided for in s 316A(2) (as added), he may remain at that school either until the expiry of ten school days after the authority serves a notice under s 325 (as amended) (see PARA 1003 ante) informing the child's parent that it does not propose to make a statement, or until a statement is made: Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 13; Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 13. As to the meaning of 'head teacher' see PARA 93 note 13 ante. As to the meaning of 'parent' see PARA 510 note 1 ante. As to community and foundation special schools see PARA 102 ante.

7 le by a local education authority under the Education Act 1996 s 324 (as amended) (see PARA 996 ante).

8 Ibid s 316(3)(a) (as substituted: see note 3 supra). If a local education authority decides to make a statement of a child's special educational needs under s 324 (as amended) (see PARA 996 ante) but decides not to name in the statement the school for which a parent has expressed a preference under s 324(7), Sch 27 para 3 (as amended) (parents' right to express a preference for a particular school: see PARA 1006 ante), then the authority, in making the statement, nonetheless complies with s 316(3) (as substituted): s 316A(4) (as added: see note 6 supra). The parents' right to express a preference under Sch 27 para 3 (as amended) (if lawfully invoked by the parent) constitutes no more than the nomination of a candidate for the authority to consider, and the process set out in s 316 (as substituted and amended) comes into operation where that nomination process has been exhausted; in carrying out the process set out in s 316 (as substituted and amended), the authority, and hence the Tribunal, has a discretion to consider particular schools as candidates for naming in part 4 of the statement (see PARA 996 note 8 head (4) ante): *R (on the application of MH) v Special Educational Needs and Disability Tribunal* [2004] EWCA Civ 770, [2004] LGR 844, [2004] ELR 424. The process set out in the Education Act 1996 s 316(3) (as substituted) does not apply to a determination under Sch 27 para 8 (as amended) where none of the conditions in Sch 27 para 8(2) has been met (see PARA 1007 ante): *Slough Borough Council v C* [2004] EWHC 1759 (Admin), [2004] ELR 546, (2004) Times, 27 August (distinguishing *R (on the application of MH) v Special Educational Needs and Disability Tribunal* supra).

The question of compatibility with parental wishes under the Education Act 1996 s 316 (as originally enacted) (which provided that the duty (subject to conditions) to educate in a non-special school unless that would be incompatible with the wishes of the child's parent applied in respect of any child with special educational needs) was considered in *L v Hereford and Worcester County Council* [2000] ELR 375; *R v Brent London Borough Council and Vassie (Chairman of the Special Educational Needs Tribunal)*, ex p AF [2000] ELR 550; *L v Worcestershire County Council and Hughes* [2000] ELR 674, CA.

9 Education Act 1996 s 316(3)(b) (as substituted: see note 3 supra). See further note 8 supra. A local education authority may, in relation to its mainstream schools taken as a whole, rely on the exception in s 316(3)(b) (as substituted) only if it shows that there are no reasonable steps that it could take to prevent the incompatibility: s 316A(5) (as added: see note 6 supra). An authority in relation to a particular mainstream school (ie in relation to a maintained school or maintained nursery school, the local education authority or the school's governing body; and in relation to a pupil referral unit, the local education authority (s 316A(11) (as so added; and amended by the Education Act 2002 s 215, Sch 21 para 38, Sch 22 Pt 3)) may rely on the exception in the Education Act 1996 s 316(3)(b) (as substituted) only if it shows that there are no reasonable steps that it or another authority in relation to the school could take to prevent the incompatibility: s 316A(6) (as so added). The exception in s 316(3)(b) (as substituted) does not permit a governing body to fail to comply with the duty imposed by s 324(5)(b) (as amended) (see PARA 996 ante): s 316A(7) (as so added). For the meaning of 'maintained school' see PARA 984 note 11 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante. For the meaning of 'pupil referral unit' see PARA 457 ante.

10 As to independent schools see PARA 465 ante.

11 le a special school approved under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 post).

12 Ibid s 316A(1) (as added: see note 6 supra).

13 Ibid s 316A(3)(a) (as added: see note 6 supra). The provision referred to in the text is s 348 (as amended) (see PARA 1009 post).

14 Ibid s 316A(3)(b) (as added: see note 6 supra). The provision referred to in the text is Sch 27 para 3 (as amended) (see PARA 1006 ante). See also note 8 supra.

15 Ie in relation to a maintained school or maintained nursery school, the local education authority or the school's governing body; and in relation to a pupil referral unit, the local education authority: ibid s 316A(11) (as added and amended: see note 9 supra).

16 Ie the requirements of ibid s 316 (as substituted) and s 316A (as added).

17 Ibid s 316A(8) (as added: see note 6 supra). Such guidance must, in particular, relate to steps which may, or may not, be regarded as reasonable for the purposes of s 316A(5), (6) (as added) (see note 6 supra): s 316A(9) (as so added).

## **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

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### **1009. Provision of special education at non-maintained schools.**

Where:

- 1855 (1) special educational provision<sup>1</sup> in respect of a child<sup>2</sup> with special educational needs<sup>3</sup> is made at a school<sup>4</sup> which is not a maintained school<sup>5</sup>; and
- 1856 (2) either the name of the school is specified in a statement in respect of the child<sup>6</sup> or the local education authority is satisfied both that his interests require the necessary special educational provision to be made for him at a school which is not a maintained school<sup>7</sup>, and that it is appropriate for the child to be provided with education at the particular school<sup>8</sup>,

the local education authority must pay the whole of the fees payable in respect of the education provided for the child at the school<sup>9</sup>; and if board and lodging are provided for him at the school<sup>10</sup>, and the authority is satisfied that the necessary special educational provision cannot be provided for him at the school unless the board and lodging are also provided<sup>11</sup>, the authority must pay the whole of the fees payable in respect of the board and lodging<sup>12</sup>.

1 For the meaning of 'special educational provision' see PARA 984 ante.

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 For the meaning of 'special educational needs' see PARA 984 ante.

4 For the meaning of 'school' see PARA 81 ante.

5 Education Act 1996 s 348(1)(a). For the purposes of s 348 (as amended), 'maintained school' means a school maintained by a local education authority: s 348(3) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 84). For the meaning of 'school maintained by a local education authority' under the School Standards and Framework Act 1998 see PARA 94 ante. As to local education authorities see PARA 20 ante.

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 348 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (u). See also Sch 1 para (vv) in relation to functions conferred by or under the Education Act 1996 s 517 (as amended; prospectively repealed) (see note 12 infra). For the meaning of 'England' see PARA 52 note 11 ante.

6 Ibid s 348(1)(b). The text refers to a statement made and maintained by a local education authority under s 324 (as amended) (see PARA 996 ante).

7 Ibid s 348(1)(b)(i).

8 Ibid s 348(1)(b)(ii). See further *White v Ealing London Borough Council*, *Richardson v Solihull Metropolitan Borough Council*, *Solihull Metropolitan Borough Council v Finn* [1998] ELR 203 at 223 per Dyson J; *Richardson v Solihull Metropolitan Borough Council*, *White v Ealing London Borough Council*, *Hereford and Worcester County Council v Lane* [1998] ELR 319 at 339-340, CA, per Schiemann LJ (who also held (at 339-340) that the Education Act 1996 s 348 (as amended) does not impose any duty to specify the name of the school in the statement).

9 Education Act 1996 s 348(2).

10 Ibid s 348(2)(a).

11 Ibid s 348(2)(b).

12 Ibid s 348(2). As to the payment of fees where arrangements have been made under Pt IV (ss 312-349) (as amended) for the provision of primary or secondary education for a pupil at a school not maintained by a local education authority see also s 517 (amended by the Education Act 1996 (Modification of Section 517) Regulations 1999, SI 1999/2260, reg 2). As from a day to be appointed, the Education Act 1996 s 517 (as amended) is repealed by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 138, Sch 31. At the date at which this volume states the law, no such day had been appointed.

## **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

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### **1010. City colleges and academies.**

Where a child<sup>1</sup> for whom a statement of special educational needs<sup>2</sup> is maintained<sup>3</sup> attends (or proposes to attend) a school<sup>4</sup> which is a city technology college, a city college for the technology of the arts or an academy<sup>5</sup>, and either the school is approved by the Secretary of State<sup>6</sup>, or the Secretary of State consents to the child being educated there<sup>7</sup>, the Secretary of State may by regulations<sup>8</sup> make provision for securing that arrangements are made for the special educational provision<sup>9</sup>, and any non-educational provision, specified in the statement<sup>10</sup>.

Accordingly, a local education authority in England<sup>11</sup> may pay to an approved city college<sup>12</sup> all or any part of the cost incurred in respect of securing that the statemented provision<sup>13</sup> for a relevant child is made<sup>14</sup>, and may provide any other assistance to an approved city college for the purpose of securing that the statemented provision for a relevant child is made<sup>15</sup>. A local education authority must keep under review the arrangements so made<sup>16</sup> and in doing so must consult the governing bodies of any city college both in the authority's area<sup>17</sup> and in any neighbouring local education authority's area to which the authority makes any payment, supplies any goods and services, or provides any assistance<sup>18</sup>.

1 For the meaning of 'child' see PARA 16 note 2 ante.

2 For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

3 Education Act 1996 s 483A(2)(a) (s 483A added by the Learning and Skills Act 2000 s 133). The text refers to a statement maintained under the Education Act 1996 s 324 (as amended) (see PARA 996 ante). As to local education authorities see PARA 20 ante.

4 For the meaning of 'school' see PARA 81 ante.

5 Education Act 1996 s 483A(2)(b) (as added (see note 3 supra); and amended by the Education Act 2002 s 65(3), Sch 7 Pt 2 para 6(1), (4)(a)). As to city technology colleges, city colleges for the technology of the arts and academies see PARA 496 ante.

6 Education Act 1996 s 483A(3)(a) (as added: see note 3 supra). The approval in question is approval under s 347(1) (approval of independent schools: see PARA 1030 post) as suitable for the admission of children for whom statements of special educational needs are maintained. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Ibid s 483A(3)(b) (as added: see note 3 supra).

8 'Regulations' means regulations made by the Secretary of State: *ibid* s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. Regulations under s 483A(4) (as added) may require or authorise a local education authority to make payments, or to provide any other assistance, to the school in respect of the child (s 483A(5) (as added: see note 3 supra)), and no condition or requirement imposed by virtue of s 482(4)(a) (as substituted) (see PARA 496 ante) may prevent a local education authority making such payments or providing such assistance (s 483A(6) (as so added)). As to the regulations made in exercise of the power under s 483A(4) (as added) see the Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071; and the text and notes 11-19 *infra*.

9 Education Act 1996 s 483A(1), (4)(a) (as added: see note 3 supra). For the meaning of 'special educational provision' see PARA 984 ante.

10 Ibid s 483A(1), (4)(b) (as added: see note 3 supra).

11 For the meaning of 'England' see PARA 52 note 11 ante.

12 For these purposes, 'city college' means an academy, a city technology college or a city college for the technology of the arts; and 'approved' means approved by the Secretary of State under the Education Act 1996 s 347(1) (approval of independent schools: see PARA 1030 post): Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071, reg 1(2). A city college will also be regarded as approved if the Secretary of State has consented to the relevant child being educated there: reg 1(3). 'Relevant child' means a child for whom a statement is maintained under the Education Act 1996 s 324 (as amended) (see PARA 996 ante) and who attends or proposes to attend a city college: Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071, reg 1(2).

13 For these purposes, 'statemented provision' means the special educational provision specified in a statement maintained under the Education Act 1996 s 324 (as amended) (see PARA 996 ante): Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071, reg 1(2). Nothing in the Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071, affects the duty of a local education authority under the Education Act 1996 s 324(5) (as amended) (see PARA 996 ante) to arrange that the special educational provision specified in a statement is made for a child: Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071, reg 4.

14 Ibid reg 2(1).

15 Ibid reg 2(2).

16 Ibid reg 3(1).

17 Ibid reg 3(2)(a). As to local education authority areas see PARA 20 ante.

18 Ibid reg 3(2)(b). This provision applies only to payments made, goods and services supplied, and assistance provided under the Education (Special Educational Needs) (City Colleges) (England) Regulations 2002, SI 2002/2071: reg 3(2)(b).

## **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1010 City colleges and academies**

TEXT AND NOTES 1-10--Education Act 1996 s 483A amended: Education and Skills Act 2008 s 147(4)-(7).

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### **1011. Special educational provision otherwise than in schools.**

Where a local education authority<sup>1</sup> is satisfied that it would be inappropriate for the special educational provision<sup>2</sup> for which a learning difficulty<sup>3</sup> of a child<sup>4</sup> in its area<sup>5</sup> calls<sup>6</sup>, or for any part of any such provision<sup>7</sup>, to be made in a school<sup>8</sup>, it may arrange for the provision (or, as the case may be, for that part of it) to be made otherwise than in a school<sup>9</sup>. Before making such an arrangement, a local education authority must consult the child's parent<sup>10</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 319 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (f). For the meaning of 'England' see PARA 52 note 11 ante.

2 For the meaning of 'special educational provision' see PARA 984 ante.

3 For the meaning of 'learning difficulty' see PARA 984 ante.

4 As to the meaning of 'child' see PARA 984 note 1 ante.

5 As to local education authority areas see PARA 20 ante.

6 Education Act 1996 s 319(1)(a).

7 Ibid s 319(1)(b).

8 For the meaning of 'school' see PARA 81 ante.

9 Education Act 1996 s 319(1). Where the school provision by the local education authority is regarded as appropriate, there is no power under s 319(1) to make arrangements for non-school provision: *T v Special Educational Needs Tribunal and Wiltshire County Council* [2002] EWHC 1474 (Admin), [2002] ELR 704. Where the Education Act 1996 s 319 is inapplicable, s 324 (as amended) applies (see PARA 996 ante): *T v Special Educational Needs Tribunal and Wiltshire County Council* supra.

10 Education Act 1996 s 319(2). As to the meaning of 'parent' see PARA 510 note 1 ante.

## **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1011 Special educational provision otherwise than in schools**

NOTE 9--See *R (on the application of M) v Hounslow LBC* [2009] EWCA Civ 859, [2010] 2 All ER 467.





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### **1012. Provision outside England and Wales for certain children.**

A local education authority<sup>1</sup> may make such arrangements as it thinks fit to enable a child<sup>2</sup> for whom it maintains a statement of special educational needs<sup>3</sup> to attend an institution outside England<sup>4</sup> and Wales<sup>5</sup> which specialises in providing for children with special needs<sup>6</sup>. Where a local education authority makes such arrangements in respect of a child, those arrangements may in particular include contributing to or paying:

- 1857 (1) fees charged by the institution<sup>7</sup>;
- 1858 (2) expenses reasonably incurred in maintaining the child while he is at the institution or travelling to or from it<sup>8</sup>;
- 1859 (3) the child's travelling expenses<sup>9</sup>; and
- 1860 (4) expenses reasonably incurred by any person accompanying the child while he is travelling or staying at the institution<sup>10</sup>.

This power is without prejudice to any other powers of a local education authority<sup>11</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 320 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (g).

2 As to the meaning of 'child' see PARA 984 note 1 ante.

3 I.e. a statement maintained under the Education Act 1996 s 324 (as amended) (see PARA 996 ante). For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 For the meaning of 'Wales' see PARA 52 note 13 ante.

6 Education Act 1996 s 320(1). For these purposes, 'children with special needs' means children who have particular needs which would be special educational needs if those children were in England and Wales: s 320(2).

7 Ibid s 320(3)(a).

8 Ibid s 320(3)(b).

9 Ibid s 320(3)(c).

10 Ibid s 320(3)(d).

11 Ibid s 320(4).

### **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1013. Duties of governing body or local education authority in relation to pupils with special educational needs.

**1013. Duties of governing body or local education authority in relation to pupils with special educational needs.**

The governing body<sup>1</sup> of a community, foundation or voluntary school<sup>2</sup> or a maintained nursery school<sup>3</sup> must<sup>4</sup>:

- 1861 (1) use its best endeavours, in exercising its functions<sup>5</sup> in relation to the school<sup>6</sup>, to secure that, if any registered pupil<sup>7</sup> has special educational needs<sup>8</sup>, the special educational provision<sup>9</sup> for which his learning difficulty<sup>10</sup> calls is made<sup>11</sup>;
- 1862 (2) secure that, where the responsible person<sup>12</sup> has been informed by the local education authority<sup>13</sup> that a registered pupil has special educational needs, those needs are made known to all who are likely to teach him<sup>14</sup>; and
- 1863 (3) secure that the teachers in the school are aware of the importance of identifying, and providing for, those registered pupils who have special educational needs<sup>15</sup>.

To the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children with special educational needs, the governing bodies of community, foundation and voluntary schools and maintained nursery schools must, in exercising functions relating to the provision for such children, consult the local education authority and the governing bodies of other such schools<sup>16</sup>.

Where a child who has special educational needs is being educated in a community, foundation or voluntary school or a maintained nursery school, those concerned with making special educational provision for the child must secure, so far as is reasonably practicable and is compatible with<sup>17</sup>:

- 1864 (a) the child receiving the special educational provision for which his learning difficulty calls<sup>18</sup>;
- 1865 (b) the provision of efficient education for the children with whom he will be educated<sup>19</sup>; and
- 1866 (c) the efficient use of resources<sup>20</sup>,

that the child engages in the activities of the school together with children who do not have special educational needs<sup>21</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante.

2 As to community, foundation and voluntary schools see PARA 102 ante.

3 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

4 Education Act 1996 s 317(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 39(1), (2)).

5 As to the meaning of 'functions' see PARA 14 note 5 ante.

6 For the meaning of 'school' see PARA 81 ante.

7 For the meaning of 'registered pupil' see PARA 512 ante.

8 For the meaning of 'special educational needs' see PARA 984 ante.

9 For the meaning of 'special educational provision' see PARA 984 ante.

10 For the meaning of 'learning difficulty' see PARA 984 ante.

11 Education Act 1996 s 317(1)(a).

12 For the purposes of ibid s 317(1)(b), 'the responsible person' means the head teacher or the appropriate governor (that is, the chairman of the governing body or, where the governing body has designated another governor for the purposes of s 317(2) (as substituted), that other governor): s 317(2) (substituted by the Education Act 2002 Sch 21 para 39(1), (3)). As to the meaning of 'head teacher' see PARA 93 note 13 ante.

13 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 317 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (c). For the meaning of 'England' see PARA 52 note 11 ante.

14 Education Act 1996 s 317(1)(b).

15 Ibid s 317(1)(c).

16 Ibid s 317(3)(a) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 paras 57, 74(1), (4)(a), Sch 31; and the Education Act 2002 Sch 21 para 39(1), (4)).

17 Education Act 1996 s 317(4) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 74(1), (5)).

18 Education Act 1996 s 317(4)(a).

19 Ibid s 317(4)(b).

20 Ibid s 317(4)(c).

21 Ibid s 317(4).

## UPDATE

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1013 Duties of governing body or local education authority in relation to pupils with special educational needs**

TEXT AND NOTES--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 2.

TEXT AND NOTE 16--The governing body of a community, foundation or voluntary school or a maintained nursery school must designate a member of the staff at the school, to be known as the 'special educational needs co-ordinator', as having responsibility for co-ordinating the provision for pupils with special educational needs: 1996 Act s 317(3A) (s 317(3A), (3B) added by Education and Inspections Act 2006 s 173 (in force in relation to England: SI 2006/3400)). Regulations may require the governing bodies of

schools falling within the 1996 Act s 317(3A) to ensure that special educational needs co-ordinators have prescribed qualifications or prescribed experience, or both, and confer on the governing bodies of those schools other functions relating to special educational needs co-ordinators: s 317(3B). As to regulations so made see Education (Special Educational Needs Co-ordinators) (England) Regulations 2008, SI 2008/2945 (amended by SI 2009/1387).

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#### **1014. Regional provision for special educational needs in Wales.**

When directed to do so by the National Assembly for Wales<sup>1</sup>, the local education authorities<sup>2</sup> in Wales<sup>3</sup>, or such of them as may be specified in the direction, must consider whether they (or any of them) would be able to carry out their special education functions<sup>4</sup>, in respect of children with the special educational needs<sup>5</sup> specified in the direction, more efficiently or effectively if regional provision<sup>6</sup> were made<sup>7</sup>. The authorities to whom a direction is given must report their conclusions to the Assembly not later than the time specified in the direction<sup>8</sup>. In discharging their duties under these provisions, local education authorities must have regard to any guidance given from time to time by the Assembly<sup>9</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'Wales' see PARA 52 note 13 ante.

4 For the purposes of the Education Act 2002 s 191, 'special education functions' means functions under the Education Act 1996 (ss 312-349) (as amended) (see PARAS 984 et seq ante, 1016 et seq post): Education Act 2002 s 191(2).

5 For the meaning of 'special educational needs' see PARA 984 ante; definition applied by virtue of ibid s 212(2), (3).

6 For the purposes of ibid s 191, 'regional provision' means: (1) provision of education for children from the areas of different local education authorities in Wales, at a school maintained by one of those authorities; or (2) provision made by two or more local education authorities in Wales for goods or services to be supplied by one of the authorities to the other or others, or to one or more governing bodies of schools maintained by the other authority or authorities: s 191(2). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3). As to the governing bodies of maintained schools see PARA 203 et seq ante.

7 Ibid s 191(1). As to the power of local education authorities in Wales to make regional provision for primary and secondary education see PARA 26 ante.

8 Ibid s 191(3).

9 Ibid s 191(4).

#### **UPDATE**

#### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1015. Directions to bring forward proposals to secure regional provision in Wales.

**1015. Directions to bring forward proposals to secure regional provision in Wales.**

Where the National Assembly for Wales<sup>1</sup> is of the opinion that two or more local education authorities<sup>2</sup> in Wales<sup>3</sup> ('Welsh authorities') would be able to carry out their special education functions<sup>4</sup>, in respect of a particular class of children, more effectively or efficiently if regional provision<sup>5</sup> were made, the Assembly may exercise its power to give directions<sup>6</sup> with a view to securing that such provision is made<sup>7</sup>. The Assembly may, by order<sup>8</sup>, do one or more of the following:

- 1867 (1) direct a Welsh authority to exercise its powers to make proposals for the establishment, alteration or discontinuance of schools<sup>9</sup>;
- 1868 (2) direct the governing body of a foundation, voluntary or foundation special school<sup>10</sup> maintained by a Welsh authority (a 'relevant school') to exercise its powers to make proposals for the alteration of its school<sup>11</sup>;
- 1869 (3) direct two or more Welsh authorities to make proposals for arrangements under which provision for education is made by one of the authorities in respect of persons from the area or areas of the other authority or authorities<sup>12</sup>, and provision is made for determining the payments to be made under the arrangements in respect of the provision of that education<sup>13</sup>;
- 1870 (4) direct two or more Welsh authorities to make proposals for arrangements that provide for one of those authorities to make to the other or others such supplies of goods or services as may be specified in the proposals on such terms, including terms as to payment, as may be so specified<sup>14</sup>;
- 1871 (5) direct a Welsh authority and the governing bodies of one or more relevant schools to make proposals for arrangements that provide for the authority to make to the governing bodies such supplies of goods or services as may be specified in the proposals, on such terms, including terms as to payment, as may be so specified<sup>15</sup>,

to secure that regional provision is made in relation to such class of children, from such areas<sup>16</sup>, as may be specified in the order<sup>17</sup>. Such an order must require the proposals to be published not later than such date as is specified in the order<sup>18</sup>, and must require the body publishing the proposals to send a copy of the published proposals and such information in connection with those proposals as may be prescribed by the order, to the Assembly<sup>19</sup>. Proposals made in pursuance of an order containing a direction under heads (3) to (5) above must contain such information and be published in such manner as is prescribed by regulations<sup>20</sup>. Regulations may, in respect of proposals made in pursuance of such an order, make provision for<sup>21</sup>: (a) consultation on the proposals<sup>22</sup>; (b) the making of comments on or objections to the proposals<sup>23</sup>; (c) withdrawal of the proposals<sup>24</sup>; (d) modification of the proposals<sup>25</sup>; (e) approval of the proposals by the Assembly<sup>26</sup>; (f) implementation of the proposals by the body or bodies that made them<sup>27</sup>.

Where the Assembly has made an order containing directions under heads (1) to (5) above<sup>28</sup>, and either any proposals have been published in pursuance of the order<sup>29</sup>, or the time allowed under the order for the publication of the proposals has expired<sup>30</sup>, the Assembly may make any such proposals as might have been made, in accordance with any direction contained in the

order, by the body or bodies to which it was addressed<sup>31</sup>. The proposals must contain such information and be published in such manner as the Assembly thinks fit<sup>32</sup>; and the Assembly must send a copy of any such proposals to each local education authority in Wales<sup>33</sup>, and the governing body of each school to which the proposals relate<sup>34</sup>. Regulations may make provision about such proposals and, in particular, may make provision for<sup>35</sup>: (i) consultation on the proposals<sup>36</sup>; (ii) the making of comments on or objections to the proposals<sup>37</sup>; (iii) modification of the proposals<sup>38</sup>; (iv) implementation of the proposals by the bodies to which they relate<sup>39</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'Wales' see PARA 52 note 13 ante.

4 For the meaning of 'special education functions' see PARA 1014 note 4 ante; definition applied by the Education Act 2002 s 192(9).

5 For the meaning of 'regional provision' see PARA 1014 note 6 ante; definition applied by *ibid* s 192(9).

6 *Ibid* under *ibid* s 192 and s 193 (see the text and notes 28-39 *infra*).

7 *Ibid* s 192(1).

8 The power to make an order under *ibid* s 192 is not exercisable by statutory instrument: see s 210(2); and PARA 77 note 7 ante.

9 *Ibid* s 192(2)(a). In s 192, 'powers to make proposals for the establishment, alteration or discontinuance of schools' means all or any of the powers of the local education authority to publish proposals under the School Standards and Framework Act 1998 s 28 (as amended; prospectively amended) (see PARA 132 ante), s 29 (prospectively amended) (see PARA 134 ante) or s 31 (prospectively amended) (see PARA 136 ante); Education Act 2002 s 192(9). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 212(2), (3).

10 As to the governing bodies of maintained schools see PARA 203 *et seq* ante. As to foundation and voluntary schools and foundation special schools see PARA 102 ante; and as to special schools see PARA 1027 *post*.

11 Education Act 2002 s 192(2)(b). In s 192, 'powers to make proposals for the alteration of its school', in relation to the governing body of a foundation, voluntary or foundation special school, means its powers to publish proposals under the School Standards and Framework Act 1998 s 28(2)(b) (as amended) (see PARA 132 ante) or s 31(2)(a) (see PARA 136 ante); Education Act 2002 s 192(9).

12 *Ibid* s 192(2)(c)(i).

13 *Ibid* s 192(2)(c)(ii). Where an order contains a direction under s 192(2)(c) and also a direction under s 192(2)(a) (see head (1) in the text) or s 192(2)(b) (see head (2) in the text), the payments to which s 192(2)(c) refers may include an amount in respect of such costs connected with the establishment, alteration or discontinuance of the school in question as may be specified in the order: s 192(3).

14 *Ibid* s 192(2)(d).

15 *Ibid* s 192(2)(e).

16 As to local education authority areas see PARA 20 ante.

17 Education Act 2002 s 192(2).

18 *Ibid* s 192(4)(a).

19 *Ibid* s 192(4)(b).

20 *Ibid* s 192(5). 'Regulations' means (in relation to Wales) regulations made under the Education Act 2002 by the National Assembly for Wales: s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. At the date at which this volume states the law, no regulations had been made under s 192.



21 Ibid s 192(6). Without prejudice to the generality of s 192(6), regulations thereunder may include provision equivalent to that made by or under the School Standards and Framework Act 1998 ss 28(8), 29(7), 31(8), Sch 6 Pt II paras 6-10 (as amended) (procedure for dealing with statutory proposals (Wales): see PARAS 137-140 ante) in relation to proposals of the kind mentioned in the Education Act 2002 s 192(2)(a) (see head (1) in the text) or s 192(2)(b) (see head (2) in the text): s 192(7). Where proposals made by the governing body of a foundation, voluntary or foundation special school in pursuance of an order containing a direction under s 192(2)(b) are approved or, as the case may be, determined to be implemented under the School Standards and Framework Act 1998 Sch 6 (as amended), then, despite anything in Sch 6 Pt III paras 11-15 (as amended) (manner of implementation of statutory proposals: see PARAS 141-144 ante), the local education authority must defray the cost of implementing the proposals: Education Act 2002 s 192(8).

22 Ibid s 192(6)(a).

23 Ibid s 192(6)(b).

24 Ibid s 192(6)(c).

25 Ibid s 192(6)(d).

26 Ibid s 192(6)(e).

27 Ibid s 192(6)(f).

28 Ibid s 193(1)(a).

29 Ibid s 193(1)(b)(i).

30 Ibid s 193(1)(b)(ii).

31 Ibid s 193(1). As from a day to be appointed: (1) proposals under s 193 for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by s 24(2) (see PARA 213 ante) (s 74(1), (3)); and (2) regulations may make provision modifying any provision contained in s 70 (see PARAS 150 et seq, 497 et seq ante) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school (s 74(2)). At the date at which this volume states the law, no such day had not been appointed in relation to Wales. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). As from a day to be appointed, s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 and head (1) supra is re-enacted as s 68 (proposals for establishment of federated school: see PARA 133 ante). At the date at which this volume states the law, no such day had been appointed.

32 Education Act 2002 s 193(2).

33 Ibid s 193(3)(a).

34 Ibid s 193(3)(b).

35 Ibid s 193(4). Without prejudice to the generality of s 193(4), regulations thereunder may include provision which applies or reproduces, with or without modification, any provisions of the School Standards and Framework Act 1998 Pt V (ss 117-124) (as amended) (nursery education: see PARA 85 et seq ante) or s 34, Sch 7 para 17 (see PARAS 192, 201 ante): Education Act 2002 s 193(5). Where proposals made and adopted by the National Assembly for Wales under s 193 have effect, by virtue of s 193(5), as if they were proposals made by the governing body of a foundation, voluntary or foundation special school under its powers to make proposals for the alteration of its school, and approved by the Assembly, then, despite anything in the School Standards and Framework Act 1998 Sch 6 Pt III paras 11-15 (as amended) (manner of implementation of statutory proposals: see PARAS 141-144 ante), the local education authority must defray the cost of implementing the proposals: Education Act 2002 s 193(6). At the date at which this volume states the law, no regulations had been made under s 193.

36 Ibid s 193(4)(a).

37 Ibid s 193(4)(b).

38 Ibid s 193(4)(c).

39 Ibid s 193(4)(d).

## UPDATE

**1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

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### **1016. Access for local education authority to certain schools.**

Where a local education authority<sup>1</sup> maintains a statement of special educational needs<sup>2</sup> for a child<sup>3</sup>, and in pursuance of the statement education is provided for the child at a school<sup>4</sup> maintained<sup>5</sup> by another local education authority or at an independent school<sup>6</sup>, any person authorised by the local education authority is entitled to have access at any reasonable time to the premises<sup>7</sup> of any such school for the purpose of monitoring the special educational provision<sup>8</sup> made in pursuance of the statement for the child at the school<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie under the Education Act 1996 s 324 (as amended) (see PARA 996 ante). For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

3 Ibid s 327(1)(a). As to the meaning of 'child' see PARA 984 note 1 ante.

4 For the meaning of 'school' see PARA 81 ante.

5 For the meaning of 'maintained school' see PARA 984 note 11 ante.

6 Education Act 1996 s 327(1)(b) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 78; and amended by the Education Act 2002 s 173). For the meaning of 'independent school' see PARA 465 ante.

7 As to the meaning of 'premises' see PARA 1352 note 3 post.

8 For the meaning of 'special educational provision' see PARA 984 ante.

9 Education Act 1996 s 327(2).

### **UPDATE**

#### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1017. Provision of goods and services in connection with special educational needs.

### **1017. Provision of goods and services in connection with special educational needs.**

A local education authority<sup>1</sup> may, for the purpose only of assisting the governing bodies<sup>2</sup> of community, foundation or voluntary schools<sup>3</sup> or maintained nursery schools<sup>4</sup> (in its or any other area<sup>5</sup>) in the performance of their duties in relation to pupils with special educational needs<sup>6</sup>, or the governing bodies of community or foundation special schools<sup>7</sup> (in its or any other area) in the performance of their duties, supply goods or services to those bodies<sup>8</sup>. A local education authority in England may supply goods and services to any authority or other person<sup>9</sup> for the purpose only of assisting them in making for any child<sup>10</sup> any special educational provision<sup>11</sup> for which any learning difficulty<sup>12</sup> of the child calls<sup>13</sup>. A local education authority in Wales<sup>14</sup> may supply goods and services to any authority in Wales or other person<sup>15</sup> for the purpose of assisting them in making for a child any special educational provision for which any learning difficulty of the child calls<sup>16</sup>. These provisions are without prejudice to the generality of any other power of local education authorities to supply goods or services<sup>17</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 318 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (e). For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 As to community, foundation and voluntary schools see PARA 102 et seq ante.

4 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

5 As to local education authority areas see PARA 20 ante. The terms on which goods or services are supplied by local education authorities under the Education Act 1996 s 318 (as amended) to the governing bodies of community, foundation or voluntary schools, maintained nursery schools or community or foundation special schools in any other area may, in such circumstances as may be prescribed, include such terms as to payment as may be prescribed: s 318(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 75(1), (3); and by the Education Act 2002 s 215(1), Sch 21 para 41(1), (3)). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. In the exercise of the power under s 318(2) (as amended), the Education (Payment for Special Educational Needs Supplies) Regulations 1999, SI 1999/710 (amended by SI 2005/2913), have been made. These provide that where a local education authority supplies, under the Education Act 1996 s 318(1) (as amended), goods or services to the governing body of a school which it does not maintain, and which is in the area of another local education authority, the terms on which the authority supplies those goods or services may include such terms as to payment as can reasonably be expected to secure that the full cost (but not more than the full cost) of the provision is recovered by the authority: Education (Payment for Special Educational Needs Supplies) Regulations 1999, SI 1999/710, reg 2.

6 I.e. under the Education Act 1996 s 317(1)(a): see PARA 1013 ante.

7 As to community and foundation special schools see PARA 102 ante.

8 Education Act 1996 s 318(1) (amended by the School Standards and Framework Act 1998 Sch 30 paras 57, 75(1), (2); and by the Education Act 2002 Sch 21 para 41(1), (2)).

9 le other than a governing body within the Education Act 1996 s 318(1) (as amended): see the text and notes 1-8 supra.

10 le any child who is receiving relevant nursery education within the meaning of the School Standards and Framework Act 1998 s 123 (as amended) (see PARA 1019 note 17 post): Education Act 1996 s 318(3) (as substituted and amended: see note 13 infra); s 318(3A)(a) (s 318(3A) added by the School Standards and Framework Act 1998 Sch 30 paras 57, 75(1), (4); and amended by the Education Act 2002 s 215(2), Sch 22 Pt 3).

11 For the meaning of 'special educational provision' see PARA 984 ante.

12 For the meaning of 'learning difficulty' see PARA 984 ante.

13 Education Act 1996 s 318(3) (substituted by the School Standards and Framework Act 1998 Sch 30 paras 57, 75(1), (4); and amended by the Education Act 2002 s 194(2)(a)).

14 For the meaning of 'Wales' see PARA 52 note 13 ante.

15 See note 9 supra.

16 Education Act 1996 s 318(3B) (added by the Education Act 2002 s 194(2)(b)). As to the power of the National Assembly for Wales to make regional provision for special educational needs see PARAS 1014-1015 ante.

17 Education Act 1996 s 318(4).

## **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1017 Provision of goods and services in connection with special educational needs**

NOTE 10--1996 Act s 318(3A) further amended: Childcare Act 2006 Sch 2 para 21 (in force in relation to England: SI 2008/2261).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1018. Review of arrangements for special educational provision.

### **1018. Review of arrangements for special educational provision.**

A local education authority<sup>1</sup> must keep under review the arrangements made by it for special educational provision<sup>2</sup>. In doing so the authority must, to the extent that it appears necessary or desirable for the purpose of co-ordinating provision for children<sup>3</sup> with special educational needs<sup>4</sup>, consult the governing bodies of community, foundation and voluntary schools, community and foundation special schools<sup>5</sup> and maintained nursery schools<sup>6</sup> in its area<sup>7</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 1996 s 315(1). For the meaning of 'special educational provision' see PARA 984 ante. This duty is effectively limited to the assessment and provision of appropriate places and does not extend to monitoring every pupil: *P v Harrow London Borough Council* [1993] 2 FCR 341, [1993] 1 FLR 723 (decided under previous legislation; pupil placed in an independent school); applied in *R (on the application of Campbell) v Special Educational Needs and Disability Tribunal* [2003] EWHC 1590 (Admin), [2004] ELR 111.

3 As to the meaning of 'child' see PARA 984 note 1 ante.

4 For the meaning of 'special educational needs' see PARA 984 ante.

5 As to the governing bodies of maintained schools see PARA 203 et seq ante. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante.

6 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

7 Education Act 1996 s 315(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 73; and by the Education Act 2002 s 215(1), Sch 21 para 37).

### **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1019. Duty of local education authority and governing body to inform parents where special educational provision is made.

**1019. Duty of local education authority and governing body to inform parents where special educational provision is made.**

Where a child<sup>1</sup> for whom no statement of his special educational needs<sup>2</sup> is maintained<sup>3</sup> is a registered pupil<sup>4</sup> at a community, foundation or voluntary school<sup>5</sup> or a maintained nursery school<sup>6</sup> or a pupil referral unit<sup>7</sup>, special educational provision<sup>8</sup> is made for him at the school because it is considered that he has special educational needs<sup>9</sup>, and the child's parent<sup>10</sup> has not previously been informed<sup>11</sup> of special educational provision made for him at the school<sup>12</sup>, then: (1) if the school is a pupil referral unit, the local education authority must secure that the head teacher<sup>13</sup> informs the child's parent that special educational provision is being made for him at the school because it is considered that he has special educational needs<sup>14</sup>; and (2) in any other case, the governing body<sup>15</sup> must inform the child's parent that special educational provision is being made for him there because it is considered that he has special educational needs<sup>16</sup>.

Where a local education authority or other person providing relevant nursery education<sup>17</sup> for a child makes special educational provision for him because it is considered that he has special educational needs<sup>18</sup>, no statement of special educational needs is maintained for the child<sup>19</sup>, and the child's parent has not previously been informed<sup>20</sup> of the special educational provision made for the child<sup>21</sup>, the authority or other person concerned must inform the child's parent that special educational provision is being made for him because it is considered that he has special educational needs<sup>22</sup>.

1 As to the meaning of 'child' see PARA 984 note 1 ante.

2 For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

3 Ie by a local education authority under the Education Act 1996 s 324 (as amended) (see PARA 996 ante). As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under s 317A (as added) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (d). For the meaning of 'England' see PARA 52 note 11 ante.

4 For the meaning of 'registered pupil' see PARA 512 ante. For the meaning of 'pupil' see PARA 16 note 4 ante.

5 As to community, foundation and voluntary schools see PARA 102 et seq ante.

6 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

7 Education Act 1996 s 317A(1)(a) (s 317A added by the Special Educational Needs and Disability Act 2001 s 7(1); and the Education Act 1996 s 317A(1)(a) amended by the Education Act 2002 s 215(1), Sch 21 para 40). For the meaning of 'pupil referral unit' see PARA 457 ante.

8 For the meaning of 'special educational provision' see PARA 984 ante.

9 Education Act 1996 s 317A(1)(b) (as added: see note 7 supra).

10 As to the meaning of 'parent' see PARA 510 note 1 ante.

11 Ie under the Education Act 1996 s 317A (as added and amended).

- 12 Ibid s 317A(1)(c) (as added: see note 7 supra).
- 13 As to the meaning of 'head teacher' see PARA 93 note 13 ante.
- 14 Education Act 1996 s 317A(2) (as added: see note 7 supra).
- 15 As to the governing bodies of maintained schools see PARA 203 et seq ante.
- 16 Education Act 1996 s 317A(3) (as added: see note 7 supra).
- 17 For these purposes, 'relevant nursery education' means nursery education which is provided: (1) by a local education authority (School Standards and Framework Act 1998 s 123(4)(a)); or (2) by any other person who is in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of s 120(2)(a) (as amended; repealed in relation to England; prospectively repealed in relation to Wales) (see PARA 88 ante) (s 123(4)(b)). For the meaning of 'nursery education' see PARA 85 ante.
- 18 Ibid s 123(3A)(a) (s 123(3A), (3B) added by the Special Educational Needs and Disability Act 2001 s 7(2)). See also PARA 1038 post.
- 19 School Standards and Framework Act 1998 s 123(3A)(b) (as added: see note 18 supra). The text refers to a statement maintained under the Education Act 1996 s 324 (as amended): see PARA 996 ante. See also PARA 1038 post.
- 20 le under the School Standards and Framework Act 1998 s 123(3B) (as added): see the text and note 22 infra.
- 21 Ibid s 123(3A)(c) (as added: see note 18 supra). See also PARA 1038 post.
- 22 Ibid s 123(3B) (as added: see note 18 supra). See also PARA 1038 post.

## UPDATE

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1019 Duty of local education authority and governing body to inform parents where special educational provision is made**

TEXT AND NOTES 17-22--1998 s 123 further amended: Childcare Act 2006 Sch 2 para 34 (in force in relation to England: SI 2008/2261).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1020. Duty of local education authority to advise and inform parents of children with special educational needs.

**1020. Duty of local education authority to advise and inform parents of children with special educational needs.**

A local education authority<sup>1</sup> must arrange for the parent<sup>2</sup> of any child<sup>3</sup> in its area<sup>4</sup> with special educational needs<sup>5</sup> to be provided with advice and information about matters relating to those needs<sup>6</sup>. In making the arrangements, the authority must have regard to any guidance given by the Secretary of State<sup>7</sup> (in relation to England) or by the National Assembly for Wales<sup>8</sup> (in relation to Wales)<sup>9</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 332A (as added) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (s). For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the meaning of 'parent' see PARA 510 note 1 ante.

3 As to the meaning of 'child' see PARA 984 note 1 ante.

4 As to local education authority areas see PARA 20 ante.

5 For the meaning of 'special educational needs' see PARA 984 ante.

6 Education Act 1996 s 332A(1) (s 332A added by the Special Educational Needs and Disability Act 2001 s 2). The authority must take such steps as it considers appropriate for making the services provided under the Education Act 1996 s 332A(1) (as added) known to the parents of children in its area, the head teachers and proprietors of schools in its area, and such other persons as it considers appropriate: s 332A(3) (as so added). As to the meaning of 'head teacher' see PARA 93 note 13 ante. For the meaning of 'proprietor' see PARA 60 note 7 ante. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'school' see PARA 81 ante.

7 As to the Secretary of State see PARA 52 ante.

8 As to the National Assembly for Wales see PARA 53 ante.

9 Education Act 1996 s 332A(2) (as added: see note 6 supra). For the meaning of 'Wales' see PARA 52 note 13 ante.

**UPDATE**

**1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1021. Provision of information and advice by governing bodies.

### **1021. Provision of information and advice by governing bodies.**

The governing body of a community, foundation or voluntary school<sup>1</sup>, a maintained nursery school<sup>2</sup>, or a community or foundation special school<sup>3</sup> must, in the case of a school in England<sup>4</sup>, prepare a report containing special needs information<sup>5</sup>, and must, in the case of a school in Wales<sup>6</sup>, include special needs information in the governors' report<sup>7</sup>.

1 As to the governing bodies of maintained schools see PARA 203 et seq ante. As to community, foundation and voluntary schools see PARA 102 ante.

2 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

3 As to community and foundation special schools see PARA 102 ante; and as to special schools see PARA 1027 post.

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 Education Act 1996 s 317(5)(a) (s 317(5), (6) substituted by the Education Act 2005 s 117, Sch 18 para 2). For this purpose, 'special needs information' means: (1) such information as may be prescribed about the implementation of the governing body's policy for pupils with special educational needs; and (2) information as to the arrangements for the admission of disabled persons as pupils at the school, the steps taken to prevent disabled pupils from being treated less favourably than other pupils, the facilities provided to assist access to the school by disabled pupils, and the plan prepared by the governing body under the Disability Discrimination Act 1995 s 28D (as added and amended) (accessibility strategies and plans: see DISCRIMINATION 13 (2007) Reissue) PARA 564); Education Act 1996 s 317(6) (as so substituted). For the purposes of head (2) supra, 'disabled person' means a person who is a disabled person for the purposes of the Disability Discrimination Act 1995 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 511); and s 28Q (as added and amended) (interpretation) applies for the purposes of head (2) supra as it applies for the purposes of Pt IV Ch I (ss 28A-28Q) (as substituted) (discrimination in schools: see DISCRIMINATION vol 13 (2007 Reissue): Education Act 1996 s 317(6A) (added by the Education Act 2005 Sch 18 para 2). For the meaning of 'pupil' see PARA 16 note 4 ante. For the meaning of 'special educational needs' see PARA 984 ante. 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations made in exercise of the power under s 317(5) (as substituted) in relation to England see the Education (Special Educational Needs) (Information) (England) Regulations 1999, SI 1999/2506 (amended by SI 2002/2469). The governing body of every community, foundation or voluntary school or community or foundation special school (including one established in a hospital) is required to publish the following information: basic information about the school's special education provision (see the Education (Special Educational Needs) (Information) (England) Regulations 1999, SI 1999/2506, reg 3, Sch 1 paras 1-6, Sch 2 paras 1-3, Sch 3 para 1); information about the school's policies for identification (in the case of a community, foundation or voluntary school), assessment and provision for all pupils with special educational needs (see Sch 1 paras 7-12, Sch 2 paras 4-8, Sch 3 paras 2-4, 6, 7); and information about the staffing policies and partnership with bodies beyond the school (see Sch 1 paras 13-17, Sch 2 paras 9-13, Sch 3 paras 5, 8). Provision is also made as to the means of publication of such information: see regs 4-5 (reg 4 amended by SI 2002/2469).

6 For the meaning of 'Wales' see PARA 52 note 13 ante.

7 Education Act 1996 s 317(5)(b) (as substituted: see note 5 supra). The text refers to the governors' report prepared under the Education Act 2002 s 30(1) (as amended): see PARA 296 ante. As to the regulations made in exercise of the power under the Education Act 1996 s 317(5) (as substituted) in relation to Wales see the Education (Special Educational Needs) (Information) (Wales) Regulations 1999, SI 1999/1442. The governing body of every community, foundation or voluntary school or community or foundation special school (including one established in a hospital) is required to publish the following information: basic information about the

school's special education provision (see reg 3, Sch 1 paras 1-6, Sch 2 paras 1-3, Sch 3 para 1); information about the school's policies for identification (in the case of a community, foundation or voluntary school), assessment and provision for all pupils with special educational needs (see Sch 1 paras 7-12, Sch 2 paras 4-8, Sch 3 paras 2-4, 6, 7); and information about the staffing policies and partnership with bodies beyond the school (see Sch 1 paras 13-17, Sch 2 paras 9-13, Sch 3 paras 5, 8). Provision is also made as to the means of publication of such information: see regs 4-5. Each governors' report must include information about the implementation of the governing body's policy for pupils with special educational needs, in particular concerning the success of the governing body's special educational needs policies, recent changes in policy, the outcome of statutory consultations, and the allocation of resources: reg 6, Sch 4.

## **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1021 Provision of information and advice by governing bodies**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1021A. Provision of information about children with special educational needs.

#### **1021A. Provision of information about children with special educational needs.**

The Secretary of State must exercise his powers under the Education Act 1996 ss 29, 408, 537, 537A, 537B and 538 with a view to securing the provision of special needs information which would, in his opinion, be likely to assist him or other persons in improving the well-being of children in England with special educational needs: s 332C (ss 332C-332E added by the Special Educational Needs (Information) Act 2008 s 1). Any reference to the well-being of children with special educational needs is a reference to their well-being so far as relating to (1) physical and mental health and emotional well-being; (2) protection from harm and neglect; (3) education, training and recreation; (4) the contribution made by them to society; and (5) social and economic well-being: Education Act 1996 s 332E(4). 'Special needs information' means information about children in England with special educational needs or about special educational provision made for them; and 'child' means a person under the age of 19, whether or not the person is a registered pupil at a school: s 332E(2), (3). The Secretary of State must in each calendar year publish, or arrange to be published, special needs information which has been obtained under the 1996 Act and the publication of which would, in his opinion, be likely to assist him or other persons in improving the well-being of children in England with special educational needs: s 332D(1). Information published under s 332D(1) may be published in such form and manner as the Secretary of State thinks fit provided that the name of the child or children to whom the information relates is not included: s 332D(2). The Secretary of State may make, or arrange for the making of, a charge, not exceeding the cost of supply, for any documents supplied by virtue of s 332D: s 332D(3).

#### **UPDATE**

#### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1022. Duty of local education authority in relation to disagreements between local education authorities, governing bodies and parents.

**1022. Duty of local education authority in relation to disagreements between local education authorities, governing bodies and parents.**

A local education authority<sup>1</sup> must make arrangements with a view to avoiding or resolving disagreements between the governing bodies of maintained schools<sup>2</sup> and the local education authority (on the one hand) and parents<sup>3</sup> of children<sup>4</sup> in its area (on the other) about the exercise of functions<sup>5</sup> under the provisions of the Education Act 1996 which relate to special educational needs<sup>6</sup>. The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements<sup>7</sup>. In making the arrangements, the authority must have regard to any guidance given by the Secretary of State<sup>8</sup> (in relation to England) and the National Assembly for Wales<sup>9</sup> (in relation to Wales)<sup>10</sup>. The arrangements cannot affect the entitlement of a parent to appeal to the Tribunal<sup>11</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 332B (as added) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (t). For the meaning of 'England' see PARA 52 note 11 ante.

2 For the meaning of 'maintained school' see PARA 984 note 11 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante. For the meaning of 'school' see PARA 81 ante.

3 As to the meaning of 'parent' see PARA 510 note 1 ante.

4 As to the meaning of 'child' see PARA 984 note 1 ante.

5 As to the meaning of 'functions' see PARA 14 note 5 ante.

6 Education Act 1996 s 332B(1), (7) (s 332B added by the Special Educational Needs and Disability Act 2001 s 3). The functions referred in the text are those under the Education Act 1996 Pt IV (ss 312-349) (as amended) (see PARAS 984 et seq ante, 1023 et seq post). For the meaning of 'special educational needs' see PARA 984 ante. The authority must take such steps as it considers appropriate for making the arrangements made under s 332B(1) (as added) known to the parents of children in its area, the head teachers and proprietors of schools in its area, and such other persons as the authority considers appropriate: s 332B(5) (as so added). As to the meaning of 'head teacher' see PARA 93 note 13 ante. For the meaning of 'proprietor' see PARA 60 note 7 ante.

7 Ibid s 332B(3) (as added: see note 6 supra).

8 As to the Secretary of State see PARA 52 ante.

9 As to the National Assembly for Wales see PARA 53 ante.

10 Education Act 1996 s 332B(4) (as added: see note 6 supra). For the meaning of 'Wales' see PARA 52 note 13 ante.

11 Ibid s 332B(6) (as added: see note 6 supra). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante.

**UPDATE**

**1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(3) PROVISION OF EDUCATION FOR CHILDREN WITH SPECIAL EDUCATIONAL NEEDS/(i) Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision/1023. Duty of local education authority in relation to disagreements between parents and proprietors.

### **1023. Duty of local education authority in relation to disagreements between parents and proprietors.**

A local education authority<sup>1</sup> must make arrangements with a view to avoiding or resolving, in each maintained school<sup>2</sup>, maintained nursery school<sup>3</sup>, pupil referral unit<sup>4</sup>, city technology college, city college for the technology of the arts, city academy<sup>5</sup>, independent school<sup>6</sup> named in a statement of special educational needs<sup>7</sup> maintained for a child<sup>8</sup>, or approved school<sup>9</sup>, disagreements between the parents<sup>10</sup> of a child<sup>11</sup> who has special educational needs and is a registered pupil<sup>12</sup> at the school in question and the proprietor<sup>13</sup> of the school about the special educational provision<sup>14</sup> made for that child<sup>15</sup>. The arrangements must provide for the appointment of independent persons with the function of facilitating the avoidance or resolution of such disagreements<sup>16</sup>. In making the arrangements, the authority must have regard to any guidance given by the Secretary of State<sup>17</sup> (in relation to England) and the National Assembly for Wales<sup>18</sup> (in relation to Wales)<sup>19</sup>. The arrangements cannot affect the entitlement of a parent to appeal to the Tribunal<sup>20</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 332B (as added) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (t). For the meaning of 'England' see PARA 52 note 11 ante.

2 For the meaning of 'maintained school' see PARA 984 note 11 ante. For the meaning of 'school' see PARA 81 ante.

3 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

4 For the meaning of 'pupil referral unit' see PARA 457 ante.

5 As to city technology colleges and city colleges for the technology of the arts see PARA 496 ante; and as to city colleges and academies see further PARA 1010 ante. References to 'city academies' should now be read as references to 'academies': see PARA 496 ante.

6 As to independent schools see PARA 465 ante.

7 For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

8 Statements of special educational needs are maintained under the Education Act 1996 s 324 (as amended): see PARA 996 ante.

9 le approved under *ibid* s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 post).

10 As to the meaning of 'parent' see PARA 510 note 1 ante.

11 As to the meaning of 'child' see PARA 984 note 1 ante.

12 For the meaning of 'registered pupil' see PARA 512 ante. For the meaning of 'pupil' see PARA 16 note 4 ante.

13 For the meaning of 'proprietor' see PARA 60 note 7 ante.

14 For the meaning of 'special educational provision' see PARA 984 ante.

15 Education Act 1996 s 332B(2), (7), (8) (s 332B added by the Special Educational Needs and Disability Act 2001 s 3). The authority must take such steps as it considers appropriate for making the arrangements made under the Education Act 1996 s 332B(2) (as added) known to the parents of children in its area, the head teachers and proprietors of schools in its area, and such other persons as the authority considers appropriate: s 332B(5) (as so added). As to the meaning of 'head teacher' see PARA 93 note 13 ante.

16 Ibid s 332B(3) (as added: see note 15 supra). As to the meaning of 'function' see PARA 14 note 5 ante.

17 As to the Secretary of State see PARA 52 ante.

18 As to the National Assembly for Wales see PARA 53 ante.

19 Education Act 1996 s 332B(4) (as added: see note 15 supra). For the meaning of 'Wales' see PARA 52 note 13 ante.

20 Ibid s 332B(6) (as added: see note 15 supra). In relation to England, the Tribunal referred to in the text is the Special Educational Needs and Disability Tribunal and, in relation to Wales, it is the Special Educational Needs Tribunal for Wales: see PARA 993 note 13 ante.

## **UPDATE**

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1023 Duty of local education authority in relation to disagreements between parents and proprietors**

TEXT AND NOTE 5--For 'city academy' read 'an Academy': 1996 Act s 332B(8) (amended by Education and Inspections Act 2006 Sch 3 para 8).



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**1024. Duty of health authority, primary care trust or local authority to help local education authority.**

Where it appears to a local education authority<sup>1</sup> that any health authority<sup>2</sup>, primary care trust<sup>3</sup> or local authority<sup>4</sup> could, by taking any specified action, help in the exercise of any of its functions<sup>5</sup> under the provisions of the Education Act 1996 which relate to special educational needs<sup>6</sup>, it may request the help of the authority or trust, specifying the action in question<sup>7</sup>. An authority or trust whose help is so requested must comply with the request unless<sup>8</sup>:

- 1872 (1) it considers that the help requested is not necessary for the purpose of the exercise by the local education authority of those functions<sup>9</sup>; or
- 1873 (2) in the case of a health authority or primary care trust, that authority or trust considers that, having regard to the resources available to it for the purpose of the exercise of its functions under the National Health Service Act 1977<sup>10</sup>, it is not reasonable for it to comply with the request<sup>11</sup>; or
- 1874 (3) in the case of a local authority, that authority considers that the request is not compatible with its own statutory or other duties and obligations or unduly prejudices the discharge of any of its functions<sup>12</sup>.

1 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 322 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (i). For the meaning of 'England' see PARA 52 note 11 ante.

2 As to health authorities see the National Health Service Act 1977 s 8 (as substituted); and HEALTH SERVICES vol 54 (2008) PARA 75 et seq.

3 As to primary care trusts see the National Health Service Act 1977 ss 16A, 16B (both as added); and HEALTH SERVICES vol 54 (2008) PARA 111 et seq.

4 'Local authority' means a county council, a county borough council, a district council (other than one for an area for which there is a county council), a London borough council or the Common Council of the City of London: Education Act 1996 s 322(5). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq. As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

5 As to the meaning of 'functions' see PARA 14 note 5 ante.

6 I.e. the Education Act 1996 Pt IV (ss 312-349) (as amended). For the meaning of 'special educational needs' see PARA 984 ante.

7 Ibid s 322(1) (amended by the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 32(1), (2)(a)). It has been judicially observed that the Education Act 1996 s 322 (as amended), by imposing a separate duty on local health authorities to help education authorities, would not have been required were the definition of public expenditure used for the purposes of s 9 (as amended) (see PARA 13 ante) wide and comprehensive enough to include costs incurred by health authorities and social services: *S v Somerset County Council* [2002] EWHC 1808 (Admin) at [30]-[31], [2003] ELR 78 at [30]-[31] per Sir Richard Tucker. See also 1006 note 14 ante.

8 Education Act 1996 s 322(2) (amended by the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 32(1), (2)(b)). Regulations may provide that, where an authority or trust is under a duty by virtue of the Education Act 1996 s 322(2) (as amended) to comply with a request to help a local education authority in the making of an assessment of educational needs under s 323 (as amended) (see PARA 988 ante) or a statement of special educational needs under s 324 (as amended) (see PARA 996 ante), it must, subject to prescribed exceptions, comply with the request within the prescribed period: s 322(4) (amended by the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 32(1), (2)(d)). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations made in exercise of this power see the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001, SI 2001/3455, reg 12(8)-(11); and the Education (Special Educational Needs) (Wales) Regulations 2002, SI 2002/152, reg 12(8)-(11).

9 Education Act 1996 s 322(2)(a).

10 See HEALTH SERVICES.

11 Education Act 1996 s 322(2)(b), (3)(a) (amended by the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 32(1), (2)(c)). This does not absolve the local education authority of its duty under the Education Act 1996 s 324(5)(a) (see PARA 996 ante) to ensure that the specified provision is made, for that is a duty that is not delegable: *R v Harrow London Borough Council, ex p M* [1997] 3 FCR 761, [1997] ELR 62. See also *R v Brent and Harrow Health Authority, ex p Harrow London Borough Council* [1997] 3 FCR 765, [1997] ELR 187 (a health authority is entitled to ration its resources and refuse to meet a request by a local education authority for provision of speech therapy, occupational therapy and physiotherapy).

12 Education Act 1996 s 322(2)(b), (3)(b).

## UPDATE

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1024 Duty of health authority, primary care trust or local authority to help local education authority**

NOTES 7, 8--1996 Act s 322(1), (2), (4) further amended: SI 2007/961.

NOTE 11--1996 Act s 322(3)(a) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 182; SI 2007/961.

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**1025. Liability of local education authorities in failing to provide adequately for children with special educational needs.**

The failure of local education authorities to diagnose learning difficulties or to make suitable education provision for children with special educational needs has been the subject of claims for breach of statutory duty and negligence<sup>1</sup> which have been considered by the House of Lords<sup>2</sup>.

Whilst the statutory duties imposed on local education authorities are of the greatest importance and the failure to fulfil them could have a serious effect on a child's education, it does not appear that Parliament intended that there should be a remedy of damages for breach of statutory duty in respect of such matters<sup>3</sup>. Rather, the general nature of the duties imposed by the education legislation on local education authorities in the context of a national education system, and the remedies available by way of appeal and judicial review, indicate that Parliament did not intend to create a statutory remedy by way of damages<sup>4</sup>.

However, it does not follow that a local education authority can never be liable in common law negligence for damage resulting from acts done in the course of the performance of a statutory duty by it or its servants or agents<sup>5</sup>. Advice given by educational psychologists has been the subject of such claims<sup>6</sup>. Where a person is employed by a local education authority to carry out professional services as part of the fulfilment of the authority's statutory duty, there is no overriding reason in principle why that person should not owe a duty of care to the child<sup>7</sup>, nor is there any overriding reason in principle why, if that duty of care is broken, the authority as employer or principal should not be vicariously liable<sup>8</sup>. This is subject to the qualification that, for there to be liability arising from the performance of professional duties by, for example, an educational psychologist in relation to a particular child, it must be a situation where the law recognises a duty of care<sup>9</sup>. If an educational psychologist is specifically called in to advise in relation to the assessment and future provision for a specific child, and it is clear that the parents acting for the child and the teachers would follow that advice, then *prima facie* a duty of care arises; the question is whether in the particular circumstances the necessary nexus has been shown<sup>10</sup>. The result of a failure by an educational psychologist to take care may be that the child suffers emotional or psychological or even physical harm, which may constitute damage for the purpose of the common law if foreseeability and causation are established<sup>11</sup>. A failure to ameliorate the effects of a congenital condition may also constitute damage for this purpose<sup>12</sup>. A claim made on either of these bases is a claim for personal injury which falls under the head of general damages<sup>13</sup>.

Whilst there are no reasons of public policy why the courts should never recognise the vicarious liability of local education authorities in situations such as these<sup>14</sup>, there may, however, be cases where it may be wrong to recognise such a vicarious liability as it may interfere with the performance of the local education authority's duties<sup>15</sup>.

Whether education authorities generally owe a common law duty of care to pupils to take reasonable care in discharging their statutory functions is less clear<sup>16</sup>. It has been said that the courts should hesitate before imposing a common law duty of care in the exercise of discretionary powers or duties conferred by Parliament for social welfare purposes<sup>17</sup>, and that a common law duty of care in the exercise of statutory discretions can only arise in relation to an

authority which has decided an issue so carelessly that no reasonable authority could have reached that decision<sup>18</sup>. However, there is no universally recognised principle that a claim at common law in negligence should never be possible<sup>19</sup>. In practice, since the authority can only act through its employees or agents, and if they are negligent vicarious liability will arise, it may rarely be necessary to invoke a claim for direct liability<sup>20</sup>.

While concerned with special educational needs, the potential scope of these rulings may extend to other areas of education as well<sup>21</sup>.

1 As to the nature of statutory duty see STATUTES vol 44(1) (Reissue) PARA 1322 et seq. As to breach of statutory duty see further STATUTES vol 44(1) (Reissue) PARA 1353 et seq; TORT vol 97 (2010) PARA 491 et seq. As to negligence in relation to statutory powers see TORT vol 97 (2010) PARA 720 et seq. As to negligence generally see NEGLIGENCE.

2 See eg *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619, [2000] 4 All ER 504, [2000] ELR 499, HL, where the House of Lords decided four appeals raising related issues together. In *Phelps v Hillingdon London Borough Council* [1998] ELR 38, [1997] 3 FCR 621 (on appeal [1999] 1 All ER 421, [1999] 1 WLR 500, CA), the claimant brought proceedings against the defendant local education authority claiming damages for breach of statutory duty (and negligence in the alternative), alleging that despite the claimant being assessed by an educational psychologist, her dyslexia remained undiagnosed and that the local education authority had failed to appreciate her learning difficulties and to make appropriate arrangements. In *Anderton v Clwyd County Council* [1998] ELR 533 (on appeal [1999] ELR 1, CA), the claimant, who also had dyslexia, claimed that she had suffered psychological problems due to the failure of the local education authority to make suitable educational provision for her. In *Jarvis v Hampshire County Council* [1999] Ed CR 785 (on appeal [2000] ELR 36, CA), the claimant brought proceedings against an educational psychologist and the local education authority on the grounds of negligence and breach of statutory duty in not providing competent advice through the authority's psychology service. In *G v Bromley London Borough Council* (4 March 1999, unreported), the claimant suffered from muscular dystrophy and claimed that the local education authority had negligently, and in breach of its statutory duty, failed to provide him with a proper education.

See also *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL, where the House of Lords heard five appeals together, three of which involved claims either in negligence or for breach of statutory duty under the education legislation against local education authorities in failing to provide appropriate special education.

3 *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619 at 652, [2000] 4 All ER 504 at 516-517, [2000] ELR 499 at 515, HL, per Lord Slynn of Hadley.

4 *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619 at 652, [2000] 4 All ER 504 at 517, [2000] ELR 499 at 515, HL, per Lord Slynn of Hadley. See also *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633 at 762, [1995] 3 All ER 353 at 392, [1995] ELR 404 at 447, HL, per Lord Browne-Wilkinson ('If, despite the complex machinery for consultation and appeals contained in the [Education Act 1981], the scheme fails to provide the benefit intended that is a matter more appropriately remedied by way of the ombudsman . . . than by way of litigation').

5 *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619 at 652-653, [2000] 4 All ER 504 at 517, [2000] ELR 499 at 515, HL, per Lord Slynn of Hadley (applying *Barrett v Enfield London Borough Council* [2001] 2 AC 550, [1999] 3 All ER 193, HL). As to vicarious liability see TORT vol 97 (2010) PARA 680 et seq.

6 As regards the role of the educational psychology service in *E (A Minor) v Dorset County Council* (reported in *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633, [1995] 3 All ER 353, [1995] ELR 404, HL), the House of Lords was clear that the local education authority was providing a service (ie psychological advice) to the public. Although the service could not be provided without statutory authority, once the decision was taken to offer such a service, a statutory body was in general in the same position as any private individual or organisation holding itself out as offering such a service, and it owed a duty of care to persons using the service; it was nevertheless important to establish the factual background to the operation of educational psychology services: see *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset*

*County Council, Christmas v Hampshire County Council, Keating v Mayor and Burgesses of Bromley London Borough Council* supra at 762-763, at 392, and at 447-448 per Lord Browne-Wilkinson. As regards individual psychologists and the question whether they owed a duty of care and whether the authority might be liable if a psychologist was found to be negligent, Lord Browne-Wilkinson went on to say (at 763-764, at 393, and at 448-449) that 'psychologists hold themselves out as having special skills and they are . . . like any other professional bound to possess such skills and exercise them carefully'. If a conflict of duty could be shown between the professional's duties to the claimant and his duty to his employer, or if there was a conflict between the professional being under a duty of care to the claimant and the discharge by the authority of its statutory duties, the trial judge might have to limit or exclude the duty of care owed to the claimant, but in this case Lord Browne-Wilkinson could not see any such conflict and also considered that there could be liability for advice given by education officers. As to education officers see further *Carty v Croydon London Borough Council* [2005] EWCA Civ 19, [2005] 2 All ER 517, [2005] 1 FCR 554 (education officers can owe a common law duty of care to children with special educational needs, and authorities can be vicariously liable for the negligence of such officers; liability is not limited to persons who have been trained and qualify as members of a recognised profession or who are subject to professional disciplinary procedures).

7 *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619 at 653-4, [2000] 4 All ER 504 at 517-518, [2000] ELR 499 at 516-517, HL, per Lord Slynn of Hadley. As to the duty of care see NEGLIGENCE vol 78 (2010) PARA 1 et seq.

8 *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619 at 653-655, [2000] 4 All ER 504 at 517, 519, [2000] ELR 499 at 516, 518, HL, per Lord Slynn of Hadley.

9 See *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619 at 654, [2000] 4 All ER 504 at 518, [2000] ELR 499 at 516-517, HL, per Lord Slynn of Hadley. 'A school which accepts a pupil assumes responsibility not only for his physical well-being but also for his educational needs . . . The head teacher, being responsible for the school, himself comes under a duty of care to exercise the reasonable skills of a headmaster in relation to such educational needs. If it comes to the attention of the headmaster that a pupil is under-performing, he does owe a duty to take such steps as a reasonable teacher would consider appropriate to try to deal with such under-performance . . . If such a head teacher gives advice to parents, then . . . he must exercise the skills and care of a reasonable teacher in giving such advice. Similarly, in the case of the advisory teacher brought in to advise on the educational needs of a specific pupil, if he knows that his advice will be communicated to the pupil's parents he must foresee that they will rely on such advice. Therefore, in giving that advice he owes a duty to the child to exercise the skill and care of a reasonable advisory teacher . . . The headmaster and advisory teachers were not under any duty to exercise a higher degree of skill such as that of an educational psychologist': *X (Minors) v Bedfordshire County Council, M (A Minor) v Newham London Borough Council, E (A Minor) v Dorset County Council, Christmas v Hampshire County Council, Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633 at 766, [1995] 3 All ER 353 at 395-396, [1995] ELR 404 at 451, HL, per Lord Browne-Wilkinson.

10 See *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619 at 654, [2000] 4 All ER 504 at 518, [2000] ELR 499 at 517, HL, per Lord Slynn of Hadley. See also *X (Minors) v Bedfordshire County Council, M (A Minor) v Newham London Borough Council, E (A Minor) v Dorset County Council, Christmas v Hampshire County Council, Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633 at 766, [1995] 3 All ER 353 at 395-396, [1995] ELR 404 at 451, HL, per Lord Browne-Wilkinson.

11 *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619 at 654, [2000] 4 All ER 504 at 518, [2000] ELR 499 at 516-517, HL, per Lord Slynn of Hadley.

12 See *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619 at 654, [2000] 4 All ER 504 at 518, [2000] ELR 499 at 517, HL, where Lord Slynn of Hadley expressed the view that there is no reason in principle to rule out claims for injury deriving from a failure by an educational psychologist to diagnose a congenital condition and to take appropriate action as a result of which a child's level of achievement is reduced, leading to loss of employment and wages. See also his remarks at 664, at 528, and at 529, quoting *Phelps v Hillingdon London Borough Council* [1997] 3 FCR 621 at 648, [1998] ELR 38 at 64 per Garland J. As to the possibility of claiming for consequential economic loss, falling under the head of special damages, see further *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* supra at 670, at 533, and at 534 per Lord Clyde; *Adams v Bracknell Forest Borough Council* [2004] UKHL 29, [2005] 1 AC 76, [2004] 3 All ER 897. See also *Devon County Council v Clarke* [2005] EWCA Civ 266, [2005] 1 FCR 752 (award of compensation made for loss of employment and earnings where the evidence was sufficient to find that, but for the breach of duty, the claimant would have been taught differently, and that he would have derived benefit which would have helped him to overcome his problems).

13 *Adams v Bracknell Forest Borough Council* [2004] UKHL 29, [2005] 1 AC 76, [2004] 3 All ER 897, approving *Robinson v St Helens Metropolitan Borough Council* [2002] EWCA Civ 1099 at [21], [2002] ELR 681 at [21], [2003] PIQR P128 at [21] per Stuart-Smith LJ (negligent failure to ameliorate the consequences of dyslexia by appropriate teaching may be said to continue the injury, in the same way that the negligent failure to cure or ameliorate a congenital physical condition so that it continues could give rise to an action for personal injuries).

A personal injury claim is subject to the provisions of the Limitation Act 1980 ss 11, 14 (both as amended) (ie three years from accrual or from the claimant's date of knowledge): see LIMITATION PERIODS vol 68 (2008) PARAS 998-999. The exercise of discretion to extend the time limit under s 33 (as amended) (see LIMITATION PERIODS vol 68 (2008) PARA 1001) is subject to the question of proportionality: *Adams v Bracknell Forest Borough Council* supra (the potential injustice to the defendant in having to defend the claim was such as to preclude any exercise of discretion), approving *Robinson v St Helens Metropolitan Borough Council* supra at [32]-[33] per Stuart-Smith LJ. The standard to be applied in fixing knowledge is that of a person assumed to be suffering from untreated dyslexia; personal characteristics are otherwise irrelevant: *Adams v Bracknell Forest Borough Council* supra. See also *Rowe v Kingston upon Hull County Council* [2003] EWCA Civ 1281, [2003] ELR 771.

14 See *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619 at 672, [2000] 4 All ER 504 at 534-535, [2000] ELR 499 at 536, HL, per Lord Clyde.

15 See *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619 at 652-655, [2000] 4 All ER 504 at 517-519, [2000] ELR 499 at 516-518, HL, per Lord Slynn of Hadley; *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633, [1995] 3 All ER 353, [1995] ELR 404, HL. 'It is important that those engaged in the provision of educational services under the statutes should not be hampered by the imposition of such vicarious liability. I do not, however, see that to recognise the existence of the duties necessarily leads or is likely to lead to that result. The recognition of a duty of care does not of itself impose unreasonably high standards': *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* supra at 655, at 519, and at 518 per Lord Slynn of Hadley. Lord Nicholls of Birkenhead distinguished cases where there is 'manifest incompetence or negligence comprising specific, identifiable mistakes', such as where a teacher 'carelessly teaches the wrong syllabus for an external examination', from a more general claim that a child did not receive an adequate education at the school or that a particular teacher failed to teach properly (*Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* supra at 667, at 530-531, and at 531-532), and he emphasised that 'proof of under-performance by a child is not by itself evidence of negligent teaching', given the range of external factors that can affect it (*Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* supra at 668, at 531, and at 532).

16 The question of whether local education authorities can be directly liable (rather than vicariously liable for the act of, for example, a teacher or psychologist) was left open in *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619 at 668, [2000] 4 All ER 504 at 531, [2000] ELR 499 at 533, HL, per Lord Nicholls of Birkenhead. Lord Slynn of Hadley (at 658, at 522, and at 521) was of the opinion that an authority would not be directly liable for the way it had established arrangements to meet its statutory duties towards children with special educational needs, but might be directly liable if it employed teachers and others who were not qualified or competent to undertake their duties.

17 *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633 at 762, [1995] 3 All ER 353 at 392, [1995] ELR 404 at 447, HL, per Lord Browne-Wilkinson.

18 *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633 at 761, [1995] 3 All ER 353 at 391, [1995] ELR 404 at 446, HL, per Lord Browne-Wilkinson.

19 *Phelps v Hillingdon London Borough Council*, *Anderton v Clwyd County Council*, *Jarvis v Hampshire County Council*, *G v Bromley London Borough Council* [2001] 2 AC 619 at 658, [2000] 4 All ER 504 at 522, [2000] ELR 499 at 521, HL, per Lord Slynn of Hadley (where he did not accept the dictum of Lord Browne-Wilkinson in *X (Minors) v Bedfordshire County Council*, *M (A Minor) v Newham London Borough Council*, *E (A Minor) v Dorset County Council*, *Christmas v Hampshire County Council*, *Keating v Mayor and Burgesses of Bromley London Borough Council* [1995] 2 AC 633 at 762, [1995] 3 All ER 353 at 392, [1995] ELR 404 at 447, HL, that an education authority owes no common law duty of care in the exercise of the powers and discretions relating to children with special educational needs specifically conferred on it by the Education Act 1981).

20 *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619 at 658, [2000] 4 All ER 504 at 522, [2000] ELR 499 at 521, HL, per Lord Slynn of Hadley.

21 See eg *R (on the application of B) v Head Teacher of Alperton Community School, R (on the application of T) v Head Teacher of Wembley High School, R (on the application of C) v Governing Body of the Cardinal Newman Roman Catholic School* [2001] EWHC Admin 229, [2001] ELR 359 (where Newman J held that *Phelps v Hillingdon London Borough Council, Anderton v Clwyd County Council, Jarvis v Hampshire County Council, G v Bromley London Borough Council* [2001] 2 AC 619, [2000] 4 All ER 504, [2000] ELR 499, HL, is 'authority against the submission that a private law right to education exists in English law'). See also *Bradford-Smart v West Sussex County Council* [2001] ELR 138; affd on different grounds [2002] EWCA Civ 07, [2002] 1 FCR 425 (a duty may be imposed on a person who had control of a potential assailant; but there is no liability if bullying occurred outside school with no apparent impact on educational progress).

## UPDATE

### **1008-1025 Duties of Local Education Authorities, Governing Bodies etc as regards Special Educational Provision**

The Secretary of State is required to secure the provision of and publish special educational needs information which is likely to assist in improving the well-being of children with special educational needs: see the Education Act 1996 ss 332C-332E; and PARA 1021A.

### **1025 Liability of local education authorities in failing to provide adequately for children with special educational needs**

NOTES--See also *Skipper v Calderdale MBC* [2006] EWCA Civ 238, [2006] ELR 322.

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## **(ii) Institutions making Special Educational Provision**

### **1026. Mainstream schools.**

A child<sup>1</sup> with special educational needs<sup>2</sup> who should be educated in a school<sup>3</sup> should in general be educated in a mainstream school<sup>4</sup>. A school is a 'mainstream school' if it is a school other than: (1) a special school<sup>5</sup>; or (2) an independent school<sup>6</sup> which is not a city technology college, a city college for the technology of the arts, or an academy<sup>7</sup>. A child with special educational needs may, however, in appropriate circumstances be educated in a special school<sup>8</sup>, an independent school<sup>9</sup>, a non-maintained school<sup>10</sup>, a city college or an academy<sup>11</sup>, an institution outside England and Wales<sup>12</sup>, or in an institution which is not a school<sup>13</sup>.

1 As to the meaning of 'child' see PARA 984 note 1 ante.

2 For the meaning of 'special educational needs' see PARA 984 ante.

3 For the meaning of 'school' see PARA 81 ante.

4 See the Education Act 1996 s 316(1)-(3) (as substituted); and PARA 1008 ante.

5 As to special schools see PARA 1027 post.

6 As to independent schools see PARA 465 ante.

7 Education Act 1996 s 316(4) (s 316 substituted by the Special Educational Needs and Disability Act 2001 s 1; and amended by the Education Act 2002 s 65(3), Sch 7 Pt 2 para 6(1), (3)). As to city technology colleges and city colleges for the technology of the arts see PARA 496 ante; and as to city colleges and academies see further PARA 1010 ante.

8 See PARAS 1027-1029 post.

9 See PARAS 1030-1031 post.

10 See PARA 1009 ante.

11 See PARA 1010 ante.

12 See PARA 1012 ante.

13 See PARAS 1008-1011 ante.



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### **1027. Special schools.**

A school<sup>1</sup> is a 'special school' if it is specially organised to make special educational provision<sup>2</sup> for pupils<sup>3</sup> with special educational needs<sup>4</sup>. Additionally, a school which is not maintained by a local education authority<sup>5</sup> is a special school if it is for the time being approved as such by the Secretary of State<sup>6</sup>.

Accordingly there are two categories of special school:

- 1875 (1) special schools maintained by local education authorities, comprising community special schools<sup>7</sup> and foundation special schools<sup>8</sup>; and
- 1876 (2) special schools which are not so maintained but are for the time being approved by the Secretary of State<sup>9</sup>.

1 For the meaning of 'school' see PARA 81 ante.

2 For the meaning of 'special educational provision' see PARA 984 ante.

3 For the meaning of 'pupil' see PARA 16 note 4 ante.

4 Education Act 1996 s 6(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 60); Education Act 1996 s 337(1) (s 337 substituted by the School Standards and Framework Act 1998 Sch 30 paras 57, 80). For the meaning of 'special educational needs' see PARA 984 ante.

5 As to local education authorities see PARA 20 ante.

6 Education Act 1996 s 6(2) (as amended: see note 4 supra); s 337(2)(b) (as substituted: see note 4 supra). The text refers to schools which are for the time being approved by the Secretary of State under s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 post): s 337(2)(b) (as so substituted). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Ibid s 337(2)(a)(i) (as substituted: see note 4 supra). As to community special schools see PARA 102 ante.

8 Ibid s 337(2)(a)(ii) (as substituted: see note 4 supra). As to foundation special schools see PARA 102 ante.

9 Ibid s 337(2)(b) (as substituted: see note 4 supra). See note 6 supra.

### **UPDATE**

### **1027 Special schools**

TEXT AND NOTES--Education Act 1996 s 337 substituted: Education and Skills Act 2008 s 142(1).

As from a day to be appointed Education Act 1996 s 6(2) substituted: Education and Skills Act 2008 Sch 1 para 6.

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### **1028. Approval of non-maintained special schools.**

The Secretary of State<sup>1</sup> may approve<sup>2</sup> any school<sup>3</sup> which is specially organised to make special educational provision<sup>4</sup> for pupils<sup>5</sup> with special educational needs<sup>6</sup>, and is not a community or foundation special school<sup>7</sup>, and may give his approval before or after the school is established<sup>8</sup>. Any school which was a special school<sup>9</sup> immediately before 1 April 1994<sup>10</sup> must be treated as so approved<sup>11</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Ie under the Education Act 1996 s 342 (as substituted). Regulations may make provision as to the requirements which are to be complied with as a condition of such approval (s 342(2) (s 342 substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 82)); and, without prejudice to the generality of this power, the requirements which may be imposed by the regulations include requirements which call for arrangements to be approved by the Secretary of State, or as to the organisation of any special school as a primary school or as a secondary school (Education Act 1996 s 342(5) (as so substituted)). 'Regulations' means regulations made by the Secretary of State: s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante.

In relation to England, the requirements which a non-maintained special school (ie a school which is not maintained by a local education authority and which has been approved as a special school under s 342 (as substituted): Education (Non-Maintained Special Schools) (England) Regulations 1999, SI 1999/2257, reg 2(1)) must comply with as a condition of its approval are concerned with the special educational provision made by the school (see reg 3, Schedule para 1), the governing body of the school (see Schedule para 2), the welfare of pupils at the school (see Schedule para 3), the not-for-profit status of the school (see Schedule para 4), and the school premises (see Schedule para 5). Corresponding provision is made in connection with the requirements with which a special school in Wales must comply as a condition of its approval: see, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1 and the Interpretation Act 1978 s 17(2)(b), the Education (Special Schools) Regulations 1994, SI 1994/652, regs 4, 6, 8, Schedule Pt I paras 1-5. For the meaning of 'special school' see PARA 1027 ante. For the meanings of 'primary school' and 'secondary school' see PARA 81 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appears to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations made under the Education Act 1996 s 342 (as substituted): s 349(1). Such orders are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order: s 349(2). As to the making, revocation or variation of orders under the Education Act 1996 see PARA 15 note 6 ante. As to the meaning of 'modifications' see PARA 43 note 7 ante. As to the meaning of 'trust deed' see PARA 104 note 6 ante. For the meaning of 'school' see PARA 81 ante. For the meaning of 'proprietor' see PARA 60 note 7 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 For the meaning of 'school' see PARA 81 ante.

4 For the meaning of 'special educational provision' see PARA 984 ante.

5 For the meaning of 'pupil' see PARA 16 note 4 ante.

6 Education Act 1996 s 342(1)(a) (as substituted: see note 2 supra). For the meaning of 'special educational needs' see PARA 984 ante.

7 Ibid s 342(1)(b) (as substituted: see note 2 supra). As to community and foundation special schools see PARA 102 ante.

8 Ibid s 342(1) (as substituted: see note 2 supra). As to the meaning of 'establish' see PARA 132 note 2 ante. A school approved under s 342(1) (as substituted) is not susceptible to judicial review: *R v Muntham House School, ex p R* [2000] ELR 287.

9 For the meaning of 'special school' see PARA 1027 ante.

10 In the date on which the Education Act 1993 s 184, which made provision in connection with proposals for the establishment or alteration of maintained or grant-maintained special schools, was brought into force by the Education Act 1993 (Commencement No 3 and Transitional Provisions) Order 1994, SI 1994/507. The Education Act 1993 s 184 was repealed by the Education Act 1996 and replaced by s 340 (itself now repealed).

11 Education Act 1996 s 342(3) (as substituted: see note 2 supra). Section 342(3) is subject to the provision that regulations may make provision as to the requirements which are to be complied with by a school while approved under s 342 (as substituted), and makes provision for the withdrawal of approvals (see PARA 1029 post): s 342(4) (as so substituted). Additionally, and without prejudice to the generality of s 342(4) (as substituted), the requirements which may be imposed by the regulations include requirements which call for arrangements to be approved by the Secretary of State, or as to the organisation of any special school as a primary school or as a secondary school: s 342(5) (as so substituted).

In relation to England, the requirements which a non-maintained special school must comply with while approved under s 342 (as substituted) are concerned with the special educational provision made by the school (see the Education (Non-Maintained Special Schools) (England) Regulations 1999, SI 1999/2257, reg 4, Schedule para 1), the governing body of the school (see Schedule para 2), the welfare of pupils at the school (see Schedule para 3), the not-for-profit status of the school (see Schedule para 4), the school premises (see Schedule para 5), proposals for changes to the school's special educational provision or governing body (see Schedule para 6), admissions and special educational provision (see Schedule para 7), pupil numbers (see Schedule para 8), the health of pupils at the school (see Schedule para 9), the provision of collective worship and religious education (see Schedule para 10), the provision of sex education (see Schedule para 11), the provision of milk, meals and refreshment (see Schedule para 12), the keeping and maintenance of incident and punishment books (see Schedule para 13), the furnishing to local authorities of reports on pupils (see Schedule para 14), the employment of suitable and sufficient non-teaching staff (see Schedule para 15), the absence of religious discrimination in the making of appointments (see Schedule para 16), the keeping and maintenance of proper accounts (see Schedule para 17), the making of reports and returns to the Secretary of State (see Schedule para 18), affording access to the school to appropriate officers of the local authority (see Schedule para 19), and the preparation and publication of a school prospectus containing specified information (see Schedule paras 20-21 (Schedule para 21 amended by SI 2002/1982)). Corresponding provision is made in connection with the requirements with which special schools in Wales must comply while approved: see, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1 and the Interpretation Act 1978 s 17(2)(b), the Education (Special Schools) Regulations 1994, SI 1994/652, regs 5-6, 8, Schedule Pt I para 1-5, Schedule Pt II paras 6-20, Schedule Pt III paras 1-13.

The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appears to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations made under the Education Act 1996 s 342 (as substituted): s 349(1). Such orders are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order: s 349(2).

## UPDATE

### 1028 Approval of non-maintained special schools

TEXT AND NOTES--Education Act 1996 ss 342, 349 amended: Education and Skills Act 2008 ss 142(2)-(4), 143, 147(2), (3), Sch 2. See also Education Act 1996 s 337A (added by Education and Skills Act 2008 s 142(1)) (definition of 'a non-maintained special school').

Regulations may make provision conferring power on a justice of the peace, on the application of the Secretary of State, to make an order in an urgent case that a non-maintained special school in England should cease to be approved under the Education Act 1996 s 342: see Education Act 1996 s 342A (added by Education and Skills Act 2008 s 144).

Regulations may make provision for an appeal against a decision of the Secretary of State (1) to withdraw approval from a non-maintained special school in England by

virtue of the Education Act 1996 s 342(4)(b) otherwise than at the request of the proprietor; (2) not to approve, not to approve a change to, or to withdraw approval from, relevant arrangements in relation to such a school: see Education Act 1996 s 342B (added by Education and Skills Act 2008 s 145).

Regulations may make provision for an appeal against the making of an order by virtue of the Education Act 1996 s 342A: see Education Act 1996 s 342C (added by Education and Skills Act 2008 s 145).

NOTE 2--As to the suitability of staff, supply staff, register of checks, and the suitability of Chair, see the Education (Non-Maintained Special Schools) (England) Regulations 1999, SI 1999/2257 Schedule paras 3A-3D (added by SI 2007/1088).

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### **1029. Withdrawal of approval of non-maintained special schools.**

Regulations<sup>1</sup> may make provision as to the withdrawal of approval<sup>2</sup> from a non-maintained special school<sup>3</sup> at the request of the proprietor<sup>4</sup> or on the ground that there has been a failure to comply with any prescribed<sup>5</sup> requirement<sup>6</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante.

2 ie including approval treated as given under *ibid* s 342(3) (as substituted) (see PARA 1028 ante).

3 As to non-maintained special schools see PARA 1028 ante. For the meaning of 'school' see PARA 81 ante.

4 For the meaning of 'proprietor' see PARA 60 note 7 ante.

5 'Prescribed' means prescribed by regulations: Education Act 1996 s 579(1). See notes 1, 6 *supra*.

6 *Ibid* s 342(4)(b) (s 342 substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 82). As to the prescribed requirements see PARA 1028 notes 2, 11 ante. Without prejudice to the generality of the Education Act 1996 s 342(4) (as substituted), the requirements which may be imposed by the regulations include requirements which call for arrangements to be approved by the Secretary of State, or as to the organisation of any special school as a primary school or as a secondary school: s 342(5) (as so substituted). For the circumstances in which the Secretary of State may withdraw his approval of a school in England see the Education (Non-Maintained Special Schools) (England) Regulations 1999, SI 1999/2257, reg 5; and in relation to the withdrawal of approval of schools in Wales see, by virtue of the Education Act 1996 s 582(3), Sch 39 para 1 and the Interpretation Act 1978 s 17(2)(b), the Education (Special Schools) Regulations 1994, SI 1994/652, reg 7. For the meaning of 'special school' see PARA 1027 ante. For the meanings of 'primary school' and 'secondary school' see PARA 81 ante.

The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or other proprietor of the school, appears to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations made under the Education Act 1996 s 342 (as substituted): s 349(1). Such orders are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order: s 349(2). As to the making, revocation or variation of orders under the Education Act 1996 see PARA 15 note 6 ante. As to the meaning of 'modifications' see PARA 43 note 7 ante. As to the meaning of 'trust deed' see PARA 104 note 6 ante. For the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools see PARA 203 *et seq* ante.

## **UPDATE**

### **1029 Withdrawal of approval of non-maintained special schools**

NOTE 6--SI 1994/652 reg 7 amended: SI 2009/2544.

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### **1030. Approval of independent schools.**

The Secretary of State<sup>1</sup> may approve<sup>2</sup> an independent school<sup>3</sup> as suitable for the admission of children<sup>4</sup> for whom statements of special educational needs<sup>5</sup> are maintained<sup>6</sup>. An approval may be given subject to such conditions as the Secretary of State sees fit to impose<sup>7</sup>. No person may so exercise his functions<sup>8</sup> under Part IV of the Education Act 1996<sup>9</sup> that a child with special educational needs is educated in an independent school unless the school is for the time being approved by the Secretary of State as suitable for the admission of children for whom statements of special educational needs are maintained<sup>10</sup>, or the Secretary of State is satisfied that there is a place available for the child at the school and consents to the child being educated there<sup>11</sup>. However, this stipulation does not apply to a local education authority<sup>12</sup> deciding<sup>13</sup> whether a parent<sup>14</sup> has made suitable arrangements for the making of special educational provision<sup>15</sup> for a child in relation to whom a statement of special educational needs is maintained<sup>16</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Regulations may make provision as to the requirements which are to be complied with by a school as a condition of its approval under the Education Act 1996 s 347 (as amended): s 347(2)(a). 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. By virtue of s 582(3), Sch 39 Pt I para 1, the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651 (amended by SI 1998/417; and further amended in relation to England by SI 2001/783; SI 2001/2237; SI 2002/2072; SI 2004/3168; and in relation to Wales by SI 2001/3710; SI 2002/808; SI 2005/2929) provide for the requirements with which an independent school must comply as a condition of its approval. Those requirements are to relate to: the fitness of the proprietor of the school so to act (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, reg 3, Sch 1 para 1); the provision of teaching staff (see Sch 1 para 2 (substituted by SI 1998/417)); the employment of residential care staff (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, Sch 1 para 3); the arrangements for admissions to the school (see Sch 1 para 4 (substituted by SI 1998/417)); the arrangements for exclusions from the school (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, Sch 1 para 5); the health and welfare of pupils at the school (see Sch 1 para 6); the use of substances and apparatus involving health hazards (see Sch 1 para 7); the provision of collective worship and religious education (see Sch 1 para 8); the keeping and maintenance of incident and punishment books (see Sch 1 para 9); and the school premises (Sch 1 para 10 (amended by SI 1998/417)). As to independent schools see PARA 465 ante. For the meaning of 'proprietor' see PARA 60 note 7 ante.

Regulations may also make provision as to the requirements which are to be complied with by a school while an approval under the Education Act 1996 s 347 is in force in respect of it: s 347(2)(b). By virtue of s 582(3), Sch 39 Pt I para 1, the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651 (amended by SI 1998/417; and further amended in relation to England by SI 2001/783; SI 2001/2237; SI 2002/2072; SI 2004/3168; and in relation to Wales by SI 2001/3710; SI 2002/808; SI 2005/2929) provide for the requirements with which an independent school must comply as a condition of its approval. Those requirements are to relate to: the fitness of the proprietor of the school so to act (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, reg 3, Sch 1 para 1); the provision of teaching staff (see Sch 1 para 2 (substituted by SI 1998/417)); the employment of residential care staff (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, Sch 1 para 3); the arrangements for admissions to the school (see Sch 1 para 4 (substituted by SI 1998/417)); the arrangements for exclusions from the school (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, Sch 1 para 5); the health and welfare of pupils at the school (see Sch 1 para 6); the use of substances and apparatus involving health hazards (see Sch 1 para 7); the provision of collective worship and religious education (see Sch 1 para 8); the keeping and maintenance of incident and punishment books (see Sch 1 para 9); the school premises (Sch 1

para 10 (amended by SI 1998/417)); the special educational provision provided to children at the school (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, reg 4, Sch 2 para 1); the proprietorship or control of the school (see Sch 2 para 2); the school premises and fire precautions (see Sch 2 paras 4-5 (Sch 2 para 5 substituted by SI 1998/417; and amended by SI 2004/3168; SI 2005/2929)); misconduct reports relating to staff (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, Sch 2 para 6); statutory provisions as to the school year and day and leave of absence (see Sch 2 para 7); the furnishing to local education authorities of reports on children with special needs (see Sch 2 para 8); the provision of information about children who move to another school (see Sch 2 para 9 (amended by SI 2001/783; SI 2001/3710)); the reporting of deaths, illness or injury occurring to children at the school (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, Sch 2 para 10 (amended by SI 1998/417)); affording access to the school to appropriate officers of the local authority (see the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, Sch 2 para 11); and the preparation and publication of a school prospectus containing specified information (see Sch 2 para 12).

In relation to England, the Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651 (as amended) do not apply to any independent school which is a city college: reg 2A (added by SI 2002/2072). For these purposes, 'city college' means an academy, city technology college or city college for the technology of the arts: Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, reg 2(1) (definition added by SI 2002/2072). As to city technology colleges and city colleges for the technology of the arts see PARA 496 ante; and as to city colleges and academies see further PARA 1010 ante.

The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or proprietor of the school, appears to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations made under the Education Act 1996 s 347 (as amended): s 349(1). Such orders are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order: s 349(2). As to the making, revocation or variation of orders under the Education Act 1996 see PARA 15 note 6 ante. As to the meaning of 'modifications' see PARA 43 note 7 ante. As to the meaning of 'trust deed' see PARA 104 note 6 ante. For the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

3 As to independent schools see PARA 465 ante.

4 As to the meaning of 'child' see PARA 984 note 1 ante.

5 For the meaning of 'special educational needs' see PARA 984 ante. As to statements of special educational needs see PARA 996 et seq ante.

6 Education Act 1996 s 347(1). The text refers to statements of special educational needs maintained by a local education authority under s 324 (as amended) (see PARA 996 ante): s 347(1). As to local education authorities see PARA 20 ante.

7 Ibid s 347(3). The conditions which may be imposed are in addition to those prescribed: s 347(3). 'Prescribed' means prescribed by regulations: s 579(1). As to the withdrawal of an approval in the event of a failure to comply with a condition see PARA 1031 post. As to regulations made for the purposes of s 347 (as amended) see note 2 supra.

8 As to the meaning of 'functions' see PARA 14 note 5 ante.

9 Ie the Education Act 1996 Pt IV (ss 312-349) (as amended).

10 Ibid s 347(5)(a). The text refers to statements maintained by a local education authority under s 324 (as amended) (see PARA 996 ante). In relation to approval or consent for the purposes of s 347(5), it has been held that while the Secretary of State is entitled to have a policy in relation to the approval of schools under s 347(5) (a) and the giving or withholding of consent under s 347(5)(b) (see the text and note 11 infra), a policy cannot lawfully be applied inflexibly, and the possibility of exceptions must always be applied: *R v Secretary of State for Education and Employment, ex p P* [2000] ELR 300 at 304-305 per Dyson J (citing *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, [1970] 3 All ER 165, HL).

11 Education Act 1996 s 347(5)(b) (amended by the Education Act 2002 s 174). This provision, making special provision for ad hoc consent by the Secretary of State for a non-approved independent school, cannot properly be interpreted to mean that in the maintained sector a child could lawfully be sent to a school which was not for the time being approved by the Secretary of State and at which the Secretary of State did not consent to the child being educated: *Sunderland City Council v P and C* [1996] ELR 283 at 293-294 per Brooke J. See also note 10 supra.

12 As to local education authorities see PARA 20 ante.

13 le for the purposes of the Education Act 1996 s 324(5) (as amended) (see PARA 996 ante).

14 As to the meaning of 'parent' see PARA 510 note 1 ante.

15 For the meaning of 'special educational provision' see PARA 984 ante.

16 Education Act 1996 s 347(5A) (added by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt I para 12).

## **UPDATE**

### **1030 Approval of independent schools**

TEXT AND NOTES--Education Act 1996 s 347 further amended: Education and Skills Act 2008 s 146 (in force 1 September 2009: SI 2009/1513). See also Education and Skills Act 2008 s 148 (approval of independent schools: transitional provision) (in force 1 September 2009: SI 2009/1513).

NOTE 2--SI 1994/651 Sch 1 para 7 omitted: SI 2008/1701.

Education Act 1996 s 349(1) amended, s 349(1A) added: Education and Skills Act 2008 s 147(2), (3), Sch 2 (in force 1 September 2009: SI 2009/1513).



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### **1031. Withdrawal of approval of independent schools.**

In any case where there is a failure to comply with a condition of an approval of an independent school<sup>1</sup>, the Secretary of State may withdraw his approval<sup>2</sup>. Regulations may make provision as to the withdrawal of approval from a school at the request of the proprietor<sup>3</sup> or on the ground that there has been a failure to comply with any prescribed<sup>4</sup> requirement<sup>5</sup>.

1     le a condition imposed by the Secretary of State under the Education Act 1996 s 347(3) (see PARA 1030 ante). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to independent schools see PARA 465 ante.

2     Ibid s 347(4). As to withdrawal of approval see *R v Secretary of State for Education and Employment, ex p McCarthy* (1996) Times, 24 July.

3     For the meaning of 'proprietor' see PARA 60 note 7 ante.

4     'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the prescribed requirements see PARA 1030 note 2 ante.

5     Ibid s 347(2)(c). The Secretary of State may withdraw his approval of a school on the ground that, in the case of that school, there has been a failure to comply with any of the requirements which are to be complied with by a school (see PARA 1030 note 2 ante) while an approval under s 347 (as amended) is in force in respect of it: Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, reg 5(1). This regulation has effect under the Education Act 1996 s 347(2) by virtue of s 582(3), Sch 39 para 1. The Secretary of State must not, however, unless he is of the opinion that it is necessary or expedient to do so in the interests of the health, safety or welfare of children at the school, so withdraw his approval without consulting the proprietor of the school and, if the proprietor so requests, affording the school a specified period within which to comply with the requirement with which the school has not complied: Education (Special Educational Needs) (Approval of Independent Schools) Regulations 1994, SI 1994/651, reg 5(2). The Secretary of State must also withdraw his approval of a school if the proprietor in writing requests him to do so: reg 5(3).

The Secretary of State may by order make such modifications of any trust deed or other instrument relating to a school as, after consultation with the governing body or proprietor of the school, appears to him to be necessary to enable the governing body or proprietor to meet any requirement imposed by regulations made under the Education Act 1996 s 347 (as amended): s 349(1). Such orders are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order: s 349(2). As to the making, revocation or variation of orders under the Education Act 1996 see PARA 15 note 6 ante. As to the meaning of 'modifications' see PARA 43 note 7 ante. As to the meaning of 'trust deed' see PARA 104 note 6 ante. For the meaning of 'school' see PARA 81 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

## **UPDATE**

### **1031 Withdrawal of approval of independent schools**

TEXT AND NOTE 2--Education Act 1996 s 347(4) amended: Education and Skills Act 2008 s 146(4) (in force 1 September 2009: SI 2009/1513). See also Education and Skills Act 2008 s 148 (approval of independent schools: transitional provision) (in force 1 September 2009: SI 2009/1513).

NOTE 5--Education Act 1996 s 349(1) amended, s 349(1A) added: Education and Skills Act 2008 s 147(2), (3), Sch 2 (in force 1 September 2009: SI 2009/1513).



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## **(4) SPECIAL EDUCATIONAL NEEDS TRIBUNALS**

### **1032. Establishment, constitution and membership.**

The Special Educational Needs and Disability Tribunal<sup>1</sup>, in relation to England<sup>2</sup>, and the Special Educational Needs Tribunal for Wales<sup>3</sup>, in relation to Wales<sup>4</sup>, must exercise the jurisdiction conferred on them<sup>5</sup>.

The Lord Chancellor must appoint a President of the Tribunal<sup>6</sup> and a panel of persons who may serve as chairman of the Tribunal<sup>7</sup>, and the Secretary of State or the National Assembly for Wales<sup>8</sup> (as the case may be) must appoint a panel of persons who may serve as the other two members of the Tribunal apart from the chairman<sup>9</sup>.

Regulations may make provision in connection with the establishment and continuation of the Tribunal as the Secretary of State or the Assembly<sup>10</sup> (as the case may be) considers necessary or desirable<sup>11</sup>. The Secretary of State or the Assembly (as the case may be) may provide such staff and accommodation as the Tribunal may require<sup>12</sup>, and may defray the expenses of the Tribunal to such amount as he or it may determine<sup>13</sup>.

1 In the Education Act 1996 ss 333-336 (as amended), 'the Tribunal' means the Special Educational Needs and Disability Tribunal: s 333(1Z) (added by the Education Act 2002 s 195, Sch 18 paras 1, 4). See also note 3 infra; and PARAS 993 note 13 ante, 1033 note 19 post. The Tribunal was established under the Education Act 1993 s 177 (repealed) and was continued in being under the Education Act 1996 s 333 (as originally enacted).

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 The Special Educational Needs Tribunal for Wales (or 'Tribiwnlys Anghenion Addysgol Arbennig Cymru') was established by the Education Act 1996 as amended by the Education Act 2002: see the Education Act 1996 s 336ZA(1) (s 336ZA added by the Education Act 2002 Sch 18 paras 1, 5). The Education Act 1996 ss 333-336 (as amended) apply in relation to the Special Educational Needs Tribunal for Wales as they apply in relation to the Special Educational Needs and Disability Tribunal, but as if: (1) functions of the Secretary of State were functions of the National Assembly for Wales; (2) references to the Secretary of State were references to the National Assembly for Wales; and (3) requirements for the Treasury's consent were omitted: s 336ZA(2) (as so added). The powers of the Assembly under s 333(4) (see the text and notes 8-9 infra), s 333(5) (see the text and notes 10-11 infra) and s 334(2) (see note 9 infra) are exercisable only with the agreement of the Secretary of State: s 336ZA(3) (as so added). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 Education Act 1996 s 333(1) (substituted by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt 1 paras 1, 3). The jurisdiction mentioned in the text is conferred by the Education Act 1996 Pt IV (ss 312-349) (as amended): s 333(1) (as so substituted). As to the jurisdiction of the Tribunal see PARA 1033 post. The Tribunal additionally exercises the functions conferred on it by the Disability Discrimination Act 1995 Pt IV Ch I (ss 28A-28Q) (as added and amended) (discrimination in schools): see s 28H (as added and amended); and DISCRIMINATION vol 13 (2007 Reissue). See note 3 supra.

6 Education Act 1996 s 333(2)(a), (3). No person may be appointed President of the Tribunal unless he has a seven year general qualification (within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 742): Education Act 1996 s 334(1). Any recommendation or appointment to the office of President of the Tribunal under s 333 (as amended) must be made, by virtue of the Constitutional Reform Act 2005 s 85(1)(b), Sch 14 Pt 3, in accordance with ss 85-93, 96: see COURTS. Any function of the Lord Chancellor under the Education Act 1996 s 333 (as amended) is a 'protected function' within the meaning of the Constitutional Reform Act 2005 and may not be transferred, modified or abolished by

an order under s 19(1): see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

If, in the opinion of the Lord Chancellor, the President is unfit to continue in office or is incapable of performing his duties, the Lord Chancellor may revoke his appointment: Education Act 1996 s 334(3). As from a day to be appointed, s 334(3) is amended so that the opinion of both the Lord Chancellor and the Lord Chief Justice is required before such a revocation takes place and the revocation itself may be effected by the Lord Chancellor only with the concurrence of the Lord Chief Justice: s 334(3) (prospectively amended by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 259). At the date at which this volume states the law, no such day had been appointed.

The President may resign office by notice in writing to the Lord Chancellor and is eligible for re-appointment if he ceases to hold office: Education Act 1996 s 334(5). The Secretary of State or the Assembly (as the case may be) may pay to the President such remuneration and allowances as he or it may determine: ss 335(1), 336ZA(2) (as added: see note 3 supra). The consent of the Treasury is required for the determination by the Secretary of State of such amounts: see ss 335(1), 336ZA(2) (as so added).

7 Ibid s 333(2)(b), (3). This panel is known as 'the chairmen's panel': s 333(2)(b). No person may be appointed a member of the chairmen's panel unless he has a seven year general qualification (within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 742): Education Act 1996 s 334(1). Any recommendation or appointment as member of the chairmen's panel under s 333 (as amended) must be made, by virtue of the Constitutional Reform Act 2005 s 85(1)(b), Sch 14 Pt 3, in accordance with ss 85-93, 96: see COURTS. See further note 6 supra.

Each member of the chairmen's panel must hold and vacate office under the terms of the instrument under which he is appointed: Education Act 1996 s 334(4). A member of the chairmen's panel may resign office by notice in writing to the Lord Chancellor and is eligible for re-appointment if he ceases to hold office: s 334(5). The Secretary of State or the Assembly (as the case may be) may pay to any person in respect of his service as a member of the Tribunal such remuneration and allowances as he or it may determine: s 335(1), s 336ZA(2) (as added: see note 3 supra). The consent of the Treasury is required for the determination by the Secretary of State of such amounts: see ss 335(1), 336ZA(2) (as so added).

8 The powers of the Assembly under ibid s 333(4) are exercisable only with the agreement of the Secretary of State: see s 336ZA(3) (as added); and note 3 supra.

9 Ibid s 333(2)(c), (4). This panel is known as 'the lay panel': s 333(2)(c). No person may be appointed member of the lay panel unless he satisfies such requirements as may be prescribed: s 334(2). 'Prescribed' means prescribed by regulations: s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. The powers of the Assembly under s 334(2) are exercisable only with the agreement of the Secretary of State: see s 336ZA(3) (as added); and note 3 supra.

No person may be appointed as a member of the lay panel unless the Secretary of State in respect of England, or the Assembly in respect of Wales, is satisfied that the person is not eligible for appointment to the chairmen's panel, and that he has knowledge and experience of children with special educational needs, with disabilities, or (if required) both: Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002, SI 2002/1985, reg 3.

Each member of the lay panel must hold and vacate office under the terms of the instrument under which he is appointed: Education Act 1996 s 334(4). A member of the lay panel may resign office by notice in writing to the Secretary of State or the Assembly (as the case may be) and is eligible for re-appointment if he ceases to hold office: ss 334(5), 336ZA(2) (as added: see note 3 supra). The Secretary of State or the Assembly (as the case may be) may pay to any person in respect of his service as a member of the Tribunal such remuneration and allowances as he or it may determine: ss 335(1), 336ZA(2) (as so added). The consent of the Treasury is required for the determination by the Secretary of State of such amounts: see ss 335(1), 336ZA(2) (as so added).

The Disabled Persons (Services, Consultation and Representation) Act 1986 s 10 (co-option to committees etc of persons representing interests of disabled person: see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1064) does not apply to appointments to the lay panel: Special Educational Needs and Disability Act 2001 s 17(2), (3) (added by the Education Act 2002 s 195, Sch 18 paras 1, 5).

10 The powers of the Assembly under the Education Act 1996 s 333(5) are exercisable only with the agreement of the Secretary of State: see s 336ZA(3) (as added); and note 3 supra.

11 Ibid s 333(5)(b). See note 3 supra. See also the Special Educational Needs Tribunal Regulations 2001, SI 2001/600 (as amended).

12 Education Act 1996 ss 333(6), 336ZA(2) (as added: see note 3 supra). The consent of the Treasury is required when the Secretary of State makes such provision: see ss 333(6), 336ZA(2) (as added); and note 3 supra.

13 Ibid s 335(2). The consent of the Treasury is required for the determination by the Secretary of State of such amounts: see ss 335(2), 336ZA(2) (as added); and note 3 supra.

## **UPDATE**

### **1032-1035 Special Educational Needs Tribunals**

The functions of the Special Educational Needs and Disability Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). Provision has been made for appeals from the Special Educational Needs Tribunal for Wales to the Upper Tribunal: Education Act 1996 (s 334 amended by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 28; Education Act 1996 ss 333-336, 336A amended, s 336ZA repealed, s 336ZB added by SI 2008/2833); Tribunals and Inquiries Act 1992 s 11(1) (amended by SI 2008/2833, SI 2009/1307); Transfer of Tribunal Functions Order 2008, SI 2008/2833, reg 6.

### **1032 Establishment, constitution and membership**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--Day now appointed: SI 2006/1014.

NOTE 9--SI 2002/1985 reg 3 amended: SI 2008/2683.

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### **1033. Jurisdiction.**

The Special Educational Needs and Disability Tribunal<sup>1</sup>, in relation to England<sup>2</sup>, and the Special Educational Needs Tribunal for Wales<sup>3</sup>, in relation to Wales<sup>4</sup>, exercise the jurisdiction conferred by Part IV of the Education Act 1996<sup>5</sup> to hear appeals against:

- 1877 (1) local education authority<sup>3</sup> determinations not to comply with requests for assessments of the educational needs of a child<sup>4</sup> in respect of whom a statement of special educational needs<sup>5</sup> is maintained<sup>6</sup>;
- 1878 (2) local education authority determinations not to comply with parental requests for assessments of the educational needs of a child in respect of whom no statement is maintained<sup>7</sup>;
- 1879 (3) local education authority determinations not to comply with requests for assessments of the educational needs of children made by the responsible body of a maintained school<sup>8</sup>, a maintained nursery school<sup>9</sup>, a pupil referral unit<sup>10</sup>, an independent school<sup>11</sup>, or an approved school<sup>12</sup>;
- 1880 (4) local education authority determinations not to comply with requests to change the name of a school<sup>13</sup> or institution specified in a statement of special educational needs<sup>14</sup>;
- 1881 (5) local authorities' decisions not to make statements of special educational needs<sup>15</sup>;
- 1882 (6) the content of statements of special educational needs<sup>16</sup>; and
- 1883 (7) local education authority determinations to cease to maintain a statement of special educational needs<sup>17</sup>.

Regulations<sup>18</sup> may provide for the jurisdiction of the Tribunal to be exercised by such number of tribunals as may be determined from time to time by the President<sup>19</sup>, and for the tribunals to sit at such time and in such places as may be from time to time determined by the President<sup>20</sup>.

1 As to the establishment, constitution and membership of the Special Educational Needs and Disability Tribunal and the appointment and terms of service of the President see PARA 1032 ante; as to proceedings before the Tribunal see PARA 1034 post; and as to appeals from Tribunal decisions see PARA 1035 post.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the establishment, constitution and membership of the Special Educational Needs Tribunal for Wales and the appointment and terms of service of the President see PARA 1032 ante; as to proceedings before the Tribunal see PARA 1034 post; and as to appeals from Tribunal decisions see PARA 1035 post.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 I.e. the jurisdiction conferred by the Education Act 1996 Pt IV (ss 312-349) (as amended): see s 333(1) (as substituted), s 336ZA (as added); and PARA 1032 ante.

3 As to local education authorities see PARA 20 ante.

4 As to the meaning of 'child' see PARA 984 note 1 ante.

5 For the meaning of 'special educational needs' see PARA 984 ante.

- 6 See the Education Act 1996 s 328(3)(b); and PARA 994 ante. Statements of special educational needs are maintained by a local education authority under s 324 (as amended) (see PARA 996 ante).
- 7 See *ibid* s 329(2)(b); and PARA 993 ante.
- 8 See *ibid* s 329A(8)(b), (12) (as added); and PARA 995 ante. For the meaning of 'maintained school' see PARA 984 note 11 ante.
- 9 See *ibid* s 329A(8)(b), (12) (as added); and PARA 995 ante. For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.
- 10 See *ibid* s 329A(8)(b), (12) (as added); and PARA 995 ante. For the meaning of 'pupil referral unit' see PARA 457 ante.
- 11 See *ibid* s 329A(8)(b), (12) (as added); and PARA 995 ante. As to independent schools see PARA 465 ante.
- 12 See *ibid* s 329A(8)(b), (12) (as added); and PARA 995 ante. The text refers to a special school approved under s 342 (as substituted) (see PARA 1028 ante).
- 13 For the meaning of 'school' see PARA 81 ante.
- 14 See the Education Act 1996 Sch 27 para 8(3)(b); and PARA 1007 ante.
- 15 See *ibid* s 325(2); and PARA 1003 ante.
- 16 See *ibid* s 326(1) (as substituted), s 326(1A) (as added); and PARA 1004 ante.
- 17 See *ibid* Sch 27 para 11(2)(b); and PARA 1001 ante.
- 18 'Regulations' means regulations made by the Secretary of State: *ibid* s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. The powers of the Assembly under s 333(5) are exercisable only with the agreement of the Secretary of State: see s 336ZA(3) (as added); and PARA 1032 note 3 ante.
- 19 *Ibid* s 333(5)(a), s 336ZA(2) (added by the Education Act 2002 Sch 18 paras 1, 5); Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002, SI 2002/1985, reg 4(1). For these purposes, where the President has determined pursuant to reg 4(1) that the jurisdiction of the Tribunal is to be exercised by more than one tribunal, 'the Tribunal' means, in relation to any proceedings, the tribunal to which the proceedings have been referred by the President: reg 2.
- 20 *Ibid* reg 4(2).

## UPDATE

### 1032-1035 Special Educational Needs Tribunals

The functions of the Special Educational Needs and Disability Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). Provision has been made for appeals from the Special Educational Needs Tribunal for Wales to the Upper Tribunal: Education Act 1996 (s 334 amended by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 28; Education Act 1996 ss 333-336, 336A amended, s 336ZA repealed, s 336ZB added by SI 2008/2833); Tribunals and Inquiries Act 1992 s 11(1) (amended by SI 2008/2833, SI 2009/1307); Transfer of Tribunal Functions Order 2008, SI 2008/2833, reg 6.

### 1033 Jurisdiction

NOTES 19, 20--SI 2002/1985 reg 4 amended: SI 2008/2683.





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### **1034. Proceedings.**

Regulations<sup>1</sup> may make provision about the proceedings of the Special Educational Needs and Disability Tribunal<sup>2</sup>, in relation to England<sup>3</sup>, and the Special Educational Needs Tribunal for Wales<sup>4</sup>, in relation to Wales<sup>5</sup>, on an appeal under Part IV of the Education Act 1996<sup>6</sup> and the initiation of such an appeal<sup>7</sup>. Such regulations may, in particular, include provision:

- 1884 (1) as to the period within which, and the manner in which, appeals are to be instituted<sup>8</sup>;
- 1885 (2) where the jurisdiction of the Tribunal is being exercised by more than one tribunal, for determining by which tribunal any appeal is to be heard, and for the transfer of proceedings from one tribunal to another<sup>9</sup>;
- 1886 (3) for enabling any functions<sup>10</sup> which relate to matters preliminary or incidental to an appeal to be performed by the President, or by the chairman<sup>11</sup>;
- 1887 (4) for hearings to be conducted in the absence of any member other than the chairman<sup>12</sup>;
- 1888 (5) as to the persons who may appear on behalf of the parties<sup>13</sup>;
- 1889 (6) for granting any person such disclosure or inspection of documents or right to further particulars as might be granted by a county court<sup>14</sup>;
- 1890 (7) requiring persons to attend to give evidence and produce documents<sup>15</sup>;
- 1891 (8) for authorising the administration of oaths to witnesses<sup>16</sup>;
- 1892 (9) for the determination of appeals without a hearing in prescribed circumstances<sup>17</sup>;
- 1893 (10) as to the withdrawal of appeals<sup>18</sup>;
- 1894 (11) for the award of costs or expenses<sup>19</sup>;
- 1895 (12) for taxing or otherwise settling any such costs or expenses (and, in particular, for enabling such costs to be taxed in the county court)<sup>20</sup>;
- 1896 (13) for the registration and proof of decisions and orders<sup>21</sup>; and
- 1897 (14) for enabling the Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations<sup>22</sup>.

Except in prescribed circumstances, proceedings before the Tribunal must be held in private<sup>23</sup>.

The Tribunal must conduct the hearing in such manner as it considers the most suitable to the clarification of the issues and generally to the just handling of the proceedings, and must seek, as far as appears to it appropriate, to avoid formality in its proceedings<sup>24</sup>. The Tribunal has a wide discretion to permit a party before it to raise new issues<sup>25</sup> and to admit late written evidence in wholly exceptional cases<sup>26</sup>.

Part I of the Arbitration Act 1996<sup>27</sup>, which makes provision for the fair resolution of disputes by an impartial tribunal and for the means of resolution to be determined, so far as practicable, in accordance with the wishes of the parties, does not apply to proceedings before the Tribunal but regulations may make provision corresponding to any provision of that Part<sup>28</sup>.

1 'Regulations' means regulations made by the Secretary of State: Education Act 1996 s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of

regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations made under s 336 (as amended) see the Special Educational Needs Tribunal Regulations 2001, SI 2001/600 (amended by SI 2002/2787); and the Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002, SI 2002/1985. The Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002, SI 2002/1985, also contain provisions in relation to the making of claims of disability discrimination in schools under the Disability Discrimination Act 1995 Pt IV Ch I (ss 28A-28Q) (as added and amended) (see PARA 1032 note 5 ante; and DISCRIMINATION vol 13 (2007 Reissue)), including the procedures of the Tribunal to be used in determining those claims.

2 As to the establishment, constitution and membership of the Special Educational Needs and Disability Tribunal and the appointment and terms of service of the President see PARA 1032 ante; as to the jurisdiction of the Tribunal see PARA 1033 ante; and as to appeals from Tribunal decisions see PARA 1035 post.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 As to the establishment, constitution and membership of the Special Educational Needs Tribunal for Wales and the appointment and terms of service of the President see PARA 1032 ante; as to the jurisdiction of the Tribunal see PARA 1033 ante; and as to appeals from Tribunal decisions see PARA 1035 post.

5 For the meaning of 'Wales' see PARA 52 note 13 ante.

6 Ie the Education Act 1996 Pt IV (ss 312-349) (as amended).

7 Ibid s 333(1Z) (added by the Education Act 2002 s 195, Sch 18 paras 1, 4); Education Act 1996 ss 336(1), 336ZA(2) (s 336ZA added by the Education Act 2002 Sch 18 paras 1, 5).

In addition to the specific matters for which provision may be made by virtue of s 336(2) (as amended) (see the text and notes 8-22 infra), the regulations make provision for the membership of the Tribunals (Special Educational Needs and Disability Tribunal (General Provisions and Disability Claims Procedure) Regulations 2002, SI 2002/1985, reg 5), the proof of documents and the certification of decisions of the Tribunal (reg 6), the making of appeals to the Tribunal by a parent and the statement of the parent's case (Special Educational Needs Tribunal Regulations 2001, SI 2001/600, Pt 2, regs 7-12) (regs 7, 9-10, 12 amended by SI 2002/2787)), the statement of the local education authority's case (Special Educational Needs Tribunal Regulations 2001, SI 2001/600, Pt 2, regs 13-16 (regs 13, 15-16 amended by SI 2002/2787)), the preparation of a hearing (Special Educational Needs Tribunal Regulations 2001, SI 2001/600, Pt 3, regs 17-28 (regs 17-21, 26, 28 amended by SI 2002/2787)), the determination of appeals (Special Educational Needs Tribunal Regulations 2001, SI 2001/600, Pt 4, regs 29-40 (regs 30, 34 amended by SI 2002/2787)), and the general powers of the Tribunal, including powers to strike out (Special Educational Needs Tribunal Regulations 2001, SI 2001/600, Pt 5, regs 41-51 (regs 46, 48 amended by SI 2002/2787)). See also the following President's statements: [1995] ELR 335 (questions to be addressed by the tribunal); [1996] ELR 280 (attendance of solicitor with counsel); [1996] ELR 281 (replies by local education authority); [1998] ELR 234 (lodging notice of appeal); [1998] ELR 641 (applications to strike out appeal); [2002] ELR 341 (appeal time limits).

On the question of when it is appropriate for the Tribunal to adjourn its proceedings see the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 35; and see *L v Royal Borough of Kensington and Chelsea* [1997] ELR 155; *Ligouri v City of Salford and Special Educational Needs Tribunal* [1997] ELR 455; *R v Cheshire County Council, ex p C* [1998] ELR 66 at 73 per Sedley J; *West Glamorgan County Council v Confrey* [1998] ELR 121 at 123. See also *S v Hounslow London Borough Council and Vassie* [2001] ELR 88 at [66] per Tomlinson J, who declined to rule on the conflict of authority, both tests being satisfied in the instant case.

The power of the Tribunal to strike out an appeal for want of prosecution (see the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 44) was considered in *White v Aldridge QC and Ealing London Borough Council* [1999] ELR 58; on appeal [1999] ELR 150, CA. See also *G v Barnet London Borough and Aldridge QC (President of Special Educational Needs Tribunal)* [1999] ELR 161 (new material may have allowed different outcome); *Glasner v South Gloucestershire Council* [2000] ELR 136; *O v Harrow London Borough Council* [2001] EWCA Civ 2046 at [22], [2002] 1 WLR 928 at [22], [2002] ELR 195 at [22] per Simon Brown LJ; *R (on the application of A) v Lambeth London Borough Council* [2002] ELR 231 at [24] per Ouseley J (issue estoppel not to be applied in all cases).

As to natural justice in the Tribunal proceedings see *Richardson v Solihull Metropolitan Borough Council, White v Ealing London Borough Council, Hereford and Worcester County Council v Lane* [1999] 1 FCR 356, [1998] ELR 319, CA (suggested school not in contemplation of either party; expert member of Tribunal may apply expert knowledge); cf *S v Hackney London Borough Council* [2001] EWHC Admin 572, [2002] ELR 45 (no duty to assume parental preferences other than those advanced). See also *Rhondda Cynon Taff Borough Council v Special Educational Needs Tribunal* [2001] EWHC (Admin) 823 at [14], [2002] ELR 290 at [14] per Newman J (no need for Tribunal to allow local education authority to suggest cheaper alternatives). Where an omission of factual evidence is relevant, ignorance of that fact may be a source of unfairness, and only exceptionally would relief not be given: *Ali v Kirklees Metropolitan Council* [2001] EWCA Civ 582 at [20], [2001] LGR 448 at [20], [2001] ELR 657 at [20] per Sedley LJ.

8 Education Act 1996 s 336(2)(a). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 7-9, 11, 17-20, 25, 50 (regs 7, 9, 17-20 amended by SI 2002/2787). As to amendment of the grounds of appeal see the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 9(2) (amended by SI 2002/2787); and *R v Special Educational Needs Tribunal, ex p KL* [1997] ELR 504.

9 Education Act 1996 s 336(2)(b). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 41. A Tribunal cannot remit papers relating to a quashed decision to a freshly-constituted Tribunal: *R v Special Educational Needs Tribunal, ex p Fisher* [1999] ELR 417.

10 As to the meaning of 'functions' see PARA 14 note 5 ante.

11 Education Act 1996 s 336(2)(c). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 8, 9(2)(a), (4)-(5), 12(6), 13(3)(a), (5)-(6), 16(1), 21-24, 26-27, 30(1)(b), 39, 41, 44(1), (6), 45 (regs 9(2)(a), (4), 12(6), 13(3), (5), 16(1), 21, 26, 30(1)(b) amended, and regs 9(5), 13(6) added, by SI 2002/2787). As to the appointment, tenure etc of the President and chairmen of the Tribunal see PARA 1032 ante.

12 Education Act 1996 s 336(2)(e). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 32(5), 36(1), 45.

13 Education Act 1996 s 336(2)(f). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 12, 13(2)(b), 14, 16 (regs 12, 16 amended by SI 2002/2787).

14 Education Act 1996 s 336(2)(g) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 1, 13(1), (2)(b)). Any person who without reasonable excuse fails to comply with any requirement in respect of the disclosure or inspection of documents imposed by regulations by virtue of the Education Act 1996 s 336(2)(g) (as amended) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 336(5)(a), (6). As to the standard scale see PARA 481 note 4 ante.

15 Ibid s 336(2)(h). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 24, 26, 34 (regs 26, 34 amended by SI 2002/2787). As to the right of the parties to give evidence and call witnesses see the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 34 (amended by SI 2002/2787); and *H v Gloucestershire County Council* [2000] ELR 357 (representative of the local education authority does not count as a witness). The Secretary of State or the National Assembly for Wales (as the case may be) may pay such allowances for the purpose of or in connection with the attendance of persons at the Tribunal as he or it may determine: Education Act 1996 ss 336(3), 336ZA(2) (as added: see note 7 supra). The consent of the Treasury is required for the determination by the Secretary of State of such amounts: see ss 336(3), 336ZA(2) (as so added). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. Any person who without reasonable excuse fails to comply with any requirement imposed by regulations by virtue of s 336(2)(h) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 336(5)(b), (6).

16 Ibid s 336(2)(i). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 34(4).

17 Education Act 1996 s 336(2)(j). 'Prescribed' means prescribed by regulations: 579(1). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 15(1)(a), 25(1)(b), 29, 31 (reg 15(1)(a) amended by SI 2002/2787). As to an agreement by the parties to amend part 2 of a statement see *Clean v Somerset County Council* [2002] ELR 152.

18 Education Act 1996 s 336(2)(k). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 10 (amended by SI 2002/2787).

19 Education Act 1996 s 336(2)(l). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 40. In connection with the matter of costs see *C v Lambeth London Borough Council* [1999] ELR 350.

20 Education Act 1996 s 336(2)(m). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 40.

21 Education Act 1996 s 336(2)(n). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 36, 48 (reg 48 amended by SI 2002/2787). As to guidance on the giving of reasons by Tribunals see the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 36(2); and *S v Special Educational Needs Tribunal* [1995] 1 WLR 1627 at 1636, [1996] ELR 102 at 112 per Latham J. See also *Re L* [1994] ELR 16, CA; *Staffordshire County Council v J and J* [1996] ELR 418 at 424 per Collins J; *Joyce v Dorset County Council* [1997] ELR 26 at 34 per Latham J; *B v Isle of Wight Council* [1997] ELR 279 at 286-289 per McCullough J; *C v Special Educational Needs Tribunal* [1997] ELR 390 at 402-403 per Dyson J (no need to give reasons for refusing a review); *L v Kent County Council and Special Educational Needs Tribunal* [1998] ELR 140

at 147 per Collins J (inadequacy of reasons may indicate an error of law); *H v Kent County Council* [2000] ELR 660 at 669 per Grigson J (reasons should deal with the substantial issues and indicate which evidence had been accepted or rejected so that an aggrieved party may identify the basis of the decision); *H v Leicestershire County Council* [2000] ELR 471 at 488 per Dyson J; *L v Devon County Council* [2001] EWHC Admin 958, [2001] All ER (D) 155 (Nov) (tribunal failed to provide adequate reasons as to rejection of expert evidence); *Crean v Somerset County Council* [2002] ELR 152; *M v Worcestershire County Council* [2002] EWHC 1292 (Admin) at [10]-[11], [2003] ELR 31 at [10]-[11] per Collins J; *S v Special Educational Needs Tribunal* [2002] EWHC 1047 (Admin) at [52], [2003] ELR 85 at [52] per Goldring J; *M v Brighton and Hove City Council* [2003] EWHC 1722 (Admin) at [23], [2003] ELR 752 at [23] per Leveson J; *R (on the application of L) v Waltham Forest London Borough Council* [2003] EWHC 2907 (Admin) at [13]-[14], [2004] ELR 161 at [13]-[14] per Beatson J (expert evidence of child's progress at school rejected; incumbent on the Tribunal to give a brief reason for so doing).

22 Education Act 1996 s 336(2)(o). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, regs 37-39, 46 (reg 46 amended by SI 2002/2787). Challenges to the adequacy of reasons may be sought via a review of a Tribunal's decision under the regulations as an alternative to an appeal to the High Court (see PARA 1035 post): *South Glamorgan County Council v L and M* [1996] ELR 400. For guidance as to when the interests of justice may require a review see *Dean v East Sussex County Council* [2005] EWCA Civ 323, [2005] ELR 388.

23 Education Act 1996 s 336(2A) (added by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 1, 13(1), (3)). See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 30 (amended by SI 2002/2787).

24 See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 32(2); *R v Special Educational Needs Tribunal, ex p KL* [1997] ELR 504 at 505 per Popplewell J. Tribunal members should, however, avoid any discussion or informal contact with one party or its witnesses during the course of the hearing: *Joyce v Dorset County Council* [1997] ELR 26.

25 See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 32(4) (the parent and/or the authority may rely on grounds not stated in the notice of appeal or the statement of case); and *L v Salford City Council* [1998] ELR 28.

26 See the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 33; and *Duncan v Bedfordshire County Council* [1997] ELR 299. The words 'wholly exceptional' in the Special Educational Needs Tribunal Regulations 2001, SI 2001/600, reg 33 do not refer to the case as a whole but to the circumstances surrounding the application to adduce the relevant material: *I v Redbridge London Borough Council* [2005] All ER (D) 378 (Nov).

27 See the Arbitration Act 1996 Pt I (ss 1-84): see ARBITRATION.

28 Education Act 1996 s 336(4) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 1, 13(1), (4)). For the regulations made in pursuance of this power see notes 7-26 supra. The regulations may make provision for an appeal under the Education Act 1996 Pt IV (as amended) to be heard, in prescribed circumstances, with a claim under the Disability Discrimination Act 1995 Pt IV Ch I (as added) (see DISCRIMINATION vol 13 (2007 Reissue)): Education Act 1996 s 336(4A) (added by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 1, 13(1), (5)).

## UPDATE

### 1032-1035 Special Educational Needs Tribunals

The functions of the Special Educational Needs and Disability Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 13A). Provision has been made for appeals from the Special Educational Needs Tribunal for Wales to the Upper Tribunal: Education Act 1996 (s 334 amended by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 28; Education Act 1996 ss 333-336, 336A amended, s 336ZA repealed, s 336ZB added by SI 2008/2833); Tribunals and Inquiries Act 1992 s 11(1) (amended by SI 2008/2833, SI 2009/1307); Transfer of Tribunal Functions Order 2008, SI 2008/2833, reg 6.

### 1034 Proceedings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--SI 2002/1985 amended: SI 2008/2683.

NOTES 7, 21-23--SI 2001/600 regs 2, 30, 48 amended, reg 39A added: SI 2008/2683.

NOTE 17--If a local education authority fails to file a statement of case or apply for further time to do so, the Tribunal is entitled to proceed with a hearing without the participation of the local education authority, provided that there are no exceptional circumstances allowing for an extension of time: *R (on the application of Barking and Dagenham LBC) v Special Educational Needs and Disability Tribunal* [2007] EWHC 343 (Admin), [2007] LGR 742.

NOTE 26--See *R (on the application of R) v Special Educational Needs and Disability Tribunal* [2008] EWHC 437 (Admin) QB, [2008] ELR 291 (case not wholly exceptional).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(4) SPECIAL EDUCATIONAL NEEDS TRIBUNALS/1035. Appeals to the High Court.

### **1035. Appeals to the High Court.**

If any party to proceedings before the Special Educational Needs and Disability Tribunal<sup>1</sup>, in relation to England<sup>2</sup>, or the Special Educational Needs Tribunal for Wales<sup>3</sup>, in relation to Wales<sup>4</sup>, is dissatisfied in point of law<sup>5</sup> with a decision of the Tribunal<sup>6</sup> he may, according as rules of court may provide, either appeal from the Tribunal to the High Court or require the Tribunal to state and sign a case for the opinion of the High Court<sup>7</sup>. Rules of court may provide for authorising or requiring the Tribunal, in the course of proceedings before it, to state a special case for the decision of the High Court on any question of law arising in the proceedings; and appeal from the decision of the High Court lies to the Court of Appeal<sup>8</sup>. The right of appeal to the High Court has largely superseded judicial review as a mechanism for challenging decisions of the Tribunal<sup>9</sup>.

1 See the Tribunals and Inquiries Act 1992 s 1, Sch 1 para 40B(a) (Sch 1 para 40B added by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 19, 22; and amended by the Education Act 2002 s 195, Sch 18 para 15(a)). As to the establishment, constitution and membership of the Special Educational Needs and Disability Tribunal and the appointment and terms of service of the President see PARA 1032 ante; as to the jurisdiction of the Tribunal see PARA 1033 ante; and as to proceedings before the Tribunal see PARA 1034 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 See the Tribunals and Inquiries Act 1992 Sch 1 para 40B(b) (as added and amended: see note 1 supra). As to the establishment, constitution and membership of the Special Educational Needs Tribunal for Wales and the appointment and terms of service of the President see PARA 1032 ante; as to the jurisdiction of the Tribunal see PARA 1033 ante; and as to proceedings before the Tribunal see PARA 1034 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 As to questions of law and questions of educational judgment see *C v Special Educational Needs Tribunal* [1997] ELR 390. See also *G v London Borough of Barnet and Special Educational Needs Tribunal* [1998] ELR 480 at 485 per Ognall J; *S v Special Educational Needs Tribunal* [2002] EWHC 1047 (Admin) at [51], [2003] ELR 85 at [51] per Goldring J (citing *Russell v Royal Borough of Kingston upon Thames* (6 November 1996, unreported) per McCullough J). As to whether points which had not been raised before the tribunal may be raised before the court on appeal see *B v Harrow London Borough Council* [2000] 1 All ER 876, [2000] 1 WLR 223, HL; and see *B v Special Educational Needs Tribunal* [1999] LGR 144 at 148, [1998] 3 FCR 231 at 236, CA, per Sir Christopher Staughton (it would be wrong to penalise claimant for not having raised point of statutory construction before tribunal when it was in the public interest for the point to be decided); *T v Special Educational Needs Tribunal and Wiltshire County Council* [2002] EWHC 1474 (Admin), [2002] ELR 704 (claimant represented by competent solicitor; point raised not of sufficient general importance).

6 'Decision' includes any direction or order; and references to the giving of a decision are to be construed accordingly: Tribunals and Inquiries Act 1992 s 11(10).

7 Ibid s 11(1) (amended by the Education Act 1993 s 181(2); the Education Act 1996 s 582(1), Sch 37 para 118(1), (2); and the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 paras 19, 20(b)); Tribunals and Inquiries Act 1992 Sch 1 para 40B (as added and amended: see note 1 supra). See further CPR Sch 1 RSC Ord 94 rr 8-9; and CIVIL PROCEDURE.

In relation to such appeals, the chairman of the panel (but not the Tribunal itself) should be named as one of the respondents to the appeal; the chairman has no right to appear and be heard but may ask the court for permission to do so: see *S and C v Special Educational Needs Tribunal* [1997] ELR 242; *S (A Minor) v Special Educational Needs Tribunal* [1996] 2 All ER 286, [1996] 1 WLR 382, [1996] ELR 228, CA. The parent, but not the child, is a party to the appeal: *S (A Minor) v Special Educational Needs Tribunal* supra. In *Sunderland City Council v P and C* [1996] ELR 283, it was held that the court's power to order that a person be added as a party

to proceedings could not be used in respect of an appeal against the decision of the Special Educational Needs Tribunal.

See also *Fairpo v Humberside County Council* [1997] 1 All ER 183, [1997] ELR 12; *Phillips v Derbyshire County Council* [1997] ELR 461; *Re F* [1999] ELR 251; *Bromley London Borough Council v Special Educational Needs Tribunal* [1999] 3 All ER 587, [1999] ELR 260, CA (extension of time for appealing); *Camden London Borough Council v Hodin and White* [1996] ELR 430 (inappropriate to exercise court's power to impose a stay of the implementation of a Tribunal decision pending an appeal to the High Court).

8 See the Tribunals and Inquiries Act 1992 s 11(3)-(5) (as amended).

9 See *R v Special Educational Needs Tribunal, ex p F* [1996] ELR 213; *R v Special Educational Needs Tribunal, ex p South Glamorgan County Council* [1996] ELR 326; but see also *R v Special Educational Needs Tribunal, ex p KL* [1997] ELR 504. As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

## UPDATE

### 1032-1035 Special Educational Needs Tribunals

The functions of the Special Educational Needs and Disability Tribunal have been transferred to the First-tier Tribunal: see the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684. An appeal from the First-tier Tribunal lies to the Upper Tribunal (see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 13A). Provision has been made for appeals from the Special Educational Needs Tribunal for Wales to the Upper Tribunal: Education Act 1996 (s 334 amended by Tribunals, Courts and Enforcement Act 2007 Sch 10 para 28; Education Act 1996 ss 333-336, 336A amended, s 336ZA repealed, s 336ZB added by SI 2008/2833); Tribunals and Inquiries Act 1992 s 11(1) (amended by SI 2008/2833, SI 2009/1307); Transfer of Tribunal Functions Order 2008, SI 2008/2833, reg 6.

### 1035 Appeals to the High Court

NOTE 1--Tribunals and Inquiries Act 1992 s 1 repealed: Tribunals, Courts and Enforcement Act 2007 s 45(2), Sch 23 Pt 1.

NOTE 8--See *H v East Sussex CC* [2009] EWCA Civ 249, [2009] ELR 161, [2009] All ER (D) 304 (Mar).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(5) CODE OF PRACTICE/1036. Code of practice.

## **(5) CODE OF PRACTICE**

### **1036. Code of practice.**

The Secretary of State<sup>1</sup> must issue, and may from time to time revise, a code of practice giving practical guidance in respect of the discharge by local education authorities<sup>2</sup> and the governing bodies of maintained schools<sup>3</sup> and maintained nursery schools<sup>4</sup> of their functions<sup>5</sup> in connection with the making of special educational provision under Part IV of the Education Act 1996<sup>6</sup>. The Secretary of State must publish the code as for the time being in force<sup>7</sup>. Local education authorities and governing bodies of maintained schools exercising functions under Part IV<sup>8</sup>, and any other person exercising any function for the purpose of the discharge by local education authorities and such governing bodies of functions under Part IV<sup>9</sup>, are under a duty to have regard to the provisions of the code<sup>10</sup>. On any appeal under Part IV to the Tribunal<sup>11</sup>, the Tribunal must have regard to any provision of the code which appears to it to be relevant to any question arising on the appeal<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'maintained school' see PARA 984 note 11 ante. As to the governing bodies of maintained schools see PARA 203 et seq ante.

4 For the meaning of 'maintained nursery school' see PARA 94 note 4 ante.

5 As to the meaning of 'functions' see PARA 14 note 5 ante.

6 Education Act 1996 s 313(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 57, 72; and the Education Act 2002 s 215(1), Sch 21 para 36). The functions referred to in the text are those under the Education Act 1996 Pt IV (ss 312-349) (as amended).

7 Ibid s 313(4).

8 Ibid s 313(2)(a).

9 Ibid s 313(2)(b).

10 Ibid s 313(2).

11 For the meaning of 'the Tribunal' for these purposes see PARA 993 note 13 ante. As to the tribunal see PARAS 1032-1035 ante. As to appeals to the Tribunal see PARAS 993-995, 1001, 1003-1004, 1007 ante.

12 Education Act 1996 s 313(3). As to the duty to have regard to the code see *R (on the application of S) v Brent London Borough Council*, *R (on the application of T) v Head Teacher of Wembley High School*, *R (on the application of P) v Oxfordshire County Council Exclusion Appeals Panel* [2002] EWCA Civ 693 at [15], [2002] ELR 556 at [15] per Schiemann LJ (the guidance is not direction and certainly not rules but cannot be neglected).

## **UPDATE**

### **1036 Code of practice**



TEXT AND NOTES 8-10--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 1.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/7. SPECIAL EDUCATIONAL NEEDS/(5) CODE OF PRACTICE/1037. Making and approval of code of practice.

### **1037. Making and approval of code of practice.**

Where the Secretary of State<sup>1</sup> proposes to issue or revise a code of practice, he must prepare a draft of the code or revised code<sup>2</sup>. He must consult such persons about the draft as he thinks fit and must consider any representations made by them<sup>3</sup>. If he determines to proceed with the draft (either in its original form or with such modifications<sup>4</sup> as he thinks fit) he must lay it before both Houses of Parliament<sup>5</sup>. If the draft is approved by resolution of each House, the Secretary of State must issue the code in the form of the draft, and the code comes into effect on such day as the Secretary of State may by order appoint<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Education Act 1996 s 314(1).

3 Ibid s 314(2).

4 As to the meaning of 'modifications' see PARA 43 note 6 ante.

5 Education Act 1996 s 314(3).

6 Ibid s 314(4). As to the making of orders under the Education Act 1996 generally see PARA 15 note 6 ante. As to the orders made see the Education (Special Educational Needs Code of Practice) (Appointed Day) (England) Order 2001, SI 2001/3943, which appointed 1 January 2002 as the day on which the Special Educational Needs Code of Practice came into force; and the Special Educational Needs Code of Practice (Appointed Day) (Wales) Order 2002, SI 2002/156, which appointed 1 April 2002 as the day on which the Special Educational Needs Code of Practice for Wales came into force.

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### **1038. Duty of nursery education providers to have regard to code of practice.**

Any local education authority<sup>1</sup> or other person providing relevant nursery education<sup>2</sup>, and any person employed<sup>3</sup> by such an authority or other person or otherwise engaged to provide his services in the provision of such education, is under a duty to have regard to the provisions of the code of practice giving practical guidance in respect of the discharge of functions under Part IV of the Education Act 1996<sup>4</sup>. The code of practice may include practical guidance in respect of the provision of relevant nursery education for children with special educational needs in circumstances where functions<sup>5</sup> under Part IV do not fall to be discharged<sup>6</sup>. However, if such provision is not made, the Secretary of State<sup>7</sup> must publish a document explaining how the practical guidance contained in the code applies in circumstances where functions under Part IV do not fall to be discharged<sup>8</sup>, and the duty to have regard to the provisions of the code<sup>9</sup> includes a duty to have regard to the provisions of that document<sup>10</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'relevant nursery education' see PARA 1019 note 17 ante. For the meaning of 'nursery education' see PARA 85 ante. If: (1) a local education authority or other person providing relevant nursery education for a child makes special educational provision for him because it is considered that he has special educational needs; (2) no statement under the Education Act 1996 s 324 (as amended) (see PARA 996 ante) is maintained for the child; and (3) the child's parent has not previously been informed of the special educational provision made for him, then the local education authority or other person concerned must inform the child's parent that special educational provision is being made for him because it is considered that he has special educational needs: School Standards and Framework Act 1998 s 123(3A), (3B) (added by the Special Educational Needs and Disability Act 2001 s 7(2)). See also PARA 1019 ante. For the meaning of 'child' see PARAS 16 note 4, 984 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). For the meanings of 'special educational provision' and 'special educational needs' see PARA 984 ante; definitions applied by virtue of s 142(8). As to the meaning of 'parent' see PARA 510 note 1; definition applied by virtue of s 142(8).

3 For the meaning of 'employed' see PARA 355 note 14 ante.

4 School Standards and Framework Act 1998 s 123(1). The code of practice in question is that issued under the Education Act 1996 s 313 (as amended) (see PARA 1036 ante) giving practical guidance in respect of the discharge of the functions of local authorities and governing bodies of maintained schools under Pt IV (ss 312-349) (as amended) (see PARA 984 et seq ante) in connection with the making of special educational provision. This duty to have regard to the code of practice does not arise where such a duty is already imposed by s 313(2) (see PARA 1036 ante): School Standards and Framework Act 1998 s 123(1).

5 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 142(8).

6 *Ibid* s 123(2).

7 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 School Standards and Framework Act 1998 s 123(3)(a).

9 *Ie* the duty imposed by *ibid* s 123(1): see the text and notes 1-4 *supra*.

10 *Ibid* s 123(3)(b).

### **UPDATE**

### **1038 Duty of nursery education providers to have regard to code of practice**

TEXT AND NOTES--1998 s 123 further amended: Childcare Act 2006 Sch 2 para 34 (in force in relation to England: SI 2008/2261).

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## 8. STUDENTS

### (1) STATUS AND RIGHTS OF REDRESS

#### 1039. Students' legal relationship with higher education institutions.

It is now accepted that a student stands in a contractual relationship with a university whatever the nature of the institution he attends<sup>1</sup>. Nevertheless, this does not necessarily mean that decisions of universities about such matters as awards of degrees, progression to the next stage of a course or disciplinary matters are not amenable to judicial review<sup>2</sup>.

In relation to issues which do not touch upon matters of academic judgment, the Higher Education Act 2004 introduced a statutory scheme for the review of complaints made by students or former students at qualifying institutions or by students working towards the grant of one of the qualifying institution's awards<sup>3</sup>.

<sup>1</sup> *Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752, [2000] 1 WLR 1988, [2000] ELR 345, CA. See also *Cadells v Balfour* (1898) 5 Ct 1138 (1890) 17 R 1138, Ct of Session; *Herring v Templeman* [1973] 3 All ER 569 at 584-585, CA, per Russell LJ; *Moran v University College Salford (No 2)* [1994] ELR 187, CA; cf *Thomson v University of London* (1864) 33 LJ Ch 625 per Kindersley VC; *Green v Master and Fellows of St Peter's College Oxford* (1896) Times, 10 February per Wills J; *R v Aston University Senate, ex p Roffey* [1969] 2 QB 538. Such contractual status notwithstanding, however, a student's 'civil right' for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6(1) was not being determined by an academic appeals committee of the university when considering matters relating to the failure to award him an MA: see *Hanuman v United Kingdom* [2000] ELR 685, ECtHR.

<sup>2</sup> See *R v Manchester Metropolitan University, ex p Nolan* [1994] ELR 380; *R v University of Humberside, ex p Cousens* [1995] CLY 1947, CA; *R v Board of Governors of Sheffield Hallam University, ex p R* [1995] ELR 267; *R v University College London, ex p Christofi* (18 June 1997, unreported); *R v Liverpool John Moores University, ex p Hayes* [1998] ELR 261; *R v University of Portsmouth, ex p Lakareber* [1999] ELR 135, CA; *R v Cambridge University, ex p Beg* [1999] ELR 404; *Iqbal Sandhu v University of Central England* [1999] ELR 419, CA; *R v Cranfield University Senate, ex p Bashir* [1999] ELR 317, CA; *R v South Bank University, ex p Coggeran* [2001] ELR 42, [2000] ICR 1342, CA; *R v Chelsea College of Art and Design, ex p Nash* [2000] ELR 686; *R v University of Cambridge, ex p Persaud* [2001] EWCA Civ 534, [2001] ELR 480, CA; *R (on the application of M) v University of the West of England* [2001] ELR 458, CA; *R (on the application of Isolyn Burgess) v South Bank University* [2001] ELR 300. As to judicial review see **JUDICIAL REVIEW** vol 61 (2010) PARA 601 et seq.

Where a decision concerning a student is amenable to judicial review, there is sufficient procedural flexibility within the Civil Procedure Rules 1998, SI 1998/3132 (as amended) (see **CIVIL PROCEDURE**) to enable a student to pursue a claim against a university in contract even though it might more appropriately be brought via judicial review, and the claim would not be struck out by the court for that reason unless the court was satisfied that there had been an abuse of the process of the court in the circumstances, including a delay in instituting proceedings: *Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752 at 761, [2000] 1 WLR 1988 at 1997-1998, [2000] ELR 345 at 355 per Lord Woolf MR, CA.

<sup>3</sup> See the Higher Education Act 2004 Pt 2 (ss 11-21); and PARA 1040 et seq post. For the meaning of 'qualifying institution' see PARA 1040 note 2 post. 'Academic judgment' is not defined in the Higher Education Act 2004. The jurisdiction of a visitor to the institution is ousted in respect of the matters covered by s 20 (qualifying student complaints: see PARA 1040 post) and s 46 (disputes between a member of staff and the qualifying institution: see PARA 657 ante). As to the jurisdiction of visitors see PARA 656 ante.

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#### **1040. Review of student complaints under statutory scheme.**

The governing body<sup>1</sup> of every qualifying institution<sup>2</sup> in England and Wales must comply with any obligation imposed upon it by a scheme for the review of qualifying complaints<sup>3</sup> that is provided by the designated operator<sup>4</sup> of the statutory student complaints scheme<sup>5</sup>. A 'qualifying complaint' means<sup>6</sup> a complaint about an act or omission of a qualifying institution which is made by a person: (1) as a student or former student at that institution<sup>7</sup>; or (2) as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution's awards<sup>8</sup>. However, a complaint which falls within these criteria is not a qualifying complaint to the extent that it relates to matters of academic judgment<sup>9</sup>.

The visitor of a qualifying institution has no jurisdiction in respect of any complaint<sup>10</sup>: (a) if it is made in respect of an application for admission to the qualifying institution as a student<sup>11</sup>; or (b) if it is made by a person as a student or former student at the qualifying institution<sup>12</sup>, or as a student or former student at another institution (whether or not a qualifying institution) undertaking a course of study, or programme of research, leading to the grant of one of the qualifying institution's awards<sup>13</sup>.

1 For these purposes, 'governing body' has the meaning given by the Further and Higher Education Act 1992 s 90(1), but subject to any provision made by virtue of s 90(2) (see PARA 584 note 5 ante): Higher Education Act 2004 s 21.

2 For the purposes of ibid Pt 2 (ss 11-21), 'qualifying institution' means any of the following institutions in England or Wales: (1) a university, whether or not receiving financial support under the Further and Higher Education Act 1992 s 65 (as amended) (see PARA 746 ante), whose entitlement to grant awards is conferred or confirmed by an Act of Parliament, a Royal Charter, or an order under the Further and Higher Education Act 1992 s 76 (see PARA 727 ante); (2) a constituent college, school or hall or other institution of a university falling within head (1) supra; (3) an institution conducted by a higher education corporation; (4) a designated institution, as defined by s 72(3) (see PARA 646 note 11 ante): Higher Education Act 2004 ss 11, 21. For the purposes of Pt 2, 'award' means any degree, diploma, certificate or other academic award or distinction: s 21. For the meaning of 'higher education corporation' see PARA 646 note 3 ante; definition applied by s 21. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante. As to the meaning of 'university' see PARA 648 ante.

3 For these purposes, 'qualifying complaint' has the meaning given by ibid s 12 (see the text and notes 6-9 infra): s 21.

4 For these purposes, 'designated operator' has the meaning given by ibid s 13(5)(b) (in relation to an institution in England, see PARA 1041 note 4 post; and, in relation to an institution in Wales, see PARA 1041 note 7 post): s 21.

5 Ibid s 15(1). The duty imposed by s 15(1) applies from the effective date of the designation and ceases to apply only if the designation is terminated: s 15(2). For these purposes, 'the effective date' has the meaning given by s 13(5)(a) (see PARA 1041 note 13 post): s 21. The obligations referred to in s 15(1) include any obligation to pay fees to the designated operator of the statutory student complaints scheme: s 15(3).

For the purposes of the law of defamation, any proceedings relating to the review under the scheme of a qualifying complaint are to be treated as if they were proceedings before a court: s 17(1). For those purposes, absolute privilege attaches to the publication of: (1) any decision or recommendation made under the scheme by a person responsible for reviewing a qualifying complaint; and (2) any report under s 14, Sch 3 para 6 or Sch 3 para 7 (see PARA 1043 post): s 17(2). For the purposes of s 17, 'the scheme' means the scheme for the review of qualifying complaints provided by the designated operator: s 17(3). As to defamation generally see LIBEL AND SLANDER.

- 6 le for the purposes of *ibid* Pt 2.
- 7 *Ibid* s 12(1)(a).
- 8 *Ibid* s 12(1)(b).
- 9 *Ibid* s 12(2). 'Academic judgment' is not defined by the Higher Education Act 2004.
- 10 *Ibid* s 20(1). As to the exclusion of the visitor's jurisdiction in relation to certain disputes involving a member of staff or the qualifying institution (or both) see *PARA 657 ante*.
- 11 *Ibid* s 20(2).
- 12 *Ibid* s 20(3)(a).
- 13 *Ibid* s 20(3)(b).

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#### **1041. Designation of operator of statutory student complaints scheme.**

The Secretary of State<sup>1</sup> may, for the purposes of the provisions relating to the review of student complaints<sup>2</sup>, designate a body corporate<sup>3</sup> as the designated operator<sup>4</sup> for England as from a date specified in the designation<sup>5</sup>. The National Assembly for Wales<sup>6</sup> may, for the purposes of the provisions relating to the review of student complaints, designate a body corporate as the designated operator<sup>7</sup> for Wales as from a date specified in the designation<sup>8</sup>.

The Secretary of State or the Assembly may not designate a body in this way unless he or it is satisfied that the body<sup>9</sup>:

- 1898 (1) meets all of the conditions to be met by an operator of the student complaints scheme<sup>10</sup>;
- 1899 (2) is providing a scheme for the review of qualifying complaints<sup>11</sup> that meets all of the conditions to be met by a student complaints scheme<sup>12</sup>, or is proposing to provide such a scheme from a date not later than the effective date<sup>13</sup>;
- 1900 (3) has consulted interested parties<sup>14</sup> about the provisions of that scheme<sup>15</sup>; and
- 1901 (4) consents to the designation<sup>16</sup>.

If a body is so designated, the Secretary of State or the Assembly must, before the effective date, give the body notice of the designation<sup>17</sup> and publish notice of the designation in such manner as he or it thinks fit<sup>18</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Ie for the purposes of the Higher Education Act 2004 Pt 2 (ss 11-21).

3 As to bodies corporate see generally COMPANIES; CORPORATIONS.

4 For these purposes, any reference to the designated operator is, in relation to an institution in England, a reference to the body designated under the Higher Education Act 2004 s 13(1): s 13(5)(b)(i). For the meaning of 'England' see PARA 52 note 11 ante.

5 Ibid s 13(1).

6 As to the National Assembly for Wales see PARA 53 ante.

7 For these purposes, any reference to the designated operator is, in relation to an institution in Wales, a reference to the body designated under the Higher Education Act 2004 s 13(2): s 13(5)(b)(ii). For the meaning of 'Wales' see PARA 52 note 13 ante.

8 Ibid s 13(2).

9 Ibid s 13(3).

10 Ibid s 13(3)(a). The text refers to the conditions set out in s 13(3)(a), Sch 1 (see PARA 1042 post).

11 For the meaning of 'qualifying complaint' see PARA 1040 note 3 ante.

12 Ie all of the conditions set out in the Higher Education Act 2004 s 13(3)(b), Sch 2 (see PARA 1042 post).



13 Ibid s 13(3)(b). For these purposes, 'the effective date', in relation to the designation of a body corporate under s 13, means the date specified in the designation as the date from which the body is designated as designated operator: s 13(5)(a).

14 In relation to a scheme for the review of qualifying complaints provided or to be provided by a body corporate, 'interested parties' means: (1) qualifying institutions in England or Wales (as the case may be); and (2) persons selected by the body corporate from amongst those it considers to represent the interests of students at qualifying institutions in England or Wales (as the case may be): ibid s 21.

15 Ibid s 13(3)(c).

16 Ibid s 13(3)(d).

17 Ibid s 13(4)(a).

18 Ibid s 13(4)(b).

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**1042. Conditions to be met by a student complaints scheme and by the operator of a student complaints scheme.**

The conditions to be met by an operator of the student complaints scheme<sup>1</sup> are: (1) that the body corporate<sup>2</sup> is a suitable person to be the designated operator<sup>3</sup> (condition 'A')<sup>4</sup>; and (2) the body corporate is capable of providing in an effective manner, on and after the effective date<sup>5</sup>, a scheme for the review of qualifying complaints<sup>6</sup> which meets all of the conditions set out in heads (a) to (h) below (condition 'B')<sup>7</sup>. The conditions to be met by a student complaints scheme<sup>8</sup> are:

- 1902 (a) that at any given time the scheme relates (as the case may be) to every institution in England, to every institution in Wales, or to every institution in England and Wales, that is a qualifying institution at that time<sup>9</sup>;
- 1903 (b) that the scheme provides that every qualifying complaint made about the qualifying institutions to which it relates is capable of being referred under the scheme<sup>10</sup>;
- 1904 (c) that the scheme requires every qualifying complaint referred under the scheme to be reviewed by an individual who is independent of the parties<sup>11</sup>, and is suitable to review that complaint<sup>12</sup>;
- 1905 (d) that the scheme requires a reviewer<sup>13</sup> to make a decision as to the extent to which a qualifying complaint is justified, and to make that decision as soon as reasonably practicable<sup>14</sup>;
- 1906 (e) that the scheme provides that, in a case where a reviewer decides that a qualifying complaint is to any extent justified, the reviewer<sup>15</sup>: (i) may recommend the governing body of the institution to which the complaint relates to do anything specified in the recommendation (which may include the payment of sums so specified), and to refrain from doing anything so specified<sup>16</sup>; but (ii) may not require any person to do, or refrain from doing, anything<sup>17</sup>;
- 1907 (f) that the scheme requires a reviewer to notify the parties to a qualifying complaint in writing of the decision the reviewer has made<sup>18</sup>, the reviewer's reasons for making that decision<sup>19</sup>, and, if the reviewer makes a recommendation, that recommendation, and the reviewer's reasons for making that recommendation<sup>20</sup>;
- 1908 (g) that the scheme does not require complainants to pay any fees in connection with the operation of the scheme<sup>21</sup>;
- 1909 (h) that any fees payable under the scheme by the qualifying institutions to which it relates do not exceed the amount incurred by the operator, taking one year with another, in providing the scheme in relation to those institutions<sup>22</sup>.

A scheme does not fail to meet the conditions set out in heads (a) to (h) above only because it also relates to bodies that are not qualifying institutions<sup>23</sup>; and a scheme which relates to such bodies does not fail to meet the conditions only because the provisions of the scheme that apply to such bodies do not meet those conditions<sup>24</sup>.

<sup>1</sup> ie the conditions referred to in the Higher Education Act 2004 s 13(3)(a) (see PARA 1041 ante) and other provisions of Pt 2 (ss 11-21): s 13(3)(a), Sch 1 para 1. As to the designation of an operator of the statutory student complaints scheme see PARA 1041 ante.

2    le the body corporate designated under *ibid* s 13 (see PARA 1041 ante). As to bodies corporate see generally COMPANIES; CORPORATIONS.

3    For the meaning of 'designated operator', in relation to an institution in England, see PARA 1041 note 4 ante; and for the meaning of 'designated operator', in relation to an institution in Wales, see PARA 1041 note 7 ante.

4    Higher Education Act 2004 Sch 1 para 2.

5    For the meaning of 'the effective date' see PARA 1041 note 13 ante.

6    For the meaning of 'qualifying complaint' see PARA 1040 note 3 ante.

7    Higher Education Act 2004 Sch 1 para 3.

8    le the conditions referred to in *ibid* s 13(3)(b) (see PARA 1041 ante) and other provisions of Pt 2: s 13(3)(b), Sch 2 para 1. Regulations may amend Sch 2 paras 1-11 (see the text and notes 9-24 *infra*): Sch 2 para 12(1). For this purpose, 'regulations' means regulations made: (1) in relation to schemes relating to qualifying institutions in England, by the Secretary of State; or (2) in relation to schemes relating to qualifying institutions in Wales, by the National Assembly for Wales: Sch 2 para 12(2). No such regulations may be made by the Secretary of State unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament: Sch 2 para 12(3). See also s 47(3); and PARA 764 note 9 ante. At the date at which this volume states the law, no regulations had been made under Sch 2 para 12. As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante. For the meaning of 'qualifying institution' see PARA 1040 note 2 ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

9    *Ibid* Sch 2 para 2.

10   *Ibid* Sch 2 para 3(1). A scheme does not fail to meet the condition in head (b) in the text only because it contains some or all of the following: (1) provision that qualifying complaints are to be referred under the scheme within a time limit specified in, or determined in accordance with, the scheme; (2) provision that, where a qualifying complaint is made about a qualifying institution which provides an internal procedure for the review of complaints, the complaint is not to be referred under the scheme until the complainant has exhausted the internal procedure; (3) provision that a qualifying complaint is not to be referred under the scheme if relevant proceedings have been concluded, or if relevant proceedings that have not been concluded have not been stayed: Sch 2 para 3(2). In head (3) *supra*, 'relevant proceedings' means proceedings relating to the subject matter of the qualifying complaint that have been brought at first instance before a court or tribunal: Sch 2 para 3(3).

11   For the purposes of *ibid* Sch 2, 'parties', in relation to a qualifying complaint, means: (1) the person making a qualifying complaint ('the complainant'); and (2) the governing body of the institution about which the complaint is made: Sch 2 para 11. For the meaning of 'governing body' see PARA 1040 note 1 ante.

12   *Ibid* Sch 2 para 4.

13   For the purposes of *ibid* Sch 2, 'reviewer', in relation to the review of a qualifying complaint under a scheme, means the individual who is reviewing the complaint: Sch 2 para 11.

14   *Ibid* Sch 2 para 5(1). A scheme does not fail to meet the condition in head (d) in the text only because it contains provision that a reviewer may dismiss a qualifying complaint without consideration of the merits if the reviewer considers the complaint to be frivolous or vexatious: Sch 2 para 5(2).

15   *Ibid* Sch 2 para 6.

16   *Ibid* Sch 2 para 6(a).

17   *Ibid* Sch 2 para 6(b).

18   *Ibid* Sch 2 para 7(a).

19   *Ibid* Sch 2 para 7(b).

20   *Ibid* Sch 2 para 7(c).

21   *Ibid* Sch 2 para 8.

22 Ibid Sch 2 para 9.

23 Ibid Sch 2 para 10(1).

24 Ibid Sch 2 para 10(2).

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### **1043. Duties of the designated operator of a student complaints scheme.**

The designated operator<sup>1</sup> of a student complaints scheme must comply with the duties set out in heads (1) to (7) below<sup>2</sup>, which apply from the relevant date<sup>3</sup> and cease to apply only if the designation is terminated<sup>4</sup>. The duties are:

- 1910 (1) that the designated operator must provide a scheme for the review of qualifying complaints<sup>5</sup> which meets all of the conditions to be met by a student complaints scheme<sup>6</sup>;
- 1911 (2) that the designated operator must publish the latest version of the scheme in such manner as it thinks fit<sup>7</sup>;
- 1912 (3) that the designated operator must not make any change to a provision of the scheme to which a condition to be met by a student complaints scheme<sup>8</sup> relates unless the operator has first consulted interested parties about the proposed change, and notified the Secretary of State<sup>9</sup> or the National Assembly for Wales<sup>10</sup> (as the case requires) of the proposed change<sup>11</sup>;
- 1913 (4) that the designated operator must comply with any requirements that the scheme imposes on it<sup>12</sup>;
- 1914 (5) that the designated operator must produce an annual report on the scheme and its operation<sup>13</sup>, and publish the report in such manner as it thinks fit<sup>14</sup>;
- 1915 (6) that the designated body must comply with any request from the Secretary of State or the Assembly to conduct a review of the scheme or its operation (or any aspect of either of those matters)<sup>15</sup>, and report the results of the review to the Secretary of State or the Assembly<sup>16</sup>, within such time as he or it may specify<sup>17</sup>;
- 1916 (7) that the designated operator must provide the Secretary of State or the Assembly with such information about itself, and the scheme and its operation, as the Secretary of State or the Assembly may reasonably require for the purposes of his or its functions under the provisions relating to the review of student complaints<sup>18</sup>.

1 For the meaning of 'designated operator', in relation to an institution in England, see PARA 1041 note 4 ante; and for the meaning of 'designated operator', in relation to an institution in Wales, see PARA 1041 note 7 ante.

2 Higher Education Act 2004 s 14. The duties referred to in s 14 and the period during which those duties must be complied with are set out in Sch 3: s 14, Sch 3 para 1.

3 For these purposes, the 'relevant date' means: (1) in relation to the duties set out in Sch 3 paras 3-5, 8 (see heads (2)-(4), (7) in the text), the date on which notice of designation is received in accordance with s 13(4)(a) (see PARA 1041 ante); and (2) in relation to the duties set out in Sch 3 paras 2, 6-7 (see heads (1), (5), (6) in the text), the effective date of the designation: Sch 3 para 9(2). For the meaning of 'the effective date' see PARA 1041 note 13 ante.

4 Ibid Sch 3 para 9(1). As to the termination of a designation see PARA 1044 post.

5 For the meaning of 'qualifying complaint' see PARA 1040 note 3 ante.

6 Higher Education Act 2004 Sch 3 para 2. The text refers to the conditions set out in s 13(3)(b), Sch 2 (see PARA 1042 ante).

7 Ibid Sch 3 para 3. Where by virtue of Sch 3 the designated operator is under a duty to publish information, it must, in choosing the manner in which the information is to be published, have regard to the object of making

that information available to interested parties: Sch 3 para 10. For the meaning of 'interested parties' see PARA 1041 note 14 ante.

8     le a condition set out in ibid Sch 2 (see PARA 1042 ante).

9     As to the Secretary of State see PARA 52 ante.

10    As to the National Assembly for Wales see PARA 53 ante.

11    Higher Education Act 2004 Sch 3 para 4.

12    Ibid Sch 3 para 5.

13    Ibid Sch 3 para 6(1)(a). The report must include information about: (1) complaints referred under the scheme; (2) the decisions and recommendations made by reviewers; (3) the extent to which recommendations made by reviewers have been followed; and (4) the way in which the operator has used the fees (if any) paid in connection with the scheme: Sch 3 para 6(2).

14    Ibid Sch 3 para 6(1)(b). As to publication of the report see note 7 supra; and as to privilege in relation to defamation attaching to the report see PARA 1040 note 5 ante.

15    Ibid Sch 3 para 7(1)(a), (2). In conducting the review, the designated body must comply with any particular requirements imposed by the Secretary of State or the Assembly: Sch 3 para 7(3).

16    Ibid Sch 3 para 7(1)(b), (2). As to privilege in relation to defamation attaching to the report see PARA 1040 note 5 ante.

17    Ibid Sch 3 para 7(2).

18    Ibid Sch 3 para 8. The provisions referred to in the text are those under Pt 2 (ss 11-21).

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#### **1044. Duration of designation of the operator of a student complaints scheme.**

The designation of a body as operator of a student complaints scheme<sup>1</sup> continues until it is terminated in accordance with the following provisions<sup>2</sup>.

The designation is terminated if the designated operator<sup>3</sup> and the Secretary of State<sup>4</sup> or the National Assembly for Wales<sup>5</sup> (as the case may be) make an agreement which specifies a date when the designation is to terminate<sup>6</sup>. In such a case, the designation is terminated on the date specified in the agreement<sup>7</sup>. Such an agreement may not be varied or cancelled<sup>8</sup>.

The designation is terminated if the designated operator gives the Secretary of State or the Assembly (as the case may be) notice which specifies a date when the designation is to terminate<sup>9</sup>. In such a case, the designation is terminated on the date specified in the notice<sup>10</sup>. Such notice may not be varied or revoked<sup>11</sup>.

The designation is terminated if the Secretary of State or the Assembly (as the case may be) gives the designated operator notice which specifies a date when the designation is to terminate<sup>12</sup>. However, such notice may not be given unless the Secretary of State or the Assembly is no longer satisfied that the designated operator meets all of the conditions to be met by an operator of the student complaints scheme<sup>13</sup>, or is satisfied that the designated operator has failed to comply with the duties required of him<sup>14</sup>. In such a case, the designation is terminated on the date specified in the notice<sup>15</sup>. Such notice may not be varied or revoked<sup>16</sup>.

The designation is terminated if the designated operator ceases to exist<sup>17</sup>. In such a case, the designation is terminated on the date when the operator ceases to exist<sup>18</sup>.

Where the designated operator and the Secretary of State or the Assembly have made an agreement<sup>19</sup>, the designated operator has given notice<sup>20</sup>, or where the Secretary of State or the Assembly has given notice<sup>21</sup>: (1) the designated operator and the Secretary of State or the Assembly may not make an agreement or a new agreement<sup>22</sup>; (2) the designated operator may not give a notice or a new notice<sup>23</sup>; and (3) the Secretary of State or the Assembly may not give a notice<sup>24</sup> (except in accordance with specified conditions<sup>25</sup>) nor give a new notice<sup>26</sup>. The original instrument of termination is superseded only if notice is given in accordance with the conditions mentioned in head (3) *supra*<sup>27</sup>, or if the designation in question is terminated where the operator ceases to exist<sup>28</sup>.

If the designation of a body is terminated, the Secretary of State or the Assembly must publish notice of the termination in such manner as he or it thinks fit<sup>29</sup>.

Where an agreement to terminate a designation has been made<sup>30</sup>, notice to terminate a designation has been given<sup>31</sup>, or the designated operator has ceased to exist<sup>32</sup>, the Secretary of State (in relation to England) or, as the case requires, the Assembly (in relation to Wales) may by order<sup>33</sup> make such provision as he or it thinks fit for, or in connection with, the review of qualifying complaints<sup>34</sup>. Such provision includes any one or more of the following:

- 1917 (a) provision requiring the designated operator to provide the scheme<sup>35</sup> in accordance with specified<sup>36</sup> requirements<sup>37</sup>;
- 1918 (b) provision modifying, or requiring the designated operator to modify, the provisions of the scheme<sup>38</sup>;
- 1919 (c) provision about the fees payable under the scheme, including provision requiring the repayment of fees already paid<sup>39</sup>;

- 1920 (d) provision for a specified person<sup>40</sup> to take over provision of the scheme<sup>41</sup>;  
 1921 (e) provision for any provision relating to the review of student complaints<sup>42</sup> that applies in relation to a scheme provided by the designated operator to apply, with or without modifications, in relation to a scheme provided by a person specified by virtue of head (d) above<sup>43</sup>;  
 1922 (f) provision for a specified person<sup>44</sup> to review qualifying complaints, or specified descriptions of qualifying complaints, otherwise than under the scheme<sup>45</sup>;  
 1923 (g) provision requiring the payment of fees by the governing bodies<sup>46</sup> of qualifying institutions<sup>47</sup> to a person specified by virtue of head (f) above<sup>48</sup>;  
 1924 (h) provision requiring the designated operator to provide such information and assistance as the Secretary of State or the Assembly considers necessary for the Secretary of State or the Assembly to make provision where the designation of the operator ceases or for any person to comply with, or act under or in accordance with, such provision<sup>49</sup>.

1 le the designation of a body corporate under the Higher Education Act 2004 s 13 (see PARA 1041 ante). As to bodies corporate see generally COMPANIES; CORPORATIONS.

2 Ibid s 16(1), Sch 4 para 1. The text refers to the provisions of Sch 4.

3 For the meaning of 'designated operator', in relation to an institution in England, see PARA 1041 note 4 ante; and for the meaning of 'designated operator', in relation to an institution in Wales, see PARA 1041 note 7 ante.

4 As to the Secretary of State see PARA 52 ante.

5 As to the National Assembly for Wales see PARA 53 ante.

6 Higher Education Act 2004 Sch 4 para 2.

7 Ibid Sch 4 para 3.

8 Ibid Sch 4 para 13(1). Accordingly, such an agreement continues in force until the designation is terminated in accordance with the agreement, or until the agreement is superseded in accordance with Sch 4 para 12 (see the text and notes 27-28 infra): Sch 4 para 13(2).

9 Ibid Sch 4 para 4(1). Such notice is valid only if the period between the date when the notice is given, and the date specified in the notice, is one year or longer: Sch 4 para 4(2).

10 Ibid Sch 4 para 5.

11 Ibid Sch 4 para 14(1). Accordingly, such notice continues in force until the designation is terminated in accordance with the notice, or until the notice is superseded in accordance with Sch 4 para 12 (see the text and notes 27-28 infra): Sch 4 para 14(2).

12 Ibid Sch 4 para 6(1). Notice under Sch 4 para 6 is valid only if the period between the date when the notice is given, and the date specified in the notice, is such as the Secretary of State or the Assembly considers reasonable: Sch 4 para 6(3).

13 Ibid Sch 4 para 6(2)(a). The text refers to the conditions set out in s 13(3)(a), Sch 1 (see PARA 1042 ante).

14 Ibid Sch 4 para 6(2)(b). The text refers to a failure to comply with s 14 (see PARA 1043 ante).

15 Ibid Sch 4 para 7.

16 Ibid Sch 4 para 14(1). Accordingly, such notice continues in force until the designation is terminated in accordance with the notice, or until the notice is superseded in accordance with Sch 4 para 12 (see the text and notes 27-28 infra): Sch 4 para 14(2).

17 Ibid Sch 4 para 8.

18 Ibid Sch 4 para 9.



19 Ibid Sch 4 para 10(1)(a). The text refers to an agreement under Sch 4 para 2 (see the text and notes 3-6 supra).

20 Ibid Sch 4 para 10(1)(b). The text refers to notice given under Sch 4 para 4 (see the text and note 9 supra).

21 Ibid Sch 4 para 10(1)(c). The text refers to notice given under Sch 4 para 6 (see the text and notes 12-14 supra).

22 Ibid Sch 4 para 11(1)(a). The text refers to an agreement or a new agreement under Sch 4 para 2 (see the text and notes 3-6 supra).

23 Ibid Sch 4 para 11(1)(b). The text refers to notice or a new notice under Sch 4 para 4 (see the text and note 9 supra).

24 Ie under ibid Sch 4 para 6 (see the text and notes 12-14 supra).

25 The Secretary of State or the Assembly may give a notice under ibid Sch 4 para 6 (see the text and notes 12-14 supra) if: (1) the original instrument of termination is an agreement under Sch 4 para 2 (see the text and notes 3-6 supra) or a notice under Sch 4 para 4 (see the text and note 9 supra); and (2) the termination date specified in the notice under Sch 4 para 6 falls before the termination date specified in the original instrument of termination: Sch 4 para 11(2). For the purposes of Sch 4 Pt 2 paras 10-14, 'original instrument of termination' means the agreement or notice referred to in Sch 4 para 10(1) (see the text and notes 19-21 supra); and 'termination date' means the date specified in an agreement under Sch 4 para 2, or notice under Sch 4 para 4 or Sch 4 para 6, as the date when the designation in question is to terminate: Sch 4 para 10(2).

26 Ibid Sch 4 para 11(1)(c). The text refers to a new notice given under Sch 4 para 6 (see the text and notes 12-14 supra).

27 Ibid Sch 4 para 12(a). The text refers to notice given under Sch 4 para 6 (see the text and notes 12-14 supra) in accordance with Sch 4 para 11(2) (see note 25 supra): Sch 4 para 12(a).

28 Ibid Sch 4 para 12(b). The text refers to termination in accordance with Sch 4 para 8 (see the text and note 17 supra): Sch 4 para 12(b).

29 Ibid s 16(2).

30 Ibid s 18(1)(a). The text refers to an agreement to terminate under Sch 4 para 2 (see the text and notes 3-6 supra).

31 Ibid s 18(1)(b). The text refers to a notice to terminate given under Sch 4 para 4 (see the text and note 9 supra) or Sch 4 para 6 (see the text and notes 12-14 supra).

32 Ibid s 18(1)(c).

33 Any statutory instrument containing an order made by the Secretary of State under ibid s 18 is subject to annulment in pursuance of a resolution of either House of Parliament: see s 47(2); and PARA 764 note 9 ante. At the date at which this volume states the law, no order had been made under s 18.

34 Ibid s 18(1). For the meaning of 'qualifying complaint' see PARA 1040 note 3 ante.

35 For the purposes of ibid s 18, 'the scheme' means the scheme for the review of qualifying complaints that the designated operator provides or has been providing: s 18(4).

36 For these purposes, 'specified' means specified in an order under ibid s 18: s 18(4). See note 33 supra.

37 Ibid s 18(2)(a).

38 Ibid s 18(2)(b).

39 Ibid s 18(2)(c).

40 The Secretary of State or the National Assembly for Wales may be specified by virtue of ibid s 18(2)(d): s 18(3).

41 Ibid s 18(2)(d).

42 Ie any provision of ibid Pt 2 (ss 11-21).

43 Ibid s 18(2)(e).

44 The Secretary of State or the National Assembly for Wales may not be specified by virtue of ibid s 18(2)(f): s 18(3).

45 Ibid s 18(2)(f).

46 For the meaning of 'governing body' see PARA 1040 note 1 ante.

47 For the meaning of 'qualifying institution' see PARA 1040 note 2 ante.

48 Higher Education Act 2004 s 18(2)(g).

49 Ibid s 18(2)(h).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/8. STUDENTS/(2) STUDENT SUPPORT/(i) The Statutory System for providing Financial Support for Students/A. INTRODUCTION/1045. The statutory framework.

## **(2) STUDENT SUPPORT**

### **(i) The Statutory System for providing Financial Support for Students**

#### **A. INTRODUCTION**

##### **1045. The statutory framework.**

The current system governing the provision of financial support for students, under which the Secretary of State<sup>1</sup> may make grants or loans for the purpose, was introduced as from 16 July 1998 by Chapter I of Part II of the Teaching and Higher Education Act 1998<sup>2</sup>. This system replaced the system formerly operated under the Education Act 1962 (and related provisions), which regulated the making of awards and grants by local authorities<sup>3</sup>, and the system under the Education (Student Loans) Act 1990, which made provision in connection with the making of loans to students in higher education<sup>4</sup>.

The former legislation continues, however, to have effect in certain circumstances. The Education Act 1962 and its associated provisions, and any subordinate legislation made or to be made thereunder, continue to have effect with respect to or otherwise in connection with awards bestowed before 1 January 1999 or to the bestowing of awards, or awards bestowed, on any student attending prescribed courses<sup>5</sup>. The Education (Student Loans) Act 1990 and subordinate legislation made or to be made thereunder continue to have effect in relation to loans made before 13 August 1998 or to the making of loans to students attending prescribed courses<sup>6</sup>. The provisions of the Education (Student Loans) Act 1990 relating to the assignment of public sector loans and the making of arrangements in connection with such assignments<sup>7</sup> continue in operation<sup>8</sup>.

Provision is made for the Secretary of State to repay amounts payable in respect of loans received under the Education (Student Loans) Act 1990<sup>9</sup> or under the Teaching and Higher Education Act 1998<sup>10</sup> by eligible persons who fulfil prescribed conditions<sup>11</sup>. Provision is made also for reducing or extinguishing the amounts payable in respect of such loans by such persons<sup>12</sup>.

<sup>1</sup> As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>2</sup> Ie the Teaching and Higher Education Act 1998 Pt II Ch I (ss 22-28) (as amended): see PARA 1046 et seq post. As to grants made to Higher Education Funding Councils see PARA 757 ante.

<sup>3</sup> The legislation regulating the making of grants and awards by local authorities (ie the Education Act 1962 ss 1-4, Sch 1, and provisions of the Education Act 1973, the Education (Fees and Awards) Act 1983, and the Education Reform Act 1988) was repealed by the Teaching and Higher Education Act 1998 s 44(2), Sch 4, with effect from 1 January 1999: see the Teaching and Higher Education Act 1998 (Commencement No 4 and Transitional Provisions) Order 1998, SI 1998/3237, art 2.

The Education Act 1962 imposed a duty on every local education authority, subject to and in accordance with regulations, to bestow on persons who were ordinarily resident in the area of the authority awards in respect of their attendance at any course which was provided by a university, college or other institution in the United Kingdom or by such a university, college or institution in conjunction with a university, college or other institution in another country and was designated as being: (1) a full-time course which was either a first degree

course or comparable to a first degree course; (2) a full-time course for the diploma of higher education; (3) a course for the initial training of teachers; or (4) a full-time course for the higher national diploma, or for the higher national diploma of the Business and Technician Education Council: see s 1(1)-(3) (s 1(1)-(3) substituted by the Education Act 1980 s 19, Sch 5; and the Education Act 1962 s 1(3) amended by the Education (Grants and Awards) Act 1984 s 4; and by virtue of the Education Act 1996 s 582(1), Sch 37 para 4). For the purposes of the exercise of any power or the performance of any duty conferred or imposed by or under any of the provisions of the Education Act 1962 ss 1-3 (as substituted and amended), it is immaterial whether an award is designated by that name or as a scholarship, studentship, exhibition or bursary or by any similar description or in what terms the bestowal of an award is expressed: s 4(1) (substituted by the Education Act 1980 Sch 5). In the Education Act 1962 ss 1-3 (as substituted and amended), any reference to an institution other than a university or college includes a reference to an institution providing a course which qualifies for funding under the Education Act 1994 Pt I (ss 1-19) (as amended): Education Act 1962 s 4(1A) (added by the Education Act 1994 s 24, Sch 2 para 2).

Provision for the reimbursement by the Secretary of State of amounts paid under the Education Act 1962 s 1(1) (as substituted) was made by the Education Reform Act 1988 s 209. The duty to bestow awards did not arise in relation to a person who did not possess prescribed qualifications (Education Act 1962 s 1(4) (substituted by the Education Act 1980 Sch 5)), and provision was made for the conditions and exceptions subject to which the duty was to have effect to be prescribed (Education Act 1962 s 1(5) (substituted by the Education Act 1980 Sch 5)). As to the power to withdraw an award see *Bristol City Council v Dookwah* [1999] ELR 174, CA. As to supplementary provision in connection with the prescribing of conditions and exceptions see the Education Act 1962 s 1(7) (substituted by the Education Act 1980 Sch 5).

Provision for the bestowal of discretionary awards was made by the Education Act 1962 s 1(6) (substituted by the Education Act 1980 Sch 5). As to the exercise of the authority's discretion see *R v Southwark London Borough Council, ex p Udu* [1996] ELR 390, CA; *R v Birmingham City Council, ex p Aghar* (20 February 1996, unreported); *R v Shropshire County Council, ex p Jones* [1997] ELR 357; *R v Bedfordshire County Council, ex p Quick* (6 October 1997, unreported); *R v Birmingham City Council, ex p Reece* [1999] ELR 373.

The Education (Fees and Awards) Act 1983 s 2 (as amended) (see PARA 1055 post), which gives the Secretary of State power to make regulations as to eligibility for discretionary awards which differentiate between United Kingdom and overseas students, was applied to awards under the Education Act 1962 s 1(6) (as substituted) by the Education (Fees and Awards) Act 1983 s 2(3)(a) (repealed).

As to the persons to be treated as 'ordinarily resident' for the purposes of the Education Act 1962 s 1(1) (as substituted) see s 1(8), Sch 1 (both substituted by the Education Act 1980 Sch 5; and the Education Act 1962 Sch 1 amended by the Education Act 1996 s 582(1), Sch 37 Pt I). See also *Shah v Barnet London Borough Council* [1983] 2 AC 309, [1983] 1 All ER 226, HL; *R v Nottinghamshire County Council, ex p Jain* [1989] COD 442, Independent, 23 January, DC.

The regulations having effect for the various purposes of the Education Act 1962 s 1 (as substituted and amended) and Sch 1 (as substituted and amended) are the Education (Mandatory Awards) Regulations 2003, SI 2003/1994 (amended by SI 2004/1038; SI 2004/1792; SI 2005/2083). Any enactment contained in the Education Act 1962 ss 1-3 (as substituted and amended) which required or authorised the making of regulations is construed as requiring or authorising regulations to be made by the Secretary of State; and regulations made for the purposes of any such enactment could make different provision for different cases to which that enactment was applicable: s 4(2) (substituted by the Education Act 1980 Sch 5). Any power to make regulations under the Education Act 1962 ss 1-3 (as substituted and amended) was exercisable by statutory instrument, and any statutory instrument containing any such regulations was subject to annulment in pursuance of a resolution of either House of Parliament: s 4(4) (substituted by the Education Act 1980 Sch 5).

The Education Act 1973 s 3 (amended by the Children Act 1975 s 108(1)(b), Sch 4) empowered the Secretary of State by regulations to make provision for the payment by him, to persons on whom awards had been bestowed by a local education authority under the Education Act 1962 s 1 (as substituted and amended), of certain additional allowances for the purpose of enabling such persons to take advantage without hardship of their awards in certain cases. The regulations having effect for these purposes are the Education (Mandatory Awards) Regulations 2003, SI 2003/1994 (amended by SI 2004/1038; SI 2004/1792; SI 2005/2083).

The Education Act 1962 s 2 (substituted by the Education Act 1980 Sch 5) made provision empowering local education authorities to bestow awards on persons over compulsory school age (including persons undergoing training as teachers) in respect of their attendance at certain courses of full-time or part-time education which were not courses of primary or secondary education. For the purposes of the Education Act 1962 s 2 (as substituted), 'training' (in relation to training as a teacher) included further training, whether the person undergoing the further training was already qualified as a teacher or not, and any reference to a person undergoing training included a person admitted or accepted by the appropriate university, college or other authorities for undergoing that training: s 4(5) (substituted by the Education Act 1980 Sch 5; and amended by the Education (No 2) Act 1986 s 67(4), Sch 4 para 3). As to the exercise of an authority's discretion in this regard see *R v Warwickshire County Council, ex p Collymore* [1995] ELR 217; *R v Warwickshire County Council, ex p Williams* [1995] ELR 326. Provision was made for authorising the Secretary of State to bestow awards on persons in respect of their attendance at designated postgraduate courses and on persons of prescribed ages in respect of their attendance at courses provided by certain grant-aided institutions and institutions designated

as colleges providing long-term residential courses of full-time education for adults: see the Education Act 1962 s 3 (substituted by the Education Act 1980 Sch 5; and amended by the Education (No 2) Act 1986 s 67(6), Sch 6, Pt I; and the Education Act 1996 s 582(1), Sch 37 para 5). The regulations having effect for the various purposes of the Education Act 1962 s 3 (as substituted and amended) are the State Awards Regulations 1978, SI 1978/1096 (amended by SI 1979/333; SI 1983/188; SI 1983/920; SI 1987/1365; SI 1988/1392; SI 1991/831); and the State Awards (State Bursaries for Adult Education) (Wales) Regulations 1979, SI 1979/333 (amended by SI 1983/1274; SI 1983/1747; SI 1991/1079; SI 2005/3302). Without prejudice to the provisions of the Education Act 1962 s 4(2) (as substituted), regulations under s 3 (as substituted and amended) could make in relation to persons ordinarily resident in Wales provision different from that made in relation to persons so resident in England: s 4(3) (substituted by the Education Act 1980 Sch 5; and amended by the Education (No 2) Act 1986 s 67(4), Sch 4 para 3).

4 The Education (Student Loans) Act 1990 was repealed by the Teaching and Higher Education Act 1998 s 44(2), Sch 4, with effect from 13 August 1998: see the Teaching and Higher Education Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2004, art 2. The Education (Student Loans) Acts 1996 and 1998, which amended the Education (Student Loans) Act 1990, were also repealed as from that date.

The Education (Student Loans) Act 1990 empowered the Secretary of State to make arrangements for enabling eligible students to receive public sector student loans towards their maintenance out of money made available by him for that purpose: see s 1(1), (1B)(a) (s 1(1A), (1B) added by the Education (Student Loans) Act 1996 s 1, Schedule paras 1, 2(1), (2)). For these purposes, 'eligible students' were those who: (1) were attending courses of higher education of at least one academic year's duration and were at institutions receiving support from public funds or (being at other institutions) were designated by or under regulations made by the Secretary of State; and (2) satisfied other prescribed conditions: see the Education (Student Loans) Act 1990 s 1(2). The regulations having effect for these purposes are the Education (Student Loans) Regulations 1998, SI 1998/211 (amended by SI 1998/1676; SI 1998/2005; SI 1999/1784; SI 2000/1804; SI 2001/1627; SI 2002/1329; SI 2003/1647; SI 2004/1030; SI 2005/1718; SI 2005/2119). As to the making of regulations see the Education (Student Loans) Act 1990 s 1(7), (8). 'Courses of higher education' were defined as courses of any description as follows: (a) a first degree course; (b) a course for the further training of teachers or youth and community workers; (c) a course for the Diploma of Higher Education; (d) a course for the Higher National Diploma or Higher National Certificate of the Business and Technician Education Council or the Scottish Vocational Education Council; (e) a designated course for the initial training of teachers; (f) a course in preparation for a professional examination of a standard higher than that of examinations at advanced level for the General Certificate of Education or the examination at higher level for the Scottish Certificate of Education, or the examination for the National Certificate or the National Diploma of the Business and Technician Education Council or the Scottish Vocational Education Council, not being a course for entry to which a first degree (or equivalent qualification) is normally required; (g) a course providing education (whether or not in preparation for an examination) the standard of which is higher than that of courses providing education in preparation for any of the examinations mentioned in head (f) *supra* but not higher than that of a first degree course, and for entry to which a first degree (or equivalent qualification) is not normally required: see s 1(3), Sch 1. Provision was made for the amendment of Sch 1 by order (see s 1(4), (6)) but no such amendments were made. 'Institutions receiving support from public funds' were defined as: universities and other institutions receiving grants; institutions maintained by local education authorities in exercise of their further and higher education functions; institutions receiving recurrent grants towards their costs from a further education funding council; institutions receiving recurrent grants towards their costs under regulations; the Queen's University of Belfast; the University of Ulster; a college of education in Northern Ireland; and institutions providing further education in Northern Ireland (see s 1(3) (amended by the Further and Higher Education Act 1992 s 93(1), Sch 8 para 67; the Education Act 1994 s 24, Sch 2 para 9; and the Education Act 1996 s 582(1), Sch 37 para 98)); and, to the extent that the Education (Student Loans) Act 1990 continues in force, they include institutions which receive financial resources under the Learning and Skills Act 2000 s 5 (as amended) (see PARA 1092 *post*) or s 34 (see PARA 1132 *post*) (see s 151(3), Sch 10 para 18). For these purposes, 'university' includes a university college and any college or institution in the nature of a college, in a university: Education (Student Loans) Act 1990 s 4(3).

The Secretary of State was also empowered, in pursuance of arrangements with persons by whom private sector student loans (ie loans made to eligible students towards their maintenance otherwise than out of money made available by the Secretary of State) were made, to pay subsidy to those persons in respect of such loans: see s 1(1A), (1B)(b) (as so added). As to provision in relation to the administration of both public sector and subsidised private sector student loans see s 1(5) (amended by the Education (Student Loans) Act 1996 s 1(2), Schedule paras 1, 2(1), (3)); the Education (Student Loans) Act 1990 Sch 2 (amended by the Education (Student Loans) Act 1996 s 1(2), Sch 2; and the Education (Student Loans) Act 1998 ss 2, 3(1)-(3)); and the Education (Student Loans) Act 1998 s 3(4), (5). As to provision in connection with the application to Northern Ireland and the financing of the statutory provisions for the making and administration of student loans see the Education (Student Loans) Act 1990 ss 2-3; the Education (Student Loans) Act 1996 ss 2-3; and the Education (Student Loans) Act 1998 ss 4-5.

The Education (Student Loans) Act 1990 s 1A (added by the Education (Student Loans) Act 1998 s 1) made provision in connection with the transfer of public sector student loans to the private sector. As to the continuing effect of this provision see the text and notes 7-8 *infra*.

5 See the Teaching and Higher Education Act 1998 (Commencement No 4 and Transitional Provisions) Order 1998, SI 1998/3237, art 3.

6 See the Teaching and Higher Education Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2004, art 3(1), (2)(a).

7 See the Education (Student Loans) Act 1990 s 1A (as added): see note 4 *supra*.

8 See the Teaching and Higher Education Act 1998 (Commencement No 2 and Transitional Provisions) Order 1998, SI 1998/2004, art 3(2)(b), (c).

9 See under the Education (Student Loans) Act 1990 s 1 (repealed): see the text and note 4 *supra*.

10 See under the Teaching and Higher Education Act 1998 s 22 (as amended): see PARAS 1046-1047 *post*.

11 See the Education Act 2002 s 186(1); and PARA 1054 *post*.

12 See *ibid* s 186(1); and PARA 1054 *post*.

## **UPDATE**

### **1045 The statutory framework**

NOTE 3--SI 2003/1994 further amended: SI 2005/3482, SI 2007/1629 (revoked), SI 2008/1477.

NOTE 4--SI 1998/211 further amended: SI 2006/929, SI 2007/1630, SI 2008/1479. SI 2005/1718 (revoked), SI 2005/2119 amended: SI 2006/929. Education (Student Loans) Act 1990 Sch 2 further amended: Apprenticeships, Skills, Children and Learning Act 2009 s 258(1)-(3).

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## ***B. FINANCIAL SUPPORT***

### **1046. Provision of financial support for students.**

Regulations<sup>1</sup> must make provision authorising or requiring the Secretary of State to make grants or loans, for any prescribed<sup>2</sup> purposes, to eligible students in connection with their undertaking higher education courses<sup>3</sup>, or further education courses<sup>4</sup>, which are designated<sup>5</sup> by or under the regulations<sup>6</sup>. Such regulations may, in particular, make provision:

- 1925 (1) for determining whether a person is an eligible student in relation to any available<sup>7</sup> grant or loan<sup>8</sup>;
- 1926 (2) prescribing, in relation to any such grant or loan and an academic year, the maximum amount available to any person for any prescribed purpose for that year<sup>9</sup>;
- 1927 (3) where the amount of any such grant or loan may vary to any extent according to a person's circumstances, for determining, or enabling the determination of the amount required or authorised to be paid to him<sup>10</sup>;
- 1928 (4) prescribing categories of attendance on higher education courses or further education courses which are to qualify for any purposes of the regulations<sup>11</sup>;
- 1929 (5) for any grant<sup>12</sup> to be made available on such terms and conditions as may be prescribed by, or determined by the Secretary of State under, the regulations, including terms and conditions requiring repayments to be made in circumstances so prescribed or determined<sup>13</sup>;
- 1930 (6) requiring the making of payments in respect of any such grant to be suspended or terminated in any such circumstances<sup>14</sup>;
- 1931 (7) prescribing requirements or other provisions, whether as to repayment or otherwise, which are for the time being to apply in relation to loans<sup>15</sup> (including requirements or other provisions taking effect during the currency of such loans so as to add to, or otherwise modify<sup>16</sup>, those for the time being applying in relation to the loans)<sup>17</sup>;
- 1932 (8) authorising grants in respect of fees<sup>18</sup> payable in connection with courses to be paid directly to institutions charging the fees<sup>19</sup>;
- 1933 (9) requiring prescribed amounts payable to eligible students under loans<sup>20</sup> to be paid directly to institutions to whom those persons are liable to make payments<sup>21</sup>;
- 1934 (10) modifying any enactment or instrument (whenever passed or made) so as to provide for the treatment, in connection with any calculation with respect to the income (however defined) of persons to whom grants or loans are made<sup>22</sup>, of amounts due from or payable to such persons under such grants or loans<sup>23</sup>;
- 1935 (11) for appeals with respect to matters arising under the regulations (including provision for determining, or enabling the determination of the procedure to be followed in connection with appeals)<sup>24</sup>.

1 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. See also note 6 infra. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations made under s 22 (as amended) see note 6 infra; and PARA 1047 note 1 post.

2 'Prescribed' means prescribed by regulations: *ibid* s 43(1). See note 1 *supra*.

3 For the purposes of *ibid* Pt II Ch I (ss 22-28) (as amended), 'higher education course' has the meaning given by regulations under s 22 (as amended): s 28(1). Regulations under s 22 (as amended) may provide for courses provided wholly or partly outside the United Kingdom to be higher education courses for the purposes of Pt II Ch I (as amended): s 28(2). As to the regulations made under s 22 (as amended) see note 6 *infra*; and PARA 1047 note 1 *post*.

4 For the purposes of *ibid* Pt II Ch I (as amended), 'further education course' has the meaning given by regulations under s 22 (as amended): s 28(1). Regulations under s 22 (as amended) may provide for courses provided wholly or partly outside the United Kingdom to be further education courses for the purposes of Pt II Ch I (as amended): s 28(2). As to the regulations made under s 22 (as amended) see note 6 *infra*; and PARA 1047 note 1 *post*.

5 *le* designated for the purposes of *ibid* s 22 (as amended).

6 *Ibid* s 22(1) (amended by the Learning and Skills Act 2000 s 146(1), (2)(a)). As to the transfer of the Secretary of State's functions in relation to the making or granting of loans to eligible students see PARA 1048 *post*. As to the delegation of such functions see PARA 1049 *post*. Provision for Northern Ireland corresponding to that made by ss 22-26, 28 (as amended) may be made under s 45. In relation to Wales, the functions of the Secretary of State under s 22 (as amended) have been transferred to the National Assembly for Wales, except so far as they relate to the making of any provision authorised by s 22(2)(a) (see head (1) in the text), s 22(2)(c) (see head (3) in the text), s 22(2)(j) (see head (10) in the text), s 22(2)(k) (see head (11) in the text), s 22(3)(e), s 22(3)(f) (as added) (see note 17 *infra*) or s 22(5) (as amended) (see PARA 1047 *post*): Higher Education Act 2004 s 44(1). The functions of the Secretary of State under the Teaching and Higher Education Act 1998 s 22 (as amended) are exercisable concurrently with the Assembly so far as they relate to the making in relation to Wales of any provision authorised by s 22(2)(a), s 22(2)(c), s 22(2)(k) (Higher Education Act 2004 s 44(2)); and regulations made under the Teaching and Higher Education Act 1998 s 22 (as amended) by the Secretary of State must provide that no provision made by virtue of s 22(5) (as amended) (see PARA 1047 *post*) is to apply in relation to any loan so made by the Assembly unless the Assembly has determined, in relation to any loan or description of loan, that repayments are to be collected by the Commissioners for Her Majesty's Revenue and Customs, and has given notice of that determination to the Secretary of State and to the person liable to make the repayments (Higher Education Act 2004 s 44(3); Commissioners for Revenue and Customs Act 2005 s 50(1)). The functions of the Secretary of State under the Teaching and Higher Education Act 1998 s 23 (as amended) (transfer or delegation of functions relating to student support: see PARA 1048 *post*) are transferred to the Assembly so far as they relate to functions which are exercisable by the Assembly under regulations under s 22 (as amended): Higher Education Act 2004 s 44(4). The Higher Education Act 2004 s 44(3), (4) are to come into force on 1 September 2006: see the Higher Education Act 2004 (Commencement No 2 and Transitional Provision) (Wales) Order 2005, SI 2005/1833, art 5. Until the commencement of the Higher Education Act 2004 s 44(4), the functions of the Secretary of State under the Teaching and Higher Education Act 1998 s 23(7)-(8) (see PARA 1048 *post*) are to be exercisable concurrently with the Assembly so far as they relate to payments to any body or person by whom there is exercisable any function that is, by virtue of the Higher Education Act 2004 s 44(1), (2), exercisable by the Assembly: s 44(5). See also note 18 *infra*; and PARA 53 note 21 *ante*. As to the National Assembly for Wales see PARA 53 *ante*. The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 *et seq*; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13. All statutory and other references to the Commissioners of Customs and Excise and their officers are, in so far as it is appropriate, now to be taken as references to the Commissioners for Her Majesty's Revenue and Customs and their officers: s 50(1), (2).

The regulations which apply in relation to the provision of support to students in relation to an academic year which begins on or after 1 September 2005, whether anything done is done before or after that date, are the Education (Student Support) Regulations 2005, SI 2005/52 (as amended): see reg 3(6). For these purposes, 'academic year' means the period of 12 months beginning on 1 January, 1 April, 1 July or 1 September of the calendar year in which the academic year of the course in question begins according to whether that academic year begins on or after 1 January and before 1 April, on or after 1 April and before 1 July, on or after 1 July and before 1 August, or on or after 1 August and on or before 31 December, respectively: reg 2(1). In addition to the general matters for which provision may be made by virtue of the Teaching and Higher Education Act 1998 s 22(2)-(4) (as amended) (see the text and notes 7-24 *infra*), the regulations make provision as to: the students eligible for support (see the Education (Student Support) Regulations 2005, SI 2005/52, Pt 2 (regs 4-7), Schs 2-3 (Sch 2 amended by SI 2005/1341; SI 2005/2084)), including the courses which are designated for the purposes of the Teaching and Higher Education Act 1998 s 22(1) (as amended) (see the Education (Student Support) Regulations 2005, SI 2005/52, reg 5, Sch 2 (Sch 2 as so amended)); the method of application for financial support (see Pt 3 (regs 8-10), Sch 4), including the provision of information to the Secretary of State (see reg 10); the eligibility of students for grants for fees (see Pt 4 (regs 11-12)); the eligibility of students for grants for living costs and the amounts of such grants (see Pt 5 (regs 13-23), Sch 5 (reg 13 amended by SI 2005/1341; the Education (Student Support) Regulations 2005, SI 2005/52, reg 18 amended by SI 2005/2084); and the



Education (Student Support) Regulations 2005, SI 2005/52, Sch 5 amended by SI 2005/1341; SI 2005/2084)); the eligibility of students for loans for living costs and the amounts of and applications for such loans (see the Education (Student Support) Regulations 2005, SI 2005/52, Pt 6 (regs 24-28) (reg 24 amended by SI 2005/1341)); financial assessments (see the Education (Student Support) Regulations 2005, SI 2005/52, Pt 7 (regs 29-30), Sch 5 (Sch 5 as so amended); the making of payments by the Secretary of State, including provision as to overpayments (see Pt 8 (regs 31-33)); the provision of support for part-time courses (see Pt 9 (regs 34-45), Schs 2-4 (reg 34 amended by SI 2005/1341; and the Education (Student Support) Regulations 2005, SI 2005/52, Sch 2 as so amended)); and support for postgraduate students with disabilities (see the Education (Student Support) Regulations 2005, SI 2005/52, Pt 10 (regs 46-54), Schs 2, 4 (reg 46 amended by SI 2005/1341; and the Education (Student Support) Regulations 2005, SI 2005/52, Sch 2 as so amended)). As to the test for eligibility in relation to students from outside the United Kingdom see *R (on the application of Haracoglou) v Department for Education and Skills* [2001] EWHC 678 (Admin), [2002] ELR 177 (test for determining residency was whether student would have been resident in the United Kingdom in any event, even if she had not been completing her degree course); Case C-209/03 *R (on the application of Bidar) v Ealing London Borough Council* [2005] QB 812, [2005] All ER (D) 235 (Mar), ECJ (national legislation could not make settlement a condition of eligibility while precluding a national of another member state from obtaining the status of settled person as a student) (both cases decided under previous legislation).

The following regulations made under the Teaching and Higher Education Act 1998 s 22 (as amended) provide for limited numbers of eligible applicants to receive financial support, in addition to that available under the Education (Student Support) Regulations 2005, SI 2005/52 (as amended), by reason of their attendance at certain designated courses: the Education (Student Support) (Dance and Drama) Regulations 1999, SI 1999/2263 (amended by SI 2001/2893); and the Education (Student Support) (European Institutions) Regulations 2000, SI 2000/2197 (amended by SI 2001/563; SI 2001/2892).

The Teaching and Higher Education Act 1998 s 42(2) (statutory instrument containing regulations to be subject to annulment by a resolution of either House of Parliament: see PARA 758 note 11 ante) did not apply to the first regulations made under s 22 (as amended), and no such regulations were to be made (whether alone or with other regulations) unless a draft of the statutory instrument containing the regulations had been laid before, and approved by a resolution of, each House of Parliament: s 42(4). Nor does s 42(2) apply to any other regulations under s 22 (as amended), a draft of which has been laid before, and approved by a resolution of, each House of Parliament: s 42(5) (substituted by the Higher Education Act 2004 s 49, Sch 6 para 9). The substitution made by Sch 6 para 9 comes into effect as from a day to be appointed under s 52(2). In relation to England, the appointed day is 14 January 2006: see the Higher Education Act 2004 (Commencement No 4) Order 2006, SI 2006/51, art 2. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales and until such a day is appointed the Teaching and Higher Education Act 1998 s 42(2) does not apply in relation to Wales to: (1) any regulations in relation to which s 22(7)(b) (repealed) applies (s 42(5)(a) (prospectively substituted)); or (2) to any other regulations under s 22 (as amended) a draft of which has been laid before, and approved by a resolution of, each House of Parliament (s 42(5)(b) (prospectively substituted)).

7     Ie available under *ibid* s 22 (as amended).

8     *Ibid* s 22(2)(a). In relation to Wales see note 6 *supra*.

9     *Ibid* s 22(2)(b).

10    *Ibid* s 22(2)(c). In relation to Wales see note 6 *supra*.

11    *Ibid* s 22(2)(d).

12    Ie under *ibid* s 22 (as amended).

13    *Ibid* s 22(2)(e).

14    *Ibid* s 22(2)(f).

15    Ie under *ibid* s 22 (as amended).

16    As to the meaning of 'modify' see PARA 833 note 16 *ante*.

17    Teaching and Higher Education Act 1998 s 22(2)(g). The provision which may be made by virtue of s 22(2)(g) in relation to loans under s 22 (as amended) includes provision: (1) for such loans to bear compound interest at such rates, and calculated in such manner, as may be prescribed from time to time (s 22(3)(a)); (2) for such loans to be repaid in such manner, at such times, and to such person or body as may be prescribed from time to time (s 22(3)(b)); (3) for the payment, in respect of amounts overpaid by borrowers, of interest at such rate, and calculated in such manner, as may be determined by the Secretary of State from time to time (s 22(3)(c)); (4) for a borrower not to be liable to make any repayment in respect of such a loan during such period as may be prescribed from time to time, or in such circumstances as may be so prescribed, including provision

for the cancellation of any further such liability of the borrower in any such circumstances (s 22(3)(d)); (5) with respect to sums which a borrower receives, or is entitled to receive, under such a loan after the commencement of his bankruptcy or the date of the sequestration of his estate (s 22(3)(e)); and (6) with respect to the effect of bankruptcy upon a borrower's liability to make repayments in respect of such a loan (whether the repayments relate to sums which the borrower receives, or is entitled to receive, before or after the commencement of the bankruptcy) (s 22(3)(f) (added by the Higher Education Act 2004 s 42(1))). As to heads (5) and (6) supra in relation to Wales see note 6 supra.

In relation to loans under the Teaching and Higher Education Act 1998 s 22 (as amended):

- 102 (a) the rates prescribed by regulations made in pursuance of s 22(3)(a) (see head (1) supra) must be no higher than those which the Secretary of State is satisfied are required to maintain the value in real terms of the outstanding amounts of such loans (s 22(4)(a)(i)) and must at no time exceed the specified rate for low interest loans (s 22(4)(a)(ii)); and
- 103 (b) such regulations may make provision, for the purpose of calculating the interest to be borne by such loans, for repayments by borrowers to be treated as having been made or received on such date or dates as may be prescribed by the regulations (s 22(4)(b)).

For the purposes of s 22(4)(a) (see head (a) supra), the Secretary of State must have regard to such index of prices as may be specified in, or determined in accordance with, regulations under s 22 (as amended): s 22(8) (amended by the Higher Education Act 2004 Sch 7). For the purposes of the Teaching and Higher Education Act 1998 s 22(4)(a), 'the specified rate for low interest loans' means the rate for the time being specified for the purposes of any exemption conferred by virtue of the Consumer Credit Act 1974 s 16(5)(b) (see CONSUMER CREDIT vol 9(1) (Reissue) PARA 101): Teaching and Higher Education Act 1998 s 22(9). As to the regulations having effect under s 22 (as amended) see note 6 supra; and PARA 1047 note 1 post.

18 For the purposes of *ibid* Pt II Ch I (as amended), 'fees', in relation to undertaking a course, means fees in respect of, or otherwise in connection with, undertaking the course, including admission, registration, tuition and graduation fees but excluding: (1) fees payable to an institution for awarding or accrediting any qualification where the institution does not provide the whole or part of the course and is not a publicly-funded institution; (2) fees payable for board or lodging; (3) fees payable for field trips (including any tuition element of such fees); (4) fees payable for attending any graduation or other ceremony; and (5) such other fees as may be prescribed: s 28(1) (amended by the Learning and Skills Act 2000 s 146(1), (5)). In connection with head (5) supra, the power to prescribe fees is exercisable by the Secretary of State or, in relation to Wales, the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672. See the Education (Student Fees) (Exceptions) (England) Regulations 1999, SI 1999/2265; and the Education (Student Fees) (Exceptions) (Wales) Regulations 1999, SI 1999/2862. As from a day to be appointed, the definition of 'fees' contained in the Teaching and Higher Education Act 1998 s 28(1) (as amended) is repealed by the Higher Education Act 2004 ss 49-50, Sch 6 para 8, Sch 7. In relation to England, the appointed day is 14 January 2006: see the Higher Education Act 2004 (Commencement No 4) Order 2006, SI 2006/51, art 2. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

As to the Secretary of State's power to impose conditions on the Higher Education Funding Councils with respect to the amounts of fees which may be charged by institutions in receipt of grants from the Councils see PARA 757 ante.

19 Teaching and Higher Education Act 1998 s 22(2)(h) (amended by the Learning and Skills Act 2000 ss 146(1), (2)(b), 153, Sch 11). For the power of the Secretary of State to modify the arrangements relating to the payments of grants in respect of fees payable in connection with attendance on the final honours year of first degree courses at higher education institutions in Scotland see PARA 1053 post.

20 *Ie* under the Teaching and Higher Education Act 1998 s 22 (as amended).

21 *Ibid* s 22(2)(i) (prospectively amended by the Higher Education Act 2004 s 43). The amendment made by s 43 is brought into effect as from a day to be appointed under s 52(2). In relation to England, the appointed day is 14 January 2006: see the Higher Education Act 2004 (Commencement No 4) Order 2006, SI 2006/51, art 2. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales and, until such a day is appointed, the words 'institutions to whom those persons are liable to make payments' should be read in relation to Wales as 'institutions who have previously made loans of any prescribed description to those persons'.

22 *Ie* under the Teaching and Higher Education Act 1998 s 22 (as amended).

23 *Ibid* s 22(2)(j). In relation to Wales see note 6 supra.

24 *Ibid* s 22(2)(k). In relation to Wales see note 6 supra.

## UPDATE

## **1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further PARA 1053A.

### **1046 Provision of financial support for students**

TEXT AND NOTES--The Consumer Credit Act 1974 (see CONSUMER CREDIT) does not regulate loans made in accordance with regulations under the Teaching and Higher Education Act 1998 s 22: Sale of Student Loans Act 2008 s 8(1). Section 8 must be treated as always having had effect: s 8(2).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--2004 Act s 44(4) now in force on 23 June 2006: SI 2005/1833 art 5 (substituted by SI 2006/1660). SI 2005/52 now replaced by the Education (Student Support) Regulations 2009, SI 2009/1555. In relation to Wales, see also the Assembly Learning Grants and Loans (Higher Education) (Wales) (No 2) Regulations 2008, SI 2008/3170 (amended by SI 2009/470, SI 2009/2156, SI 2009/2737), replaced on 1 September 2010 by Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008, SI 2009/2737.

SI 2000/2197 replaced: Education (Student Support) (European Institutions) (No 2) Regulations 2006, SI 2006/3156 (amended by SI 2007/1336, SI 2007/3344, SI 2008/1478, SI 2008/3054, SI 2009/1576); Assembly Learning Grants (European University Institute) (Wales) Regulations 2009, SI 2009/3359. See also Assembly Learning Grant (Further Education) Regulations 2007, SI 2007/2314; Assembly Learning Grant (Further Education) Regulations 2008, SI 2008/538 (amended by SI 2010/637); and Assembly Learning Grant (Further Education) Regulations 2009, SI 2009/2158 (amended by SI 2010/637), which make provision for a means tested grant for students in post-compulsory education who are ordinarily resident in Wales who are taking designated further education courses.

NOTE 17--Teaching and Higher Education Act 1998 s 22(3)(g), (h) added: Apprenticeships, Skills, Children and Learning Act 2009 s 257(2).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/8. STUDENTS/(2) STUDENT SUPPORT/(i) The Statutory System for providing Financial Support for Students/B. FINANCIAL SUPPORT/1047. Arrangements for the recovery of loans.

#### **1047. Arrangements for the recovery of loans.**

Regulations<sup>1</sup> may make such provision as the Secretary of State considers necessary or expedient in connection with the recovery of amounts due from borrowers under loans<sup>2</sup>. The regulations may include provision for:

- 1936 (1) imposing on employers<sup>3</sup>, or (as the case may be) such other persons or bodies as may be prescribed<sup>4</sup>, requirements with respect to: (a) the making of deductions in respect of amounts so due (or, in any prescribed circumstances, amounts assessed in accordance with the regulations to be so due) from emoluments payable to borrowers<sup>5</sup>; (b) the collection by other means of such amounts<sup>6</sup>; and (c) the transmission of amounts so deducted or collected to the Secretary of State in accordance with directions given by him<sup>7</sup>;
- 1937 (2) imposing on employers, or such other persons or bodies as may be prescribed, requirements with respect to the keeping and production of records for such purposes as may be prescribed<sup>8</sup>;
- 1938 (3) imposing on borrowers requirements with respect to the provision of such information<sup>9</sup> and the keeping and production of such documents and records<sup>10</sup> relating to their income as may be prescribed<sup>11</sup>;
- 1939 (4) requiring the payment, by persons or bodies to whom requirements imposed in pursuance of any of heads (1) to (3) above apply, of penalties in cases of non-compliance with such requirements (or penalties otherwise framed by reference to such requirements)<sup>12</sup>, and interest in respect of periods when such penalties are due but unpaid<sup>13</sup>;
- 1940 (5) requiring the payment by borrowers, in respect of periods when amounts due under their loans are unpaid, of interest<sup>14</sup> or both such interest and one or more surcharges (together with further interest in respect of periods when such surcharges are due but unpaid)<sup>15</sup>;
- 1941 (6) enabling the Secretary of State to require the reimbursement by borrowers of costs or expenses of any prescribed description incurred by him in connection with the recovery of unpaid amounts<sup>16</sup>;
- 1942 (7) applying or extending with or without modification<sup>17</sup>, for purposes connected with the recovery of amounts under regulations<sup>18</sup>, any of the provisions of the Taxes Acts<sup>19</sup> or of PAYE regulations<sup>20</sup>;
- 1943 (8) determining the priority as between certain deductions falling to be made by employers<sup>21</sup> and other deductions falling to be made from emoluments payable to borrowers<sup>22</sup>.

<sup>1</sup> 'Regulations' means regulations made by the Secretary of State under the Teaching and Higher Education Act 1998: s 43(1). As to the Secretary of State see PARA 52 ante. See also PARA 1046 note 6 ante. As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. The Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944 (as amended) apply to the repayment of student loans which have been made under the Teaching and Higher Education Act 1998. As to the making of such loans see PARA 1046 ante. In addition to the general matters for which provision may be made by virtue of the Teaching and Higher Education Act 1998 s 22(5) (as amended) (see the text and notes 2-22 infra), the regulations make provision as to the functions of Her Majesty's Revenue and Customs (see the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 4; and the Commissioners for Revenue and Customs Act 2005 s 50), inspectors and collectors (see the Education (Student Loans)

(Repayment) Regulations 2000, SI 2000/944, reg 5), service of documents (see reg 6), matters applicable to all repayments (see Pt II (regs 9-13E) (reg 9 amended by SI 2001/971; SI 2004/2752; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 10 amended by SI 2004/2752; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 11 amended by SI 2001/971; SI 2002/2087; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 13 amended by SI 2002/2087; SI 2004/2752; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, regs 13A-13E added by SI 2004/2752)), repayments by assessment to income tax (see the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, Pt III (regs 14-26) (reg 15 amended by SI 2001/971; SI 2002/2087; SI 2004/2752)), penalties (see the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 7), deductions of repayments by employers (see Pt IV (regs 27-52C) (regs 34, 40, 42-43 amended, and regs 39A-39B added, by SI 2001/971; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, regs 35, 43 amended by SI 2002/2087; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 36 amended by SI 2002/2859; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, regs 27, 32-33, 35, 38-43, 50, 51 amended, regs 52A-52C added, and reg 28 substituted, by SI 2004/1175; the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 29 amended by SI 2004/2752; and the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, regs 27, 35 amended, reg 28A added, and reg 50 substituted, by SI 2005/2690)), and repayments by overseas residents (see the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, Pt V (regs 53-57) (reg 55 amended by SI 2001/971; and the Education (Student Loans) (Repayment) Regulations 2000, SI 2000/944, reg 56 amended by SI 2004/2752)). See also PARA 1046 note 6 ante.

2 Teaching and Higher Education Act 1998 s 22(5). As to the transfer of the Secretary of State's functions in relation to the recovery of amounts due in respect of loans made to eligible students see PARA 1048 post. As to the delegation of such functions see PARA 1049 post. In relation to Wales, no provision made by virtue of s 22(5) (as amended) is to apply in relation to any loan made by the National Assembly for Wales unless the Assembly has been consulted: see the Higher Education Act 2004 s 44; and PARA 1046 note 6 ante.

3 For the purposes of the Teaching and Higher Education Act 1998 s 22(5) (as amended), 'employers' means persons who make payments of, or on account of, PAYE income (see INCOME TAXATION vol 23(1) (Reissue) PARA 754); s 22(6)(a) (amended by the Income Tax (Earnings and Pensions) Act 2003 s 722, Sch 6 Pt 2 para 236(b)).

4 'Prescribed' means prescribed by regulations: Teaching and Higher Education Act 1998 s 43(1).

5 Ibid s 22(5)(a)(i).

6 Ibid s 22(5)(a)(ii).

7 Ibid s 22(5)(a)(iii).

8 Ibid s 22(5)(b).

9 Ibid s 22(5)(c)(i).

10 Ibid s 22(5)(c)(ii).

11 Ibid s 22(5)(c).

12 See ibid s 22(5)(d)(i).

13 Ibid s 22(5)(d)(ii).

14 Ibid s 22(5)(e)(i). The interest in question is applied to such amounts at a rate calculated otherwise than in accordance with s 22(4)(a) (see PARA 1046 note 17 ante).

15 Ibid s 22(5)(e)(ii).

16 Ibid s 22(5)(f).

17 As to the meaning of 'modification' see PARA 833 note 16 ante.

18 Ie made by virtue of the Teaching and Higher Education Act 1998 s 22(5) (as amended).

19 For the meaning of 'the Taxes Acts' see the Taxes Management Act 1970 s 118(1) (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 21 (definition applied by the Teaching and Higher Education Act 1998 s 22(6)(b)).

20 Ibid s 22(5)(g) (amended by the Income Tax (Earnings and Pensions) Act 2003 Sch 6 Pt 2 para 236(a)). The PAYE regulations referred to in the text are made under the Income Tax (Earnings and Pensions) Act 2003 ss 684-685 (as amended): see INCOME TAXATION vol 23(1) (Reissue) PARA 755.

21 The deductions falling to be made by virtue of the Teaching and Higher Education Act 1998 s 22(5)(a)(i) (see head (1)(a) in the text).

22 Ibid s 22(5)(h). The other deductions referred to in the text are deductions falling to be made by virtue of other enactments (whenever passed): see s 22(5)(h).

## **UPDATE**

### **1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further PARA 1053A.

### **1047 Arrangements for the recovery of loans**

NOTE 1--SI 2000/944 replaced: Education (Student Loans) (Repayment) Regulations 2009, SI 2009/470, which contain provisions applicable to all repayments of loans (regs 9-27), and deal with repayments by assessment to income tax (regs 28-40), deduction of repayments by employers (regs 41-70), repayments by overseas borrowers (regs 71-79), and the effect of the insolvency of borrowers (reg 80).

NOTE 7--Regulations by virtue of the Teaching and Higher Education Act 1998 s 22(5)(a) (iii) may make provision for the transmission of amounts (1) by a specified person, or body, other than a borrower's employer; (2) to a loan purchaser; and (3) in accordance with directions given by the Secretary of State: Sale of Student Loans Act 2008 s 5(2).

NOTE 16--Regulations by virtue of the Teaching and Higher Education Act 1998 s 22(5) (f) may enable the Secretary of State to require the reimbursement of costs or expenses incurred by a loan purchaser: Sale of Student Loans Act 2008 s 5(3).

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#### **1048. Transfer of functions relating to student support.**

If the Secretary of State<sup>1</sup> so determines, any function<sup>2</sup> exercisable by him by virtue of provisions relating to the making of grants or loans to students or the recovery of amounts due in respect of such loans<sup>3</sup> is, to such extent as is specified in his determination, exercisable instead by such body as is so specified which is either<sup>4</sup>:

- 1944 (1) a local education authority for the purposes of the Education Act 1996<sup>5</sup>; or
- 1945 (2) the governing body of an institution with which eligible students<sup>6</sup> are undertaking courses<sup>7</sup>.

A body by whom any function is for the time being exercisable<sup>8</sup> must comply with any directions given by the Secretary of State as to the exercise of that function<sup>9</sup>.

The Secretary of State may pay, to any body or person by whom any transferred function is exercisable<sup>10</sup>, such amounts as he considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that body or person in making grants or loans<sup>11</sup>, or by way of administrative expenses, in, or in connection with, the exercise of that function<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante. See also PARA 1046 note 6 ante.

2 As to the meaning of 'functions' see PARA 774 note 30 ante. In relation to any function which, by virtue of the Teaching and Higher Education Act 1998 s 23(1) (as amended) is exercisable to a specified extent, references in any other provision of s 23 (as amended) to the exercise of that function are accordingly to its exercise to that extent: s 23(10). As to the delegation of the Secretary of State's functions see PARA 1049 post.

3 I.e. any function exercisable by virtue of regulations under *ibid* s 22 (as amended) (see PARAS 1046-1047 ante). 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations relating to the making of grants or loans to eligible students see PARA 1046 ante; and as to the regulations relating to the recovery of amounts due in respect of such loans see PARA 1047 ante.

4 *Ibid* s 23(1). As to the bringing of appeals arising out of the exercise of transferred functions see PARA 1050 post. See also PARA 1046 note 6 ante.

5 *Ibid* s 23(1)(a). As to local education authorities for the purposes of the Education Act 1996 (and other enactments) see PARA 20 ante.

6 I.e. within the meaning of the regulations listed in PARAS 1046-1047 ante.

7 Teaching and Higher Education Act 1998 s 23(1)(b) (amended by the Learning and Skills Act 2000 s 146(1), (3)).

8 I.e. by virtue of the Teaching and Higher Education Act 1998 s 23(1) (as amended).

9 *Ibid* s 23(2). Where any function is so exercisable by a local education authority, the functions are taken to be a function of that authority for the purposes of:

104 (1) in the case of an authority which is not operating executive arrangements, the Local Government Act 1972 s 101 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370) (Teaching and Higher Education Act 1998 s 23(3)(a) (s 23(3) substituted, in relation to England, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(t), 34(a); and, in relation

to Wales, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, arts 2(s), 33(a));

- 105 (2) the Deregulation and Contracting Out Act 1994 s 70 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 407) (Teaching and Higher Education Act 1998 s 23(3)(b) (as so substituted)); and
- 106 (3) in the case of an authority which is operating executive arrangements, the Local Government Act 2000 s 13 (see LOCAL GOVERNMENT vol 69 (2009) PARA 324) (Teaching and Higher Education Act 1998 s 23(3)(c) (as so substituted)); and accordingly: (a) if, or to the extent that, that function is the responsibility of the executive of that authority the Local Government Act 2000 ss 14-16 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 357-359), and any regulations made under ss 17-20 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 360-363), apply (Teaching and Higher Education Act 1998 s 23(3)(c)(i) (as so substituted)); or (b) if, or to the extent that, that function is not the responsibility of that executive, the Local Government Act 1972 s 101 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370) applies (Teaching and Higher Education Act 1998 s 23(3)(c)(ii) (as so substituted)).

For the meanings of 'executive arrangements' and 'executive' see the Local Government Act 2000 ss 10-11 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 303, 327); definitions applied by the Teaching and Higher Education Act 1998 s 23(11) (added, in relation to England, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, SI 2001/2237, arts 1(2), 2(t), 34(b); and, in relation to Wales, by the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Further Provisions) (Wales) Order 2002, SI 2002/808, arts 2(s), 33(b)).

10 Teaching and Higher Education Act 1998 s 23(7). A transferred function is a function which is exercisable by virtue of s 23(1) (as amended) (see the text and notes 1-7 supra). In relation to Wales see PARA 1046 note 6 ante.

11 le under *ibid* s 22 (as amended): see PARA 1046 ante.

12 *Ibid* s 23(7)(a). Any payment under s 23(7)(a) may be made subject to such terms and conditions as the Secretary of State may determine; and any such conditions may in particular: (1) require the provision of returns or other information before any such payment is made (s 23(8)(a)); and (2) relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid (s 23(8)(b)). In relation to Wales see PARA 1046 note 6 ante.

## UPDATE

### 1046-1053 Financial support

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further PARA 1053A.



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### **1049. Delegation of functions relating to student support.**

The Secretary of State<sup>1</sup> may make arrangements for any person or body specified in the arrangements to exercise on his behalf, to such extent as is so specified, any function<sup>2</sup> exercisable by him by virtue of provisions relating to the making of grants or loans to students or the recovery of amounts due in respect of such loans<sup>3</sup> (including any such function in relation to appeals)<sup>4</sup>. Any such arrangements do not prevent the Secretary of State from exercising the function in question himself<sup>5</sup>.

The Secretary of State may pay to any body or person by whom any delegated function is exercisable<sup>6</sup>: (1) such amounts as he considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that body or person in making grants or loans<sup>7</sup>, or by way of administrative expenses, in, or in connection with, the exercise of that function<sup>8</sup>; and (2) such remuneration as he may determine<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. See also PARA 1046 note 6 ante.

2 As to the meaning of 'functions' see PARA 774 note 30 ante. In relation to any function which, by virtue of the Teaching and Higher Education Act 1998 s 23(4) is exercisable to a specified extent, references in any other provision of s 23 (as amended) to the exercise of that function are accordingly to its exercise to that extent: s 23(10). As to the transfer of the Secretary of State's functions see PARA 1048 ante.

3 Ie any function exercisable by virtue of regulations under *ibid* s 22 (as amended) (see PARAS 1046-1047 ante). 'Regulations' means regulations made under the Teaching and Higher Education Act 1998: s 43(1). As to the making of regulations under the Teaching and Higher Education Act 1998 generally see PARA 758 note 11 ante. As to the regulations relating to the making of grants or loans to eligible students see PARA 1046 ante. As to the regulations relating to the recovery of amounts due in respect of such loans see PARA 1047 ante.

4 *Ibid* s 23(4). As to the bringing of appeals arising out of the exercise of delegated functions see PARA 1050 post. See also PARA 1046 note 6 ante.

5 *Ibid* s 23(5).

6 *Ibid* s 23(7). A delegated function is a function which is exercisable by virtue of s 23(4) (see the text and notes 1-4 *supra*).

7 Ie under *ibid* s 22 (as amended): see PARA 1046 ante.

8 *Ibid* s 23(7)(a). Any payment under s 23(7)(a) may be made subject to such terms and conditions as the Secretary of State may determine; and any such conditions may in particular: (1) require the provision of returns or other information before any such payment is made (s 23(8)(a)); and (2) relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid (s 23(8)(b)).

9 *Ibid* s 23(7)(b).

## **UPDATE**

### **1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further PARA 1053A.



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### **1050. Appeals relating to the exercise of transferred or delegated functions.**

The Secretary of State<sup>1</sup> may make provision for enabling appeals<sup>2</sup> to be made, to a person or body appointed by him for the purpose<sup>3</sup>, with respect to such matters arising out of the exercise by any person or body of any function<sup>4</sup> relating to the making of grants or loans to students or the recovery of amounts due in respect of such loans, transferred<sup>5</sup> or delegated<sup>6</sup> to him, as the Secretary of State may determine<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. See also PARA 1046 note 6 ante.

2 Teaching and Higher Education Act 1998 s 23(6).

3 Ibid s 23(6)(b). The Secretary of State may pay to any person or body appointed by him under s 23(6) such remuneration or administrative expenses (or both) as he may determine: s 23(9). See also PARA 1046 note 6 ante.

4 As to the meaning of 'functions' see PARA 774 note 30 ante. In relation to any function which, by virtue of the Teaching and Higher Education Act 1998 s 23(1) (as amended) (see PARA 1048 ante) or s 23(4) (see PARA 1049 ante) is exercisable to a specified extent, references in any other provision of s 23 (as amended) to the exercise of that function are accordingly to its exercise to that extent: s 23(10).

5 Ie in accordance with ibid s 23(1) (as amended): see PARA 1048 ante.

6 Ie in accordance with ibid s 23(4): see PARA 1049 ante.

7 Ibid s 23(6)(a).

## **UPDATE**

### **1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further PARA 1053A.

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### **1051. Information in connection with student loans.**

Any information which is held by the Commissioners for Her Majesty's Revenue and Customs<sup>1</sup> or held by a person providing services to those Commissioners and in connection with the provision of those services<sup>2</sup> may, for the purpose of enabling or assisting the recipient to exercise any function in connection with the operation of the student loans scheme<sup>3</sup>, be supplied to<sup>4</sup>:

- 1946 (1) the Secretary of State<sup>5</sup>;
- 1947 (2) any person or body acting on behalf of the Secretary of State under the delegation of functions provisions<sup>6</sup>; or
- 1948 (3) any authority or governing body by whom any function of the Secretary of State is for the time being exercisable to any extent by virtue of the transfer of functions provisions<sup>7</sup>.

Information so supplied<sup>8</sup> must not be supplied by the recipient to any other person or body unless it is supplied to a person or body to whom it could be so supplied<sup>9</sup>, or for the purposes of any civil or criminal proceedings arising out of the student loans scheme<sup>10</sup>. These provisions<sup>11</sup> extend only to the supply of information by or under the authority of the Commissioners for Her Majesty's Revenue and Customs<sup>12</sup>.

1 Teaching and Higher Education Act 1998 s 24(1)(a); Commissioners for Revenue and Customs Act 2005 s 50(1). The Commissioners for Her Majesty's Revenue and Customs are appointed under the Commissioners for Revenue and Customs Act 2005 s 1 and have taken over the functions of the former Inland Revenue and Her Majesty's Customs and Excise: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13. All statutory and other references to the Commissioners of Customs and Excise and their officers are, in so far as it is appropriate, now to be taken as references to the Commissioners for Her Majesty's Revenue and Customs and their officers: s 50(1), (2).

2 Teaching and Higher Education Act 1998 s 24(1)(b).

3 Ibid s 24(2). For the purposes of s 24, 'the student loans scheme' means the provisions of regulations under s 22 (see PARAS 1046-1047 ante) (or any corresponding Northern Ireland legislation), so far as having effect in relation to loans under s 22 (as amended), or regulations under the Education (Scotland) Act 1980 s 73(f) made with respect to loans: Teaching and Higher Education Act 1998 s 24(6)(c). Provision for Northern Ireland corresponding to that made by ss 22-26, 28 (as amended) may be made under s 45.

4 Ibid s 24(2). Section 24 does not limit the circumstances in which information may otherwise be supplied: s 24(5).

5 See ibid s 24(2)(a). Section 24(2) also makes provision for the supply of information to a corresponding Northern Ireland body. As to the Secretary of State see PARA 52 ante. See also PARA 1046 note 6 ante.

6 Ibid s 24(2)(b). See note 5 supra. 'The delegation of functions provisions' means s 23(4) (see PARA 1049 ante), or any corresponding Northern Ireland legislation, or the Education (Scotland) Act 1980 s 73A(3) (as added): Teaching and Higher Education Act 1998 s 24(6)(a). As to the meaning of 'functions' see PARA 774 note 30 ante.

7 Ibid s 24(2)(c). See note 5 supra. 'The transfer of functions provisions' means s 23(1) (as amended) (see PARA 1048 ante), or any corresponding Northern Ireland legislation, or the Education (Scotland) Act 1980 s 73A(1) (as added): Teaching and Higher Education Act 1998 s 24(6)(b).

8 le under ibid s 24(2). Section 24 does not limit the circumstances in which information may otherwise be supplied: s 24(5).

9 Ibid s 24(3)(a).

10 Ibid s 24(3)(b).

11 le ibid s 24(2), (3) (see the text and notes 1-10 supra).

12 Ibid s 24(4); Commissioners for Revenue and Customs Act 2005 s 50(1).

## **UPDATE**

### **1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further PARA 1053A.

### **1051 Information in connection with student loans**

TEXT AND NOTES--Teaching and Higher Education Act 1998 s 24(2)-(4) modified, s 24(7)-(11) added by the Sale of Student Loans Act 2008 s 7 so as to (1) enable the Commissioners for Her Majesty's Revenue and Customs to disclose information to the Secretary of State for the purposes of passing it to loan purchasers, potential purchasers (prior to an initial or onward sale), and other parties who may have a purpose connected with the sale of loans; and (2) extend the criminal sanction for wrongful disclosure of data set out in the Commissioners for Revenue and Customs Act 2005 s 19 (see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 920) to disclosure by the Commissioners of information under the Sale of Student Loans Act 2008. As to the meaning of 'loan purchaser' see PARA 335A.

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### **1052. Information in connection with student support.**

Regulations<sup>2</sup> may provide that a student support authority may supply student support information<sup>3</sup> of a prescribed<sup>4</sup> description to a prescribed person for a prescribed purpose<sup>5</sup>. Such regulations may also provide that information may be supplied under such regulations only if prescribed conditions are met<sup>6</sup>. Such regulations may not allow information to be supplied except with the consent of every individual to whom the information relates, given in such manner as may be prescribed<sup>7</sup>, unless the supply of information is for the purposes of any civil or criminal proceedings arising out of the student support scheme<sup>8</sup>.

None of the above limits the circumstances in which information may otherwise be supplied<sup>9</sup>.

2 For the purposes of the Higher Education Act 2004 s 45, 'regulations' means: (1) in relation to a student support authority falling within any of s 45(7)(a)-(c) (see heads (a)-(c) *infra*), regulations made by the Secretary of State; and (2) in relation to a student support authority falling within any of s 45(7)(d)-(f) (see heads (d)-(f) *infra*), regulations made by the National Assembly for Wales: s 45(8). 'Student support authority' means: (a) the Secretary of State (s 45(7)(a)); (b) any authority or governing body by whom any function of the Secretary of State is for the time being exercisable to any extent by virtue of the Teaching and Higher Education Act 1998 s 23(1) (as amended) (see PARA 1048 *ante*) (Higher Education Act 2004 s 45(7)(b)); (c) any person acting on behalf of the Secretary of State to any extent by virtue of the Teaching and Higher Education Act 1998 s 23(4) (see PARA 1049 *ante*) (Higher Education Act 2004 s 45(7)(c)); (d) the National Assembly for Wales (s 45(7)(d)); (e) any authority or governing body by whom any function of the Assembly is for the time being exercisable to any extent by virtue of the Teaching and Higher Education Act 1998 s 23(1) (as amended) (Higher Education Act 2004 s 45(7)(e)); and (f) any person acting on behalf of the Assembly to any extent by virtue of the Teaching and Higher Education Act 1998 s 23(4) (Higher Education Act 2004 s 45(7)(f)). At the date at which this volume states the law, no regulations had been made under s 45. As to the Secretary of State see PARA 52 *ante*; and as to the National Assembly for Wales see PARA 53 *ante*. See also PARA 1046 note 6 *ante*.

3 For the purposes of *ibid* s 45, 'student support information', in relation to a student support authority, means any information which the student support authority holds in connection with, or in consequence of, the exercise of any function relating to the operation of the student support scheme; and 'student support scheme' means the provisions of regulations under the Teaching and Higher Education Act 1998 s 22 (as amended) (see PARAS 1046-1047 *ante*): Higher Education Act 2004 s 45(8).

4 For the purposes of *ibid* s 45, 'prescribed' means prescribed by regulations: s 45(8).

5 *Ibid* s 45(1). A person may not be prescribed under s 45(1) unless the person: (1) is the governing body of an institution with which eligible students (as defined for the purposes of the student support scheme) are undertaking courses; or (2) is a person who appears to the Secretary of State or, as the case may be, the National Assembly for Wales to be exercising functions of a public nature: s 45(2). As to the eligibility of students see PARA 1046 *ante*.

6 *Ibid* s 45(5).

7 *Ibid* s 45(3).

8 *Ibid* s 45(4).

9 *Ibid* s 45(6).

## **UPDATE**

### **1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further *PARA 1053A*.

**1052 Information in connection with student support**

NOTE 2--See the Education (Supply of Student Support Information to Governing Bodies) Regulations 2006, SI 2006/141; and the Supply of Student Support Information to Governing Bodies (Wales) Regulations 2006, SI 2006/2828.

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### **1053. Power to ensure parity of provision as respects attendance at Scottish institutions.**

The Secretary of State<sup>1</sup> was required, not later than 16 January 1999<sup>2</sup>, to appoint an independent body to review the arrangements for England and Wales<sup>3</sup> relating to the payment of grants in respect of fees payable in connection with attendance on the final honours year of first degree courses at higher education institutions in Scotland<sup>4</sup>. The Secretary of State was required to invite the Scottish higher education principals, the Committee of Vice-Chancellors and Principals, and such other bodies as he considered appropriate, to make representations to such body, and the report of the body was required to be laid before each House of Parliament not later than 1 April 2000<sup>5</sup>.

In the event that that body recommended that such arrangements<sup>6</sup> should be modified<sup>7</sup>, the Secretary of State was empowered to modify those arrangements so as to secure that they were no less favourable than the arrangements made under corresponding Scottish legislation<sup>8</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. See also PARA 1046 note 6 ante.

2 I.e. six months after the Teaching and Higher Education Act 1998 was passed (ie received Royal Assent). The Act was passed on 16 July 1998.

3 For the purposes of *ibid* s 25(4), (6), any reference to the arrangements for England and Wales is a reference to arrangements made either under the Education Act 1962 (repealed) (see PARA 1045 ante) or under the Teaching and Higher Education Act 1998 s 22 (as amended) (see PARAS 1046-1047 ante). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

4 *Ibid* s 25(4). For the power of the Secretary of State to make arrangements relating to the payment of grants in respect of fees payable in connection with courses see PARA 1046 ante.

5 *Ibid* s 25(5). The report was published by the Stationery Office: see *Report of the Scottish Fee Support Review* (March 2000).

6 I.e. the arrangements referred to in the Teaching and Higher Education Act 1998 s 25(4) (see the text and notes 1-4 *supra*).

7 I.e. in accordance with *ibid* s 25(6). As to the meaning of 'modified' see PARA 833 note 16 ante.

8 *Ibid* s 25(6). The corresponding Scottish legislation is comprised of regulations under the Education (Scotland) Act 1980 s 73(f) for the payment of allowances in respect of fees payable as mentioned in the Teaching and Higher Education Act 1998 s 25(4) (see the text and notes 1-4 *supra*).

## **UPDATE**

### **1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further PARA 1053A.



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### **1053A. Sale of student loans.**

The Secretary of State may enter into arrangements ('transfer arrangements') under which rights of the Secretary of State in respect of student loans are transferred to another person ('the loan purchaser'): Sale of Student Loans Act 2008 s 1(1). 'Student loans' means loans made by the Secretary of State in accordance with regulations under the Teaching and Higher Education Act 1998 s 22 (see PARAS 1046-1047) ('loan regulations'): Sale of Student Loans Act 2008 s 1(2). Transfer arrangements may relate to specified loans or a specified class of loan or some or all of the Secretary of State's rights: s 1(3). Transfer arrangements may include provision (1) transferring to the loan purchaser an obligation of the Secretary of State in connection with a loan; (2) transferring to the loan purchaser the benefit of an obligation or undertaking of the borrower in respect of a loan, whether deriving from loan regulations or from arrangements agreed between the borrower and the Secretary of State in respect of the loan ('loan arrangements'); (3) for warranties or indemnities or other obligations of the Secretary of State; (4) enabling the Secretary of State to require a loan purchaser to make specified arrangements in connection with the administration of loans, whether by appointing a specified agent for specified purposes, or otherwise; (5) prohibiting the loan purchaser from making specified arrangements without the Secretary of State's consent; (6) specifying consequences of the breach of a provision of the transfer arrangements: s 1(4). Transfer arrangements are to have effect, and, in particular, a provision transferring rights or obligations is sufficient to effect the transfer: s 1(5). Transfer arrangements may be made without the borrower's consent and without notice to the borrower: s 1(6). The Secretary of State must take reasonable steps to notify the borrower within three months of transfer arrangements taking effect: s 1(7). A loan in respect of which transfer arrangements are made may be referred to as a 'transferred loan': s 1(8). For supplemental provision see s 2. By virtue of s 3, the purchaser has the right to sell the loans to another buyer after the initial sale, subject to any limits on that right specified in the terms of the original sales contract with the Secretary of State. After entering into transfer arrangements, the Secretary of State must lay before Parliament a report about the arrangements: see s 4. A reference in loan regulations to the Secretary of State as lender includes a reference to a loan purchaser: s 5(1). Amendments of loan regulations may have effect in respect of transferred loans: s 5(4). Section 5(4) includes amendments which have effect in respect of loans made before the amendments are made: s 5(5). But in amending loan regulations the Secretary of State must aim to ensure that no borrower whose loan is transferred is in a worse position, as the result of the amendment, than would have been the case had the loan not been transferred: s 5(6). Section 5(6) also applies to making or amending regulations under the Education Act 2002 s 186 (see PARA 1054): Sale of Student Loans Act 2008 s 5(7). Loan regulations, loan arrangements or transfer arrangements may include provision about repayment of loans to a loan purchaser: s 6(1). In particular, regulations or arrangements may provide for collection by a person acting on behalf of a loan purchaser or collection by Her Majesty's Commissioner for Revenue and Customs: s 6(2). A provision of loan regulations or loan arrangements which requires money to be paid to the Secretary of State or into the Consolidated Fund, whether as repayment, interest, charge or penalty, is to be treated in relation to a transferred loan as requiring payment to the loan purchaser, whether directly, through the Secretary of State or through another agent: s 6(3). Section 6(3) is subject to any provision included in transfer arrangements by virtue of s 2: s 6(4). Section 9 enables the Welsh ministers to sell their rights and obligations in relation to Welsh student loans.

**UPDATE**

**1046-1053 Financial support**

The Sale of Student Loans Act 2008 enables the Secretary of State to sell some or all existing rights and obligations relating to student loans: see further *PARA 1053A*.

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### ***C. ADJUSTMENT OF ARRANGEMENTS FOR THE RECOVERY OF STUDENT LOANS***

#### **1054. Student loans.**

Regulations<sup>1</sup> may make provision for:

- 1949 (1) the repayment by the Secretary of State of amounts payable in respect of certain loans<sup>2</sup>;
- 1950 (2) reducing or extinguishing the amounts payable in respect of certain loans<sup>3</sup>.

The regulations may, in particular, make provision:

- 1951 (a) for determining whether a person is eligible for the purposes of the regulations<sup>4</sup>;
- 1952 (b) prescribing the circumstances and manner in which, and the times at which, payments are to be made, or amounts are to be reduced or extinguished<sup>5</sup>;
- 1953 (c) allowing retrospective adjustments for the purposes of the regulations, including provision allowing the Secretary of State to require reimbursement of repayments, or to alter the amounts reduced or extinguished<sup>6</sup>;
- 1954 (d) for imposing on employers, or such other persons or bodies as may be prescribed, requirements with respect to information to be given to the Secretary of State<sup>7</sup>;
- 1955 (e) for the reimbursement by the Secretary of State of costs incurred by persons or bodies in complying with any such requirements<sup>8</sup>;
- 1956 (f) for appeals with respect to matters arising under the regulations (including provision for determining, or enabling the determination of the procedure to be followed in connection with the appeals)<sup>9</sup>.

The Secretary of State may make arrangements for any person or body specified in the arrangements to exercise on his behalf, to such extent as is so specified, any function exercisable by him by virtue of the regulations (including any such function in relation to appeals)<sup>10</sup>.

1 For the purposes of the Education Act 2002 s 186, 'regulations' means regulations made under s 186 by the Secretary of State: s 186(9). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 186 see the Education (Teacher Student Loans) (Repayment etc) Regulations 2002, SI 2002/2086; and the Education (Teacher Student Loans) (Repayment etc) Regulations 2003, SI 2003/1917 (amended by SI 2005/3309).

2 Education Act 2002 s 186(1)(a). The loans referred to in the text are: (1) loans received under arrangements made under the Education (Student Loans) Act 1990 s 1 (repealed) (see PARA 1045 ante) by eligible persons who fulfil prescribed conditions (Education Act 2002 s 186(2)(a)); (2) loans received under arrangements made under the Teaching and Higher Education Act 1998 s 22 (as amended) (see PARAS 1046-1047 ante) by eligible persons who fulfil prescribed conditions (Education Act 2002 s 186(2)(b)); (3) loans received for educational purposes under such other arrangements as may be prescribed by the regulations, including arrangements made outside England and Wales, by eligible persons who fulfil prescribed conditions (s

186(2)(c)). For the purposes of s 186, 'prescribed' means prescribed by regulations: s 186(9). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

3 Ibid s 186(1)(b). The loans referred to in the text are those mentioned in s 186(2)(a), (b) (see note 2 heads (1), (2) supra): s 186(1)(b).

4 Ibid s 186(3)(a). As to eligibility and applications for repayment or reduction see the Education (Teacher Student Loans) (Repayment etc) Regulations 2002, SI 2002/2086, regs 3-8; and the Education (Teacher Student Loans) (Repayment etc) Regulations 2003, SI 2003/1917, regs 3-8 (reg 4 amended by SI 2005/3309).

5 Education Act 2002 s 186(3)(b). As to repayment and reduction see the Education (Teacher Student Loans) (Repayment etc) Regulations 2002, SI 2002/2086, regs 11-13; and the Education (Teacher Student Loans) (Repayment etc) Regulations 2003, SI 2003/1917, regs 11-13.

6 Education Act 2002 s 186(3)(c). As to the regulations made see note 5 supra.

7 Ibid s 186(3)(d). As to the provision of information to the Secretary of State see the Education (Teacher Student Loans) (Repayment etc) Regulations 2002, SI 2002/2086, regs 9-10; and the Education (Teacher Student Loans) (Repayment etc) Regulations 2003, SI 2003/1917, regs 9-10.

8 Education Act 2002 s 186(3)(e). As to reimbursement see the Education (Teacher Student Loans) (Repayment etc) Regulations 2002, SI 2002/2086, reg 14; and the Education (Teacher Student Loans) (Repayment etc) Regulations 2003, SI 2003/1917, reg 14.

9 Education Act 2002 s 186(3)(f).

10 Ibid s 186(4). Any arrangements made under s 186(4) do not prevent the Secretary of State from exercising the function in question himself: s 186(5). The Secretary of State may pay to any person or body by whom any function is exercisable by virtue of s 186(4) such amounts as he considers appropriate for the purpose of meeting expenditure incurred or to be incurred by that person or body in, or in connection with, the exercise of that function: s 186(6). Any payment under s 186(6) may be made subject to such terms and conditions as the Secretary of State may determine: s 186(7). Such conditions may in particular: (1) require the provision of returns or other information before any such payment is made; (2) relate to the use of the amount paid or require the repayment in specified circumstances of all or part of the amount paid: s 186(8).

## UPDATE

### 1054 Student loans

NOTE 1--SI 2002/2086 amended, SI 2003/1917 further amended: SI 2005/3238.

NOTE 4--SI 2002/2086 reg 4 amended, SI 2003/1917 reg 4 further amended: SI 2005/3238.

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## **(ii) Eligibility for Financial Awards**

### **1055. Making of discretionary awards.**

The Secretary of State<sup>1</sup> may, as respects any awards (however described) as may be specified by regulations, being awards in connection with courses of education or training or the undertaking of research, make regulations authorising the adoption of rules of eligibility which confine the awards to persons having such connection with the United Kingdom<sup>2</sup> or any part of it as may be specified in the regulations<sup>3</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For these purposes, references to the United Kingdom include references to the Channel Islands and the Isle of Man, but the Education (Fees and Awards) Act 1983 does not extend to Northern Ireland: see s 3. For the meaning of 'United Kingdom' generally see PARA 63 note 3 ante.

3 Ibid s 2(1), (3)(b) (s 2(3)(b) amended by the Teaching and Higher Education Act 1998 s 44(2), Sch 4). The regulations may provide for exceptions and make different provision for different cases or purposes: Education (Fees and Awards) Act 1983 s 2(2). The power to make regulations under s 2 (as amended) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 2(4). As to the regulations that have been made see the Education (Fees and Awards) Regulations 1997, SI 1997/1972 (amended by SI 1998/1965; SI 1999/229; SI 2000/2192; SI 2000/2945; SI 2003/3280; SI 2005/2114); and the Local Education Authority (Post-Compulsory Education Awards) Regulations 1999, SI 1999/229 (amended by SI 2000/2057; revoked, in relation to Wales, by SI 2002/1856).

## **UPDATE**

### **1055 Making of discretionary awards**

NOTE 3--SI 1997/1972 replaced: Education (Fees and Awards) (England) Regulations 2007, SI 2007/779 (see PARA 638 NOTE 3); Education (Fees and Awards) (Wales) Regulations 2007, SI 2007/2310 (see PARA 638 NOTE 3).

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### **1056. Power to charge higher fees for students not connected with the United Kingdom.**

In respect of certain institutions<sup>1</sup>, the Secretary of State<sup>2</sup> may make regulations requiring or authorising the charging of fees<sup>3</sup> which are higher in the case of students not having such connection with the United Kingdom<sup>4</sup> or any part of it as may be specified in the regulations than in the case of students having such a connection<sup>5</sup>. The regulations may provide for exceptions and make different provision for different cases or purposes<sup>6</sup>.

1 The Education (Fees and Awards) Act 1983 s 1 (as amended) applies to the following higher education institutions:

- 107 (1) any university, university college or college, school, hall or other institution of a university (s 1(3)(a));
- 108 (2) any institution within the higher education sector (s 1(3)(b) (substituted by the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt I para 19));
- 109 (3) any institution which provides higher education or further education (or both) and is either: (a) maintained by a local education authority; or (b) is substantially dependent for its maintenance on public funds and either is specified in the regulations made under the Education (Fees and Awards) Act 1983 s 1 (as amended) or is of a class or description so specified (s 1(3)(c), (3A) (s 1(3)(c) substituted, and s 1(3A) added, by the Education Reform Act 1988 s 237(1), Sch 12 para 91));
- 110 (4) any training provider, within the meaning of the Education Act 2005 Pt 3 (ss 74-100) (see PARA 795 note 5 ante), who is receiving financial support under s 78 (see PARA 795 ante) from the Training and Development Agency for Schools (Education (Fees and Awards) Act 1983 s 1(3)(e) (added by the Education Act 1994 s 24, Sch 2 para 7; and substituted by the Education Act 2005 s 98, Sch 14 para 9)); and
- 111 (5) any institution eligible for funding by the Higher Education Funding Council for Wales under the Education Act 2005 Pt 3 (Education (Fees and Awards) Act 1983 s 1(3)(ee) (added by the Education Act 2005 Sch 14 para 9)).

The Education (Fees and Awards) Act 1983 s 1 (as amended) also applies to certain further education institutions: see PARA 638 ante. As to the regulations made under s 1 (as amended) see note 5 infra. As to the meaning of 'university' see PARA 648 ante. As to references to institutions within the higher education sector see PARA 646 ante. For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of s 1(4) (amended by the Education Reform Act 1988 Sch 12 para 91; and the Education Act 1996 s 582(1), Sch 37 para 57). For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of the Education (Fees and Awards) Act 1983 s 1(4) (as so amended). As to local education authorities see PARA 20 ante. For the purposes of s 1 (as amended), 'public funds' means assistance from a local authority or grants under the Education Act 1996 s 485 (see PARA 69 ante); see the Education (Fees and Awards) Act 1983 s 1(4) (as so amended). As to the Training and Development Agency for Schools see PARA 784 et seq ante; and as to the Higher Education Funding Council for Wales see PARA 733 et seq ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For these purposes, 'fees' includes charges however described (including charges for board and lodging): Education (Fees and Awards) Act 1983 s 1(4).

4 For these purposes, references to the United Kingdom include references to the Channel Islands and the Isle of Man, but the Education (Fees and Awards) Act 1983 does not extend to Northern Ireland: see s 3. For the meaning of 'United Kingdom' generally see PARA 63 note 3 ante.

5 Ibid s 1(1). The power to make regulations under s 1 (as amended) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 1(5). As to the regulations made under s 1 (as amended) see the Education (Fees and Awards) Regulations 1997, SI 1997/1972 (amended by SI 1998/1965; SI 1999/229; SI 2000/2192; SI 2000/2945; SI 2003/3280; SI 2005/2114). See *R (on the application of Mitchell) v Coventry University and the Secretary of State for Education and Employment* [2001] ELR 594, where it was held that the purpose behind the regulations was a reasonable and objective justification for the discrimination which resulted, so there was no conflict with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 14 or with the First Protocol (Paris, 20 March 1952; TS 46 (1954); Cmd 9221) art 2 (see PARA 3 ante).

The Education (Fees and Awards) Act 1983 s 1 (as amended) is without prejudice to the Education Reform Act 1988 s 218(9) (as amended; prospectively repealed) (see PARA 629 note 2 ante) (power of to make regulations in connection with the fees to be charged for courses of further education at higher education institutions): Education (Fees and Awards) Act 1983 s 1(6) (amended by the Teaching and Higher Education Act 1993 s 44(1), Sch 3 para 5). The Education (Fees and Awards) Act 1983 s 1(6) (as amended) is repealed by the Education Act 2002 s 215, Sch 21 para 5, Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed.

6 Education (Fees and Awards) Act 1983 s 1(2).

## UPDATE

### **1056 Power to charge higher fees for students not connected with the United Kingdom**

TEXT AND NOTES--The functions of the Secretary of State under the Education (Fees and Awards) Act 1983 s 1 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(a), 3.

NOTE 5--SI 1997/1972 replaced: Education (Fees and Awards) (England) Regulations 2007, SI 2007/779 (see PARA 638 NOTE 3); Education (Fees and Awards) (Wales) Regulations 2007, SI 2007/2310 (see PARA 638 NOTE 3). Day now appointed in relation to England: SI 2006/2895.

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### **(iii) Particular Scholarships**

#### **1057. Industrial scholarships.**

'Industrial scholarships' are scholarships (however described) tenable by persons undertaking full-time courses<sup>1</sup> of higher education<sup>2</sup> provided by a university, college or other institution in the United Kingdom<sup>3</sup>, being courses which appear to the Secretary of State<sup>4</sup> or, as the case may be, the person awarding the scholarships to be relevant to a career in industry<sup>5</sup>. The Secretary of State may award industrial scholarships or make payments to any other person in respect of the award of such scholarships by that person<sup>6</sup>.

1 The reference to a full-time course includes a reference to a course consisting of alternate periods of full-time study in the university, college or institution in question and associated industrial, professional or commercial experience: Education Act 1980 s 20(3)(a), (b).

2 For the meaning of 'higher education' see PARA 19 ante; definition applied by *ibid* s 38(3) (substituted by the Education Act 1996 s 582(1), Sch 37 para 47(1), (3)).

3 The reference to a course provided by a university, college or institution in the United Kingdom includes a reference to a course provided by such a university, college or institution in conjunction with a university, college or other institution in another country: Education Act 1980 s 20(3).

4 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 Education Act 1980 s 20(2).

6 *Ibid* s 20(1). Any expenses incurred by the Secretary of State under the Education Act 1980, and any increase attributable to that Act in the sums payable out of such moneys under any other Act, must be defrayed out of moneys provided by Parliament: s 36.



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### **1058. Commonwealth Scholarship Commission.**

The Commonwealth Scholarship Commission<sup>1</sup> is charged with the duty of: (1) selecting the recipients<sup>2</sup> of awards arising out of the Commonwealth Scholarship and Fellowship Plan<sup>3</sup> to persons coming to the United Kingdom<sup>4</sup>; (2) making arrangements for placing the recipients at institutions within the further education sector<sup>5</sup> or higher education sector<sup>6</sup> or at other appropriate establishments in the United Kingdom, and for the supervision of their work during the currency of their awards<sup>7</sup>; (3) selecting persons to put forward as candidates from the United Kingdom for awards arising out of the plan<sup>8</sup> and to be granted in countries outside the United Kingdom<sup>9</sup>; and (4) discharging any other functions under the plan<sup>10</sup> which the Secretary of State<sup>11</sup> may assign to the Commission<sup>12</sup>.

The Commission consists of a chairman and not less than nine nor more than fourteen other members appointed by the Secretary of State<sup>13</sup>. The Commission may appoint committees to assist it in the discharge of its functions, and may delegate the discharge of its functions to such a committee, with or without restrictions or conditions<sup>14</sup>. In the discharge of its functions the Commission must comply with any directions given to it by the Secretary of State<sup>15</sup>. The expenses of the Commission, up to such amount as may be approved by the Secretary of State with the consent of the Treasury, may be defrayed by the Secretary of State<sup>16</sup>.

The Commission makes an annual report to the Secretary of State on the discharge of its functions<sup>17</sup>, and the Secretary of State lays a copy of every such report before Parliament<sup>18</sup>.

1 The existence of the Commission known as the Commonwealth Scholarship Commission in the United Kingdom continues by virtue of the International Development Act 2002 s 13(1). As to financial assistance under the International Development Act 2002 see also PARA 67 ante.

2 Persons selected must be Commonwealth citizens or British protected persons (within the meaning of the British Nationality Act 1981) except where the Commission for special reasons, approved by the Secretary of State, otherwise determines: International Development Act 2002 s 14(4). As to Commonwealth citizens see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 11. As to British protected persons see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 10, 72-76.

3 The 'Commonwealth Scholarship and Fellowship Plan' means the plan so named which was put forward by the Commonwealth Development Conference held at Oxford in July 1959: *ibid* s 14(6).

The origin of the Commonwealth Scholarship and Fellowship Plan was a speech by Sydney Smith, former president of the University of Toronto and then Canadian Minister for External Affairs, delivered at the Eighth Quinquennial Congress of Commonwealth Universities at Montreal in September 1958. From that conference there emerged the proposal to establish a new scheme of Commonwealth scholarships and fellowships. The purpose and operation of the scheme were elaborated at the first Commonwealth Development Conference held at Oxford in July 1959. The first Commonwealth Scholars took up their awards in 1960.

4 *Ibid* s 14(1)(a). The Secretary of State (see note 11 *infra*) may make such awards as are mentioned in s 14(1)(a): s 14(5). For these purposes, 'United Kingdom' includes the Channel Islands and the Isle of Man: s 14(6). For the meaning of 'United Kingdom' generally see PARA 63 note 3 ante.

5 For the meaning of 'further education sector' see PARA 579 ante; definition applied by *ibid* s 14(6).

6 For the meaning of 'higher education sector' see PARA 646 ante; definition applied by *ibid* s 14(6).

7 *Ibid* s 14(1)(b).

8 See note 3 *supra*.

9 International Development Act 2002 s 14(1)(c). The Secretary of State (see note 11 *infra*) may make such awards as are mentioned in s 14(1)(c): s 14(5).

10 See note 3 *supra*.

11 As to the Secretary of State see PARA 52 *ante*.

12 International Development Act 2002 s 14(1)(d).

13 *Ibid* s 13(2). Not less than four of the members must be persons appointed as the holders of high academic office: s 13(3). A member of the Commission holds and vacates office in accordance with the terms of his appointment and is eligible for re-appointment, but may at any time resign his office by notice in writing to the Secretary of State: s 13(4), Sch 2 para 1. The quorum at any meeting of the Commission is six and the validity of any proceedings of the Commission is not affected by any vacancy in its number or any defect in the appointment of a member: Sch 2 para 2.

14 *Ibid* Sch 2 para 3(1), (3). Any such committee may include persons who are not members of the Commission: Sch 2 para 3(2).

15 *Ibid* s 14(2). No direction is to be given for the selection or rejection of any particular person for an award or as a candidate for an award: s 14(3).

16 *Ibid* Sch 2 para 4(1). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517. Such expenses include the payment of travelling and other allowances to members of the Commission or of any committee of the Commission and to persons chosen by the Commission to act as advisers: Sch 2 para 4(2).

17 See *ibid* Sch 2 para 5(1).

18 *Ibid* Sch 2 para 5(2).

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### **1059. Marshall Aid Commemoration Commission.**

The Marshall Aid Commemoration Commission was established by the Marshall Aid Commemoration Act 1953<sup>1</sup>. The Commission consists of not less than seven nor more than ten members appointed by the Secretary of State<sup>2</sup>.

The Commission's functions are to give effect to arrangements made by or with the approval of the Secretary of State: (1) for administering the grants provided by Parliament for Marshall scholarships<sup>3</sup>; (2) for the selection of the persons to receive Marshall scholarships<sup>4</sup>; and (3) for the placing of the holders of Marshall scholarships in universities or university colleges in the United Kingdom<sup>5</sup>. The Commission also discharges such other functions in connection with Marshall scholarships as may be conferred on it by such arrangements<sup>6</sup>.

The Commission is obliged to make an annual report to the Secretary of State on the discharge by it of its functions, and the Secretary of State must lay a copy of every such report before each House of Parliament<sup>7</sup>.

The Commission must prepare accounts of its expenditure in such form as the Secretary of State may with the approval of the Treasury<sup>8</sup> direct, and must submit the accounts to the Secretary of State at such time as he may direct<sup>9</sup>.

1 The Marshall Aid Commemoration Act 1953 and the Marshall Scholarships Act 1959, which may together be cited as the Marshall Aid Commemoration Acts 1953 and 1959 (see the Marshall Scholarships Act 1959 s 2), provide for the granting of Marshall scholarships tenable at universities or university colleges in the United Kingdom by citizens of the United States of America who are graduates of recognised institutions of higher learning in the United States of America: Marshall Aid Commemoration Act 1953 s 1. The Secretary of State may make, out of moneys provided by Parliament, grants to the Commission to defray the expenditure of the Commission incurred for the said purpose, including administrative expenses: s 1. As to the Secretary of State see PARA 52 ante.

Marshall scholarships were established in commemoration of the assistance received by the United Kingdom after the 1939-45 war under the European Recovery Programme known as Marshall Aid. The Marshall Aid Commemoration Act 1953 provided for up to 12 scholarships to be granted in each year; the Marshall Scholarships Act 1959 substituted for the reference to 12 scholarships a reference to 24 or such greater number as Her Majesty might by Order in Council from time to time determine: Marshall Scholarships Act 1959 s 1(1). Any such Order in Council is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(2). The Marshall Scholarships Order 1972, SI 1972/961 (revoked) increased the maximum number to 30 each year. The Marshall Scholarships Order 1990, SI 1990/990, further increased the maximum number of annual scholarships to 40.

2 Marshall Aid Commemoration Act 1953 s 2(2). Not less than two of the Commission's members must be chosen as persons of eminence in academic matters, and the Secretary of State may designate one of the members to be chairman of the Commission: s 2(2). The Commission's quorum is four (s 2(3)) but so long as it is quorate the Commission has power to act notwithstanding any vacancy in its number (s 2(4)). Terms of office of members of the Commission are determined by the Secretary of State: s 2(5). A member of the Commission is eligible for re-appointment on vacating office: s 2(5).

3 Ibid s 2(1)(a).

4 Ibid s 2(1)(b).

5 Ibid s 2(1)(c).

6 Ibid s 2(1).

7 See ibid s 2(6).

8 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

9 Marshall Aid Commemoration Act 1953 s 2(7). On or before 30 November in any year the Secretary of State must transmit the Commission's accounts for the financial year last ended to the Comptroller and Auditor General, who must examine and certify the accounts and lay before Parliament copies of the accounts together with his report on them: s 2(7). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 724 et seq.

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### **(3) STUDENTS' UNIONS**

#### **(i) Defined Terms**

##### **1060. Meaning of 'students' union'.**

Part II of the Education Act 1994<sup>1</sup> contains provisions relating to students' unions. For those purposes, a 'students' union' means:

- 1957 (1) an association of the generality of students<sup>2</sup> at an establishment<sup>3</sup> to which Part II applies<sup>4</sup> whose principal purposes include promoting the general interests of its members as students<sup>5</sup>; or
- 1958 (2) a representative body (whether an association or not) whose principal purposes include representing the generality of students at such an establishment in academic, disciplinary or other matters relating to the government of the establishment<sup>6</sup>.

References to a students' union include an association or body which consists wholly or mainly of:

- 1959 (a) constituent or affiliated associations or bodies which are themselves students' unions<sup>7</sup>; or
- 1960 (b) representatives of such constituent or affiliated associations<sup>8</sup>,

and which fulfils the functions of a students' union<sup>9</sup> in relation to students at an establishment to which Part II applies<sup>10</sup>.

An association or body may be a students' union in relation to more than one establishment but not in relation to establishments generally in the United Kingdom or a part of the United Kingdom<sup>11</sup>.

<sup>1</sup> ie the Education Act 1994 Pt II (ss 20-22).

<sup>2</sup> References in *ibid* s 20 to an association of the generality of students, or of any description of students, include:

- 112 (1) any association which the generality of students, or of students of that description, may join, whether or not it has in membership a majority of them (s 20(5)(a)); and
- 113 (2) any association which would fall within head (1) *supra* if the references there to students were confined to full-time students (s 20(5)(b)),

and references to a representative body whose principal purposes include representing the generality of students, or of any description of students, must be similarly construed (s 20(5)).

<sup>3</sup> References to a students' union include an association or body which would fall within *ibid* s 20(1) if for the references to the generality of students at the establishment there were substituted a reference to:

- 114 (1) the generality of undergraduate students, or graduate students, at the establishment (s 20(2)(a)); or

- 115 (2) the generality of students at a particular hall of residence of the establishment (s 20(2)(b)).
- 4 As to the establishments to which *ibid* Pt II applies see PARA 1061 post.
- 5 *Ibid* s 20(1)(a).
- 6 *Ibid* s 20(1)(b). A students' union has purposes and functions which are distinct from those of the establishment to which it relates and is an entity separate from that establishment which nevertheless has a supervisory role: *Customs and Excise Comrs v University of Leicester Students' Union* [2001] EWCA Civ 1972, [2002] STC 147, [2002] ELR 347. However, a students' union does not have a public law or statutory character such as to make its decisions amenable to judicial review: *R v Thames Valley University Students Union, ex p Ogilvy* [1997] CLY 2149.
- 7 Education Act 1994 s 20(3)(a). The reference to bodies which are themselves students' unions is a reference to bodies which are student unions within s 20(1) or s 20(2) (see the text and notes 1-6 *supra*).
- 8 *Ibid* s 20(3)(b).
- 9 *Ie* within *ibid* s 20(1) or s 20(2) (see the text and notes 1-6 *supra*).
- 10 *Ibid* s 20(3).
- 11 *Ibid* s 20(4). For the meaning of 'United Kingdom' see PARA 63 note 3 *ante*.

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### **1061. Applicable establishments.**

The establishments in England<sup>1</sup> and Wales<sup>2</sup> to which the provisions relating to students' unions<sup>3</sup> apply are:

- 1961 (1) any university<sup>4</sup> receiving financial support under the provisions of the Further and Higher Education Act 1992<sup>5</sup> relating to the administration of funds by the relevant Higher Education Funding Council<sup>6</sup>;
- 1962 (2) any institution conducted by a higher education corporation<sup>7</sup> or further education corporation<sup>8</sup>;
- 1963 (3) any institution designated<sup>9</sup> as eligible to receive support from funds administered by a Higher Education Funding Council<sup>10</sup>;
- 1964 (4) any institution designated<sup>11</sup> as eligible to receive support from funds administered by a further education funding council<sup>12</sup>;
- 1965 (5) any institution substantially dependent on financial support under the provision relating to applications for support for the provision of facilities for part-time, or adult, further education<sup>13</sup>;
- 1966 (6) any institution designated, or of a description designated, by order of the Secretary of State<sup>14</sup>;
- 1967 (7) any college, school or hall in an establishment within any of heads (1) to (6) above<sup>15</sup>.

<sup>1</sup> For the meaning of 'England' see PARA 52 note 11 ante.

<sup>2</sup> For the meaning of 'Wales' see PARA 52 note 13 ante.

<sup>3</sup> Ie the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

<sup>4</sup> As to the meaning of 'university' for the purposes of the Further and Higher Education Act 1992 see PARA 646 note 8 ante. As to universities generally see PARA 646 et seq ante.

<sup>5</sup> Ie under ibid s 65 (as amended) (see PARA 746 ante).

<sup>6</sup> Education Act 1994 s 21(1)(a). 'The Higher Education Funding Council' means, in relation to matters falling within the responsibility of the Higher Education Funding Council for England or to educational institutions in England, the Higher Education Funding Council for England, and in relation to matters falling within the responsibility of the Higher Education Funding Council for Wales or to educational institutions in Wales, the Higher Education Funding Council for Wales: see the Further and Higher Education Act 1992 s 62(5)-(6); and PARA 733 et seq ante.

<sup>7</sup> Ie within the meaning of the Further and Higher Education Act 1992: see PARA 646 note 3 ante.

<sup>8</sup> Education Act 1994 s 21(1)(b). The reference to a further education corporation is a reference to a further education corporation within the meaning of the Further and Higher Education Act 1992: see PARA 579 note 3 ante.

<sup>9</sup> Ie under the Education Reform Act 1988 s 129 (as amended): see PARA 701 ante.

<sup>10</sup> Education Act 1994 s 21(1)(c).

<sup>11</sup> Ie under the Further and Higher Education Act 1992 s 28 (as amended): see PARA 599 ante.

12 Education Act 1994 s 21(1)(d). As to the dissolution of the Further Education Funding Council for England see PARA 1072 post; and as to the dissolution of the Further Education Funding Council for Wales see PARA 1113 post.

13 Ibid s 21(1)(e). The provision referred to in the text is the Further and Higher Education Act 1992 s 6(5) (repealed). For the purposes of the Education Act 1994 s 21(1)(e), an institution is substantially dependent on financial support under the Further and Higher Education Act 1992 s 6(5) (repealed) in any year in which such support amounts to 25% or more of its income: Education Act 1994 s 21(3). For this purpose, 'year' means an accounting year of the institution; and 'income' means receipts of any description, including capital receipts: s 21(3). For the meaning of 'further education' see PARA 18 ante.

14 Ibid s 21(1)(f). At the date at which this volume states the law, no such orders had been made. As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

Any power of the Secretary of State to make orders under Pt II is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 23(1) (amended by the Education Act 2005 s 123, Sch 19 Pt 3). Orders under the Education Act 1994 Pt II may make different provision for different cases, circumstances or areas and may contain such incidental, supplementary or transitional provisions as the Secretary of State thinks fit: s 23(2) (amended by the Education Act 2005 Sch 19 Pt 3).

15 Education Act 1994 s 21(1)(g). For these purposes, 'college' includes any institution in the nature of a college: s 21(4).



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## **(ii) Duties of Governing Bodies**

### **1062. General duty of governing body in relation to students' unions.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must take such steps as are reasonably practicable to secure that any students' union for students at the establishment operates in a fair and democratic manner and is accountable for its finances<sup>4</sup>.

1 References in the Education Act 1994 Pt II (ss 20-22) to the governing body of an establishment are references to the executive governing body which has responsibility for the conduct of affairs of the establishment and the management and administration of its revenue and property: s 21(5).

2 *le ibid* Pt II. For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 Education Act 1994 s 22(1).

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### **1063. Duties regarding constitution of students' unions.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must take such steps as are reasonably practicable to secure that the following requirements are observed by or in relation to any students' union for students at the establishment<sup>4</sup>. The requirements are that the union should have a written constitution<sup>5</sup> and that the provisions of the constitution should be subject to the approval of the governing body and should be subject to review by that body at intervals of not more than five years<sup>6</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 I.e. the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 Education Act 1994 s 22(2). See further PARAS 1064-1071 post.

5 Ibid s 22(2)(a).

6 Ibid s 22(2)(b).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/8. STUDENTS/(3) STUDENTS' UNIONS/(ii) Duties of Governing Bodies/1064. Duties regarding students' right not to join students' unions.

#### **1064. Duties regarding students' right not to join students' unions.**

A student should have the right not to be a member<sup>1</sup> of the students' union<sup>2</sup>, or, in the case of a representative body which is not an association<sup>3</sup>, to signify that he does not wish to be represented by it<sup>4</sup>, and students who exercise that right should not be unfairly disadvantaged, with regard to the provision of services or otherwise, by reason of their having done so<sup>5</sup>. The governing body of every establishment to which the provisions relating to students' unions<sup>6</sup> apply<sup>7</sup> must take such steps as are reasonably practicable to secure that this requirement is observed by or in relation to any students' union for students at the establishment<sup>8</sup>.

1 In the Education Act 1994 s 22, the expression 'members', in relation to a representative body which is not an association, means those whom it is the purpose of the union to represent, excluding any student who has exercised the right referred to in s 22(2)(c)(ii) (see the text to notes 3-4 infra): s 22(7). For the meaning of 'students' union' see PARA 1060 ante. As to complaints in relation to the exercise of the right not to be a member of the union see PARA 1068 post.

2 Ibid s 22(2)(c)(i). The governing body must bring to the attention of all students, at least once a year, and must include in any information which is generally made available to persons considering whether to become students at the establishment, information as to the right referred to in s 22(2)(c)(i) or in s 22(2)(c)(ii) (see the text to notes 3-4 infra) (s 22(5)(a)), and details of any arrangements it has made for services of a kind which a students' union at the establishment provides for its members to be provided for students who are not members of the union (s 22(5)(b)). As to the meaning of 'governing body' see PARA 1062 note 1 ante.

For the purposes of ibid s 22(2), (4) and (5), the expression 'all students' is to be construed as follows:

- 116 (1) in relation to an association or body which is a students' union by virtue of s 20(1) (see PARA 1060 ante), the reference is to all students at the establishment (s 22(6)(a));
- 117 (2) in relation to an association or body which is a students' union by virtue of s 20(2) (see PARA 1060 ante), the reference is to all undergraduate, or all graduate, students at the establishment or to all students at the hall of residence in question, as the case may be (s 22(6)(b));
- 118 (3) in relation to an association or body which is a students' union by virtue of s 20(3) (see PARA 1060 ante), the reference is to all the students who by virtue of s 20(1) or s 20(2) are comprehended by that expression in relation to its constituent or affiliated associations or bodies (s 22(6)(c)).

3 As to the meaning of 'association' see PARA 1060 note 2 ante.

4 Education Act 1994 s 22(2)(c)(ii). Students who claim to have been unfairly disadvantaged by reason of their having exercised the right not to be a member of the union or not to be represented by a representative body have the right to make a complaint: see PARA 1068 post.

5 Ibid s 22(2)(c).

6 Ie ibid Pt II (ss 20-22).

7 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

8 Education Act 1994 s 22(2).

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### **1065. Duties regarding appointment, election and tenure of union officers.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must take such steps as are reasonably practicable to secure that the following requirements are observed by or in relation to any students' union for students at the establishment<sup>4</sup>. The requirements are that:

- 1968 (1) appointment to major union offices should be by election in a secret ballot in which all members<sup>5</sup> are entitled to vote<sup>6</sup>;
- 1969 (2) the governing body should satisfy itself that the elections are fairly and properly conducted<sup>7</sup>; and
- 1970 (3) a person should not hold sabbatical union office, or paid elected union office, for more than two years in total at the establishment<sup>8</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 Ie the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 Education Act 1994 s 22(2).

5 As to the meaning of 'member' see PARA 1064 note 1 ante.

6 Education Act 1994 s 22(2)(d). Section 22(2)(d) does not apply in the case of an establishment where the students, or the great majority of them, are provided with materials for private study and are not required to attend the establishment to any significant extent or at all (ie an 'open or distance learning establishment'): s 22(9).

7 Ibid s 22(2)(e).

8 Ibid s 22(2)(f).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/8. STUDENTS/(3) STUDENTS' UNIONS/(ii) Duties of Governing Bodies/1066. Duties regarding financial affairs of students' unions.

### **1066. Duties regarding financial affairs of students' unions.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must take such steps as are reasonably practicable to secure that the following requirements are observed by or in relation to any students' union for students at the establishment<sup>4</sup>. The requirements are that:

- 1971 (1) the financial affairs of the union should be properly conducted and appropriate arrangements should exist for the approval of the union's budget, and the monitoring of its expenditure, by the governing body<sup>5</sup>;
- 1972 (2) financial reports of the union should be published annually or more frequently, and should be made available to the governing body and to all students<sup>6</sup>, and each such report should contain, in particular<sup>7</sup>, a list of the external organisations to which the union has made donations in the period to which the report relates<sup>8</sup>, and details of those donations<sup>9</sup>; and
- 1973 (3) the procedure for allocating resources to groups or clubs should be fair and should be set down in writing and freely accessible to all students<sup>10</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 I.e. the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 Education Act 1994 s 22(2).

5 Ibid s 22(2)(g).

6 As to the meaning of 'all students' see PARA 1064 note 2 ante.

7 Education Act 1994 s 22(2)(h).

8 Ibid s 22(2)(h)(i).

9 Ibid s 22(2)(h)(ii).

10 Ibid s 22(2)(i).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/8. STUDENTS/(3) STUDENTS' UNIONS/(ii) Duties of Governing Bodies/1067. Duties regarding affiliations of students' unions.

### **1067. Duties regarding affiliations of students' unions.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must take such steps as are reasonably practicable to secure that the following requirements are observed by or in relation to any students' union for students at the establishment<sup>4</sup>. The requirements are that:

- 1974 (1) if the union decides to affiliate to an external organisation<sup>5</sup>, it should publish notice of its decision stating<sup>6</sup> the name of the organisation<sup>7</sup>, and details of any subscription or similar fee paid or proposed to be paid, and of any donation made or proposed to be made, to the organisation<sup>8</sup>, and any such notice should be made available to the governing body and to all students<sup>9</sup>;
- 1975 (2) where the union is affiliated to any external organisations, a report should be published annually or more frequently containing<sup>10</sup> a list of the external organisations to which the union is currently affiliated<sup>11</sup>, and details of subscriptions or similar fees paid, or donations made, to such organisations in the past year (or since the last report)<sup>12</sup>, and such reports should be made available to the governing body and to all students<sup>13</sup>; and
- 1976 (3) there should be procedures for the review of affiliations to external organisations<sup>14</sup> under which the current list of affiliations is submitted for approval by members<sup>15</sup> annually or more frequently<sup>16</sup>, and at such intervals of not more than a year as the governing body may determine, a requisition may be made by such proportion of members (not exceeding 5 per cent) as the governing body may determine, that the question of continued affiliation to any particular organisation be decided upon by a secret ballot in which all members are entitled to vote<sup>17</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 I.e. the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 Education Act 1994 s 22(2).

5 For the purposes of ibid s 22(2)(j)-(l) (see heads (1)-(3) in the text), the references to affiliation to an external organisation, in relation to a students' union for students at an establishment, include any form of membership of, or formal association with, an organisation whose purposes are not confined to purposes connected with that establishment: s 22(8).

6 Ibid s 22(2)(j).

7 Ibid s 22(2)(j)(i).

8 Ibid s 22(2)(j)(ii).

9 Ibid s 22(2)(j). As to the meaning of 'all students' see PARA 1064 note 2 ante.

10 Ibid s 22(2)(k).

11 Ibid s 22(2)(k)(i). See note 5 supra.

12 Ibid s 22(2)(k)(ii).

13 Ibid s 22(2)(k).

14 Ibid s 22(2)(l). See note 5 supra.

15 As to the meaning of 'members' see PARA 1064 note 1 ante.

16 Education Act 1994 s 22(2)(l)(i).

17 Ibid s 22(2)(l)(ii). Section 22(l)(ii) does not apply in the case of an establishment where the students, or the great majority of them, are provided with materials for private study and are not required to attend the establishment to any significant extent or at all (ie an 'open or distance learning establishment'): s 22(9).

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### **1068. Duties regarding complaints in relation to students' unions.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must take such steps as are reasonably practicable to secure that the following requirements are observed by or in relation to any students' union for students at the establishment<sup>4</sup>. The requirements are that:

- 1977 (1) there should be a complaints procedure available to all students<sup>5</sup> or groups of students who<sup>6</sup> are dissatisfied in their dealings with the union<sup>7</sup>, or claim to be unfairly disadvantaged by reason of their having exercised the right not to be a member<sup>8</sup> of the union<sup>9</sup> or not to be represented by a representative body<sup>10</sup>, which should include provision for an independent person appointed by the governing body to investigate and report on complaints<sup>11</sup>; and
- 1978 (2) complaints should be dealt with promptly and fairly and where a complaint is upheld there should be an effective remedy<sup>12</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 I.e. the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 Education Act 1994 s 22(2).

5 As to the meaning of 'all students' see PARA 1064 note 2 ante.

6 Education Act 1994 s 22(2)(m).

7 Ibid s 22(2)(m)(i).

8 As to the meaning of 'members' see PARA 1064 note 1 ante.

9 I.e. the right referred to in the Education Act 1994 s 22(2)(c)(i): see PARA 1064 ante.

10 Ibid s 22(2)(m)(ii). The right not to be represented by a representative body is the right referred to in s 22(2)(c)(ii): see PARA 1064 ante.

11 Ibid s 22(2)(m).

12 Ibid s 22(2)(n).



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### **1069. Duty to prepare codes of practice.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must prepare and issue, and when necessary revise, a code of practice as to the manner in which the requirements to be observed in relation to students' unions<sup>4</sup> are to be carried into effect in relation to any students' union for students at the establishment, setting out in relation to each of the requirements details of the arrangements made to secure its observance<sup>5</sup>. The governing body must, as regards any students' union for students at the establishment, bring the code of practice currently in force to the attention of all students<sup>6</sup>, at least once a year<sup>7</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 I.e. the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 I.e. the requirements set out in the Education Act 1994 s 22(1)-(2): see PARAS 1062-1068 ante.

5 Ibid s 22(3).

6 As to the meaning of 'all students' see PARA 1064 note 2 ante.

7 Education Act 1994 s 22(4)(a).

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**1070. Duty to publicise provisions safeguarding freedom of speech.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> and to which the provisions relating to freedom of speech in universities<sup>4</sup> apply must, as regards any students' union for students at the establishment, bring to the attention of all students<sup>5</sup>, at least once a year, those provisions and any code of practice issued under them, relevant to the activities or conduct of the union<sup>6</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 Ie the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 Ie the Education (No 2) Act 1986 s 43 (as amended): see PARA 12 ante.

5 As to the meaning of 'all students' see PARA 1064 note 2 ante.

6 Education Act 1994 s 22(4)(c).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/8. STUDENTS/(3) STUDENTS' UNIONS/(ii) Duties of Governing Bodies/1071. Duty to publicise restrictions on union activities arising under law of charities.

**1071. Duty to publicise restrictions on union activities arising under law of charities.**

The governing body<sup>1</sup> of every establishment to which the provisions relating to students' unions<sup>2</sup> apply<sup>3</sup> must, as regards any students' union for students at the establishment, bring to the attention of all students<sup>4</sup>, at least once a year, any restrictions imposed on the activities of the union by the law relating to charities<sup>5</sup>.

1 As to the meaning of 'governing body' see PARA 1062 note 1 ante.

2 Ie the Education Act 1994 Pt II (ss 20-22). For the meaning of 'students' union' see PARA 1060 ante.

3 As to the establishments in England and Wales to which the provisions relating to students' unions apply see PARA 1061 ante.

4 As to the meaning of 'all students' see PARA 1064 note 2 ante.

5 Education Act 1994 s 22(4)(b). See in particular CHARITIES vol 8 (2010) PARA 22.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(i) Establishment of the Learning and Skills Council for England and Dissolution of the Further Education Funding Council for England/1072. Establishment of the Learning and Skills Council for England and dissolution of the Further Education Funding Council for England.

## **9. LEARNING AND SKILLS COUNCILS**

### **(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND**

#### **(i) Establishment of the Learning and Skills Council for England and Dissolution of the Further Education Funding Council for England**

##### **1072. Establishment of the Learning and Skills Council for England and dissolution of the Further Education Funding Council for England.**

The Learning and Skills Act 2000 established a body corporate called the Learning and Skills Council for England<sup>1</sup>, which replaced the Further Education Funding Council for England.

On 1 April 2001<sup>2</sup>, the Further Education Funding Council for England was dissolved, and all property, rights and liabilities to which it was entitled or subject immediately before that day became property, rights and liabilities of the Learning and Skills Council for England<sup>3</sup>.

The Secretary of State<sup>4</sup> had power to make a scheme providing for the preliminary transfer of any of the property, rights and liabilities of the Further Education Funding Council for England to the Secretary of State, Her Majesty's Chief Inspector of Schools in England<sup>5</sup> or the Adult Learning Inspectorate<sup>6</sup>.

1 Learning and Skills Act 2000 s 1(1). As to the constitution, general administration and proceedings of the Learning and Skills Council for England see PARAS 1075-1084 post; and as to its functions and powers see PARAS 1085-1102 post. As to the National Council for Education and Training for Wales, which has similar functions in relation to Wales, see PARA 1113 et seq post.

2 Ie the day appointed under ibid s 154 for the commencement of s 89: s 89(2); Learning and Skills Act 2000 (Commencement No 3 and Savings and Transitional Provisions) Order 2001, SI 2001/654, art 2(2), Schedule Pt II.

3 Learning and Skills Act 2000 s 89(1). A transfer effected by virtue of s 89 did not give rise to liability to stamp duty: s 94(1). As to stamp duty generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX. As to transitional provisions see s 151(1), Sch 10 Pt I paras 1-8. Nothing in Sch 10 prejudices the generality of s 152(6) (orders or regulations under the Learning and Skills Act 2000 may contain incidental, supplementary, saving or transitional provisions etc: see PARA 972 note 7 ante): s 151(4).

4 As to the Secretary of State see PARA 52 ante.

5 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 et seq post.

6 Learning and Skills Act 2000 s 90(1), (2). As to the Adult Learning Inspectorate see PARA 1304 et seq post.

The Secretary of State had power to include in the scheme such supplementary, incidental, consequential or transitional provisions as he thought appropriate: see s 90(3). The scheme was to come into force on the day it specified, but that day had to be before 1 April 2001 (ie the day appointed under s 154 for the commencement of s 89: see note 2 supra): s 90(4), (6). The scheme was to have effect to transfer, in accordance with its provisions, the property, rights and liabilities to which it applies: s 90(5). Stamp duty was not chargeable on a scheme under s 90: s 94(2).

**UPDATE****1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

**1072 Establishment of the Learning and Skills Council for England and dissolution of the Further Education Funding Council for England**

TEXT AND NOTES 4-6--Learning and Skills Act 2000 s 90 repealed: Education and Inspections Act 2006 Sch 14 para 58(a), Sch 18 Pt 5. See further Sch 15 para 6.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(i) Establishment of the Learning and Skills Council for England and Dissolution of the Further Education Funding Council for England/1073. Schemes for transfers.

### **1073. Schemes for transfers.**

The Secretary of State<sup>1</sup> may make: (1) a scheme providing for the transfer of any of his property, rights and liabilities to the Learning and Skills Council for England<sup>2</sup>, Her Majesty's Chief Inspector of Schools in England<sup>3</sup> or the Adult Learning Inspectorate<sup>4</sup> (the 'listed persons')<sup>5</sup>; (2) a scheme providing for the transfer of any of the property, rights and liabilities of a listed person to any other listed person<sup>6</sup>; (3) a scheme providing for the transfer to any listed person of any of the property, rights and liabilities of a person with whom the Secretary of State has made certain arrangements<sup>7</sup> regarding employment<sup>8</sup>. Such a scheme may include such supplementary, incidental, consequential or transitional provisions as the Secretary of State thinks are appropriate<sup>9</sup>. Such a scheme comes into force on the day it specifies<sup>10</sup>, and when it comes into force it has effect to transfer (in accordance with its provisions) the property, rights and liabilities to which it applies<sup>11</sup>. Stamp duty is not chargeable on any such scheme<sup>12</sup>; and a land transaction<sup>13</sup> effected by such a scheme is exempt from charge for the purposes of stamp duty land tax<sup>14</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

3 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 et seq post.

4 As to the Adult Learning Inspectorate see PARA 1304 et seq post.

5 Learning and Skills Act 2000 s 92(1), (4).

6 Ibid s 92(2).

7 I.e. arrangements under the Employment and Training Act 1973 s 2 (as substituted and amended): see EMPLOYMENT vol 40 (2009) PARA 563.

8 Learning and Skills Act 2000 s 92(3). A scheme under s 92(3) is invalid unless it is made with the consent of the person from whom the transfer is to be made: s 92(10).

9 Ibid s 92(5).

10 Ibid s 92(6). If a scheme under s 92(1) included provision for the transfer of liabilities, the day specified by the scheme for it to come into force must not have fallen after the end of the period of three years starting with 1 April 2001 (i.e. the day appointed under s 154 for the commencement of s 89: see PARA 1072 ante): s 92(8). The day specified by a scheme under s 92(2) or s 92(3) for the scheme to come into force must not have fallen after the end of the period of three years starting with 1 April 2001: s 92(9).

11 Ibid s 92(7).

12 Ibid s 94(2). As to stamp duty generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

13 For these purposes, 'land transaction' has the meaning given by the Finance Act 2003 s 43(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX): Learning and Skills Act 2000 s 94A(3) (s 94A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 31).

14 Learning and Skills Act 2000 s 94A(1) (as added: see note 13 supra). Relief under s 94A (as added) must be claimed in a land transaction return or an amendment of such a return: s 94A(2) (as so added). 'Land transaction return' has the meaning given by the Finance Act 2003 s 76(1) (see STAMP DUTIES AND STAMP DUTY

RESERVE TAX): Learning and Skills Act 2000 s 94A(3) (as so added). As to stamp duty land tax generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

### **1073 Schemes for transfers**

TEXT AND NOTES 3, 4--References to 'Her Majesty's Chief Inspector of Schools in England' and 'the Adult Learning Inspectorate' omitted: 2000 Act s 92(4) (amended by the Education and Inspections Act 2006 Sch 14 para 58(b), Sch 18 Pt 5). See further Sch 15 para 6.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(i) Establishment of the Learning and Skills Council for England and Dissolution of the Further Education Funding Council for England/1074. Continuity of employment on transfer.

#### **1074. Continuity of employment on transfer.**

If rights and liabilities under a contract of employment are transferred by virtue of the statutory provisions relating to the dissolution and transfer of the property of the Further Education Funding Council for England<sup>1</sup>, anything done by or in relation to the transferor<sup>2</sup> in respect of the employee before the day on which the transfer takes effect is to be treated on and after that day as done by or in relation to the transferee<sup>3</sup>.

For the purposes of the statutory provisions relating to redundancy payments<sup>4</sup>, the employee is not to be regarded as having been dismissed by virtue of the transfer<sup>5</sup>, the employee's period of employment with the transferor is to count as a period of employment with the transferee, and the change of employment is not to break the continuity of the period of employment<sup>6</sup>.

The provisions described above<sup>7</sup> do not prejudice any right of the employee to terminate the contract of employment if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer effected by the transfer<sup>8</sup>.

1 Learning and Skills Act 2000 s 95(1). The reference in the text to the transfer of rights and liabilities is a reference to a transfer by virtue of s 89 (see PARA 1072 ante), or by virtue of a scheme under s 90 (see PARA 1072 ante) or s 92 (see PARA 1073 ante): see s 95(1).

2 For the purposes of ibid s 95, the transferor is the person from whom the rights and liabilities are transferred: s 95(6)(a).

3 Ibid s 95(2). For the purposes of s 95, the transferee is the person to whom the rights and liabilities are transferred: s 95(6)(b).

4 I.e. for the purposes of the Employment Rights Act 1996 Pt XI (ss 135-181) (as amended) (see EMPLOYMENT vol 40 (2009) PARA 790 et seq).

5 Learning and Skills Act 2000 s 95(3).

6 Ibid s 95(4). As to continuity of employment see EMPLOYMENT vol 39 (2009) PARA 105 et seq.

7 I.e. ibid s 95(1)-(4) (see the text and notes 1-6 supra).

8 Ibid s 95(5).

#### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and



leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

**1074 Continuity of employment on transfer**

NOTE 1--Words 'or s 92' omitted: 2000 Act s 95(1) (amended by the Education and Inspections Act 2006 Sch 14 para 60, Sch 18 Pt 5). See further Sch 15 para 6.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1075. Constitution of the Learning and Skills Council for England.

## **(ii) Constitution, General Administration and Proceedings**

### **1075. Constitution of the Learning and Skills Council for England.**

The Learning and Skills Council for England is a body corporate<sup>1</sup>. The Council consists of not less than 12 and not more than 16 members appointed by the Secretary of State<sup>2</sup>, and he must appoint one of them as chairman<sup>3</sup>. In appointing a member the Secretary of State must have regard to the desirability of appointing a person who has experience relevant to the Council's functions<sup>4</sup>. The Council's functions are to be carried out in relation to England only<sup>5</sup>.

The Council is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>6</sup>, and the Council's property is not to be regarded as property of the Crown or as property held by or on its behalf<sup>7</sup>.

1 Learning and Skills Act 2000 s 1(1). As to the establishment of the Learning and Skills Council for England see PARA 1072 ante. As to the functions and powers of the Learning and Skills Council for England see PARAS 1085-1102 post. As to the National Council for Education and Training for Wales, which has similar functions in relation to Wales, see PARA 1113 et seq post.

2 As to the Secretary of State see PARA 52 ante.

3 Learning and Skills Act 2000 s 1(2).

4 Ibid s 1(3).

5 Ibid s 1(5).

6 Ibid s 1(4), Sch 1 para 15(1).

7 Ibid Sch 1 para 15(2).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1076. Chief executive.

### **1076. Chief executive.**

One of the members of the Learning and Skills Council for England<sup>1</sup> is to be its chief executive<sup>2</sup>. Each chief executive is to be appointed by the Council on such terms as it determines<sup>3</sup>. Such an appointment or determination requires the Secretary of State's approval<sup>4</sup>. If a person to be so appointed is not already a member of the Council, the Secretary of State must appoint him as a member for the same term as the term of his appointment as chief executive<sup>5</sup>. If such a person is already a member of the Council but his term of appointment as such ends before the term of his appointment as chief executive ends, the Secretary of State must extend his term of appointment as a member so that it ends when the term of his appointment as chief executive ends<sup>6</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 1(4), Sch 1 para 1(1).

3 Ibid Sch 1 para 1(3). The first chief executive was appointed by the Secretary of State to hold and vacate office in accordance with the terms of his appointment: Sch 1 para 1(2). As to the Secretary of State see PARA 52 ante.

4 Ibid Sch 1 para 1(4).

5 Ibid Sch 1 para 1(5).

6 Ibid Sch 1 para 1(6).

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1077. Tenure of members.

### **1077. Tenure of members.**

A person is to hold and vacate office as a member or chairman or chief executive of the Learning and Skills Council for England<sup>1</sup> in accordance with the terms of his appointment<sup>2</sup>. On ceasing to be a member or chairman or chief executive a person is eligible for re-appointment<sup>3</sup>. A person may at any time by notice in writing to the Secretary of State<sup>4</sup> resign his office as a member or chairman or chief executive<sup>5</sup>. If the Secretary of State is satisfied that a member has been absent from meetings of the Council for a period longer than six consecutive months without the Council's permission<sup>6</sup>, or is unable or unfit to carry out the functions of a member<sup>7</sup>, he may by notice in writing to the member remove him from his office, which then becomes vacant<sup>8</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante. As to the chief executive of the Learning and Skills Council for England see PARA 1076 ante.

2 Learning and Skills Act 2000 s 1(4), Sch 1 para 2(1).

3 Ibid Sch 1 para 2(2).

4 As to the Secretary of State see PARA 52 ante.

5 Learning and Skills Act 2000 Sch 1 para 2(3).

6 Ibid Sch 1 para 3(1)(a).

7 Ibid Sch 1 para 3(1)(b).

8 Ibid Sch 1 para 3(2).

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1078. Salaries, pensions, etc.

### **1078. Salaries, pensions, etc.**

The Learning and Skills Council for England<sup>1</sup> must pay in respect of its members such salaries and fees and such travelling, subsistence and other allowances as the Secretary of State<sup>2</sup> may determine<sup>3</sup>. Such a payment may be made to the member concerned or, if the member consents, to another person<sup>4</sup>. As regards any member in whose case the Secretary of State may so determine, the Council must pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine<sup>5</sup>. If a person ceases to be a member and it appears to the Secretary of State that there are special circumstances making it right that he should receive compensation, the Secretary of State may direct the Council to make to the person a payment of such amount as the Secretary of State may determine<sup>6</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Learning and Skills Act 2000 s 1(4), Sch 1 para 4(1).

4 Ibid Sch 1 para 4(2).

5 Ibid Sch 1 para 4(3).

6 Ibid Sch 1 para 4(4).

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1079. Staff.

### **1079. Staff.**

The Learning and Skills Council for England<sup>1</sup> may appoint such employees as it thinks fit<sup>2</sup>. A person is to be appointed as an employee of the Council on such terms, including terms as to remuneration and allowances, as the Council may determine<sup>3</sup>, and such a determination requires the approval of the Secretary of State<sup>4</sup>.

Employment with the Council is included among the kinds of employment to which a scheme under the Superannuation Act 1972<sup>5</sup> can apply<sup>6</sup>. The Council must pay to the Minister for the Civil Service<sup>7</sup> such sums as he may determine in respect of the increase attributable<sup>8</sup> in the sums payable out of money provided by Parliament under the Superannuation Act 1972, and the Council must pay the sums at such times as that minister may direct<sup>9</sup>. If an employee of the Council is by reference to that employment a participant in such a scheme and is also a member of the Council, the Secretary of State may determine that his service as such a member is to be treated for the purposes of the scheme as service as an employee of the Council<sup>10</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 1(4), Sch 1 para 5(1).

3 Ibid Sch 1 para 5(2).

4 Ibid Sch 1 para 5(3). As to the Secretary of State see PARA 52 ante.

5 Ie under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

6 Learning and Skills Act 2000 Sch 1 para 6(1).

7 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550.

8 Ie under the Learning and Skills Act 2000 Sch 1 para 6(1): see the text and notes 5-6 supra.

9 Ibid Sch 1 para 6(2).

10 Ibid Sch 1 para 6(3). This applies whether or not any benefits are payable to or in respect of him by virtue of Sch 1 para 4 (see PARA 1078 ante): Sch 1 para 6(3).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and

leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1080. Delegation of functions.

### **1080. Delegation of functions.**

The Learning and Skills Council for England<sup>1</sup> may authorise the chairman or the chief executive<sup>2</sup> to exercise such of its functions as it may determine<sup>3</sup>. If the chairman is authorised to exercise a function he may authorise another member of the Council to exercise it<sup>4</sup>. If the chief executive is authorised to exercise a function he may authorise an employee of the Council to exercise it<sup>5</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 As to the chief executive of the Learning and Skills Council for England see PARA 1076 ante.

3 Learning and Skills Act 2000 s 1(4), Sch 1 para 7(1). As to the functions of the Learning and Skills Council for England see PARAS 1085-1102 post.

4 Ibid Sch 1 para 7(2).

5 Ibid Sch 1 para 7(3).

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1081. Members' interests.

### **1081. Members' interests.**

A member of the Learning and Skills Council for England<sup>1</sup> who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Council or a committee of the Council must disclose the nature of his interest to the meeting<sup>2</sup>. If such a disclosure is made it must be recorded in the minutes of the meeting<sup>3</sup>, and the member must not take any part in any deliberation or decision of the Council or any committee of the Council with respect to that matter<sup>4</sup>. A member need not attend in person at a meeting in order to make a disclosure which he is so required to make if he takes reasonable steps to secure that the disclosure is made by a notice which is read and considered at the meeting<sup>5</sup>.

The Secretary of State<sup>6</sup> may remove a disability under these provisions subject to such conditions as he considers appropriate<sup>7</sup>, and this power of the Secretary of State includes power to remove, either indefinitely or for any period, a disability which would otherwise attach to any member, or members of any description, by reason of such interests, and in respect of such matters, as may be specified or described by the Secretary of State<sup>8</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 1(4), Sch 1 para 8(1). For these purposes, a general notification given at a meeting by a member to the effect that he has an interest in a specified company, firm or other organisation, and is to be regarded as interested in any matter involving that company, firm or other organisation, must be regarded as a sufficient disclosure of his interest in relation to any such matter: Sch 1 para 8(4).

If a member is not present at a meeting at which a matter in which he is interested is brought up for consideration, Sch 1 para 8(1) only applies to him if he was aware that the matter would be brought up for consideration at the meeting: Sch 1 para 8(3).

3 Ibid Sch 1 para 8(2)(a).

4 Ibid Sch 1 para 8(2)(b).

5 Ibid Sch 1 para 8(5).

6 As to the Secretary of State see PARA 52 ante.

7 Learning and Skills Act 2000 Sch 1 para 8(6). Nothing in Sch 1 para 8 precludes any member from taking part in the consideration or discussion of, or in voting on, any question whether an application ought to be made to the Secretary of State for the exercise of the power conferred by Sch 1 para 8(6): Sch 1 para 8(8).

8 Ibid Sch 1 para 8(7).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills,

Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1082. Proceedings.

## **1082. Proceedings.**

A representative of the Secretary of State<sup>1</sup> is entitled to attend and take part in any deliberations, but not in decisions, at meetings of the Learning and Skills Council for England<sup>2</sup>. The Council must provide the Secretary of State with such copies, made in such form, as he may require of any information distributed to members of the Council<sup>3</sup>.

The validity of any proceedings of the Council is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>4</sup>. The Council may<sup>5</sup> regulate its own procedure<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Learning and Skills Act 2000 s 1(4), Sch 1 para 9(1). Schedule 1 para 9 is without prejudice to any other rights the Secretary of State may have as a condition of any grants made to the Council under the Learning and Skills Act 2000: Sch 1 para 9(3). As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

3 Ibid Sch 1 para 9(2).

4 Ibid Sch 1 para 10.

5 Ie subject to ibid Sch 1 paras 1-10: see PARAS 1076-1081 ante.

6 Ibid Sch 1 para 11.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1083. Seal and proof of instruments.

### **1083. Seal and proof of instruments.**

The application of the seal of the Learning and Skills Council for England<sup>1</sup> is authenticated by the signature of the chairman or of some other person authorised, generally or specially, by the Council to act for that purpose, and of one other member<sup>2</sup>.

If a document purports to be an instrument made or issued by or on behalf of the Council and to be duly executed under the Council's seal, or to be signed or executed by a person authorised by the Council to act in that behalf<sup>3</sup>, the document must be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown<sup>4</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 1(4), Sch 1 para 12.

3 Ibid Sch 1 para 13(1).

4 Ibid Sch 1 para 13(2). See generally CIVIL PROCEDURE Vol 11 (2009) PARA 865.

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(ii) Constitution, General Administration and Proceedings/1084. Accounts.

#### **1084. Accounts.**

The Learning and Skills Council for England<sup>1</sup> must: (1) keep proper accounts and proper records in relation to them<sup>2</sup>; (2) prepare a statement of accounts in respect of each financial year of the Council<sup>3</sup>; and (3) send copies of the statement to the Secretary of State<sup>4</sup> and to the Comptroller and Auditor General<sup>5</sup> before the end of August next following the financial year<sup>6</sup> to which the statement relates<sup>7</sup>.

The statement of accounts must comply with any directions given by the Secretary of State as to the information to be contained in it<sup>8</sup>, the manner in which the information is to be presented<sup>9</sup>, or the methods and principles according to which the statement is to be prepared<sup>10</sup>. The statement of accounts must contain such additional information as the Secretary of State may require to be provided for the information of Parliament<sup>11</sup>. The Comptroller and Auditor General must examine, certify and report on each statement received by him<sup>12</sup>, and lay copies of each statement and of his report before each House of Parliament<sup>13</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 1(4), Sch 1 para 14(1)(a).

3 Ibid Sch 1 para 14(1)(b).

4 As to the Secretary of State see PARA 52 ante.

5 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

6 In relation to the Learning and Skills Council for England, 'financial year of the Council' means the period starting with the date on which it is established and ending with the second 31 March following that date, and each successive period of 12 months: Learning and Skills Act 2000 s 29.

7 Ibid Sch 1 para 14(1)(c).

8 Ibid Sch 1 para 14(2)(a).

9 Ibid Sch 1 para 14(2)(b).

10 Ibid Sch 1 para 14(2)(c).

11 Ibid Sch 1 para 14(3).

12 Ibid Sch 1 para 14(4)(a).

13 Ibid Sch 1 para 14(4)(b).

#### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42,

50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/A. IN GENERAL/1085. Main functions of the Learning and Skills Council for England.

### **(iii) Functions and Powers**

#### **A. IN GENERAL**

##### **1085. Main functions of the Learning and Skills Council for England.**

The main duties and powers of the Learning and Skills Council for England<sup>1</sup> are the provision of facilities for education and training<sup>2</sup> and the provision of financial resources and funding<sup>3</sup>. The Council has ancillary powers which enable it to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its functions<sup>4</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 See PARAS 1088-1091 post.

3 See PARAS 1092-1096 post.

4 See PARA 1086 post.

#### **UPDATE**

##### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/A. IN GENERAL/1086. Supplementary functions of the Learning and Skills Council for England.

### **1086. Supplementary functions of the Learning and Skills Council for England.**

The Learning and Skills Council for England<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its other functions<sup>2</sup>. In particular it may: (1) acquire and dispose of land and other property<sup>3</sup>; (2) enter into contracts<sup>4</sup>; (3) invest sums not immediately needed for the purpose of exercising its other functions<sup>5</sup>; (4) accept financial resources, whether as gifts or otherwise<sup>6</sup>; and (5) accept gifts of land and other property<sup>7</sup>. But the Council has no power to borrow money<sup>8</sup>, to lend money unless the Secretary of State<sup>9</sup> consents<sup>10</sup>, or to subscribe for or otherwise acquire shares in or securities of a company unless the Secretary of State consents<sup>11</sup>.

The Secretary of State may by order confer or impose on the Council such supplementary powers or duties<sup>12</sup> relating to the provision of post-16 education or training as he thinks fit<sup>13</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 18(1). As to the main functions of the Learning and Skills Council for England see PARA 1085 ante.

3 Ibid s 18(2)(a).

4 Ibid s 18(2)(b).

5 Ibid s 18(2)(c).

6 Ibid s 18(2)(d).

7 Ibid s 18(2)(e).

8 Ibid s 18(3)(a).

9 As to the Secretary of State see PARA 52 ante.

10 Learning and Skills Act 2000 s 18(3)(b).

11 Ibid s 18(3)(c).

12 For the purposes of ibid s 18(4), a power or duty is supplementary if it is exercisable in connection with functions of the Secretary of State, and it is relevant to the provision of facilities for post-16 education or training: s 18(5). References in Pt I (ss 1-29) (as amended) to 'post-16 education' are references to education falling within s 2(1)(a) (see PARA 1088 post) or s 3(1)(a) (see PARA 1088 post), and organised leisure-time occupation connected with such education: s 3(6). References in Pt I (as amended) to 'post-16 training' are references to training falling within s 2(1)(b) (see PARA 1088 post) or s 3(1)(b) (see PARA 1088 post), and organised leisure-time occupation connected with such training: s 3(7).

13 Ibid s 18(4). As to the making of orders under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to orders made under s 18(4) see the Learning and Skills Council for England (Supplementary Functions) Order 2001, SI 2001/2877.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**



The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/A. IN GENERAL/1087. Equality of opportunity.

### **1087. Equality of opportunity.**

In exercising its functions, the Learning and Skills Council for England<sup>1</sup> must have due regard to the need to promote equality of opportunity between persons of different racial groups<sup>2</sup>, between men and women<sup>3</sup>, and between persons who are disabled<sup>4</sup> and persons who are not<sup>5</sup>. As soon as is reasonably practicable after the end of each financial year of the Council<sup>6</sup> it must publish a report containing a statement of the arrangements so made and having effect in the year<sup>7</sup>, and an assessment of how effective the arrangements were in promoting equality of opportunity<sup>8</sup>. The Council must send a copy of the report to the Secretary of State<sup>9</sup>.

It is unlawful for the Council in carrying out its functions to do any act which constitutes sex discrimination<sup>10</sup> or racial discrimination<sup>11</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 14(1)(a). 'Racial group' has the same meaning as in the Race Relations Act 1976 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 441); Learning and Skills Act 2000 s 14(5).

3 Ibid s 14(1)(b).

4 Disabled persons are persons who are disabled for the purposes of the Disability Discrimination Act 1995 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 511); Learning and Skills Act 2000 s 14(6).

5 Ibid s 14(1)(c).

6 For the meaning of 'financial year of the Council' see PARA 1084 note 6 ante.

7 Learning and Skills Act 2000 s 14(2)(a).

8 Ibid s 14(2)(b). The report must also contain a statement of the arrangements which the Council has made, or proposes to make, under s 14(1) in respect of the financial year immediately following that referred to in s 14(2): s 14(3).

9 Ibid s 14(4). As to the Secretary of State see PARA 52 ante.

10 See the Sex Discrimination Act 1975 s 23A (as added and amended); para 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARA 378.

11 See the Race Relations Act 1976 s 18A (as added and amended); para 8 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARA 460.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and

leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING/1088. Education and training for persons aged 16 to 19, and for persons over 19.

## ***B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING***

### **1088. Education and training for persons aged 16 to 19, and for persons over 19.**

The Learning and Skills Council for England<sup>1</sup> must secure the provision of proper facilities<sup>2</sup> for: (1) education<sup>3</sup>, other than higher education<sup>4</sup>, suitable to the requirements of persons who are above compulsory school age<sup>5</sup> but have not attained the age of 19<sup>6</sup>; (2) training<sup>7</sup> suitable to the requirements of such persons<sup>8</sup>; (3) organised leisure-time occupation connected with such education<sup>9</sup>; and (4) organised leisure-time occupation connected with such training<sup>10</sup>.

The Council must also secure the provision of reasonable facilities<sup>11</sup> for: (a) education, other than higher education, suitable to the requirements of persons who have attained the age of 19<sup>12</sup>; (b) training suitable to the requirements of such persons<sup>13</sup>; (c) organised leisure-time occupation connected with such education<sup>14</sup>; and (d) organised leisure-time occupation connected with such training<sup>15</sup>.

In performing the duties so imposed<sup>16</sup> on it, the Council must:

- 1979 (i) take account of the places where facilities are provided, the character of facilities and the way they are equipped<sup>17</sup>;
- 1980 (ii) take account of the different abilities and aptitudes of different persons<sup>18</sup>;
- 1981 (iii) take account of the education and training required in different sectors of employment for employees and potential employees<sup>19</sup>;
- 1982 (iv) take account of facilities whose provision the Council thinks might reasonably be secured by other persons<sup>20</sup>;
- 1983 (v) make the best use of the Council's resources and in particular avoid provision which might give rise to disproportionate expenditure<sup>21</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Facilities are proper if they are of a quantity sufficient to meet the reasonable needs of individuals and of a quality adequate to meet those needs: Learning and Skills Act 2000 s 2(2). In discharging its functions under s 2, the Council must have regard to the needs of persons with learning difficulties: see PARA 1091 post. As to when a person has learning difficulties see PARA 1091 note 6 post.

3 For the purposes of ibid ss 2, 3, education includes both full-time and part-time education: ss 2(5)(a), 3(5)(a).

4 For the purposes of ibid ss 2, 3, higher education is education provided by means of a course of any description mentioned in the Education Reform Act 1988 s 120 (as amended), Sch 6 (see PARA 19 ante): Learning and Skills Act 2000 ss 2(5)(d), 3(5)(d).

5 As to compulsory school age see PARA 15 ante.

6 Learning and Skills Act 2000 s 2(1)(a). As to further education generally see PARA 579 et seq ante.

7 For the purposes of ibid ss 2, 3, training includes: (1) both full-time and part-time training; and (2) vocational, social, physical and recreational training: ss 2(5)(b), (c), 3(5)(b), (c).

8 Ibid s 2(1)(b).

9 Ibid s 2(1)(c).

10 Ibid s 2(1)(d).

11 Facilities are reasonable if, taking account of the Council's resources, the facilities are of such a quantity and quality that the Council can reasonably be expected to secure their provision: *ibid* s 3(2). In discharging its functions under s 3, the Council must have regard to the needs of persons with learning difficulties: see *PARA 1091 post*.

12 Ibid s 3(1)(a).

13 Ibid s 3(1)(b).

14 Ibid s 3(1)(c).

15 Ibid s 3(1)(d).

16 *Ie* under *ibid* ss 2, 3: see the text and notes 1-15 *supra*.

17 Ibid ss 2(3)(a), 3(3)(a).

18 Ibid ss 2(3)(b), 3(3)(b).

19 Ibid ss 2(3)(c), 3(3)(c).

20 Ibid ss 2(3)(d), 3(3)(d).

21 Ibid ss 2(3)(e), 3(3)(e). Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision: ss 2(4), 3(4).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and *PARA 1088A*.

### **1088-1091 Provision of Facilities for Education and Training**

For provision relating to assessments of effectiveness of education or training see *PARA 1091A*.

The Education and Skills Act 2008 Pt 1 (ss 1-67) (not yet in force) places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). See further *PARA 1148A*.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING/1088A. The Chief Executive of Skills Funding.

### **1088A. The Chief Executive of Skills Funding.**

There is to be a Chief Executive of Skills Funding ('the Chief Executive'), who is to be appointed to the office by the Secretary of State and whose functions will (with specified exceptions) be limited to England: see Apprenticeships, Skills, Children and Learning Act 2009 s 81, Sch 4. The Secretary of State may direct the Chief Executive to designate a person to carry out apprenticeship functions on behalf of the Chief Executive: s 82. The Chief Executive may secure the provision of facilities for apprenticeship training of young people (s 83) and may enter into arrangements with local education authorities when securing such training (s 84). The Chief Executive must (1) promote apprenticeships for young people to employers, and encourage them to employ young people as apprentices (s 85); (2) secure the provision of reasonable facilities for the education and training for persons aged 19 or over and those who are subject to adult detention (s 86); (3) secure the provision of proper facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications and ensure that learners are not liable to pay fees for courses of study so provided (ss 87-89, Sch 5; Adult Skills (Specified Qualifications) Regulations 2010, SI 2010/733); and (4) encourage participation in education and training amongst people aged 19 or over and others subject to adult detention (s 90).

The Chief Executive must also secure sufficient apprenticeship places for every suitably qualified person within one of the categories of people eligible for the offer of an apprenticeship who wants one: ss 91, 93, 94 (ss 91-98 come into force on a day or days to be appointed). Eligibility criteria for persons who may elect for the apprenticeship offer are specified, and a person who elects for the offer must select two apprenticeship sectors for the purposes of the offer: s 92. The qualifications a person must hold to elect for the apprenticeship offer at level 2 or level 3 are specified: ss 95, 96. The Secretary of State may suspend the apprenticeship offer in a specified geographical area in relation to a particular apprenticeship sector or at a particular level for up to two years (s 97), and may amend the age under which people are eligible for the apprenticeship offer (s 98).

The Chief Executive may fund other persons for the purpose of fulfilling the duties and exercising the powers vested in him (s 100) and may attach conditions to the financial resources that he makes available (s 101). The Chief Executive may also adopt or develop schemes for the assessment of the performance of individual providers of education and training and may take this assessment into account when deciding which providers he will continue to fund: s 102. The Chief Executive may also carry out means tests or arrange for others to do so in order to establish how much financial support students may be eligible to receive in respect of the costs of education or training: s 103. The Chief Executive must provide or secure provision of services to assist people to find apprenticeships (s 104) and must promote progression to a level 3 apprenticeship where a person has completed a level 2 apprenticeship (s 105, which comes into force on a day or days to be appointed). The Secretary of State may request the Chief Executive to provide advice and assistance to enable the Secretary of State to discharge responsibilities for statutory apprenticeships (s 106), and the Chief Executive may provide services to individuals and to bodies exercising education and training functions in relation to those functions (s 107) and assist persons to select, train for, obtain and retain employment (s 108). The Chief Executive may carry out programmes of research and development and establish systems for collecting information, and must provide the Secretary of State with information and advice relating to his functions on request: s 110.

The Secretary of State may confer on the Chief Executive additional functions connected to the functions of the Secretary of State and relevant to the provision of facilities for education or training within the remit of the Chief Executive: s 111.

The Secretary of State may by order specify an area of England outside Greater London as an area for which a specified body may formulate and keep under review a strategy for how education and training for those persons that the Chief Executive is responsible for is to be delivered: s 112. Corresponding provision is made in relation to Greater London: s 113. The Chief Executive has a duty to implement any strategy formulated by a body set up under the powers contained in ss 112, 113: s 114. In performing his functions, the Chief Executive must have regard to (1) the needs of persons who are aged 19 or over who have learning difficulties and persons with learning difficulties who are subject to adult detention (s 115); (2) the needs of persons subject to adult detention (s 116); (3) any information which has been provided by a person designated by the Secretary of State (s 117); and (4) any guidance given by the Secretary of State (s 118). The Secretary of State may direct the Chief Executive to secure that funding he provides is not used to make payments in respect of certain specified qualifications (s 119) and may give directions to the Chief Executive about what overarching objectives he should be seeking to achieve in performing his functions (s 120). Provision is also made for the sharing of information for education and training purposes: s 122.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

### **1088-1091 Provision of Facilities for Education and Training**

For provision relating to assessments of effectiveness of education or training see PARA 1091A.

The Education and Skills Act 2008 Pt 1 (ss 1-67) (not yet in force) places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). See further PARA 1148A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING/1089. Encouragement of education and training.

### **1089. Encouragement of education and training.**

The Learning and Skills Council for England<sup>1</sup> must encourage individuals to undergo post-16 education and training<sup>2</sup>, encourage employers to participate in the provision of post-16 education and training<sup>3</sup>, and encourage employers to contribute to the costs of post-16 education and training<sup>4</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 4(a). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1086 note 12 ante.

3 Ibid s 4(b).

4 Ibid s 4(c).

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

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### **1090. Links between education and training and employment in England.**

The Learning and Skills Council for England<sup>1</sup> may secure the provision of facilities for the gaining of work experience by young persons<sup>2</sup> receiving education<sup>3</sup>. The Council may secure the provision of facilities designed to form links between, on the one hand, employers and, on the other, persons who provide education or training, and persons who receive it and who have not attained the age of 19<sup>4</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 A person is a young person in the period which starts with the beginning of the year in which he attains the age of 15, and ends with the end of the year in which he attains the age of 19: Learning and Skills Act 2000 s 8(4). A year is a year beginning with 1 September: s 8(5).

3 Ibid s 8(1). In discharging its functions under s 8, the Council must have regard to the needs of persons with learning difficulties: see PARA 1091 post. As to when a person has learning difficulties see PARA 1091 note 6 post.

4 Ibid s 8(2), (3). See also note 3 supra.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

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### **1088-1091 Provision of Facilities for Education and Training**

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The Education and Skills Act 2008 Pt 1 (ss 1-67) (not yet in force) places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). See further PARA 1148A.

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### **1091. Persons with learning difficulties.**

In discharging its functions in relation to the provision of education and training for persons aged 16 to 19<sup>1</sup> and education and training for persons over 19<sup>2</sup>, the provision of financial resources<sup>3</sup>, and the formation of links between education and employment<sup>4</sup>, the Learning and Skills Council for England<sup>5</sup> must have regard to the needs of persons with learning difficulties<sup>6</sup>, and in particular, to any report of an assessment relating to learning difficulties<sup>7</sup>.

If the Council is satisfied that it cannot secure the provision of facilities for education or training which are sufficient in quantity and adequate in quality for a person with a learning difficulty who is over compulsory school age<sup>8</sup> but who has not attained the age of 19 unless it also secures the provision of boarding accommodation for him, the Council must secure the provision of such accommodation for him<sup>9</sup>. If the Council is satisfied that it cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 19 but not the age of 25 unless it also secures the provision of boarding accommodation for him, the Council must secure the provision of such accommodation for him<sup>10</sup>; and if the Council is satisfied that it cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 25 unless it also secures the provision of boarding accommodation for him, the Council may secure the provision of boarding accommodation for him<sup>11</sup>.

1    Ie under the Learning and Skills Act 2000 s 2: see PARA 1088 ante.

2    Ie under ibid s 3: see PARA 1088 ante.

3    Ie under ibid s 5(1)(a)-(d), (g): see PARA 1092 post.

4    Ie under ibid s 8: see PARA 1090 ante.

5    As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

6    A person has a learning difficulty if: (1) he has a significantly greater difficulty in learning than the majority of persons of his age; or (2) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training: Learning and Skills Act 2000 s 13(5). However, a person is not to be taken to have a learning difficulty solely because the language (or form of language) in which he is or will be taught is different from a language (or form of language) which has at any time been spoken in his home: s 13(6). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1086 note 12 ante. As to learning difficulties which call for special educational provision ('special educational needs') see PARA 984 et seq ante.

7    Ibid s 13(1). The report of an assessment referred to in the text is a report of an assessment conducted under s 140 (see PARA 992 ante): see s 13(1).

See *R (on the application of Hill) v Further Education Funding Council* (18 December 2000) Lexis, CA (decided under previous legislation in relation to a similar duty of the predecessor body).

8    As to compulsory school age see PARA 15 ante.

9    Learning and Skills Act 2000 s 13(2).

10   Ibid s 13(3).

11   Ibid s 13(4).

**UPDATE****1072-1112 The Learning and Skills Council for England**

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**1088-1091 Provision of Facilities for Education and Training**

For provision relating to assessments of effectiveness of education or training see PARA 1091A.

The Education and Skills Act 2008 Pt 1 (ss 1-67) (not yet in force) places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). See further PARA 1148A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING/1091A. Assessments of effectiveness of education or training.

### **1091A. Assessments of effectiveness of education or training.**

Information within the Education and Skills Act 2008 s 87(2) or (3) may be (1) used in connection with the exercise of an assessment function of the Secretary of State or a devolved authority, or (2) disclosed to a person for use in connection with the exercise of an assessment function of the Secretary of State or a devolved authority: Education and Skills Act 2008 s 87(1). For the purposes of s 87 and ss 88-90, 'assessment function' means any of the following functions (a) evaluating the effectiveness of training or education provided for persons who have attained the age of 19; (b) assessing policy in relation to the provision of such training or education; (c) assessing policy in relation to social security or employment as it affects the provision of or participation in such training or education: s 87(4). Information is within s 87(2) if (i) it is about an individual who has attained the age of 19, and (ii) it is held by the Secretary of State for the purposes of any function of the Secretary of State relating to social security: s 87(2). Information is within s 87(3) if (A) it is about an individual who has attained the age of 19, (B) it is held by the Secretary of State or a devolved authority, and (C) it relates to any training or course of education undertaken by the individual (whether before or after the individual attained the age of 19): s 87(3). The Commissioners for Her Majesty's Revenue and Customs may disclose information relating to income tax or tax credits to a person for use in connection with the exercise of an assessment function of the Secretary of State or a devolved authority: see Education and Skills Act 2008 s 88. Provision is made with respect to the use of information (see Education and Skills Act 2008 s 89) and the wrongful onward disclosure of information (see Education and Skills Act 2008 s 90). Supplementary provision is made: see Education and Skills Act 2008 s 91.

### **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

### **1088-1091 Provision of Facilities for Education and Training**

For provision relating to assessments of effectiveness of education or training see PARA 1091A.

The Education and Skills Act 2008 Pt 1 (ss 1-67) (not yet in force) places a duty on young people in England to participate in education or training until the age of 18 (or until attaining a level 3 qualification if earlier). See further PARA 1148A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1092. Provision of financial resources.

### **C. PROVISION OF FINANCIAL RESOURCES AND FUNDING**

#### **1092. Provision of financial resources.**

The Learning and Skills Council for England<sup>1</sup> may secure the provision of financial resources to:

- 1984 (1) persons providing or proposing to provide post-16 education or training<sup>2</sup>;
- 1985 (2) persons providing or proposing to provide goods or services in connection with the provision by others of post-16 education or training<sup>3</sup>;
- 1986 (3) persons receiving or proposing to receive post-16 education or training<sup>4</sup>;
- 1987 (4) persons providing or proposing to provide certain higher level courses<sup>5</sup>;
- 1988 (5) institutions within the further or higher education sector<sup>6</sup> which provide or propose to provide secondary education<sup>7</sup> (other than post-16 education)<sup>8</sup>;
- 1989 (6) persons providing or proposing to provide, wholly or partly at the premises of an employer, education or training that is suitable to the requirements of pupils<sup>9</sup> who have attained the age of 15 or will attain that age in the current school year<sup>10</sup>, but have not ceased to be of compulsory school age<sup>11</sup>;
- 1990 (7) persons undertaking or proposing to undertake research relating to education or training<sup>12</sup>;
- 1991 (8) persons providing or proposing to provide facilities for the gaining of work experience by young persons receiving education or to provide facilities designed to form links between: (a) employers; and (b) persons who provide education or training and persons who receive it and who have not attained the age of 19<sup>13</sup>;
- 1992 (9) persons carrying out<sup>14</sup> means tests<sup>15</sup>;
- 1993 (10) persons providing or proposing to provide information, advice or guidance about education or training or connected matters (including employment)<sup>16</sup>.

The Council may secure the provision of financial resources under heads (1) to (10) above by providing resources itself<sup>17</sup>, by making arrangements for the provision of resources by another person<sup>18</sup>, or by making arrangements for the provision of resources by persons jointly (whether or not including the Council)<sup>19</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 5(1)(a). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1086 note 12 ante. In discharging its functions under s 5(1)(a), the Council must have regard to the needs of persons with learning difficulties: see PARA 1091 ante. As to when a person has learning difficulties see PARA 1091 note 6 ante.

3 Ibid s 5(1)(b). In discharging its functions under s 5(1)(b), the Council must have regard to the needs of persons with learning difficulties: see PARA 1091 ante.

4 Ibid s 5(1)(c). In exercising its power under s 5(1)(c), the Council may secure the provision of financial resources by reference to any fees or charges payable by the person receiving or proposing to receive the education or training or to any other matter, such as transport or childcare: s 5(3). In discharging its functions under s 5(1)(c), the Council must have regard to the needs of persons with learning difficulties: see PARA 1091 ante.

5 Ibid s 5(1)(d). The courses referred to in the text are courses falling within the Education Reform Act 1988 s 120 (as amended), Sch 6 para 1(g) (courses in preparation for professional examinations at higher level: see PARA 19 ante) or Sch 6 para 1(h) (courses providing education at a higher level: see PARA 19 ante). In discharging its functions under the Learning and Skills Act 2000 s 5(1)(d), the Council must have regard to the needs of persons with learning difficulties: see PARA 1091 ante.

6 As to references to institutions within the further education sector see PARA 579 ante; and as to references to institutions within the higher education sector see PARA 646 ante (definitions applied by ibid s 5(1)(e)).

7 As to secondary education see PARA 17 ante.

8 Learning and Skills Act 2000 s 5(1)(e).

9 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by ibid s 5(4) (added by the Education Act 2002 s 178(1), (2)(b)).

10 Learning and Skills Act 2000 s 5(1)(ea)(i) (s 5(1)(ea) added by the Education Act 2002 s 178(1), (2)(a)). For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by the Learning and Skills Act 2000 s 5(4) (as added: see note 9 supra).

11 Ibid s 5(1)(ea)(ii) (as added: see note 10 supra). For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by s 5(4) (as added: see note 9 supra).

12 Ibid s 5(1)(f).

13 Ibid s 5(1)(g). The facilities referred to in the text are those described in s 8(1) or s 8(2): see PARA 1090 ante. In discharging its functions under s 5(1)(g), the Council must have regard to the needs of persons with learning difficulties: see PARA 1091 ante.

14 Ie under arrangements made under ibid s 9: see PARA 1095 post.

15 Ibid s 5(1)(h).

16 Ibid s 5(1)(i).

17 Ibid s 5(2)(a). As to the imposition of conditions for the provision of financial resources by the Council see PARA 1093 post.

18 Ibid s 5(2)(b).

19 Ibid s 5(2)(c).

## UPDATE

### 1072-1112 The Learning and Skills Council for England

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1093. Conditions for the provision of financial resources.

### **1093. Conditions for the provision of financial resources.**

If the Learning and Skills Council for England<sup>1</sup> itself provides financial resources<sup>2</sup>, it may impose conditions<sup>3</sup>. The conditions may:

- 1994 (1) require the Council or a person designated by it to be allowed access to a person's accounts and documents and to be given rights in relation to a person's computers and associated apparatus and material<sup>4</sup>;
- 1995 (2) require a person to whom financial resources are provided to give to the Council information it requests for the purpose of carrying out its functions<sup>5</sup>.

The conditions may also require a person providing or proposing to provide education or training (the 'provider') to make arrangements providing for all or any of the following:

- 1996 (a) for the provider to charge fees by reference to specified criteria<sup>6</sup>;
- 1997 (b) for the provider to make awards by reference to specified criteria<sup>7</sup>;
- 1998 (c) for the provider to recover amounts from persons receiving education or training or from employers, or from both<sup>8</sup>;
- 1999 (d) for amounts to be determined by reference to specified criteria where provision is made under head (c) above<sup>9</sup>;
- 2000 (e) for specified exemptions to operate where provision is made under head (c) above<sup>10</sup>;
- 2001 (f) for the provider to make provision specified in a report of an assessment<sup>11</sup> relating to learning difficulties<sup>12</sup>.

The conditions may enable the Council to require the repayment (in whole or part) of sums paid by the Council if any of the conditions subject to which the sums were paid is not complied with<sup>13</sup>, and the conditions may require the payment of interest in respect of any period in which a sum due to the Council in accordance with any condition is unpaid<sup>14</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 As to the provision of financial resources see PARA 1092 ante.

3 Learning and Skills Act 2000 s 6(1).

4 Ibid s 6(1), (2)(a).

5 Ibid s 6(1), (2)(b).

6 Ibid s 6(1), (3)(a).

7 Ibid s 6(1), (3)(b).

8 Ibid s 6(1), (3)(c).

9 Ibid s 6(1), (3)(d).



- 10 Ibid s 6(1), (3)(e).
- 11 le an assessment conducted under ibid s 140: see PARA 992 ante.
- 12 Ibid s 6(1), (3)(f).
- 13 Ibid s 6(1), (5)(a).
- 14 Ibid s 6(1), (5)(b).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1094. Funding of school sixth-forms.

#### **1094. Funding of school sixth-forms.**

The Learning and Skills Council for England<sup>1</sup> may make a grant to a local education authority<sup>2</sup>:

2002 (1) on the condition that the grant be applied as part of the authority's schools budget<sup>3</sup> for a funding period<sup>4</sup>; and

2003 (2) with a view to the grant being used for the purposes of, or for purposes connected with, the provision by schools of education suitable to the requirements of persons above compulsory school age<sup>5</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'schools budget' see PARA 312 ante; definition applied by the Learning and Skills Act 2000 s 7(3) (substituted by the Education Act 2005 s 117, Sch 18 para 12(1), (3)).

4 Learning and Skills Act 2000 s 7(1)(a) (amended by the Education Act 2002 Sch 21 para 124(1), (2); and the Education Act 2005 s 117, Sch 18 para 12(1), (2)). For these purposes, 'funding period' means a financial year or, if some other period is prescribed in relation to England under the School Standards and Framework Act 1998 s 45(1B) (as added) (see PARA 312 note 3 ante), that other period: Learning and Skills Act 2000 s 7(3) (as substituted: see note 3 supra).

A grant made under s 7 (as amended) may be made on conditions in addition to the condition mentioned in s 7(1)(a) (as amended), including conditions of a kind which could be imposed under s 6 (as amended) (see PARA 1093 ante): s 7(2).

5 Ibid s 7(1)(b). As to compulsory school age see PARA 15 ante.

#### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1095. Assessments and means tests.

### **1095. Assessments and means tests.**

The Learning and Skills Council for England<sup>1</sup> may develop schemes for the assessment of the performance of persons in providing post-16 education and training<sup>2</sup>. The Council may take the assessments into account in deciding how to exercise its powers<sup>3</sup> in relation to the provision of financial resources<sup>4</sup>.

The Council may either carry out means tests<sup>5</sup>, or arrange for other persons to carry out means tests<sup>6</sup>. The Council may take the results of the tests into account in exercising its power<sup>7</sup> to provide financial resources to persons receiving or proposing to receive post-16 education or training<sup>8</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 9(1). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1086 note 12 ante.

3 *Ie* under *ibid* s 5 (as amended): see PARA 1092 ante.

4 *Ibid* s 9(2).

5 *Ibid* s 9(3)(a).

6 *Ibid* s 9(3)(b).

7 *Ie* under *ibid* s 5(1)(c): see PARA 1092 ante.

8 *Ibid* s 9(4).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1096. Qualifying accounts and arrangements.

### **1096. Qualifying accounts and arrangements.**

The Learning and Skills Council for England<sup>1</sup> may promote the holding of qualifying accounts<sup>2</sup> and the making of qualifying arrangements<sup>3</sup>. The Council:

- 2004 (1) may be specified as a body with which qualifying arrangements<sup>4</sup> may be made<sup>5</sup>;
- 2005 (2) may be designated by the Secretary of State<sup>6</sup> under provisions relating to qualifying arrangements<sup>7</sup>, and may act in accordance with such a designation<sup>8</sup>;
- 2006 (3) may make arrangements<sup>9</sup> in relation to the payment of grants<sup>10</sup>; and
- 2007 (4) may be designated by the Secretary of State in exercise of a power conferred on him under provisions relating to grants<sup>11</sup>, and may act in accordance with such a designation<sup>12</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 10(1)(a). The reference in the text to qualifying accounts is a reference to accounts which qualify under s 104: see PARA 981 ante. The Individual Learning Accounts programme under ss 104-109 has been discontinued in England: see PARA 980 ante.

3 Ibid s 10(1)(b). The reference in the text to qualifying arrangements is a reference to arrangements which qualify under s 105: see PARA 982 ante.

4 Ie under ibid s 105: see PARA 982 ante.

5 Ibid s 10(2)(a).

6 As to the Secretary of State see PARA 52 ante.

7 Ie under the Learning and Skills Act 2000 s 107(1) or s 107(3): see PARA 982 ante.

8 Ibid s 10(2)(b).

9 Ie under provision made under ibid s 108(5)(d): see PARA 983 ante.

10 Ibid s 10(2)(c).

11 Ie under ibid s 108(6)(b) or s 108(7)(b): see PARA 983 ante.

12 Ibid s 10(2)(d).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the

office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1097. Provision and use of information by the Learning and Skills Council for England.

### ***D. INFORMATION, STRATEGIES, PLANS AND REPORTS***

#### **1097. Provision and use of information by the Learning and Skills Council for England.**

The Learning and Skills Council for England<sup>1</sup> may carry out research relating to any matter relevant to any of its functions<sup>2</sup>. It must provide the Secretary of State<sup>3</sup> with such information or advice as he requests about any matter in relation to which the Council has a function<sup>4</sup>, and may provide the Secretary of State with such information or advice as it thinks fit about any matter in relation to which it has a function<sup>5</sup>. The Council may also provide any person designated by the Secretary of State with such information as the Council thinks fit about any matter in relation to which it has a function<sup>6</sup>.

The Council must establish systems for collecting information which is designed to secure that its decisions with regard to education and training are made on a sound basis<sup>7</sup>. The Council may secure the provision of facilities for providing information, advice or guidance about education or training or connected matters, including employment<sup>8</sup>.

In carrying out its functions the Council must have regard to information supplied to it by any body designated by the Secretary of State for these purposes<sup>9</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 12(1).

3 As to the Secretary of State see PARA 52 ante.

4 Learning and Skills Act 2000 s 12(2).

5 Ibid s 12(3).

6 Ibid s 12(4).

7 Ibid s 12(5).

8 Ibid s 12(6).

9 Ibid s 17.

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the

office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1098. Efficiency studies.

### **1098. Efficiency studies.**

The Learning and Skills Council for England<sup>1</sup> may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of an institution within the further education sector<sup>2</sup>. A person promoting or carrying out such studies at the request of the Council may require the governing body<sup>3</sup> of the institution concerned:

2008 (1) to furnish the person, or any person authorised by him, with such information<sup>4</sup>; and

2009 (2) to make its accounts and such other documents available to him, or any person so authorised, for inspection<sup>5</sup>,

as the person may reasonably require for that purpose<sup>6</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante. In relation to the dissolution of further education corporations see PARA 598 note 7 ante.

2 Further and Higher Education Act 1992 s 83(1) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 39). As to references to institutions within the further education sector see PARA 579 ante.

3 For the meaning of 'governing body' in relation to an educational institution see PARA 584 note 5 ante.

4 Further and Higher Education Act 1992 s 83(2)(a).

5 Ibid s 83(2)(b).

6 Ibid s 83(2).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1099. Strategy.

### **1099. Strategy.**

The Learning and Skills Council for England<sup>1</sup> must formulate a strategy in relation to its functions, and keep it under review<sup>2</sup>.

The strategy must include proposals as to how the Council intends to develop the skills of persons in employment<sup>3</sup>. The Council must incorporate in the strategy proposals as to: (1) how it intends to achieve any objectives contained in directions of the Secretary of State<sup>4</sup>; and (2) how it intends to achieve such objectives within any time limits contained in such directions<sup>5</sup>.

The Council must have regard to the strategy in exercising its functions<sup>6</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 16(1).

3 Ibid s 16(3). This provision does not affect the generality of s 16(1): see the text and notes 1-2 supra.

4 Ibid s 16(4)(a). As to the Secretary of State see PARA 52 ante.

5 Ibid s 16(4)(b).

6 Ibid s 16(2).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1100. Plans.

### **1100. Plans.**

The Learning and Skills Council for England<sup>1</sup> must make and publish a plan for each of its financial years<sup>2</sup>, and may make and publish such other plans as it thinks fit<sup>3</sup>. A plan for the Council's first financial year had to be published as soon as reasonably practicable after the start of the year<sup>4</sup>, but a plan for any subsequent financial year of the Council must be published before the year starts<sup>5</sup>. A plan for a financial year must include proposals as to how the Council intends to achieve in the financial year any objectives which should be achieved in the year in conformity with directions of the Secretary of State<sup>6</sup> or with conditions imposed<sup>7</sup>. A plan must also include the Council's financial proposals for the year<sup>8</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 15(1)(a). For the meaning of 'financial year of the Council' see PARA 1084 note 6 ante.

3 Ibid s 15(1)(b).

4 Ibid s 15(2).

5 Ibid s 15(3).

6 As to the Secretary of State see PARA 52 ante.

7 Learning and Skills Act 2000 s 15(4)(a). The conditions referred to in the text are conditions imposed under s 27: see PARA 1104 post.

8 Ibid s 15(4)(b).

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1101. Annual report.

### **1101. Annual report.**

As soon as is reasonably practicable after the end of each financial year of the Learning and Skills Council for England<sup>1</sup>, it must prepare a report on its activities in that year and send a copy of the report to the Secretary of State<sup>2</sup>. A report must be in such form and contain such information as the Secretary of State may specify in directions to the Council<sup>3</sup>, and must set out any other directions given to the Council under Part I of the Learning and Skills Act 2000<sup>4</sup> in the financial year to which the report relates<sup>5</sup>.

Following receipt of a copy of such a report, the Secretary of State must lay a copy of it before each House of Parliament and arrange for copies of it to be published in such manner as he thinks appropriate<sup>6</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante. For the meaning of 'financial year of the Council' see PARA 1084 note 6 ante.

2 Learning and Skills Act 2000 s 28(1). As to the Secretary of State see PARA 52 ante.

3 Ibid s 28(2)(a).

4 Ie ibid Pt I (ss 1-29) (as amended).

5 Ibid s 28(2)(b).

6 Ibid s 28(3).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iii) Functions and Powers/E. JOINT EXERCISE OF FUNCTIONS/1102. Joint exercise of functions.

## ***E. JOINT EXERCISE OF FUNCTIONS***

### **1102. Joint exercise of functions.**

Any two or more of the following councils, namely, a Higher Education Funding Council<sup>1</sup>, the Learning and Skills Council for England<sup>2</sup>, the National Council for Education and Training for Wales<sup>3</sup> or the Scottish Higher Education Funding Council, may exercise jointly any of their functions where it appears to them that to do so will be more efficient, or will enable them more effectively to discharge any of their functions<sup>4</sup>. Any two or more such councils must, if directed to do so by the Secretary of State<sup>5</sup>, jointly make provision for the assessment by a person appointed by them of matters relating to the arrangements made by each institution in Great Britain which is within the higher education sector<sup>6</sup> for maintaining academic standards in the institution<sup>7</sup>. The power of the Secretary of State to give such directions is to be treated, as regards the Scottish Higher Education Funding Council, as exercisable in or as regards Scotland and may be exercised separately<sup>8</sup>.

1 As to the meaning of 'Higher Education Funding Council' see PARA 733 note 1 ante. As to the Higher Education Funding Councils see PARA 733 et seq ante.

2 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

3 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 post.

4 Further and Higher Education Act 1992 s 82(1), (3)(a) (s 82(3)(a) amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 38); Further and Higher Education Act 1992 s 90(2A) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 41).

5 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

6 As to references to institutions within the higher education sector see PARA 646 ante. In the Further and Higher Education Act 1992 s 82 (as amended), references to institutions within the higher education sector include institutions within the higher education sector within the meaning of the Further and Higher Education (Scotland) Act 1992 Pt II: Further and Higher Education Act 1992 s 82(3)(b).

7 Ibid s 82(2).

8 Ibid s 82(2A) (added by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and

leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

### **1102 Joint exercise of functions**

TEXT AND NOTES 1-7--References to councils are now to relevant authorities; reference to National Council for Education and Training for Wales now to the National Assembly for Wales to the extent that it is discharging its functions under the Learning and Skills Act 2000 Pt 2 (ss 30-51): 1992 Act s 82 (s 82(1), (2) amended, s 82(3)(a) substituted by SI 2005/3238).

NOTE 4--1992 Act s 90(2A) repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iv) Powers of the Secretary of State/1103. Directions to the Learning and Skills Council for England.

#### **(iv) Powers of the Secretary of State**

##### **1103. Directions to the Learning and Skills Council for England.**

The Secretary of State<sup>1</sup> may give directions to the Learning and Skills Council for England<sup>2</sup>. Directions may contain: (1) objectives which the Council should achieve in seeking to carry out its functions<sup>3</sup>; (2) time limits within which the Council should achieve the objectives<sup>4</sup>; and (3) provision relating to the management of the Council<sup>5</sup>. If the Secretary of State asks the Council to do so, it must advise him on the formulation of objectives and time limits<sup>6</sup>.

If the Secretary of State is satisfied that the Council has failed to discharge a duty imposed by or under any Act<sup>7</sup>, or has acted or is proposing to act unreasonably<sup>8</sup> with respect to the exercise of a power conferred or the performance of a duty imposed by or under any Act<sup>9</sup>, then in such a case directions may contain such provision as the Secretary of State thinks fit as to the exercise of the Council's powers and performance of its duties<sup>10</sup>. Directions may contain such provision despite any enactment making the exercise of a power or performance of a duty contingent on the Council's opinion<sup>11</sup>.

Directions may not concern the provision of financial resources in respect of activities carried on by a particular person or persons<sup>12</sup>.

The Council must comply with any directions given to it by the Secretary of State<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Learning and Skills Act 2000 s 25(1). As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

3 Ibid s 25(1), (2)(a).

4 Ibid s 25(1), (2)(b).

5 Ibid s 25(1), (2)(c).

6 Ibid s 25(7).

7 Ibid s 25(1), (3)(a).

8 Cf para 57 ante.

9 Learning and Skills Act 2000 s 25(1), (3)(b).

10 Ibid s 25(1), (4).

11 Ibid s 25(5).

12 Ibid s 25(6).

13 Ibid s 25(8).

#### **UPDATE**

##### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed:  
Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(iv) Powers of the Secretary of State/1104. Grants to the Learning and Skills Council for England.

#### **1104. Grants to the Learning and Skills Council for England.**

The Secretary of State<sup>1</sup> may make grants to the Learning and Skills Council for England<sup>2</sup> of such amounts and subject to such conditions as he thinks fit<sup>3</sup>.

The conditions may set the Council's budget for any of its financial years<sup>4</sup>. The conditions may also:

- 2010 (1) require the Council to use the grants for specified purposes<sup>5</sup>;
- 2011 (2) require the Council to comply with specified requirements in respect of every person (or every person of a specified class or description) in securing the provision of specified financial resources to such persons<sup>6</sup>;
- 2012 (3) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any condition imposed is not complied with<sup>7</sup>;
- 2013 (4) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any condition remains unpaid<sup>8</sup>.

The Secretary of State may not impose conditions which relate to the Council's securing of the provision of financial resources to a particular person or persons<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

3 Learning and Skills Act 2000 s 27(1).

4 Ibid s 27(2). For the meaning of 'financial year of the Council' see PARA 1084 note 6 ante.

5 Ibid s 27(3)(a).

6 Ibid s 27(3)(b). Requirements which may be imposed under s 27(3)(b) include in particular requirements that, if the Council itself provides specified financial resources, it is to impose specified conditions: s 27(4).

7 Ibid s 27(3)(c).

8 Ibid s 27(3)(d).

9 Ibid s 27(5).

#### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills,



Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(v) Committees of the Learning and Skills Council for England/1105. Committees and members of committees.

## **(v) Committees of the Learning and Skills Council for England**

### **1105. Committees and members of committees.**

The Learning and Skills Council for England<sup>1</sup> must establish a young people's learning committee<sup>2</sup> and an adult learning committee<sup>3</sup>, and may establish such other committees as it thinks fit<sup>4</sup>. Members of a committee may be (but need not be) members of the Council<sup>5</sup>.

A person holds and vacates office as a member of a committee of the Council in accordance with the terms of his appointment<sup>6</sup>. On ceasing to be a member of a committee a person is eligible for re-appointment<sup>7</sup>. A person may at any time by notice in writing resign his office as a member of a committee<sup>8</sup>. If the Council is satisfied that a member of a committee of the Council has been absent from meetings of the committee for a period longer than six consecutive months without the committee's permission<sup>9</sup>, or is unable or unfit to carry out the functions of a member<sup>10</sup>, the Council may by notice in writing to the member remove him from his office, which then becomes vacant<sup>11</sup>.

The Council must pay to the members of any of its committees who are not members of the Council such travelling, subsistence and other allowances as the Secretary of State may determine<sup>12</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 As to the young people's learning committee see PARA 1106 post.

3 Learning and Skills Act 2000 s 26, Sch 3 para 1(1)(a). As to the adult learning committee see PARA 1107 post.

Nothing in Sch 3 applies to local learning and skills councils: Sch 3 para 1(3). As to local learning and skills councils see PARAS 1110-1112 post.

4 Ibid Sch 3 para 1(1)(b). As to other committees of the Council see PARA 1108 post.

5 Ibid Sch 3 para 1(2).

6 Ibid Sch 3 para 5(1). As to the appointment of members of the young people's learning committee see PARA 1106 post; as to the appointment of members of the adult learning committee see PARA 1107 post; and as to the appointment of members of other committees see PARA 1108 post.

7 Ibid Sch 3 para 5(2).

8 Ibid Sch 3 para 5(3), (4). In the case of a member of the young people's learning committee or in the case of a member of the adult learning committee, notice must be given to the Secretary of State: see Sch 3 para 5(3). In the case of a member of any other committee, notice must be given to the Council: see Sch 3 para 5(4). As to the Secretary of State see PARA 52 ante.

9 Ibid Sch 3 para 6(1)(a).

10 Ibid Sch 3 para 6(1)(b).

11 Ibid Sch 3 para 6(2).

12 Ibid Sch 3 para 7.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(v) Committees of the Learning and Skills Council for England/1106. The young people's learning committee.

### **1106. The young people's learning committee.**

The members of the young people's learning committee are appointed by the Learning and Skills Council for England<sup>1</sup> with the approval of the Secretary of State<sup>2</sup>. The Secretary of State must appoint one of the members as chairman after seeking the Council's advice<sup>3</sup>. In appointing a member, the Council and the Secretary of State must have regard to the desirability of appointing a person who appears to them to understand the needs of young persons<sup>4</sup> receiving education or training<sup>5</sup>.

The young people's learning committee must: (1) investigate the provision of education and training of young persons and the provision of financial resources for their education and training<sup>6</sup>; and (2) advise the Council on the provision of such education and training and the provision of such resources<sup>7</sup>. The committee must also consider, and advise the Council on, what education and training would be appropriate for young persons of different abilities and aptitudes in order to prepare them for those opportunities, responsibilities and experiences of adult life which are not connected to employment<sup>8</sup>. The committee is to have such other functions relating to the education and training of young persons, and such functions relating to their employment, as the Council specifies<sup>9</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 26, Sch 3 para 2(1), (5). As to the Secretary of State see PARA 52 ante.

3 Ibid Sch 3 para 2(1), (6).

4 A person is a young person in the period which starts with the beginning of the year in which he attains the age of 15, and ends when he attains the age of 19: *ibid* Sch 3 para 2(8). A year is a year beginning with 1 September: Sch 3 para 2(9).

5 Ibid Sch 3 para 2(1), (7).

6 Ibid Sch 3 para 2(1), (2)(a).

7 Ibid Sch 3 para 2(1), (2)(b).

8 Ibid Sch 3 para 2(1), (3).

9 Ibid Sch 3 para 2(1), (4).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and

leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

**1106 The young people's learning committee**

TEXT AND NOTES--Learning and Skills Act 2000 s 26, Sch 3 repealed: Further Education and Training Act 2007 Sch 2, Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 paras 39, 52, Sch 16 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(v) Committees of the Learning and Skills Council for England/1107. The adult learning committee.

### **1107. The adult learning committee.**

The members of the adult learning committee are appointed by the Learning and Skills Council for England<sup>1</sup> with the approval of the Secretary of State<sup>2</sup>. The Secretary of State must appoint one of the members as chairman after seeking the Council's advice<sup>3</sup>. In appointing a member, the Council and the Secretary of State must have regard to the desirability of appointing a person who appears to them to understand the needs of adults<sup>4</sup> receiving education or training<sup>5</sup>.

The adult learning committee must: (1) investigate the provision of education and training of adults and the provision of financial resources for their education and training<sup>6</sup>; and (2) advise the Council on the provision of such education and training and the provision of such resources<sup>7</sup>. The committee is to have such other functions relating to the education and training of adults, and such functions relating to their employment, as the Council specifies<sup>8</sup>.

- 1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.
- 2 Learning and Skills Act 2000 s 26, Sch 3 para 3(1), (4). As to the Secretary of State see PARA 52 ante.
- 3 Ibid Sch 3 para 3(1), (5).
- 4 An adult is a person who has attained the age of 19: *ibid* Sch 3 para 3(7).
- 5 Ibid Sch 3 para 3(1), (6).
- 6 Ibid Sch 3 para 3(1), (2)(a).
- 7 Ibid Sch 3 para 3(1), (2)(b).
- 8 Ibid Sch 3 para 3(1), (3).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

### **1107 The adult learning committee**

TEXT AND NOTES--Learning and Skills Act 2000 s 26, Sch 3 repealed: Further Education and Training Act 2007 Sch 2, Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 paras 39, 52, Sch 16 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(v) Committees of the Learning and Skills Council for England/1108. Other committees.

### **1108. Other committees.**

The members of any committee of the Learning and Skills Council for England<sup>1</sup> (other than the young people's learning committee<sup>2</sup> and the adult learning committee<sup>3</sup>) are appointed by the Council<sup>4</sup>.

The functions of such a committee are such functions as the Council specifies<sup>5</sup>, and concern such matters as the Council specifies<sup>6</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 As to the young people's learning committee see PARA 1106 ante.

3 As to the adult learning committee see PARA 1107 ante.

4 Learning and Skills Act 2000 s 26, Sch 3 para 4(1), (3).

5 Ibid Sch 3 para 4(1), (2)(a).

6 Ibid Sch 3 para 4(1), (2)(b).

### **UPDATE**

#### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(v) Committees of the Learning and Skills Council for England/1109. Proceedings of committees.

### **1109. Proceedings of committees.**

A representative of the Secretary of State<sup>1</sup> is entitled to attend and take part in any deliberations (but not in decisions) at meetings of any committee of the Learning and Skills Council for England<sup>2</sup>. The Council must provide the Secretary of State with such copies as he may require of any documents distributed to members of any committee of the Council<sup>3</sup>.

The validity of any proceedings of any committee of the Council is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>4</sup>.

The Council may regulate the procedure of any of its committees<sup>5</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Learning and Skills Act 2000 s 26, Sch 3 para 8(1). As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

3 Ibid Sch 3 para 8(2).

4 Ibid Sch 3 para 9. As to members of committees see PARA 1105 ante. As to the appointment of members of the young people's learning committee see PARA 1106 ante; as to the appointment of members of the adult learning committee see PARA 1107 ante; and as to the appointment of members of other committees see PARA 1108 ante.

5 Ibid Sch 3 para 10. This is subject to the provisions of Sch 3 paras 1-9: see the text and notes 1-4 supra; and PARAS 1105-1108 ante.

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(vi) Local Learning and Skills Councils/1110. Local learning and skills councils.

## **(vi) Local Learning and Skills Councils**

### **1110. Local learning and skills councils.**

The Learning and Skills Council for England (the 'Council')<sup>1</sup> must establish a committee (known as a 'local learning and skills council') for each area of England specified by the Secretary of State<sup>2</sup>. A local learning and skills council consists of not less than 12 and not more than 16 members appointed by the Council with the approval of the Secretary of State<sup>3</sup>. Members of a local learning and skills council may be (but need not be) members of the Council<sup>4</sup>. The Secretary of State must appoint one of the members as chairman after seeking the advice of the Council<sup>5</sup>.

A person is to hold and vacate office as a member or as chairman of a local learning and skills council in accordance with the terms of his appointment<sup>6</sup>. On ceasing to be a member or chairman a person is eligible for re-appointment<sup>7</sup>. A person may at any time by notice in writing resign his office as a member or as chairman<sup>8</sup>. If the Council is satisfied that a member of a local learning and skills council has been absent from meetings of the council for a period longer than six consecutive months without the council's permission<sup>9</sup>, or is unable or unfit to carry out the functions of a member<sup>10</sup>, the Council may by notice in writing to the member remove him from his office, which then becomes vacant<sup>11</sup>.

The Council must appoint one of its employees as the director of a local learning and skills council<sup>12</sup>, and must seek the advice of the chairman of a local learning and skills council before making such an appointment<sup>13</sup>. If a person to be appointed as a director of a local learning and skills council is not already a member of that council, the Council must appoint him as a member of the local learning and skills council for the same term as the term of his appointment as director<sup>14</sup>. If a person to be appointed as a director of a local learning and skills council is already a member of that council but his term of appointment as such ends before the term of his appointment as director ends, the Council must extend his term of appointment as a member so that it ends when the term of his appointment as director ends<sup>15</sup>.

The Council may appoint such of its employees as it thinks fit to act as the staff of a local learning and skills council<sup>16</sup>.

A local learning and skills council may regulate its own procedure<sup>17</sup>. It may authorise the chairman or the director to exercise such of its functions as it may determine<sup>18</sup>. If the chairman is authorised to exercise a function he may authorise another member of the local learning and skills council to exercise it<sup>19</sup>. If the director is authorised to exercise a function he may authorise an employee of the local learning and skills council to exercise it<sup>20</sup>.

The validity of any proceedings of a local learning and skills council is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>21</sup>.

The Council must pay: (1) in respect of the chairman of a local learning and skills council such salary and travelling, subsistence and other allowances as the Secretary of State may determine<sup>22</sup>; and (2) in respect of the other members of a local learning and skills council such travelling, subsistence and other allowances as the Secretary of State may determine<sup>23</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 Learning and Skills Act 2000 s 19(1). For the meaning of 'England' see PARA 52 note 11 ante. As to the Secretary of State see PARA 52 ante.

3 Ibid s 19(2).

4 Ibid s 19(4).

5 Ibid s 19(3).

6 Ibid s 19(5), Sch 2 para 2(1).

7 Ibid Sch 2 para 2(2).

8 Ibid Sch 2 para 2(3), (4). In the case of a member, notice must be given to the Council (see Sch 2 para 2(3)); and, in the case of a chairman, notice must be given to the Secretary of State (see Sch 2 para 2(4)).

9 Ibid Sch 2 para 3(1)(a).

10 Ibid Sch 2 para 3(1)(b).

11 Ibid Sch 2 para 3(2). Such a notice requires the Secretary of State's approval: Sch 2 para 3(3).

12 Ibid Sch 2 para 1(1).

13 Ibid Sch 2 para 1(2). This provision did not apply to the appointment of the first director of a local learning and skills council: Sch 2 para 1(3).

14 Ibid Sch 2 para 1(4).

15 Ibid Sch 2 para 1(5).

16 Ibid Sch 2 para 5.

17 Ibid Sch 2 para 8.

18 Ibid Sch 2 para 6(1).

19 Ibid Sch 2 para 6(2).

20 Ibid Sch 2 para 6(3).

21 Ibid Sch 2 para 7.

22 Ibid Sch 2 para 4(a) (Sch 2 para 4 substituted by the Education Act 2002 s 209).

23 Learning and Skills Act 2000 Sch 2 para 4(b) (as substituted: see note 22 supra).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

### **1110-1112 [Regional] Learning and Skills Councils**

Learning and Skills Act 2000 ss 19-24, Sch 2 repealed: Further Education and Training Act 2007 s 3(2)(a), Sch 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(vi) Local Learning and Skills Councils/1111. Functions and objectives of local learning and skills councils.

### **1111. Functions and objectives of local learning and skills councils.**

Certain duties of the Learning and Skills Council for England (the 'Council')<sup>1</sup> are performed by local learning and skills councils<sup>2</sup>. A local learning and skills council must perform in relation to its area such of the Council's duties as the Council specifies<sup>3</sup>, and it may exercise in relation to its area such of the Council's powers as the Council specifies<sup>4</sup>. A local learning and skills council must perform, in relation to such places outside its area as the Council specifies, such of the Council's duties as the Council specifies<sup>5</sup>, and it may exercise in relation to such places outside its area as the Council specifies such of the Council's powers as the Council specifies<sup>6</sup>.

In relation to each financial year of the Council<sup>7</sup>, it must prepare guidance for each local learning and skills council<sup>8</sup>. The guidance must include objectives which a local learning and skills council should achieve in seeking to carry out its functions<sup>9</sup>, and time limits within which it should achieve the objectives<sup>10</sup>. The guidance must also set a local learning and skills council's budget for the financial year<sup>11</sup>. The Council must consult the regional development agencies<sup>12</sup> and local education authorities<sup>13</sup> on the guidance<sup>14</sup>. After consulting, and (if appropriate) altering the guidance, the Council must issue the guidance to the local learning and skills council<sup>15</sup>.

1 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

2 As to the establishment of local learning and skills councils see PARA 1110 ante.

3 Learning and Skills Act 2000 s 20(1)(a).

4 Ibid s 20(1)(b).

5 Ibid s 20(2)(a).

6 Ibid s 20(2)(b).

7 For the meaning of 'financial year of the Council' see PARA 1084 note 6 ante.

8 Learning and Skills Act 2000 s 21(1). The guidance in relation to the Council's first financial year had to be prepared as soon as reasonably practicable after the start of the year: s 24(1), (2). The guidance in relation to any subsequent financial year of the Council must be prepared in time for the guidance to be issued under s 21, and a plan to be published under s 22 (see PARA 1112 post), before the financial year starts: s 24(1), (3).

9 Ibid s 21(2)(a).

10 Ibid s 21(2)(b).

11 Ibid s 21(3).

12 A regional development agency is a development agency established by the Regional Development Agencies Act 1998 s 1: Learning and Skills Act 2000 s 21(6). As to regional development agencies see TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq.

13 As to local education authorities see PARA 20 ante.

14 Learning and Skills Act 2000 s 21(4).

15 Ibid s 21(5).

**UPDATE****1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

**1110-1112 [Regional] Learning and Skills Councils**

Learning and Skills Act 2000 ss 19-24, Sch 2 repealed: Further Education and Training Act 2007 s 3(2)(a), Sch 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(1) THE LEARNING AND SKILLS COUNCIL FOR ENGLAND/(vi) Local Learning and Skills Councils/1112. Plans of local learning and skills councils.

### **1112. Plans of local learning and skills councils.**

A local learning and skills council<sup>1</sup> must prepare a plan for each financial year of the Learning and Skills Council for England (the 'Council')<sup>2</sup>. A plan must include:

- 2014 (1) a statement of the needs regarding education and training of the population of the local learning and skills council's area<sup>3</sup>;
- 2015 (2) a statement of the needs of employers in the local learning and skills council's area regarding education and training of their employees and potential employees<sup>4</sup>;
- 2016 (3) a statement of how the local learning and skills council proposes to carry out its functions in the light of the needs mentioned in heads (1) and (2) above<sup>5</sup>;
- 2017 (4) proposals as to how the local learning and skills council intends to achieve in the financial year any objectives which should be achieved in the year in conformity with guidance issued<sup>6</sup> by the Council<sup>7</sup>;
- 2018 (5) the local learning and skills council's financial proposals for the year, taking account of guidance issued<sup>8</sup> by the Council<sup>9</sup>;
- 2019 (6) a statement of the likely effect of the local learning and skills council's activities on the economic development and regeneration of its area<sup>10</sup>;
- 2020 (7) a statement of the education and training (and connected organised leisure-time occupation) whose provision the local learning and skills council would like a relevant local education authority<sup>11</sup> to secure in the local learning and skills council's area for persons who have attained the age of 19<sup>12</sup>; and
- 2021 (8) proposals as to the financial resources with which the authority will be provided by the Council to enable the authority to secure the provision of such education and training (and connected organised leisure-time occupation)<sup>13</sup>.

In preparing a plan, a local learning and skills council must have regard to: (a) any matter contained in guidance issued<sup>14</sup> by the Council<sup>15</sup>; (b) the strategy<sup>16</sup> of any relevant regional development agency<sup>17</sup>; and (c) any strategy<sup>18</sup> prepared by any relevant local authority<sup>19</sup>. In preparing a plan a local learning and skills council must also consult any relevant regional development agency<sup>20</sup>, any relevant local authority<sup>21</sup>, and such other persons as the Secretary of State may specify<sup>22</sup>. After consulting, and (if appropriate) altering the plan, the local learning and skills council must seek the Council's approval of it, and the Council must consult any relevant regional development agency on whether the plan should be approved<sup>23</sup>. The Council must approve the plan or require the local learning and skills council to make specified alterations of it, and if alterations are required the local learning and skills council must make them<sup>24</sup>.

The local learning and skills council must publish the plan as approved by the Council or as altered in accordance with the Council's requirements<sup>25</sup>.

A plan must be taken into account in deciding: (i) the extent to which a local learning and skills council has carried out its functions in a satisfactory way<sup>26</sup>; and (ii) the extent to which a director of a local learning and skills council has carried out his functions in a satisfactory way<sup>27</sup>.

<sup>1</sup> As to the establishment of local learning and skills councils see PARA 1110 ante.

2 Learning and Skills Act 2000 s 22(1). As to the establishment of the Learning and Skills Council for England see PARA 1072 ante. For the meaning of 'financial year of the Council' see PARA 1084 note 6 ante.

The plan for the Council's first financial year had to be prepared as soon as reasonably practicable after the start of the year: s 24(1), (4). The plan for any subsequent financial year of the Council must be prepared in time for the plan to be published under s 22 before the financial year starts: s 24(1), (5).

3 Ibid s 22(2)(a).

4 Ibid s 22(2)(b).

5 Ibid s 22(2)(c). As to the functions of local learning and skills councils see PARA 1111 ante.

6 Ie under ibid s 21: see PARA 1111 ante.

7 Ibid s 22(2)(d).

8 Ie under ibid s 21: see PARA 1111 ante.

9 Ibid s 22(2)(e).

10 Ibid s 22(2)(f).

11 For the purposes of ibid s 22, a local education authority is a relevant authority if any of its area falls within the area of the local learning and skills council concerned: s 22(10)(c). As to local education authorities see PARA 20 ante.

12 Ibid s 22(3)(a). If a local education authority does not secure the provision of education and training (and connected organised leisure-time occupation) in accordance with provisions included in a plan under s 22(3), the Secretary of State may direct the authority to do so: s 23(1). The authority must act in accordance with the direction, but only if the Council provides it with any financial resources which the authority reasonably requires to enable it to do so: s 23(2). As to the Secretary of State see PARA 52 ante.

Any function of a local education authority in England which is conferred by or under s 23 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (m). For the meaning of 'England' see PARA 52 note 11 ante.

13 Learning and Skills Act 2000 s 22(3)(b). See note 12 supra.

14 Ie under ibid s 21: see PARA 1111 ante.

15 Ibid s 22(4)(a). This is in addition to the matters mentioned in s 22(2): see the text and notes 3-10 supra.

16 Ie prepared under the Regional Development Agencies Act 1998 s 7 (as amended) or published under s 7A (as added). See TRADE AND INDUSTRY vol 97 (2010) PARA 989.

17 Learning and Skills Act 2000 s 22(4)(b). For the purposes of s 22, a regional development agency is a development agency established by the Regional Development Agencies Act 1998 s 1 (see TRADE AND INDUSTRY vol 97 (2010) PARA 988); and a regional development agency is a relevant agency if any of its area falls within the area of the local learning and skills council concerned: Learning and Skills Act 2000 s 22(10)(a), (b).

18 Ie prepared under the Local Government Act 2000 s 4 (strategy for promoting well-being): see LOCAL GOVERNMENT vol 69 (2009) PARA 464.

19 Learning and Skills Act 2000 s 22(4)(c). For the purposes of s 22, 'local authority' means a county council, a district council, a London borough council, the Common Council of the City of London in its capacity as a local authority, and the Greater London Authority: see s 22(10)(d); and the Local Government Act 2000 s 1(a). As to areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq; as to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 et seq; as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55; and as to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 34, 79 et seq. For the purposes of the Learning and Skills Act 2000 s 22, a local authority is a relevant authority if any of its area falls within the area of the local learning and skills council concerned: s 22(10)(e).

20 Ibid s 22(5)(a).

21 Ibid s 22(5)(b).



- 22 Ibid s 22(5)(c).
- 23 Ibid s 22(6).
- 24 Ibid s 22(7).
- 25 Ibid s 22(8).
- 26 Ibid s 22(9)(a).
- 27 Ibid s 22(9)(b).

## **UPDATE**

### **1072-1112 The Learning and Skills Council for England**

The Learning and Skills Council for England ceased to exist on 1 April 2010 and the Learning and Skills Act 2000 Pt 1 (ss 1-29), Schs 1, 1A, 3 are repealed: Apprenticeships, Skills, Children and Learning Act 2009 s 123(1), Sch 6 paras 15-42, 50-52, Sch 16 Pt 2. For provision about schemes for the transfer of staff, property, rights and liabilities from the Council to other persons see Apprenticeships, Skills, Children and Learning Act 2009 Sch 7. As to the establishment and functions of the office of Chief Executive of Skills Funding, which has responsibility for establishing and leading a new system of skills provision for adults, see Apprenticeships, Skills, Children and Learning Act 2009 ss 81-108, 110-122, Schs 4, 5; and PARA 1088A.

### **1110-1112 [Regional] Learning and Skills Councils**

Learning and Skills Act 2000 ss 19-24, Sch 2 repealed: Further Education and Training Act 2007 s 3(2)(a), Sch 2.

### **1112 Plans of local learning and skills councils**

NOTE 19--Local Government Act 2000 s 1 amended to include an eligible parish council: Local Government and Public Involvement in Health Act 2007 s 77 (see LOCAL GOVERNMENT vol 69 (2009) PARA 23).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(i) Establishment of the National Council for Education and Training for Wales and Dissolution of the Further Education Funding Council for Wales/1113. Establishment of the National Council for Education and Training for Wales and dissolution of the Further Education Funding Council for Wales.

## **(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES**

### **(i) Establishment of the National Council for Education and Training for Wales and Dissolution of the Further Education Funding Council for Wales**

#### **1113. Establishment of the National Council for Education and Training for Wales and dissolution of the Further Education Funding Council for Wales.**

The Learning and Skills Act 2000 established a body corporate called the National Council for Education and Training for Wales (or 'Cyngor Cenedlaethol Cymru dros Addysg a Hyfforddiant')<sup>1</sup>, which replaced the Further Education Funding Council for Wales.

On 1 April 2001<sup>2</sup> the Further Education Funding Council for Wales was dissolved, and all property, rights and liabilities to which it was entitled or subject immediately before that day became property, rights and liabilities of the National Council for Education and Training for Wales<sup>3</sup>.

<sup>1</sup> Learning and Skills Act 2000 s 30(1). As to the constitution, general administration and proceedings of the National Council for Education and Training for Wales see PARAS 1116-1125 post; and as to its functions and powers see PARAS 1126-1142 post. As to the Learning and Skills Council for England, which has similar functions in relation to England, see PARA 1072 et seq ante.

Note that on 1 April 2006 ('the transfer date'), all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238, arts 1(2), 2. As to the National Assembly for Wales see PARA 53 ante.

<sup>2</sup> The day appointed under the Learning and Skills Act 2000 s 154 for the commencement of s 91: s 91(2); Learning and Skills Act 2000 (Commencement No 3 and Transitional Provisions) (Wales) Order 2001, SI 2001/1274, art 2(1), Schedule Pt I.

<sup>3</sup> Learning and Skills Act 2000 s 91(1). Such a transfer did not give rise to liability to stamp duty: s 94(1). As to stamp duty generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX. As to transitional provisions see s 151(1), Sch 10 Pt II paras 9-16. Nothing in Sch 10 prejudices the generality of s 152(6) (orders or regulations under the Learning and Skills Act 2000 may contain incidental, supplementary, saving or transitional provisions etc: see PARA 972 note 7 ante): s 151(4).

## **UPDATE**

### **1113 Establishment of the National Council for Education and Training for Wales and dissolution of the Further Education Funding Council for Wales**

TEXT AND NOTES--2000 Act ss 30, 91, Sch 10 Pt II paras 9-16 repealed, ss 94(1), 151(1) amended; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education

and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(i) Establishment of the National Council for Education and Training for Wales and Dissolution of the Further Education Funding Council for Wales/1114. Schemes for transfers.

### **1114. Schemes for transfers.**

The National Assembly for Wales<sup>1</sup> may make a scheme<sup>2</sup> providing: (1) for the transfer of any of its property, rights and liabilities to the National Council for Education and Training for Wales<sup>3</sup>; or (2) for the transfer to the Council of any of the property, rights and liabilities of a person with whom the Assembly has made certain arrangements<sup>4</sup> regarding employment<sup>5</sup>. Such a scheme comes into force on the day it specifies for it to come into force<sup>6</sup>, and when it does come into force it has effect to transfer (in accordance with its provisions) the property, rights and liabilities to which it applies<sup>7</sup>. Stamp duty is not chargeable on any such scheme<sup>8</sup>; and a land transaction<sup>9</sup> effected by such a scheme is exempt from charge for the purposes of stamp duty land tax<sup>10</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 Such a scheme may include such supplementary, incidental, consequential or transitional provisions as the National Assembly for Wales thinks are appropriate: Learning and Skills Act 2000 s 93(3).

3 Ibid s 93(1). As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante.

4 I.e. arrangements under the Employment and Training Act 1973 s 2 (as substituted and amended): see EMPLOYMENT vol 40 (2009) PARA 563.

5 Learning and Skills Act 2000 s 93(2). A scheme under s 93(2) is invalid unless it is made with the consent of the person from whom the transfer is to be made: s 93(8).

6 Ibid s 93(4). If a scheme under s 93(1) included provision for the transfer of liabilities, the day specified by the scheme for it to come into force must not have fallen after the end of the period of three years starting with 1 April 2001 (ie the day appointed under s 154 for the commencement of s 91 (see PARA 1113 ante)): s 93(6). The day specified by a scheme under s 93(2) for the scheme to come into force must not have fallen after the end of the period of three years starting with 1 April 2001 (ie the day appointed under s 154 for the commencement of s 91): s 93(7).

7 Ibid s 93(5).

8 Ibid s 94(2). As to stamp duty generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

9 For the meaning of 'land transaction' see PARA 1073 note 13 ante.

10 Learning and Skills Act 2000 s 94A(1) (s 94A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 31). Relief under the Learning and Skills Act 2000 s 94A (as added) must be claimed in a land transaction return or an amendment of such a return: s 94A(2) (as so added). For the meaning of 'land transaction return' see PARA 1073 note 14 ante. As to stamp duty land tax generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

## **UPDATE**

### **1114 Schemes for transfers**

TEXT AND NOTES 1-7--Repealed: SI 2005/3238.

NOTE 8--2000 Act s 94(2) (amended by SI 2005/3238) accordingly no longer applies.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(i) Establishment of the National Council for Education and Training for Wales and Dissolution of the Further Education Funding Council for Wales/1115. Continuity of employment on transfer.

### **1115. Continuity of employment on transfer.**

If rights and liabilities under a contract of employment are transferred by virtue of the statutory provisions relating to the dissolution and transfer of the property of the Further Education Funding Council for Wales<sup>1</sup>, anything done by or in relation to the transferor<sup>2</sup> in respect of the employee before the day on which the transfer takes effect is to be treated on and after that day as done by or in relation to the transferee<sup>3</sup>.

For the purposes of the statutory provisions relating to redundancy payments<sup>4</sup>, the employee is not to be regarded as having been dismissed by virtue of the transfer<sup>5</sup>, the employee's period of employment with the transferor is to count as a period of employment with the transferee, and the change of employment is not to break the continuity of the period of employment<sup>6</sup>.

The provisions described above<sup>7</sup> do not prejudice any right of the employee to terminate the contract of employment if a substantial change is made to his detriment in his working conditions, but no such right arises by reason only of the change in employer effected by the transfer<sup>8</sup>.

1 Learning and Skills Act 2000 s 95(1). The reference in the text to the transfer of rights and liabilities is a reference to the transfer by virtue of s 91 (see PARA 1113 ante), or by virtue of a scheme under s 93 (see PARA 1114 ante): s 95(1).

2 For the purposes of ibid s 95, the transferor is the person from whom the rights and liabilities are transferred: s 95(6)(a).

3 Ibid s 95(2). For the purposes of s 95, the transferee is the person to whom the rights and liabilities are transferred: s 95(6)(b).

4 Ie for the purposes of the Employment Rights Act 1996 Pt XI (ss 135-181) (as amended) (see EMPLOYMENT vol 40 (2009) PARA 790 et seq).

5 Learning and Skills Act 2000 s 95(3).

6 Ibid s 95(4). As to continuity of employment see EMPLOYMENT vol 39 (2009) PARA 105 et seq.

7 Ie ibid s 95(1)-(4) (see the text and notes 1-6 supra).

8 Ibid s 95(5).

### **UPDATE**

### **1115 Continuity of employment on transfer**

NOTE 1--2000 Act s 95(1) amended: Education and Inspections Act 2006 Sch 14 para 60, Sch 18 Pt 5; SI 2005/3238. See also 2006 Act Sch 15 para 6.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1116. Constitution of the National Council for Education and Training for Wales.

## **(ii) Constitution, General Administration and Proceedings**

### **1116. Constitution of the National Council for Education and Training for Wales.**

The National Council for Education and Training for Wales (or 'Cyngor Cenedlaethol Cymru dros Addysg a Hyfforddiant') is a body corporate<sup>1</sup>. The Council must consist of not less than 10 and not more than 12 members appointed by the National Assembly for Wales and the Assembly must appoint one of them as chairman<sup>2</sup>. In appointing a member the Assembly must have regard to the desirability of appointing a person who has experience relevant to the Council's functions<sup>3</sup>. The Council's functions are to be carried out in relation to Wales only<sup>4</sup>.

The Council is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>5</sup>, and the Council's property is not to be regarded as property of the Crown or as property held by or on its behalf<sup>6</sup>.

<sup>1</sup> Learning and Skills Act 2000 s 30(1). As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. As to the functions and powers of the National Council for Education and Training for Wales see PARAS 1126-1142 post. As to the Learning and Skills Council for England, which has similar functions in relation to England, see PARA 1072 et seq ante.

On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

<sup>2</sup> Ibid s 30(2).

<sup>3</sup> Ibid s 30(3).

<sup>4</sup> Ibid s 30(5).

<sup>5</sup> Ibid s 30(4), Sch 4 para 15(1).

<sup>6</sup> Ibid Sch 4 para 15(2).

## **UPDATE**

### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1117. Chief executive.

### **1117. Chief executive.**

One of the members of the National Council for Education and Training for Wales<sup>1</sup> is to be its chief executive<sup>2</sup>. Each chief executive is to be appointed by the Council on such terms as it determines<sup>3</sup>. Such an appointment or determination requires the approval of the National Assembly for Wales<sup>4</sup>. If a person to be so appointed is not already a member of the Council, the Assembly must appoint him as a member for the same term as the term of his appointment as chief executive<sup>5</sup>. If a person to be so appointed is already a member of the Council but his term of appointment as such ends before the term of his appointment as chief executive ends, the Assembly must extend his term of appointment as a member so that it ends when the term of his appointment as chief executive ends<sup>6</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 1(1).

3 Ibid Sch 4 para 1(3). The first chief executive was appointed by the National Assembly for Wales to hold and vacate office in accordance with the terms of his appointment: Sch 4 para 1(2).

4 Ibid Sch 4 para 1(4).

5 Ibid Sch 4 para 1(5).

6 Ibid Sch 4 para 1(6).

### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1118. Tenure of members.

### **1118. Tenure of members.**

A person is to hold and vacate office as a member or chairman or chief executive of the National Council for Education and Training for Wales<sup>1</sup> in accordance with the terms of his appointment<sup>2</sup>. On ceasing to be a member or chairman or chief executive a person is eligible for re-appointment<sup>3</sup>. A person may at any time by notice in writing to the National Assembly for Wales resign his office as a member or chairman or chief executive<sup>4</sup>. If the Assembly is satisfied that a member has been absent from meetings of the Council for a period longer than six consecutive months without the Council's permission<sup>5</sup>, or is unable or unfit to carry out the functions of a member<sup>6</sup>, the Assembly may by notice in writing to the member remove him from his office, which then becomes vacant<sup>7</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. As to the chief executive of the National Council for Education and Training for Wales see PARA 1117 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 2(1).

3 Ibid Sch 4 para 2(2).

4 Ibid Sch 4 para 2(3).

5 Ibid Sch 4 para 3(1)(a).

6 Ibid Sch 4 para 3(1)(b).

7 Ibid Sch 4 para 3(2).

### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1119. Salaries, pensions etc.

### **1119. Salaries, pensions etc.**

The National Council for Education and Training for Wales<sup>1</sup> must pay in respect of its members such salaries and fees and such travelling, subsistence and other allowances as the National Assembly for Wales may determine<sup>2</sup>. Such a payment may be made to the member concerned or, if the member consents, to another person<sup>3</sup>. As regards any member in whose case the Assembly may so determine, the Council must pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Assembly may determine<sup>4</sup>. If a person ceases to be a member and it appears to the Assembly that there are special circumstances making it right that he should receive compensation, the Assembly may direct the Council to make to the person a payment of such amount as the Assembly may determine<sup>5</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 4(1).

3 Ibid Sch 4 para 4(2).

4 Ibid Sch 4 para 4(3).

5 Ibid Sch 4 para 4(4).

### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1120. Staff.

### **1120. Staff.**

The National Council for Education and Training for Wales<sup>1</sup> may appoint such employees as it thinks fit<sup>2</sup>. A person is to be appointed as an employee of the Council on such terms, including terms as to remuneration and allowances, as the Council may determine<sup>3</sup>. Such a determination requires the approval of the National Assembly for Wales<sup>4</sup>.

Employment with the Council is included among the kinds of employment to which a scheme under the Superannuation Act 1972<sup>5</sup> can apply<sup>6</sup>. The Council must pay to the Minister for the Civil Service<sup>7</sup> such sums as he may determine in respect of the increase attributable<sup>8</sup> in the sums payable out of money provided by Parliament under the Superannuation Act 1972, and the Council must pay the sums at such times as that minister may direct<sup>9</sup>. If an employee of the Council is by reference to that employment a participant in such a scheme and is also a member of the Council, the Assembly may determine that his service as such a member is to be treated for the purposes of the scheme as service as an employee of the Council<sup>10</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 5(1).

3 Ibid Sch 4 para 5(2).

4 Ibid Sch 4 para 5(3).

5 Ie under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

6 Learning and Skills Act 2000 Sch 4 para 6(1).

7 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550.

8 Ie under the Learning and Skills Act 2000 Sch 4 para 6(1): see the text and notes 5-6 supra.

9 Ibid Sch 4 para 6(2).

10 Ibid Sch 4 para 6(3). This applies whether or not any benefits are payable to or in respect of him by virtue of Sch 4 para 4 (see PARA 1119 ante): Sch 4 para 6(3).

### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1121. Delegation of functions.

### **1121. Delegation of functions.**

The National Council for Education and Training for Wales<sup>1</sup> may authorise the chairman or the chief executive<sup>2</sup> to exercise such of its functions as it may determine<sup>3</sup>. If the chairman is authorised to exercise a function he may authorise another member of the Council to exercise it<sup>4</sup>. If the chief executive is authorised to exercise a function he may authorise an employee of the Council to exercise it<sup>5</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 As to the chief executive of the National Council for Education and Training for Wales see PARA 1117 ante.

3 Learning and Skills Act 2000 s 30(4), Sch 4 para 7(1). As to the functions of the National Council for Education and Training for Wales see PARAS 1126-1142 post.

4 Ibid Sch 4 para 7(2).

5 Ibid Sch 4 para 7(3).

### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1122. Members' interests.

### **1122. Members' interests.**

A member of the National Council for Education and Training for Wales<sup>1</sup> who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Council or a committee of the Council must disclose the nature of his interest to the meeting<sup>2</sup>. If such a disclosure is made, the disclosure must be recorded in the minutes of the meeting<sup>3</sup>, and the member must not take any part in any deliberation or decision of the Council or any committee of the Council with respect to that matter<sup>4</sup>. A member need not attend in person at a meeting in order to make a disclosure which he is so required to make if he takes reasonable steps to secure that the disclosure is made by a notice which is read and considered at the meeting<sup>5</sup>.

The National Assembly for Wales may remove a disability under this provision subject to such conditions as it considers appropriate<sup>6</sup>, and this power of the Assembly includes power to remove, either indefinitely or for any period, a disability which would otherwise attach to any member, or members of any description, by reason of such interests, and in respect of such matters, as may be specified or described by the Assembly<sup>7</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 8(1). For these purposes, a general notification given at a meeting by a member to the effect that he: (1) has an interest in a specified company, firm or other organisation; and (2) is to be regarded as interested in any matter involving that company, firm or other organisation, must be regarded as a sufficient disclosure of his interest in relation to any such matter: Sch 4 para 8(4).

If a member is not present at a meeting at which a matter in which he is interested is brought up for consideration, Sch 4 para 8(1) only applies to him if he was aware that the matter would be brought up for consideration at the meeting: Sch 4 para 8(3).

3 Ibid Sch 4 para 8(2)(a).

4 Ibid Sch 4 para 8(2)(b).

5 Ibid Sch 4 para 8(5).

6 Ibid Sch 4 para 8(6). Nothing in Sch 4 para 8 precludes any member from taking part in the consideration or discussion of, or in voting on, any question whether an application should be made to the National Assembly for Wales for the exercise of the power conferred by Sch 4 para 8(6): Sch 4 para 8(8).

7 Ibid Sch 4 para 8(7).

## **UPDATE**

### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for

Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1123. Proceedings.

### **1123. Proceedings.**

A representative of the National Assembly for Wales<sup>1</sup> is entitled to attend and take part in any deliberations, but not in decisions, at meetings of the National Council for Education and Training for Wales<sup>2</sup>. The Council must provide the Assembly with such copies, made in such form, as the Assembly may require of any information distributed to members of the Council<sup>3</sup>.

The validity of any proceedings of the Council is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>4</sup>. The Council may<sup>5</sup> regulate its own procedure<sup>6</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 9(1). Schedule 4 para 9 is without prejudice to any other rights the National Assembly for Wales may have as a condition of any grants made to the Council under the Learning and Skills Act 2000: Sch 4 para 9(3). As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante.

3 Ibid Sch 4 para 9(2).

4 Ibid Sch 4 para 10.

5 Ie subject to ibid Sch 4 paras 1-10: see PARAS 1117-1122 ante.

6 Ibid Sch 4 para 11.

### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1124. Seal and proof of instruments.

#### **1124. Seal and proof of instruments.**

The application of the seal of the National Council for Education and Training for Wales<sup>1</sup> must be authenticated by the signature of the chairman or of some other person authorised, generally or specially, by the Council to act for that purpose, and of one other member<sup>2</sup>.

If a document purports to be an instrument made or issued by or on behalf of the Council and to be duly executed under the Council's seal, or to be signed or executed by a person authorised by the Council to act in that behalf<sup>3</sup>, the document must be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown<sup>4</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 12.

3 Ibid Sch 4 para 13(1).

4 Ibid Sch 4 para 13(2). See generally CIVIL PROCEDURE vol 11 (2009) PARA 865.

#### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(ii) Constitution, General Administration and Proceedings/1125. Accounts.

### **1125. Accounts.**

The National Council for Education and Training for Wales<sup>1</sup> must: (1) keep proper accounts and proper records in relation to them<sup>2</sup>; (2) prepare a statement of accounts in respect of each financial year of the Council<sup>3</sup>; and (3) send copies of the statement to the National Assembly for Wales and to the Auditor General for Wales<sup>4</sup> before the end of August next following the financial year<sup>5</sup> to which the statement relates<sup>6</sup>.

The statement of accounts must comply with any directions given by the Assembly as to the information to be contained in it<sup>7</sup>, the manner in which the information is to be presented<sup>8</sup>, or the methods and principles according to which the statement is to be prepared<sup>9</sup>. The statement of accounts must contain such additional information as the Assembly may require to be included<sup>10</sup>. The Auditor General for Wales must examine, certify and report on each statement received by him<sup>11</sup>, and lay copies of each statement and of his report before the Assembly<sup>12</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 30(4), Sch 4 para 14(1)(a).

3 Ibid Sch 4 para 14(1)(b).

4 As to the Auditor General for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 In relation to the National Council for Education and Training for Wales, 'financial year of the Council' means the period starting with the date on which it is established and ending with the second 31 March following that date, and each successive period of 12 months: Learning and Skills Act 2000 s 51.

6 Ibid Sch 4 para 14(1)(c).

7 Ibid Sch 4 para 14(2)(a).

8 Ibid Sch 4 para 14(2)(b).

9 Ibid Sch 4 para 14(2)(c).

10 Ibid Sch 4 para 14(3).

11 Ibid Sch 4 para 14(4)(a).

12 Ibid Sch 4 para 14(4)(b).

### **UPDATE**

#### **1116-1125 Constitution, General Administration and Proceedings**

Learning and Skills Act 2000 s 30, Sch 4 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

**1125 Accounts**

NOTE 5--2000 Act s 51 repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/A. IN GENERAL/1126. Main functions of the National Council for Education and Training for Wales.

### **(iii) Functions and Powers**

#### **A. IN GENERAL**

#### **1126. Main functions of the National Council for Education and Training for Wales.**

The main duties and powers of the National Council for Education and Training for Wales<sup>1</sup> are the provision of facilities for education and training<sup>2</sup> and the provision of financial resources and funding<sup>3</sup>. The Council has ancillary powers which enable it to do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its functions<sup>4</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 See PARAS 1129-1131 post.

3 See PARAS 1132-1136 post.

4 See PARA 1127 post.

#### **UPDATE**

#### **1126 Main functions of the National Council for Education and Training for Wales**

TEXT AND NOTES--National Council for Education and Training for Wales abolished and its functions transferred to National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/A. IN GENERAL/1127. Supplementary functions of the National Council for Education and Training for Wales.

### **1127. Supplementary functions of the National Council for Education and Training for Wales.**

The National Council for Education and Training for Wales<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its other functions<sup>2</sup>. In particular it may: (1) acquire and dispose of land and other property<sup>3</sup>; (2) enter into contracts<sup>4</sup>; (3) invest sums not immediately needed for the purpose of exercising its other functions<sup>5</sup>; (4) accept financial resources, whether as gifts or otherwise<sup>6</sup>; (5) accept gifts of land and other property<sup>7</sup>. But the Council has no power to borrow money<sup>8</sup>, to lend money unless the National Assembly for Wales consents<sup>9</sup>, or to subscribe for or otherwise acquire shares in or securities of a company unless the Assembly consents<sup>10</sup>.

The Assembly may by order confer or impose on the Council such supplementary powers or duties<sup>11</sup> relating to the provision of post-16 education or training as the Assembly thinks fit<sup>12</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 46(1). As to the Council's main functions see PARA 1129 et seq post.

3 Ibid s 46(2)(a).

4 Ibid s 46(2)(b).

5 Ibid s 46(2)(c).

6 Ibid s 46(2)(d).

7 Ibid s 46(2)(e).

8 Ibid s 46(3)(a).

9 Ibid s 46(3)(b).

10 Ibid s 46(3)(c).

11 For the purposes of ibid s 46(4), a power or duty is supplementary if it is exercisable in connection with functions of the National Assembly for Wales, and it is relevant to the provision of facilities for post-16 education or training: s 46(5). References in Pt II (ss 30-51) (as amended) to 'post-16 education' are references to education falling within s 31(1)(a) (see PARA 1129 post) or s 32(1)(a) (see PARA 1129 post), and organised leisure-time occupation connected with such education: s 32(6). References in Pt II (as amended) to 'post-16 training' are references to training falling within s 31(1)(b) or s 32(1)(b), and organised leisure-time occupation connected with such training: s 32(7).

12 Ibid s 46(4). As to the making of orders under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. At the date at which this volume states the law, no orders had been made under s 46(4).

### **UPDATE**

### **1127 Supplementary functions of the National Council for Education and Training for Wales**

TEXT AND NOTES--Repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/A. IN GENERAL/1128. Equality of opportunity.

### **1128. Equality of opportunity.**

In exercising its functions, the National Council for Education and Training for Wales<sup>1</sup> must have due regard to the need to promote equality of opportunity between persons of different racial groups<sup>2</sup>, between men and women<sup>3</sup>, and between persons who are disabled<sup>4</sup> and persons who are not<sup>5</sup>. As soon as is reasonably practicable after the end of each financial year of the Council<sup>6</sup> it must publish a report containing a statement of the arrangements so made and having effect in the year<sup>7</sup>, and an assessment of how effective the arrangements were in promoting equality of opportunity<sup>8</sup>. The Council must send a copy of the report to the National Assembly for Wales<sup>9</sup>.

It is unlawful for the Council in carrying out its functions to do any act which constitutes sex discrimination<sup>10</sup> or racial discrimination<sup>11</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 42(1)(a). 'Racial group' has the same meaning as in the Race Relations Act 1976 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 441); Learning and Skills Act 2000 s 42(5).

3 Ibid s 42(1)(b).

4 Disabled persons are persons who are disabled for the purposes of the Disability Discrimination Act 1995 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 511); Learning and Skills Act 2000 s 42(6).

5 Ibid s 42(1)(c).

6 For the meaning of 'financial year of the Council' see PARA 1125 note 6 ante.

7 Learning and Skills Act 2000 s 42(2)(a). The report must also contain a statement of the arrangements which the Council has made, or proposes to make, under s 42(1) in respect of the financial year immediately following that referred to in s 42(2): s 42(3).

8 Ibid s 42(2)(b).

9 Ibid s 42(4).

10 See the Sex Discrimination Act 1975 s 23A (as added and amended); para 6 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARA 378.

11 See the Race Relations Act 1976 s 18A (as added and amended); para 8 ante; and DISCRIMINATION vol 13 (2007 Reissue) PARA 460.

### **UPDATE**

### **1128 Equality of opportunity**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTES 1-9--Repealed: SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING/1129. Education and training for persons aged 16 to 19, and for persons over 19.

## ***B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING***

### **1129. Education and training for persons aged 16 to 19, and for persons over 19.**

The National Council for Education and Training for Wales<sup>1</sup> must secure the provision of proper facilities<sup>2</sup> for: (1) education<sup>3</sup>, other than higher education<sup>4</sup>, suitable to the requirements of persons who are above compulsory school age<sup>5</sup> but have not attained the age of 19<sup>6</sup>; (2) training<sup>7</sup> suitable to the requirements of such persons<sup>8</sup>; (3) organised leisure-time occupation connected with such education<sup>9</sup>; and (4) organised leisure-time occupation connected with such training<sup>10</sup>.

The Council must also secure the provision of reasonable facilities<sup>11</sup> for: (a) education, other than higher education, suitable to the requirements of persons who have attained the age of 19<sup>12</sup>; (b) training suitable to the requirements of such persons<sup>13</sup>; (c) organised leisure-time occupation connected with such education<sup>14</sup>; and (d) organised leisure-time occupation connected with such training<sup>15</sup>.

In performing the duties so imposed<sup>16</sup> on it, the Council must:

- 2022 (i) take account of the places where facilities are provided, the character of facilities and the way they are equipped<sup>17</sup>;
- 2023 (ii) take account of the different abilities and aptitudes of different persons<sup>18</sup>;
- 2024 (iii) take account of the education and training required in different sectors of employment for employees and potential employees<sup>19</sup>;
- 2025 (iv) take account of facilities whose provision the Council thinks might reasonably be secured by other persons<sup>20</sup>;
- 2026 (v) make the best use of the Council's resources and in particular avoid provision which might give rise to disproportionate expenditure<sup>21</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Facilities are proper if they are of a quantity sufficient to meet the reasonable needs of individuals, and of a quality adequate to meet those needs: Learning and Skills Act 2000 s 31(2). In discharging its functions under s 31, the Council must have regard to the needs of persons with learning difficulties: see PARA 1131 post. As to when a person has learning difficulties see PARA 1131 note 5 post.

3 For the purposes of *ibid* ss 31-32, education includes both full-time and part-time education: ss 31(5)(a), 32(5)(a).

4 For the purposes of *ibid* ss 31-32, higher education is education provided by means of a course of any description mentioned in the Education Reform Act 1988 s 120 (as amended), Sch 6 (see PARA 19 ante): Learning and Skills Act 2000 ss 31(5)(d), 32(5)(d).

5 As to compulsory school age see PARA 15 ante.

6 Learning and Skills Act 2000 s 31(1)(a). As to further education generally see PARA 579 et seq ante.

- 7 For the purposes of *ibid* ss 31, 32, training includes: (1) both full-time and part-time training; and (2) vocational, social, physical and recreational training: ss 31(5)(b), (c), 32(5)(b), (c).
- 8 *Ibid* s 31(1)(b).
- 9 *Ibid* s 31(1)(c).
- 10 *Ibid* s 31(1)(d).
- 11 Facilities are reasonable if, taking account of the Council's resources, the facilities are of such a quantity and quality that the Council can reasonably be expected to secure their provision: *ibid* s 32(2). In discharging its functions under s 32, the Council must have regard to the needs of persons with learning difficulties: see *PARA 1131 post*.
- 12 *Ibid* s 32(1)(a).
- 13 *Ibid* s 32(1)(b).
- 14 *Ibid* s 32(1)(c).
- 15 *Ibid* s 32(1)(d).
- 16 *Ie* under *ibid* ss 31, 32: see the text and notes 1-15 *supra*.
- 17 *Ibid* ss 31(3)(a), 32(3)(a).
- 18 *Ibid* ss 31(3)(b), 32(3)(b).
- 19 *Ibid* ss 31(3)(c), 32(3)(c).
- 20 *Ibid* ss 31(3)(d), 32(3)(d).
- 21 *Ibid* ss 31(3)(e), 32(3)(e). Provision is not to be considered as giving rise to disproportionate expenditure only because that provision is more expensive than comparable provision: ss 31(4), 32(4).

## UPDATE

### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

### **1129 Education and training for persons aged 16 to 19, and for persons over 19**

NOTE 11--2000 Act s 32(2) repealed: SI 2005/3238.

TEXT AND NOTE 21--Repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING/1130. Encouragement of education and training.

### **1130. Encouragement of education and training.**

The National Council for Education and Training for Wales<sup>1</sup> must encourage individuals to undergo post-16 education and training<sup>2</sup>, encourage employers to participate in the provision of post-16 education and training<sup>3</sup>, and encourage employers to contribute to the costs of post-16 education and training<sup>4</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 33(a). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1127 note 12 ante.

3 Ibid s 33(b).

4 Ibid s 33(c).

### **UPDATE**

#### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/B. PROVISION OF FACILITIES FOR EDUCATION AND TRAINING/1131. Persons with learning difficulties.

### **1131. Persons with learning difficulties.**

In discharging its functions in relation to education and training for persons aged 16 to 19<sup>1</sup>, education and training for persons over 19<sup>2</sup> and the provision of financial resources<sup>3</sup>, the National Council for Education and Training for Wales<sup>4</sup> must have regard to the needs of persons with learning difficulties<sup>5</sup>, and in particular, to any report of an assessment relating to learning difficulties<sup>6</sup>.

If the Council is satisfied that it cannot secure the provision of facilities for education or training which are sufficient in quantity and adequate in quality for a person with a learning difficulty who is over compulsory school age<sup>7</sup> but who has not attained the age of 19 unless it also secures the provision of boarding accommodation for him, the Council must secure the provision of boarding accommodation for him<sup>8</sup>. If the Council is satisfied that it cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 19 but not the age of 25 unless it also secures the provision of boarding accommodation for him, the Council must secure the provision of boarding accommodation for him<sup>9</sup>; and if the Council is satisfied that it cannot secure the provision of reasonable facilities for education or training for a person with a learning difficulty who has attained the age of 25 unless it also secures the provision of boarding accommodation for him, the Council may secure the provision of boarding accommodation for him<sup>10</sup>.

1    Ie under the Learning and Skills Act 2000 s 31: see PARA 1129 ante.

2    Ie under *ibid* s 32: see PARA 1129 ante.

3    Ie under *ibid* s 34(1)(a)-(d), (g): see PARA 1132 post.

4    As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

5    A person has a learning difficulty if: (1) he has a significantly greater difficulty in learning than the majority of persons of his age; or (2) he has a disability which either prevents or hinders him from making use of facilities of a kind generally provided by institutions providing post-16 education or training: Learning and Skills Act 2000 s 41(5). However, a person is not to be taken to have a learning difficulty solely because the language, or form of language, in which he is or will be taught is different from a language, or form of language, which has at any time been spoken in his home: s 41(6). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1127 note 12 ante. As to learning difficulties which call for special educational provision ('special educational needs') see PARA 984 et seq ante.

6    *Ibid* s 41(1). The report of an assessment referred to in the text is a report of an assessment conducted under s 140 (see PARA 992 ante): see s 41(1).

See *R (on the application of Hill) v Further Education Funding Council* (18 December 2000) Lexis, CA (decided under previous legislation in relation to a similar duty of the predecessor body).

7    As to compulsory school age see PARA 15 ante.

8    Learning and Skills Act 2000 s 41(2).

9    *Ibid* s 41(3).

10 Ibid s 41(4).

## **UPDATE**

### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

### **1131 Persons with learning difficulties**

TEXT AND NOTE 6--Learning and Skills Act 2000 s 41(1) amended: Education and Skills Act 2008 Sch 1 para 76(d).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1132. Provision of financial resources.

### **C. PROVISION OF FINANCIAL RESOURCES AND FUNDING**

#### **1132. Provision of financial resources.**

The National Council for Education and Training for Wales<sup>1</sup> may secure the provision of financial resources to:

- 2027 (1) persons providing or proposing to provide post-16 education or training<sup>2</sup>;
- 2028 (2) persons providing or proposing to provide goods or services in connection with the provision by others of post-16 education or training<sup>3</sup>;
- 2029 (3) persons receiving or proposing to receive post-16 education or training<sup>4</sup>;
- 2030 (4) persons providing or proposing to provide certain higher level courses<sup>5</sup>;
- 2031 (5) institutions within the further or higher education sector<sup>6</sup> which provide or propose to provide secondary education<sup>7</sup> (other than post-16 education)<sup>8</sup>;
- 2032 (6) persons undertaking or proposing to undertake research relating to education or training<sup>9</sup>;
- 2033 (7) persons providing or proposing to provide facilities designed to form links between: (a) employers; and (b) persons who provide or receive education or training<sup>10</sup>;
- 2034 (8) persons carrying out<sup>11</sup> means tests<sup>12</sup>;
- 2035 (9) persons providing or proposing to provide information, advice or guidance about education or training or connected matters (including employment)<sup>13</sup>.

The Council may secure the provision of financial resources under the provisions described above by providing resources itself<sup>14</sup>, by making arrangements for the provision of resources by another person<sup>15</sup>, or by making arrangements for the provision of resources by persons jointly (whether or not including the Council)<sup>16</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 34(1)(a). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1127 note 12 ante. In discharging its functions under s 34(1)(a), the Council must have regard to the needs of persons with learning difficulties: see PARA 1131 ante. As to when a person has learning difficulties see PARA 1131 note 5 ante.

3 Ibid s 34(1)(b). In discharging its functions under s 34(1)(b), the Council must have regard to the needs of persons with learning difficulties: see PARA 1131 ante.

4 Ibid s 34(1)(c). In exercising its power under s 34(1)(c), the Council may secure the provision of financial resources by reference to any fees or charges payable by the person receiving or proposing to receive the education or training or to any other matter, such as transport or childcare: s 34(3). In discharging its functions under s 34(1)(c), the Council must have regard to the needs of persons with learning difficulties: see PARA 1131 ante.

5 Ibid s 34(1)(d). The courses referred to in the text are courses falling within the Education Reform Act 1988 s 120 (as amended), Sch 6 para 1(g) (courses in preparation for professional examinations at higher level: see PARA 19 ante) or Sch 6 para 1(h) (courses providing education at a higher level: see PARA 19 ante). In discharging

its functions under the Learning and Skills Act 2000 s 34(1)(d), the Council must have regard to the needs of persons with learning difficulties: see PARA 1131 ante.

6 As to references to institutions within the further education sector see PARA 579 ante; and as to references to institutions within the higher education sector see PARA 646 ante (definitions applied by *ibid* s 34(1)(e)).

7 As to secondary education see PARA 17 ante.

8 Learning and Skills Act 2000 s 34(1)(e).

9 *Ibid* s 34(1)(f).

10 *Ibid* s 34(1)(g). In discharging its functions under s 34(1)(g), the Council must have regard to the needs of persons with learning difficulties: see PARA 1131 ante.

11 *Ie* under arrangements made under *ibid* s 37: see PARA 1135 post.

12 *Ibid* s 34(1)(h).

13 *Ibid* s 34(1)(i).

14 *Ibid* s 34(2)(a). As to the imposition of conditions for the provision of financial resources by the Council see PARA 1133 post.

15 *Ibid* s 34(2)(b).

16 *Ibid* s 34(2)(c).

## **UPDATE**

### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1133. Conditions for the provision of financial resources.

### **1133. Conditions for the provision of financial resources.**

If the National Council for Education and Training for Wales<sup>1</sup> itself provides financial resources<sup>2</sup>, it may impose conditions<sup>3</sup>. The conditions may:

- 2036 (1) require the Council or a person designated by it to be allowed access to a person's accounts and documents and to be given rights in relation to a person's computers and associated apparatus and material<sup>4</sup>;
- 2037 (2) require a person to whom financial resources are provided to give to the Council information it requests for the purpose of carrying out its functions<sup>5</sup>.

The conditions may also require a person providing or proposing to provide education or training (the 'provider') to make arrangements providing for all or any of the following:

- 2038 (a) for the provider to charge fees by reference to specified criteria<sup>6</sup>;
- 2039 (b) for the provider to make awards by reference to specified criteria<sup>7</sup>;
- 2040 (c) for the provider to recover amounts from persons receiving education or training or from employers, or from both<sup>8</sup>;
- 2041 (d) for amounts to be determined by reference to specified criteria where provision is made under head (c) above<sup>9</sup>;
- 2042 (e) for specified exemptions to operate where provision is made under head (c) above<sup>10</sup>;
- 2043 (f) for the provider to make provision specified in a report of an assessment<sup>11</sup> relating to learning difficulties<sup>12</sup>.

The conditions may enable the Council to require the repayment (in whole or part) of sums paid by the Council if any of the conditions subject to which the sums were paid is not complied with<sup>13</sup>, and the conditions may require the payment of interest in respect of any period in which a sum due to the Council in accordance with any condition is unpaid<sup>14</sup>.

<sup>1</sup> As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

<sup>2</sup> As to the provision of financial resources see PARA 1132 ante.

<sup>3</sup> Learning and Skills Act 2000 s 35(1).

<sup>4</sup> Ibid s 35(1), (2)(a).

<sup>5</sup> Ibid s 35(1), (2)(b).

<sup>6</sup> Ibid s 35(1), (3)(a).

<sup>7</sup> Ibid s 35(1), (3)(b).

<sup>8</sup> Ibid s 35(1), (3)(c).



- 9 Ibid s 35(1), (3)(d).
- 10 Ibid s 35(1), (3)(e).
- 11 ie an assessment conducted under ibid s 140: see PARA 992 ante.
- 12 Ibid s 35(1), (3)(f).
- 13 Ibid s 35(1), (5)(a).
- 14 Ibid s 35(1), (5)(b).

## **UPDATE**

### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

### **1133 Conditions for the provision of financial resources**

TEXT AND NOTE 5--The functions referred to are the functions of the National Assembly of Wales under the 2000 Act Pt 2 (ss 30-51): s 35(2)(b) (amended by SI 2005/3238).

TEXT AND NOTE 12--Learning and Skills Act 2000 s 35(3)(f) amended: Education and Skills Act 2008 Sch 1 para 76(c).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1134. Funding of school sixth-forms.

### **1134. Funding of school sixth-forms.**

The National Council for Education and Training for Wales<sup>1</sup> may make a grant to a local education authority<sup>2</sup>:

- 2044 (1) on the condition that the grant be applied as part of the authority's schools budget<sup>3</sup> for a financial year<sup>4</sup>; and
- 2045 (2) with a view to the grant being used for the purposes of, or for purposes connected with, the provision by schools of education suitable to the requirements of persons above compulsory school age<sup>5</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 36(1). As to local education authorities see PARA 20 ante.

3 For the meaning of 'schools budget' see PARA 312 ante; definition applied by ibid s 36(3) (amended by the Education Act 2002 s 215(1), Sch 21 para 125(1), (3)). The Learning and Skills Act 2000 s 36(3) (as amended) is prospectively substituted (see note 4 infra), but this definition will not be substantially affected.

4 Ibid s 36(1)(a) (amended by the Education Act 2002 Sch 21 para 125(1), (2)). A grant made under s 36 (as amended) may be made on conditions in addition to the condition mentioned in s 36(1)(a) (as amended), including conditions of a kind which could be imposed under s 35 (as amended) (see PARA 1133 ante): s 36(2).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (4)(b), the words 'financial year' in the Learning and Skills Act 2000 s 36(1)(a) (as amended) are to be replaced by the words 'funding period'; and 'funding period' is to be defined as a financial year or, if some other period is prescribed in relation to Wales under the School Standards and Framework Act 1998 s 45(1B) (as added) (see PARA 312 note 3 ante), that other period: see the Learning and Skills Act 2000 s 36(1)(a), (3) (s 36(1)(a) prospectively amended, and s 36(3) prospectively substituted, by the Education Act 2005 s 117, Sch 18 para 13). At the date at which this volume states the law, no such day had been appointed.

5 Learning and Skills Act 2000 s 36(1)(b). As to compulsory school age see PARA 15 ante.

### **UPDATE**

#### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1135. Assessments and means tests.

### **1135. Assessments and means tests.**

The National Council for Education and Training for Wales<sup>1</sup> may develop schemes for the assessment of the performance of persons in providing post-16 education and training<sup>2</sup>. The Council may take the assessments into account in deciding how to exercise its powers<sup>3</sup> in relation to the provision of financial resources<sup>4</sup>.

The Council may either carry out means tests<sup>5</sup>, or arrange for other persons to carry out means tests<sup>6</sup>. The Council may take the results of the tests into account in exercising its power<sup>7</sup> to provide financial resources to persons receiving or proposing to receive post-16 education or training<sup>8</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 37(1). For the meanings of 'post-16 education' and 'post-16 training' see PARA 1127 note 12 ante.

3 *Ie* under *ibid* s 34: see PARA 1132 ante.

4 *Ibid* s 37(2).

5 *Ibid* s 37(3)(a).

6 *Ibid* s 37(3)(b).

7 *Ie* under *ibid* s 34(1)(c): see PARA 1132 ante.

8 *Ibid* s 37(4).

### **UPDATE**

#### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/C. PROVISION OF FINANCIAL RESOURCES AND FUNDING/1136. Qualifying accounts and arrangements.

### **1136. Qualifying accounts and arrangements.**

The National Council for Education and Training for Wales<sup>1</sup> may promote the holding of qualifying accounts<sup>2</sup> and the making of qualifying arrangements<sup>3</sup>. The Council:

2046 (1) may be specified as a body with which qualifying arrangements<sup>4</sup> may be made<sup>5</sup>;

2047 (2) may be designated by the National Assembly for Wales under provisions relating to qualifying arrangements<sup>6</sup>, and may act in accordance with such a designation<sup>7</sup>;

2048 (3) may make arrangements<sup>8</sup> in relation to the payment of grants<sup>9</sup>; and

2049 (4) may be designated by the Assembly in exercise of a power conferred on it under provisions relating to grants<sup>10</sup>, and may act in accordance with such a designation<sup>11</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 38(1)(a). The reference in the text to qualifying accounts is a reference to accounts which qualify under s 104: see PARA 981 ante. As to the Individual Learning Accounts programme under ss 104-109, operating as Individual Learning Accounts Wales, see PARA 980 ante.

3 Ibid s 38(1)(b). The reference in the text to qualifying arrangements is a reference to arrangements which qualify under s 105: see PARA 982 ante.

4 Ie under ibid s 105: see PARA 982 ante.

5 Ibid s 38(2)(a).

6 Ie under ibid s 107(1) or s 107(3): see PARA 982 ante.

7 Ibid s 38(2)(b).

8 Ie under provision made under ibid s 108(5)(d): see PARA 983 ante.

9 Ibid s 38(2)(c).

10 Ie under ibid s 108(6)(b) or s 108(7)(b): see PARA 983 ante.

11 Ibid s 38(2)(d).

### **UPDATE**

#### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education

and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

**1136 Qualifying accounts and arrangements**

TEXT AND NOTES 5-11--2000 Act s 38(2) repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1137. Provision and use of information by the National Council for Education and Training for Wales.

### ***D. INFORMATION, STRATEGIES, PLANS AND REPORTS***

#### **1137. Provision and use of information by the National Council for Education and Training for Wales.**

The National Council for Education and Training for Wales<sup>1</sup> may carry out research relating to any matter relevant to any of its functions<sup>2</sup>. It must provide the National Assembly for Wales with such information or advice as the Assembly requests about any matter in relation to which the Council has a function<sup>3</sup>, and may provide the Assembly with such information or advice as the Council thinks fit about any matter in relation to which it has a function<sup>4</sup>. The Council may provide any person designated by the Assembly with such information as the Council thinks fit about any matter in relation to which it has a function<sup>5</sup>.

The Council must establish systems for collecting information which is designed to secure that its decisions with regard to education and training are made on a sound basis<sup>6</sup>. The Council may secure the provision of facilities for providing information, advice or guidance about education or training or connected matters, including employment<sup>7</sup>.

In carrying out its functions the Council must have regard to information supplied to it by any body designated by the Assembly for these purposes<sup>8</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 40(1).

3 Ibid s 40(2).

4 Ibid s 40(3).

5 Ibid s 40(4).

6 Ibid s 40(5).

7 Ibid s 40(6).

8 Ibid s 45.

### **UPDATE**

#### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1138. Efficiency studies.

### **1138. Efficiency studies.**

The National Council for Education and Training for Wales<sup>1</sup> may arrange for the promotion or carrying out by any person of studies designed to improve economy, efficiency and effectiveness in the management or operations of an institution within the further education sector<sup>2</sup>. A person promoting or carrying out such studies at the request of the Council may require the governing body<sup>3</sup> of the institution concerned:

2050 (1) to furnish the person, or any person authorised by him, with such information<sup>4</sup>; and

2051 (2) to make its accounts and such other documents available to him, or any person so authorised, for inspection<sup>5</sup>,

as the person may reasonably require for that purpose<sup>6</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. In relation to the dissolution of further education corporations see PARA 598 note 7 ante.

On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Further and Higher Education Act 1992 s 83(1) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 39). As to references to institutions within the further education sector see PARA 579 ante.

3 For the meaning of 'governing body' in relation to an educational institution see PARA 584 note 5 ante.

4 Further and Higher Education Act 1992 s 83(2)(a).

5 Ibid s 83(2)(b).

6 Ibid s 83(2).

### **UPDATE**

#### **1129-1138 Education and training for persons aged 16 to 19, and for persons over 19 ... Efficiency studies**

References in these provisions to the National Council for Education and Training for Wales are now to the National Assembly for Wales: see National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1139. Strategy.

### **1139. Strategy.**

The National Council for Education and Training for Wales<sup>1</sup> must formulate a strategy in relation to its functions and keep it under review<sup>2</sup>.

The strategy must include proposals as to how the Council intends to develop the skills of persons in employment<sup>3</sup>. The Council must incorporate in the strategy proposals as to: (1) how it intends to achieve any objectives contained in directions of the National Assembly for Wales<sup>4</sup>; and (2) how it intends to achieve such objectives within any time limits contained in the directions<sup>5</sup>.

The Council may at any time send a copy of the strategy as it subsists for the time being to the Assembly<sup>6</sup>, and, at such times as the Assembly indicates, the Council must send to the Assembly a copy of the strategy as it subsists for the time being<sup>7</sup>. The Assembly must approve the strategy sent to it or require the Council to make specified alterations of it<sup>8</sup>. If alterations are required, the Council must make them<sup>9</sup>.

In exercising its functions, the Council must have regard to the strategy as approved by the Assembly or as altered in accordance with its requirements<sup>10</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 44(1).

3 Ibid s 44(3). This provision does not affect the generality of s 44(1): see the text and notes 1-2 supra.

4 Ibid s 44(2)(a).

5 Ibid s 44(2)(b).

6 Ibid s 44(4)(a).

7 Ibid s 44(4)(b).

8 Ibid s 44(5).

9 Ibid s 44(5).

10 Ibid s 44(6).

### **UPDATE**

#### **1139-1141 Strategy ... Annual report**

Repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1140. Plans.

#### **1140. Plans.**

The National Council for Education and Training for Wales<sup>1</sup> must make a plan for each of its financial years<sup>2</sup>. The Council had to send its plan for its first financial year to the National Assembly for Wales as soon as reasonably practicable after the start of the year<sup>3</sup>. The Council must send its plan for any subsequent financial year of the Council to the Assembly before the year starts<sup>4</sup>. A plan for a financial year must include: (1) proposals as to how the Council intends to achieve in the financial year any objectives which should be achieved in the year in conformity with directions of the Assembly or with conditions imposed<sup>5</sup>; (2) the Council's financial proposals for the year<sup>6</sup>; (3) such other matters as the Assembly specifies<sup>7</sup>. The Assembly must approve the plan or require the Council to make specified alterations of it, and if alterations are required the Council must make them<sup>8</sup>. The Council must publish the plan as approved by the Assembly or as altered in accordance with the Assembly's requirements<sup>9</sup>. Publication must be made at such time and in such manner as the Assembly specifies<sup>10</sup>.

The Council may make and publish such other plans as it thinks fit, but any such plan must not conflict with a plan for a financial year<sup>11</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 43(1). For the meaning of 'financial year of the Council' see PARA 1125 note 6 ante.

3 Ibid s 43(2).

4 Ibid s 43(3).

5 Ibid s 43(4)(a). The conditions referred to in the text are conditions imposed under s 49: see PARA 1144 post.

6 Ibid s 43(4)(b).

7 Ibid s 43(4)(c).

8 Ibid s 43(5).

9 Ibid s 43(6).

10 Ibid s 43(6).

11 Ibid s 43(7).

#### **UPDATE**

#### **1139-1141 Strategy ... Annual report**

Repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/D. INFORMATION, STRATEGIES, PLANS AND REPORTS/1141. Annual report.

#### **1141. Annual report.**

As soon as is reasonably practicable after the end of each financial year of the National Council for Education and Training for Wales<sup>1</sup>, it must prepare a report on its activities in that year and send a copy of the report to the National Assembly for Wales<sup>2</sup>. A report must be in such form and contain such information as the Assembly may specify in directions to the Council<sup>3</sup>, and must set out any other directions given to the Council under Part II of the Learning and Skills Act 2000<sup>4</sup> in the financial year to which the report relates<sup>5</sup>.

Following receipt of a copy of such a report, the Assembly must arrange for copies of it to be published in such manner as it thinks appropriate<sup>6</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. For the meaning of 'financial year of the Council' see PARA 1125 note 6 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 50(1).

3 Ibid s 50(2)(a).

4 Ie ibid Pt II (ss 30-51) (as amended).

5 Ibid s 50(2)(b).

6 Ibid s 50(3).

#### **UPDATE**

#### **1139-1141 Strategy ... Annual report**

Repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iii) Functions and Powers/E. JOINT EXERCISE OF FUNCTIONS/1142. Joint exercise of functions.

## ***E. JOINT EXERCISE OF FUNCTIONS***

### **1142. Joint exercise of functions.**

Any two or more of the following councils, namely, a Higher Education Funding Council<sup>1</sup>, the Learning and Skills Council for England<sup>2</sup>, the National Council for Education and Training for Wales<sup>3</sup> or the Scottish Higher Education Funding Council, may exercise jointly any of their functions where it appears to them that to do so will be more efficient, or will enable them more effectively to discharge any of their functions<sup>4</sup>. Any two or more such councils must, if directed to do so by the Secretary of State<sup>5</sup>, jointly make provision for the assessment by a person appointed by them of matters relating to the arrangements made by each institution in Great Britain which is within the higher education sector<sup>6</sup> for maintaining academic standards in the institution<sup>7</sup>. The power of the Secretary of State to give such directions is to be treated, as regards the Scottish Higher Education Funding Council, as exercisable in or as regards Scotland and may be exercised separately<sup>8</sup>.

1 As to the meaning of 'Higher Education Funding Council' see PARA 733 note 1 ante. As to the Higher Education Funding Councils see PARA 733 et seq ante.

2 As to the establishment of the Learning and Skills Council for England see PARA 1072 ante.

3 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

4 Further and Higher Education Act 1992 ss 82(1), (3)(a) (s 82(3)(a) amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 38); Further and Higher Education Act 1992 s 90(2A) (added by the Learning and Skills Act 2000 s 149, Sch 9 para 1, 41).

5 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

6 As to references to institutions within the higher education sector see PARA 646 ante. In the Further and Higher Education Act 1992 s 82 (as amended), references to institutions within the higher education sector include institutions within the higher education sector within the meaning of the Further and Higher Education (Scotland) Act 1992 Pt II: Further and Higher Education Act 1992 s 82(3)(b).

7 Ibid s 82(2).

8 Ibid s 82(2A) (added by the Scotland Act 1998 (Modification of Functions) Order 1999, SI 1999/1756).

## **UPDATE**

### **1142 Joint exercise of functions**

TEXT AND NOTES 1-7--References to councils are now to relevant authorities; reference to National Council for Education and Training for Wales now to the National Assembly for Wales to the extent that it is discharging its functions under the Learning and Skills Act 2000 Pt 2 (ss 30-51): 1992 Act s 82 (s 82(1), (2) amended, s 82(3)(a) substituted by SI 2005/3238).

NOTE 4--1992 Act s 90(2A) repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iv) Powers of the National Assembly for Wales/1143. Directions to the National Council for Education and Training for Wales.

#### **(iv) Powers of the National Assembly for Wales**

##### **1143. Directions to the National Council for Education and Training for Wales.**

The National Assembly for Wales<sup>1</sup> may give directions to the National Council for Education and Training for Wales<sup>2</sup>. Directions may contain: (1) objectives which the Council should achieve in seeking to carry out its functions<sup>3</sup>; (2) time limits within which the Council should achieve the objectives<sup>4</sup>; and (3) provision relating to the management of the Council<sup>5</sup>. If the Assembly asks the Council to do so, it must advise the Assembly on the formulation of objectives and time limits<sup>6</sup>.

If the Assembly is satisfied that the Council has failed to discharge a duty imposed by or under any Act<sup>7</sup>, or has acted or is proposing to act unreasonably<sup>8</sup> with respect to the exercise of a power conferred or the performance of a duty imposed by or under any Act<sup>9</sup>, then in such a case directions may contain such provision as the Assembly thinks fit as to the exercise of the Council's powers and performance of its duties<sup>10</sup>. Directions may contain such provision despite any enactment making the exercise of a power or performance of a duty contingent on the Council's opinion<sup>11</sup>.

Directions may not concern the provision of financial resources in respect of activities carried on by a particular person or persons<sup>12</sup>.

The Council must comply with any directions given to it by the Assembly<sup>13</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 47(1). As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante.

3 Ibid s 47(1), (2)(a).

4 Ibid s 47(1), (2)(b).

5 Ibid s 47(1), (2)(c).

6 Ibid s 47(7).

7 Ibid s 47(1), (3)(a).

8 Cf para 57 ante.

9 Learning and Skills Act 2000 s 47(1), (3)(b).

10 Ibid s 47(1), (4).

11 Ibid s 47(5).

12 Ibid s 47(6).

13 Ibid s 47(8).

**UPDATE**

**1143-1144 Directions to the National Council for Education and Training for Wales, Grants to the National Council for Education and Training for Wales**

Repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(iv) Powers of the National Assembly for Wales/1144. Grants to the National Council for Education and Training for Wales.

#### **1144. Grants to the National Council for Education and Training for Wales.**

The National Assembly for Wales<sup>1</sup> may make grants to the National Council for Education and Training for Wales<sup>2</sup> of such amounts and subject to such conditions as the Assembly thinks fit<sup>3</sup>.

The conditions may set the Council's budget for any of its financial years<sup>4</sup>. The conditions may also:

- 2052 (1) require the Council to use the grants for specified purposes<sup>5</sup>;
- 2053 (2) require the Council to comply with specified requirements in respect of every person (or every person of a specified class or description) in securing the provision of specified financial resources to such persons<sup>6</sup>;
- 2054 (3) enable the Assembly to require the repayment, in whole or in part, of sums paid by it if any condition imposed is not complied with<sup>7</sup>;
- 2055 (4) require the payment of interest in respect of any period during which a sum due to the Assembly in accordance with any condition remains unpaid<sup>8</sup>.

The Assembly may not impose conditions which relate to the Council's securing of the provision of financial resources to a particular person or persons<sup>9</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante.

3 Learning and Skills Act 2000 s 49(1).

4 Ibid s 49(2). For the meaning of 'financial year of the Council' see PARA 1125 note 6 ante.

5 Ibid s 49(3)(a).

6 Ibid s 49(3)(b). Requirements which may be imposed under s 49(3)(b) include in particular requirements that, if the Council itself provides specified financial resources, it is to impose specified conditions: s 49(4).

7 Ibid s 49(3)(c).

8 Ibid s 49(3)(d).

9 Ibid s 49(5).

#### **UPDATE**

#### **1143-1144 Directions to the National Council for Education and Training for Wales, Grants to the National Council for Education and Training for Wales**

Repealed: SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(v) Committees of the National Council for Education and Training for Wales/1145. Committees and members of committees.

## **(v) Committees of the National Council for Education and Training for Wales**

### **1145. Committees and members of committees.**

The National Council for Education and Training for Wales<sup>1</sup> may establish a regional committee for each region of Wales<sup>2</sup>, and may establish such other committees as it thinks fit (whether or not it establishes regional committees)<sup>3</sup>.

A person holds and vacates office as a member or as chairman of a committee of the Council in accordance with the terms of his appointment<sup>4</sup>. On ceasing to be a member or chairman a person is eligible for re-appointment<sup>5</sup>. A person may at any time by notice in writing to the Council resign his office as a member<sup>6</sup> and a person may at any time by notice in writing to the National Assembly for Wales resign his office as chairman<sup>7</sup>.

The Council must pay to the members of any of its committees who are not members of the Council such travelling, subsistence and other allowances as the Assembly may determine<sup>8</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 48, Sch 5 para 1(1)(a). For the meaning of 'Wales' see PARA 52 note 13 ante. The regions of Wales are: (1) North Wales, as constituted by standing orders for the purposes of the Government of Wales Act 1998 s 61 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS); and (2) each of the other regions of Wales, as so constituted: Learning and Skills Act 2000 Sch 5 para 1(2).

3 Ibid Sch 5 para 1(1)(b).

4 Ibid Sch 5 para 5(1). As to the appointment of members of regional committees see PARA 1146 post; and as to the appointment of members of other committees see PARA 1147 post.

5 Ibid Sch 5 para 5(2).

6 Ibid Sch 5 para 5(3).

7 Ibid Sch 5 para 5(4).

8 Ibid Sch 5 para 6.

### **UPDATE**

#### **1145-1148 Committees of the National Council for Education and Training for Wales**

Learning and Skills Act 2000 s 48, Sch 5 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(v) Committees of the National Council for Education and Training for Wales/1146. Regional committees.

#### **1146. Regional committees.**

A regional committee consists of not less than eight members appointed by the National Council for Education and Training for Wales<sup>1</sup>; and the Council must appoint one of them as chairman<sup>2</sup>. The chairman must be a member of the Council<sup>3</sup>. Other members may be (but need not be) members of the Council<sup>4</sup>.

A regional committee: (1) must perform with regard to its area such of the Council's duties as the Council specifies with the approval of the National Assembly for Wales<sup>5</sup>; (2) may exercise with regard to its area such of the Council's powers as the Council specifies with the approval of the Assembly<sup>6</sup>; (3) must advise the Council on matters which are relevant to education and training in its area and which the Council specifies<sup>7</sup>.

1 Learning and Skills Act 2000 s 48, Sch 5 para 2(1). As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 Ibid Sch 5 para 2(1).

3 Ibid Sch 5 para 2(2).

4 Ibid Sch 5 para 2(3).

5 Ibid Sch 5 para 3(a).

6 Ibid Sch 5 para 3(b).

7 Ibid Sch 5 para 3(c).

#### **UPDATE**

#### **1145-1148 Committees of the National Council for Education and Training for Wales**

Learning and Skills Act 2000 s 48, Sch 5 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(v) Committees of the National Council for Education and Training for Wales/1147. Other committees.

#### **1147. Other committees.**

The members of any committee of the National Council for Education and Training for Wales<sup>1</sup> (other than a regional committee<sup>2</sup>) are appointed by the Council<sup>3</sup>. Members of such a committee may be (but need not be) members of the Council<sup>4</sup>.

The functions of such a committee are such functions as the Council specifies<sup>5</sup>, and concern such matters as the Council specifies<sup>6</sup>.

1 As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante. As to the National Assembly for Wales see PARA 53 ante.

2 As to regional committees see PARA 1146 ante.

3 Learning and Skills Act 2000 s 48, Sch 5 para 4(1), (3).

4 Ibid Sch 5 para 4(1), (4).

5 Ibid Sch 5 para 4(1), (2)(a).

6 Ibid Sch 5 para 4(1), (2)(b).

#### **UPDATE**

#### **1145-1148 Committees of the National Council for Education and Training for Wales**

Learning and Skills Act 2000 s 48, Sch 5 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9. LEARNING AND SKILLS COUNCILS/(2) THE NATIONAL COUNCIL FOR EDUCATION AND TRAINING FOR WALES/(v) Committees of the National Council for Education and Training for Wales/1148. Proceedings of committees.

#### **1148. Proceedings of committees.**

A representative of the National Assembly for Wales<sup>1</sup> is entitled to attend and take part in any deliberations (but not in decisions) at meetings of any committee of the National Council for Education and Training for Wales<sup>2</sup>. The Council must provide the Assembly with such copies as the Assembly may require of any documents distributed to members of any committee of the Council<sup>3</sup>.

The validity of any proceedings of a committee of the Council is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>4</sup>.

A committee of the Council may regulate its own procedure<sup>5</sup>, and may authorise the chairman of the committee to exercise such of the committee's functions as it may determine<sup>6</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 Learning and Skills Act 2000 s 48, Sch 5 para 8(1). As to the establishment of the National Council for Education and Training for Wales see PARA 1113 ante. On 1 April 2006, all the functions of the National Council for Education and Training for Wales are to be transferred to the National Assembly for Wales: see PARA 1113 note 1 ante.

3 Ibid Sch 5 para 8(2).

4 Ibid Sch 5 para 9. As to members of committees see PARA 1145 ante; as to the appointment of members of regional committees see PARA 1146 ante; and as to the appointment of members of other committees see PARA 1147 ante.

5 Ibid Sch 5 para 10. This is subject to the provisions of Sch 5 paras 1-9: see the text and notes 1-4 supra; the text and note 6 infra; and PARAS 1145-1147 ante.

6 Ibid Sch 5 para 7.

#### **UPDATE**

#### **1145-1148 Committees of the National Council for Education and Training for Wales**

Learning and Skills Act 2000 s 48, Sch 5 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/9A. DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND/1148A. Duty to participate in education or training in England.

#### **9A. DUTY TO PARTICIPATE IN EDUCATION OR TRAINING: ENGLAND**

##### **1148A. Duty to participate in education or training in England.**

As from a day to be appointed the statutory framework is changed to put a duty on all young people in England to participate in education or training until the age of 18, with corresponding duties on local education authorities and employers to enable and support participation.

The following provisions are not yet in force.

## **1. Young persons**

The Education and Skills Act 2008 Pt 1 (ss 1-67) applies to any person who is resident in England and who (1) has ceased to be of compulsory school age, (2) has not reached the age of 18, and (3) has not attained a level 3 qualification (see Education and Skills Act 2008 s 3): Education and Skills Act 2008 s 1. Regulations may provide for a person to be, or not to be, regarded as resident in England for the purposes of any provision of Pt 1: Education and Skills Act 2008 s 66(2).

A person to whom the Education and Skills Act 2008 Pt 1 applies must (a) be participating in appropriate full-time education or training (see Education and Skills Act 2008 s 4), (b) be participating in training in accordance with a contract of apprenticeship, or (c) both (i) be in full-time occupation (see Education and Skills Act 2008 s 5), and (ii) participate in sufficient relevant training or education in each relevant period (see Education and Skills Act 2008 ss 6-8): Education and Skills Act 2008 s 2(1). For the purposes of Pt 1, a person who is in full-time occupation is to be taken to be participating in sufficient relevant training or education at any particular time if (A) arrangements have been made (whether by means of enrolment on a course or courses, or otherwise) for the person to receive sufficient relevant training or education during the current relevant period, and (B) where the arrangements call for the person to be participating in training or education at the time, the person is so participating: s 2(2).

## **2. Local education authorities and educational institutions**

A local education authority in England must ensure that its functions are (so far as they are capable of being so exercised) exercised so as to promote the effective participation in education or training of persons belonging to its area to whom the Education and Skills Act 2008 Pt 1 (ss 1-67) applies with a view to ensuring that those persons fulfil the duty imposed by s 2 (see PARA 1148A.1): Education and Skills Act 2008 s 10.

The governing body of an institution in England to which the Education and Skills Act 2008 s 11 applies (ie (1) a community, foundation or voluntary school; (2) a community or foundation special school; (3) a pupil referral unit; (4) an institution within the further education sector) must exercise its functions (so far as they are capable of being so exercised) so as to promote the participation, through regular attendance, of persons to whom Pt 1 applies and for whom the institution provides education or training in that education or training: see Education and Skills Act 2008 s 11.

A local education authority in England must make arrangements to enable it to establish (so far as it is possible to do so) the identities of persons belonging to its area to whom Pt 1 applies but who are failing to fulfil the duty imposed by s 2 (see PARA 1148A.1): Education and Skills Act 2008 s 12. See further Education and Skills Act 2008 s 66(4), (5).

Where (a) arrangements have been made for a person to whom Pt 1 applies to participate in education or training provided by an educational institution in England, (b) the person is not participating in that education or training at a time when the arrangements call for the person to be so participating, and (c) the responsible person has reasonable cause to believe that in consequence of that failure to participate the person is failing to fulfil the duty imposed by s 2

(see PARA 1148A.1), the responsible person must give notice to the appropriate service provider of those circumstances: see Education and Skills Act 2008 s 13. Relevant information about a pupil or student (i) who is attending an educational institution in England, and (ii) to whom Pt 1 applies, must, on request by a local education authority in England, be provided by the responsible person to the authority: see Education and Skills Act 2008 s 14. Any of the following persons or bodies (ie (A) a local authority, (B) the Learning and Skills Council for England, (C) a Primary Care Trust, (D) a Strategic Health Authority, (E) a chief officer of police, (F) a provider of probation services, (G) a local probation board, and (H) a youth offending team) may supply information about a person to a local education authority in England for the purpose of enabling or assisting the authority to exercise its functions under Pt 1: see Education and Skills Act 2008 s 16. Information held by local education authorities and information held by their service providers may be shared and used for the purposes of Pt 1: see Education and Skills Act 2008 s 17 (amended by Apprenticeships, Skills, Children and Learning Act 2009 s 254(3)-(6)). In exercising its functions under Pt 1, a local education authority must have regard to any guidance given by the Secretary of State: Education and Skills Act 2008 s 18.

### **3. Employers**

A person must not, as employer, enter into a relevant contract of employment with a person to whom the Education and Skills Act 2008 Pt 1 (ss 1-67) applies without being satisfied, having taken all such steps as are reasonable to ascertain, that the person has made appropriate arrangements for training or education: Education and Skills Act 2008 s 21(1). In Pt 1 'contract of employment' means a contract of service, whether express or implied and (if it is express) whether oral or in writing, but does not include a contract of apprenticeship: Education and Skills Act 2008 s 66(1). In the Education and Skills Act 2008 Pt 1 Ch 3 (ss 19-39), 'relevant contract of employment' means a contract of employment (1) under which the employee is required to work for at least 20 hours per week, (2) which (a) has a fixed term of eight weeks or longer, or (b) does not have a fixed term but can reasonably be expected to be, or has been, in force for at least eight weeks, and (3) under which the place of work, or one of the places where the employee may be required to work, is in England: Education and Skills Act 2008 s 19(1). But a contract is not a 'relevant contract of employment' if the employer has undertaken to provide the employee with sufficient relevant training or education in each relevant period, and by virtue of the contract, the employee is in full-time occupation for the purposes of Pt 1: s 19(2). For the purposes of Pt 1 Ch 3, a person to whom Pt 1 applies has made appropriate arrangements for training or education if the person has enrolled on a course or courses constituting relevant training or education (or arrangements have otherwise been made for the person to receive relevant training or education), or the person is participating in full-time education or training: Education and Skills Act 2008 s 20(1). References in Pt 1 Ch 3 to appropriate arrangements made by the person are to the arrangements (of whatever kind and whether or not made by the person) for the person to receive the training or education in question: s 20(2). In the case of a relevant contract of employment which provides for commencement of the employment to be conditional on the employee's having made such arrangements (i) s 21(1) does not apply, but (ii) the employer must not permit the employment to commence, at a time when the employee is a person to whom Pt 1 applies, without being satisfied, having taken all such steps as are reasonable to ascertain, that the employee has made appropriate arrangements for training or education: s 21(2). Failure to comply with s 21 in relation to a contract of employment is not to be taken to affect the validity of the contract: s 21(3).

Where a relevant local education authority is satisfied that a person ('the employer') has contravened s 21, the authority may by notice (a 'penalty notice') require the employer to pay a financial penalty: see Education and Skills Act 2008 s 22. Where a penalty notice has been given to a person ('the employer') under s 22 by a local education authority, the employer may,

by giving notice (a 'notice of objection') to the authority, object to the giving of the penalty notice on either or both of the following grounds (A) that the employer did not commit the contravention of s 21 stated in the penalty notice; (B) that the amount of the penalty stated in the penalty notice is too high: see Education and Skills Act 2008 s 23. An employer may appeal to the First-tier Tribunal against a penalty notice given under s 22: see Education and Skills Act 2008 s 24. If an appeal has been made but not yet determined, the local authority may withdraw the penalty notice: see Education and Skills Act 2008 s 25. Further provision is made with respect to the withdrawal or variation of a penalty notice given under s 22: see Education and Skills Act 2008 s 26.

Where a person to whom Pt 1 applies is employed under a relevant contract of employment, and before commencement of the employment the person notified the employer of appropriate arrangements which the person had made, the employer must permit the employee to participate in training or education in accordance with those appropriate arrangements: see Education and Skills Act 2008 s 27. Where a person to whom Pt 1 applies is employed under a relevant contract of employment, and after commencement of the employment the person notifies the employer of appropriate arrangements which the person has made, the employer must, so far as is reasonable having regard to specified matters, permit the person to participate in training or education in accordance with those appropriate arrangements: see Education and Skills Act 2008 s 28. If a person reaches 18 years of age, remains in employment and has been participating in education or training in order to fulfil the duty imposed by s 2 (see PARA 1148A.1), the duty on the employer remains in place until the course finishes, the young person ceases to be resident in England, the person attains a level 3 qualification or the person attains the age of 19: see Education and Skills Act 2008 s 29. For regulations as to whether a person is regarded as resident in England see PARA 1148A.1. 'Level 3 qualification' has the meaning given by the Education and Skills Act 2008 s 3: Education and Skills Act 2008 s 66(1). An enforcement notice may be issued by the local education authority where the employer has not fulfilled the duty to enable participation: see Education and Skills Act 2008 s 30. Provision is made for a financial penalty for non-compliance with an enforcement notice given under s 30: see Education and Skills Act 2008 s 31. A local education authority may withdraw an enforcement notice, provided that, if a penalty notice has been issued, any appeal against it has not yet been determined: see Education and Skills Act 2008 s 32. An employer may object to a penalty notice within two weeks of being given the notice under s 31; the local education authority must consider the employer's notice of objection and either withdraw the penalty notice, reduce the amount of the penalty or confirm the penalty notice: see Education and Skills Act 2008 s 33. An employer may appeal to the First-tier Tribunal against a penalty notice given under s 31: see Education and Skills Act 2008 s 34. Where a penalty notice has been given to a person ('the employer') under s 31 by a local education authority, and any appeal made under s 34 in respect of the penalty notice has not been determined, the authority may withdraw the penalty notice by giving notice of the withdrawal to the employer: Education and Skills Act 2008 s 35. Further provision is made with respect to the withdrawal or variation of a penalty notice given under s 31: see Education and Skills Act 2008 s 36.

#### **4. Parenting contracts and parenting orders**

The Education and Skills Act 2008 s 40 applies where a person to whom the Education and Skills Act 2008 Pt 1 (ss 1-67) applies ('the young person') is failing to fulfil the duty imposed by s 2 (see PARA 1148A.1): Education and Skills Act 2008 s 40(1). See further Education and Skills Act 2008 s 66(4), (5). A local education authority in England may enter into a parenting contract with a parent of the young person (1) if the parent is resident in England, and (2) the authority considers that entering into the parenting contract would be desirable in the interests of the young person's fulfilment of that duty: s 40(2). For regulations as to whether a person is regarded as resident in England see PARA 1148A.1. A parenting contract is a document which contains (a) a statement by the parent that the parent agrees to comply with such



requirements as may be specified in the document for such period as may be so specified, and (b) a statement by the local education authority that it agrees to provide support to the parent for the purpose of complying with those requirements: s 40(3). The requirements mentioned in s 40(3) may include (in particular) a requirement to attend a counselling or guidance programme: s 40(4). A parenting contract must be signed by the parent and signed on behalf of the local education authority: s 40(5). A parenting contract does not create any obligations in respect of whose breach any liability arises in contract or in tort: s 40(6).

The Education and Skills Act 2008 s 41 applies where a person to whom Pt 1 applies ('the young person') is failing to fulfil the duty imposed by s 2 (see PARA 1148A.1): Education and Skills Act 2008 s 41(1). A local education authority in England may apply to a magistrates' court for a parenting order in respect of a parent of the young person, if the parent is resident in England: s 41(2). If such an application is made, the court may make a parenting order in respect of the parent if it is satisfied that (i) the young person is failing to fulfil the duty imposed by s 2, and (ii) the making of the order would be desirable in the interests of the young person's fulfilment of that duty: s 41(3). A parenting order is an order which requires the parent (A) to comply, for a period not exceeding 12 months, with such requirements as are specified in the order, and (B) subject to s 41(5), to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer: s 41(4). A parenting order under s 41 may, but need not, include a requirement mentioned in head (B) in any case where a parenting order under s 41 or any other enactment has been made in respect of the parent on a previous occasion: s 41(5). A counselling or guidance programme which a parent is required to attend by virtue of head (B) may be or include a residential course but only if the court is satisfied that the following two conditions are fulfilled: s 41(6). The first condition is that the attendance of the parent at a residential course is likely to be more effective than attendance at a non-residential course in the interests of the young person's fulfilment of the duty imposed by s 2: s 41(7). The second condition is that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances: s 41(8). Supplemental provision with respect to parenting orders is made: see Education and Skills Act 2008 s 42. An appeal lies to the Crown Court against the making of a parenting order under s 41: see Education and Skills Act 2008 s 43.

Further provision is made with respect to parenting contracts and parenting orders: see Education and Skills Act 2008 s 44.

## **5. Attendance notices**

The Education and Skills Act 2008 ss 45-50 set out the procedure that a local education authority may follow should it believe that a person is failing without reasonable excuse to fulfil the duty imposed by s 2 (see PARA 1148A.1). See further Education and Skills Act 2008 s 66(4), (5). The initial steps before the commencement of this process are set out in the Education and Skills Act 2008 s 45, which states that the local authority must ensure that appropriate support has made available and that the young person has been given the opportunity to take advantage of services designed to support participation; it also provides that the local education authority must give the young person 15 days' notice in writing of its intention to issue an attendance notice. If the young person fails to participate without reasonable excuse after the local education authority has given 15 days' notice, the local education authority may issue an attendance notice: see Education and Skills Act 2008 s 46. The education or training specified in the attendance notice must be a course provided at a school, college or other education establishment or a contract of apprenticeship, and be a way of fulfilling the duty imposed by s 2: see Education and Skills Act 2008 s 47. A local education authority in England must establish an attendance panel, constituted in accordance with regulations; its functions include hearing appeals against attendance notices, appeals against penalty notices and making recommendations to local education authorities: see Education and Skills Act 2008 s

48. Appeal arrangements are set out: see Education and Skills Act 2008 s 49. The local education authority can vary or revoke an attendance notice in certain circumstances, and can specify additional education or training: see Education and Skills Act 2008 s 50.

The Education and Skills Act 2008 ss 51-59 relate to the failure to comply with an attendance notice. It is an offence for a person to whom an attendance notice has been given to fail, without reasonable excuse, to comply with the requirements of the attendance notice; it is a defence for a person charged with such an offence to show that he or she is, and since the giving of the attendance notice has been, fulfilling the duty imposed by s 2 (see PARA 1148A.1): see Education and Skills Act 2008 s 51. The restrictions on proceedings for offences under s 51 are set out: see Education and Skills Act 2008 s 52. Where a local education authority which has given an attendance notice to a person under s 46 has reason to believe that the person has committed an offence under s 51 relating to the notice, the authority may give the person a penalty notice in respect of the offence; a penalty notice is a notice offering a person the opportunity of discharging any liability to conviction in respect of the offence to which the notice relates by payment of a penalty in accordance with the notice: see Education and Skills Act 2008 s 53. A local education authority must make arrangements for enabling a young person to whom a penalty notice is given by the authority under s 53 to appeal against the notice: see Education and Skills Act 2008 s 54. Provision is made with regard to the enforcement of a non-participation fine when a person reaches the age of 18: see Education and Skills Act 2008 s 56. 'Non-participation fine' means a fine imposed for an offence under a 51, or in respect of a failure to comply with any sentence imposed for such an offence: Education and Skills Act 2008 s 55(1). Similar provision is made in respect of a person who is 18 when given a fine: see Education and Skills Act 2008 s 57. Further provision is made with respect to the enforcement of non-participation fines: see Education and Skills Act 2008 s 58. The Lord Chancellor may by regulations make provision as to the application of amounts recovered by local education authorities by virtue of ss 56 and 57: see Education and Skills Act 2008 s 59.

The Secretary of State must appoint a person to conduct a review of the initial operation of the Education and Skills Act 2008 Pt 1 Ch 5 (ss 45-60); and the person appointed must make a report to the Secretary of State on the review within a reasonable period after the school leaving date for 2016: see Education and Skills Act 2008 s 60.

## **6. Miscellaneous**

Regulations may (1) provide for who is to be treated as the employer for the purposes of the Education and Skills Act 2008 Pt 1 (ss 1-67) in relation to any way of working prescribed by regulations under s 5 (see PARA 1148A.1), and (2) provide for any provision of Pt 1 to apply with modifications in relation to any such way of working: Education and Skills Act 2008 s 61(1). Regulations may provide for any provision of Pt 1 to apply with modifications in cases where a person to whom Pt 1 applies (a) is employed under a contract of employment, and (b) is for the time being supplied by the employer to another person ('the principal') to perform work in accordance with a contract made between the employer and the principal: s 61(2). For the meaning of 'contract of employment' see PARA 1148A.3.

Crown employees are to be treated as if they are employed under contracts of employment: see Education and Skills Act 2008 s 62. The powers of local education authorities to take enforcement action against employers do not apply where the employer in question is the House of Lords or the House of Commons: see Education and Skills Act 2008 ss 63, 64. Penalties payable under financial penalty notices are payable to local education authorities, who may only use the funds generated in the exercise of specified functions: see Education and Skills Act 2008 s 65.

The Secretary of State may by order make corresponding provision for Wales: see Education and Skills Act 2008 s 67.

**UPDATE**

**1145-1148 Committees of the National Council for Education and Training for Wales**

Learning and Skills Act 2000 s 48, Sch 5 repealed; National Council for Education and Training for Wales now abolished and all functions transferred to National Assembly for Wales: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(1) PROVISION OF SERVICES IN ENGLAND/1149. Provision of services.

## **10. SUPPORT AND SERVICES FOR YOUNG PEOPLE**

### **(1) PROVISION OF SERVICES IN ENGLAND**

#### **1149. Provision of services.**

The Secretary of State<sup>1</sup> may provide or secure the provision of services which he thinks will encourage, enable or assist (directly or indirectly) effective participation by young persons<sup>2</sup> in education or training<sup>3</sup>. In securing the provision of those services the Secretary of State may, in particular, make arrangements with local authorities<sup>4</sup> and other persons for the provision of services<sup>5</sup> and may direct local education authorities<sup>6</sup> to provide services, to secure the provision of services or to participate in the provision of services<sup>7</sup>. Such arrangements and directions may include provision for grants, loans and other kinds of financial assistance to be provided by the Secretary of State (whether or not on conditions)<sup>8</sup>, and may require persons with whom arrangements are made or to whom directions are given to have regard to guidance issued by the Secretary of State<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 'Young persons' means persons who have attained the age of 13 but not the age of 20: Learning and Skills Act 2000 ss 114(4), 121(1).

3 Ibid s 114(1). The power under s 114 must not be used to provide or secure the provision of services outside England: s 121(2). For the meaning of 'England' see PARA 52 note 11 ante. As to the provision of services in Wales see PARAS 1155-1159 post.

4 For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by ibid s 121(1).

5 Ibid s 114(2)(a).

6 As to local education authorities see PARA 20 ante.

7 Learning and Skills Act 2000 s 114(2)(b). A direction under s 114 may be revoked or varied by a later direction: s 114(5).

8 Ibid s 114(3)(a).

9 Ibid s 114(3)(b).

#### **UPDATE**

#### **1149-1154 Provision of Services in England**

The Learning and Skills Act 2000 ss 114-121 are repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(1) PROVISION OF SERVICES IN ENGLAND/1150. Consultation and co-ordination.

### **1150. Consultation and co-ordination.**

Before providing or securing the provision of services to encourage, enable or assist participation by young persons in education or training<sup>1</sup> for residents of a particular place or area, the Secretary of State<sup>2</sup> must consult each of the following with responsibility for all or part of the place or area<sup>3</sup>: (1) a local authority<sup>4</sup>; (2) a strategic health authority<sup>5</sup>; (3) a chief officer of police<sup>6</sup>; (4) a police authority<sup>7</sup>; (5) a local probation board<sup>8</sup>; (6) a youth offending team<sup>9</sup>; and (7) a primary care trust<sup>10</sup>. The Secretary of State must also consult any voluntary body which provides services for young persons<sup>11</sup> in the place or area concerned and which he thinks it appropriate to consult<sup>12</sup>, and such other persons as he thinks appropriate<sup>13</sup>.

Where the Secretary of State provides or proposes to provide, or secures or proposes to secure the provision of services<sup>14</sup> for the residents of a particular place or area<sup>15</sup>, persons and bodies listed in heads (1) to (7) above with responsibility for all or part of that place or area must<sup>16</sup> exercise their functions so as to support and assist the services provided, secured or proposed by the Secretary of State<sup>17</sup>, and co-ordinate the exercise of their functions, so far as seems reasonable, with persons providing those services<sup>18</sup>.

1    le services of the kind mentioned in the Learning and Skills Act 2000 s 114(1): see PARA 1149 ante.

2    As to the Secretary of State see PARA 52 ante.

3    Learning and Skills Act 2000 s 115(1).

4    Ibid s 115(1)(a). For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by s 121(1).

5    Ibid s 115(1)(b) (substituted by the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Regulations 2002, SI 2002/2469, reg 4, Sch 1 Pt 1 para 28(1), (2)). 'Strategic health authority' means a strategic health authority established under the National Health Service Act 1977 s 8 (as substituted) (see HEALTH SERVICES vol 54 (2008) PARA 94 et seq): Learning and Skills Act 2000 s 121(1) (definition added by the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Regulations 2002, SI 2002/2469, reg 4, Sch 1 Pt 1 para 28(1), (4)).

6    Learning and Skills Act 2000 s 115(1)(c). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARA 178 et seq.

7    Ibid s 115(1)(d). 'Police authority' has the meaning given by the Police Act 1996 s 101 (see POLICE vol 36(1) (2007 Reissue) PARA 102): Learning and Skills Act 2000 s 121(1).

8    Ibid s 115(1)(e) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 208, 209). A local probation board is a board established under the Criminal Justice and Court Services Act 2000 s 4: Learning and Skills Act 2000 s 121(1) (definition added by the Criminal Justice and Court Services Act 2000 Sch 7 paras 208, 210). As to local probation boards see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq.

9    Learning and Skills Act 2000 s 115(1)(f). A youth offending team is a team established under the Crime and Disorder Act 1998 s 39 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1703): Learning and Skills Act 2000 s 121(1).

10   Ibid s 115(1)(g). As to primary care trusts see HEALTH SERVICES vol 54 (2008) PARA 111 et seq.

11   For the meaning of 'young person' see PARA 1149 note 2 ante.

12   Learning and Skills Act 2000 s 115(2)(a).

13 Ibid s 115(2)(b).

14 le services of the kind mentioned in ibid s 114(1): see PARA 1149 ante.

15 Ibid s 115(3).

16 Ibid s 115(4). However, s 115(4) does not require persons or bodies to take action which would significantly interfere with the efficient or effective exercise of their functions: s 115(5).

17 Ibid s 115(4)(a).

18 Ibid s 115(4)(b).

## **UPDATE**

### **1149-1154 Provision of Services in England**

The Learning and Skills Act 2000 ss 114-121 are repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(1) PROVISION OF SERVICES IN ENGLAND/1151. Duties and powers of local education authorities.

### **1151. Duties and powers of local education authorities.**

A local education authority<sup>1</sup>: (1) may enter into arrangements<sup>2</sup> for the provision of services to encourage, enable or assist participation by young persons in education or training<sup>3</sup>; (2) must comply with a direction given to it<sup>4</sup>; and (3) may provide, secure the provision of or participate in the provision of services<sup>5</sup> otherwise than in accordance with head (1) or head (2) above<sup>6</sup>. For these purposes, a local education authority may: (a) incur expenditure<sup>7</sup>; (b) form companies<sup>8</sup>; (c) employ officers<sup>9</sup>; (d) enter into agreements for the supply of goods or services<sup>10</sup>; and (e) do anything else which it considers necessary or expedient<sup>11</sup>. Action which a local education authority takes in pursuance of heads (1) to (3) above may relate to services for a person from another area<sup>12</sup>. No power of a local education authority to provide services or incur expenditure is prejudiced by anything in or done under the power to provide services to encourage, enable or assist participation by young persons in education or training<sup>13</sup>.

1 As to local education authorities see PARA 20 ante.

2 ie under the Learning and Skills Act 2000 s 114(2)(a): see PARA 1149 ante.

3 Ibid s 116(1)(a). The text refers to the provision of services of the kind mentioned in s 114(1): see PARA 1149 ante.

4 Ibid s 116(1)(b). The text refers to a direction given to it under s 114(2)(b): see PARA 1149 ante.

5 As to the services referred to in the text see note 3 supra.

6 Learning and Skills Act 2000 s 116(1)(c).

7 Ibid s 116(3)(a).

8 Ibid s 116(3)(b).

9 Ibid s 116(3)(c).

10 Ibid s 116(3)(d).

11 Ibid s 116(3)(e).

12 Ibid s 116(2).

13 Ibid s 116(4). As to the services referred to in the text see note 3 supra.

### **UPDATE**

#### **1149-1154 Provision of Services in England**

The Learning and Skills Act 2000 ss 114-121 are repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(1) PROVISION OF SERVICES IN ENGLAND/1152. Educational institutions' duty to provide information and access.

### **1152. Educational institutions' duty to provide information and access.**

Where a person is involved in the provision of services to encourage, enable or assist participation by young persons in education or training<sup>1</sup>, any: (1) community, foundation and voluntary schools<sup>2</sup>; (2) community or foundation special schools (other than those established in hospitals)<sup>3</sup>; (3) city technology colleges, city colleges for the technology of the arts and academies<sup>4</sup>; (4) pupil referral units<sup>5</sup>; (5) institutions within the further education sector<sup>6</sup>; and (6) institutions in receipt of funding from the Learning and Skills Council for England<sup>7</sup>, must, for the purpose of the provision of those services<sup>8</sup>:

- 2056 (a) provide him on request with the name and address of a pupil or student<sup>9</sup>;
- 2057 (b) provide him on request with the name and address of a parent<sup>10</sup> of a pupil or student<sup>11</sup>;
- 2058 (c) provide him on request with information in the institution's possession about a pupil or student<sup>12</sup>;
- 2059 (d) permit him to have access to a pupil or student on the institution's premises<sup>13</sup> at reasonable times<sup>14</sup>; and
- 2060 (e) make available to him, so far as is reasonably convenient, facilities on the institution's premises for providing services to individual pupils or students or groups of pupils or students<sup>15</sup>.

However, information must not be provided under head (c) above: (i) in the case of a pupil or student who has not attained the age of 16, if a parent of his has instructed the institution not to provide information of that kind<sup>16</sup>; or (ii) in the case of a pupil or student who has attained the age of 16, if he has instructed the institution not to provide information of that kind<sup>17</sup>.

1    In pursuance of the Learning and Skills Act 2000 s 114(1): see PARA 1149 ante.

2    Ibid s 117(3)(a). As to community, foundation and voluntary schools see PARA 102 et seq ante.

3    Ibid s 117(3)(b). As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

4    Ibid s 117(3)(c) (amended by the Education Act 2002 s 65(3), Sch 7 Pt 2 para 10). As to city technology colleges, city colleges for the technology of the arts and academies see PARA 496 et seq ante.

5    Learning and Skills Act 2000 s 117(3)(d). As to pupil referral units see PARAS 457-464 ante.

6    Ibid s 117(3)(e). As to references to institutions within the further education sector see PARA 579 ante.

7    Ibid s 117(3)(f). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

8    Ibid s 117(1).

9    Ibid s 117(1)(a).

10   'Parent', in relation to a child, means a person who has parental responsibility for him within the meaning of the Children Act 1989 s 3 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134): Learning and Skills Act 2000 s 121(1).

11   Ibid s 117(1)(b).



- 12 Ibid s 117(1)(c).
- 13 As to the provision of sites and premises see PARA 1352 et seq post.
- 14 Learning and Skills Act 2000 s 117(1)(d).
- 15 Ibid s 117(1)(e).
- 16 Ibid s 117(2)(a).
- 17 Ibid s 117(2)(b).

## **UPDATE**

### **1149-1154 Provision of Services in England**

The Learning and Skills Act 2000 ss 114-121 are repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(1) PROVISION OF SERVICES IN ENGLAND/1153. Supply of information by the Secretary of State.

### **1153. Supply of information by the Secretary of State.**

The Secretary of State<sup>1</sup> may supply information, including social security information<sup>2</sup>, to any civil servant or other person for the purpose of the provision of services to encourage, enable or assist participation by young persons in education or training<sup>3</sup>. It is an offence for a person to disclose information supplied so to him unless the disclosure is made<sup>4</sup>:

- 2061 (1) for the purpose of the provision of services to encourage, enable or assist participation by young persons in education or training<sup>5</sup>;
- 2062 (2) in accordance with an enactment or an order of a court<sup>6</sup>;
- 2063 (3) for the purpose of actual or contemplated proceedings before a court<sup>7</sup>;
- 2064 (4) with consent given by or on behalf of the person to whom the information relates<sup>8</sup>; or
- 2065 (5) in such a way as to prevent the identification of the person to whom it relates<sup>9</sup>.

It is a defence for a person charged with such an offence to prove that he reasonably believed that his disclosure was lawful<sup>10</sup>. A person guilty of such an offence is liable on conviction to a penalty<sup>11</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 'Social security information' means personal information about a young person which is obtained by the Secretary of State in the course of the exercise of a function under the Social Security Contributions and Benefits Act 1992 or the Social Security Administration Act 1992 (see SOCIAL SECURITY AND PENSIONS): Learning and Skills Act 2000 s 119(2). 'Personal information' means, in relation to a young person: (1) his name, address and date of birth; and (2) the name and address of a parent of his: s 119(3). For the meaning of 'young person' see PARA 1149 note 2 ante. As to the meaning of 'parent' see PARA 1152 note 10 ante.

3 Ibid s 119(1).

4 Ibid s 119(4).

5 Ibid s 119(4)(a). The text refers to the provision of services in pursuance of s 114(1): see PARA 1149 ante.

6 Ibid s 119(4)(b).

7 Ibid s 119(4)(c).

8 Ibid s 119(4)(d).

9 Ibid s 119(4)(e).

10 Ibid s 119(5).

11 Ibid s 119(6). The penalty on conviction on indictment is imprisonment for a term not exceeding two years, a fine, or both, and on summary conviction is imprisonment for a term not exceeding six months, a fine not exceeding the statutory maximum, or both: see s 119(6)(a), (b). As to the statutory maximum see PARA 66 note 26 ante.

## **UPDATE**

### **1149-1154 Provision of Services in England**

The Learning and Skills Act 2000 ss 114-121 are repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(1) PROVISION OF SERVICES IN ENGLAND/1154. Supply of information by public bodies.

### **1154. Supply of information by public bodies.**

For the purpose of the provision of services to encourage, enable or assist participation by young persons in education or training<sup>1</sup>: (1) a local authority<sup>2</sup>; (2) a strategic health authority<sup>3</sup>; (3) the Learning and Skills Council for England<sup>4</sup>; (4) a chief officer of police<sup>5</sup>; (5) a local probation board<sup>6</sup>; (6) a youth offending team<sup>7</sup>; and (7) a primary care trust<sup>8</sup>, may supply information about a young person<sup>9</sup> to the Secretary of State<sup>10</sup> and any other person or body involved in the provision of those services<sup>11</sup>.

1 le in pursuance of the Learning and Skills Act 2000 s 114(1): see PARA 1149 ante.

2 Ibid s 120(2)(a). For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by s 121(1).

3 Ibid s 120(2)(b) (substituted by the National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc Provisions) Regulations 2002, SI 2002/2469, reg 4, Sch 1 Pt 1 para 28(1), (3)). For the meaning of 'strategic health authority' see PARA 1150 note 5 ante.

4 Learning and Skills Act 2000 s 120(2)(c). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

5 Ibid s 120(2)(d). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARA 178 et seq.

6 Ibid s 120(2)(e) (amended by the Criminal Justice and Court Services Act 2000 s 74, Sch 7 paras 208, 209). As to local probation boards see PARA 1150 note 8 ante.

7 Learning and Skills Act 2000 s 120(2)(f). As to youth offending teams see PARA 1150 note 9 ante.

8 Ibid s 120(2)(g). As to primary care trusts see HEALTH SERVICES vol 54 (2008) PARA 111 et seq.

9 For the meaning of 'young person' see PARA 1149 note 2 ante.

10 Learning and Skills Act 2000 s 120(1)(a). As to the Secretary of State see PARA 52 ante.

11 Ibid s 120(1)(b).

### **UPDATE**

#### **1149-1154 Provision of Services in England**

The Learning and Skills Act 2000 ss 114-121 are repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(1) PROVISION OF SERVICES IN ENGLAND/1154A. Provision of support services.

#### **1154A. Provision of support services.**

A local education authority in England must make available to young persons and relevant young adults for whom it is responsible such services as it considers appropriate to encourage, enable or assist the effective participation of those persons in education or training: Education and Skills Act 2008 s 68(1). 'Young person' means a person who has attained the age of 13 but not the age of 20: Education and Skills Act 2008 s 78(1). 'Relevant young adult' means a person who has attained the age of 20 but not the age of 25, and has a learning difficulty; and the Learning and Skills Act 2000 s 13(5), (6) (construction of references to learning difficulties: see PARA 1091) apply for this purpose: Education and Skills Act 2008 s 78(1). For the purposes of the Education and Skills Act 2008 ss 68-77, a local education authority is responsible for any young person or relevant young adult who is receiving education or training in its area (and for these purposes 'training' includes vocational, social, physical and recreational training), normally resident in its area, or otherwise within its area: Education and Skills Act 2008 s 78(2), (3). Section 68(1) is subject to any direction given by the Secretary of State under the Education and Skills Act 2008 s 69 (amended by Apprenticeships, Skills, Children and Learning Act 2009 s 255(2)): s 68(2). For the purposes of s 68 and s 69, a local education authority makes services available if it (1) provides them, or (2) makes arrangements with another local education authority or another person for their provision: s 68(3). In carrying out its functions under s 68, a local education authority must (a) comply with any direction given by the Secretary of State under s 69 (amended by Apprenticeships, Skills, Children and Learning Act 2009 s 255(1), (2)), and (b) have regard to any guidance issued by the Secretary of State: s 68(4). Nothing in s 68 requires a local education authority to make services available to a young person or relevant young adult for whom it is responsible if (i) another local education authority in England is also responsible for the person, and (ii) services are being provided to the person by, or under arrangements made by, the other authority in exercise of its functions under s 68(1): s 68(5).

A local education authority in England (A) may provide, secure the provision of or participate in the provision of services under arrangements entered into by it with another local education authority in pursuance of any function of that other local education authority under s 68, and (B) may provide, secure the provision of or participate in the provision of services for encouraging, enabling or assisting the effective participation in education or training of young persons, or relevant young adults, (including such persons from other areas) otherwise than in accordance with s 68 or head (A): Education and Skills Act 2008 s 70(1). Nothing in or done under s 68, 69 or s 70 is to be taken to prejudice any powers which a local education authority has with respect to the exercise of its functions otherwise than under those provisions: s 70(2).

Services provided for young persons in pursuance of s 68 or head (b) may include the provision of support on a conditional basis: see Education and Skills Act 2008 s 71. Relevant information about a pupil or student who is attending an educational institution in England must be provided by the responsible person to a person involved in the provision of services in pursuance of s 68 or head (b), on a request by that person: see Education and Skills Act 2008 s 72. The responsible person in relation to an educational institution in England, must, on a request by a person involved in the provision of services in pursuance of s 68 or head (b) permit that person to have access to a pupil or student attending the institution on the institution's premises at reasonable times, and make available to that person, so far as is reasonably convenient, facilities on the institution's premises for providing services to individual such pupils or students or groups of such pupils or students: see Education and Skills

Act 2008 s 73. The Secretary of State may provide or secure the provision of services for encouraging, enabling or assisting the effective participation of young persons and relevant young adults in England in education or training; such services are services provided by means of the publication whether electronically or otherwise of information, advice and guidance; and the provision, in response to requests by young persons and relevant young adults, of information, advice or guidance to those persons by telephone or other electronic means: see Education and Skills Act 2008 s 74. Her Majesty's Chief Inspector of Education, Children's Services and Skills must, when requested to do so by the Secretary of State, inspect and report on the provision of services in pursuance of s 68 or 74, and may undertake such other inspections of the provision of those services as Her Majesty's Chief Inspector thinks fit: see Education and Skills Act 2008 s 75. The Secretary of State may make arrangements for the supply of social security information for the purposes of the provision of services for young persons in pursuance of s 68 or head (b): see Education and Skills Act 2008 s 76 (amended by Apprenticeships, Skills, Children and Learning Act 2009 s 254(7)-(9)). The Secretary of State may also make arrangements for the holding and supply of information in connection with, or for the purposes of, the provision of services for young persons in pursuance of s 68 or head (b): see Education and Skills Act 2008 s 76A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 255(3)). Specified persons and public bodies are given the power to supply information about a young person or relevant young adult to any other person or body involved in the provision of services in pursuance of s 68 or head (b) for the purpose of the provision of those services: see Education and Skills Act 2008 s 77.

## **UPDATE**

### **1149-1154 Provision of Services in England**

The Learning and Skills Act 2000 ss 114-121 are repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(2) PROVISION OF SERVICES IN WALES/1155. Provision of services.

## **(2) PROVISION OF SERVICES IN WALES**

### **1155. Provision of services.**

The National Assembly for Wales<sup>1</sup> may direct a local authority<sup>2</sup> to provide 'youth support services'<sup>3</sup>, to secure the provision of youth support services<sup>4</sup>, and to participate in the provision of youth support services<sup>5</sup>. 'Youth support services' are services which in the opinion of the Assembly will encourage, enable or assist young persons<sup>6</sup> (directly or indirectly) to participate effectively in education or training<sup>7</sup>, take advantage of opportunities for employment<sup>8</sup>, or participate effectively and responsibly in the life of their communities<sup>9</sup>. Such directions of the Assembly may: (1) include provision for grants, loans and other kinds of financial assistance to be provided by the Assembly (whether or not on conditions)<sup>10</sup>; (2) require local authorities to have regard to guidance issued by the Assembly<sup>11</sup>; and (3) require local authorities when making arrangements with other persons to require those persons to have regard to guidance issued by the Assembly<sup>12</sup>. Such directions may relate to a particular class of young person<sup>13</sup> and may make different provision for different classes of young person<sup>14</sup>. They may be revoked or varied by a later direction<sup>15</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 For these purposes, 'local authority' means a county council or a county borough council: Learning and Skills Act 2000 s 129(1). As to county councils and county borough councils in Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 37 et seq.

3 Ibid s 123(1)(a). The power under s 123 does not relate to services which are provided or to be provided outside Wales: s 129(2). For the meaning of 'Wales' see PARA 52 note 13 ante. As to the provision of services in England see PARAS 1149-1154 ante.

4 Ibid s 123(1)(b).

5 Ibid s 123(1)(c).

6 'Young persons' means persons who have attained the age of 11 but not the age of 26: ibid ss 123(3), 129(1).

7 Ibid ss 123(2)(a), 129(1).

8 Ibid ss 123(2)(b), 129(1).

9 Ibid ss 123(2)(c), 129(1).

10 Ibid s 123(4)(a).

11 Ibid s 123(4)(b).

12 Ibid s 123(4)(c).

13 Ibid s 123(5)(a).

14 Ibid s 123(5)(b).

15 Ibid s 123(5)(c).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(2) PROVISION OF SERVICES IN WALES/1156. Consultation and co-ordination.

### **1156. Consultation and co-ordination.**

Before complying with a direction of the National Assembly for Wales<sup>1</sup> by providing, securing the provision of or participating in the provision of youth support services<sup>2</sup> for residents of a particular place or area, a local authority<sup>3</sup> must consult each of the following with responsibility for all or part of the area<sup>4</sup>: (1) a health authority<sup>5</sup>; (2) a chief officer of police<sup>6</sup>; (3) a police authority<sup>7</sup>; (4) a local probation board<sup>8</sup>; and (5) a youth offending team<sup>9</sup>. The local authority must also:

- 2066 (a) consult any voluntary body which provides services for young persons<sup>10</sup> in the place or area concerned and which the local authority thinks it appropriate to consult<sup>11</sup>;
- 2067 (b) consult the National Council for Education and Training for Wales<sup>12</sup>;
- 2068 (c) consult any authority or person with whom arrangements have been made for the place or area concerned under the Employment and Training Act 1973<sup>13</sup>;
- 2069 (d) consult any relevant organisation established for the purpose of enabling voluntary bodies to co-operate and co-ordinate their activities<sup>14</sup>;
- 2070 (e) consult such other persons as the local authority thinks appropriate<sup>15</sup>; and
- 2071 (f) provide such opportunities as the local authority thinks appropriate for young persons in the place or area concerned to express their views<sup>16</sup>.

Where a local authority provides or proposes to provide youth support services for the residents of a particular place or area<sup>17</sup>, or secures or proposes to secure the provision of youth support services for the residents of a particular place or area<sup>18</sup>, persons or bodies listed in heads (1) to (5) above with responsibility for all or part of that place or area must<sup>19</sup>: (i) exercise their functions so as to support and assist the services provided, secured or proposed by the local authority<sup>20</sup>; and (ii) co-ordinate the exercise of their functions, so far as seems reasonable, with persons providing those services<sup>21</sup>. However, this does not require persons or bodies to take action which would significantly interfere with the efficient or effective exercise of their functions<sup>22</sup>.

1 Ibid under the Learning and Skills Act 2000 s 123(1); see PARA 1155 ante. As to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'youth support services' see PARA 1155 ante.

3 For the meaning of 'local authority' see PARA 1155 note 2 ante.

4 Learning and Skills Act 2000 s 125(1).

5 Ibid s 125(1)(a). 'Health authority' has the meaning given by the National Health Service Act 1977 s 8 (as substituted) (see HEALTH SERVICES vol 54 (2008) PARA 75); Learning and Skills Act 2000 s 129(1).

6 Ibid s 125(1)(b). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARA 178 et seq.

7 Ibid s 125(1)(c). 'Police authority' has the meaning given by the Police Act 1996 s 101 (see POLICE vol 36(1) (2007 Reissue) PARA 102); Learning and Skills Act 2000 s 129(1).

8 Ibid s 125(1)(d). Local probation boards have replaced probation committees: see the Criminal Justice and Court Services Act 2000 s 4. As to local probation boards see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq.



- 9 Learning and Skills Act 2000 s 125(1)(e). A youth offending team is a team established under the Crime and Disorder Act 1998 s 39 (as amended) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 1703): Learning and Skills Act 2000 s 129(1).
- 10 For the meaning of 'young persons' see PARA 1155 note 6 ante.
- 11 Learning and Skills Act 2000 s 125(2)(a).
- 12 Ibid s 125(2)(b). As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.
- 13 Ibid s 125(2)(c). The text refers to the Employment and Training Act 1973 s 10(1), (3)(a), (b), (d) (as substituted) (see PARA 1160 post; and EMPLOYMENT vol 40 (2009) PARA 569): Learning and Skills Act 2000 s 125(2) (c).
- 14 Ibid s 125(2)(d).
- 15 Ibid s 125(2)(e).
- 16 Ibid s 125(2)(f).
- 17 Ibid s 125(3)(a).
- 18 Ibid s 125(3)(b).
- 19 Ibid s 125(4).
- 20 Ibid s 125(4)(a).
- 21 Ibid s 125(4)(b).
- 22 Ibid s 125(5).

## **UPDATE**

### **1156 Consultation and co-ordination**

TEXT AND NOTES 1-9--2000 Act s 125(1) amended: SI 2008/912.

TEXT AND NOTE 5--For 'health authority' read 'local health board': 2000 Act s 125(1)(a) (amended by SI 2007/961). 'Local health board' has the meaning given by the National Health Service (Wales) Act 2006 s 11: 2000 Act s 129(1) (definition added by SI 2007/961). Definition of 'health authority' in 2000 Act s 129(1) omitted: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 203.

TEXT AND NOTE 12--Repealed: SI 2005/3238.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(2) PROVISION OF SERVICES IN WALES/1157. Duties and powers of local authorities.

### **1157. Duties and powers of local authorities.**

A local authority<sup>1</sup>: (1) must comply with a direction given to it by the National Assembly for Wales<sup>2</sup> to provide, secure the provision of or participate in the provision of youth support services<sup>3</sup>; and (2) may provide, secure the provision of, or participate in the provision of, youth support services<sup>4</sup> otherwise than in accordance with head (1) above<sup>5</sup>. For these purposes, a local authority may: (a) incur expenditure<sup>6</sup>; (b) employ officers<sup>7</sup>; (c) enter into agreements for the supply of goods or services<sup>8</sup>; and (d) do anything else (other than forming companies) which it considers necessary or expedient<sup>9</sup>. Action which a local authority takes in pursuance of heads (1) and (2) above may relate to a particular class of young persons<sup>10</sup>, and may relate to services for a person from another area<sup>11</sup>.

1 For the meaning of 'local authority' see PARA 1155 note 2 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 Learning and Skills Act 2000 s 124(1)(a). The text refers to a direction given under s 123(1); see PARA 1155 ante. In complying with a direction under s 123(1) a local authority must have regard to the expediency of co-operation with voluntary organisations: s 124(3). A local authority's power to provide services or incur expenditure is not prejudiced by anything in or done under s 123 (see PARA 1155 ante): s 124(5).

4 For the meaning of 'youth support services' see PARA 1155 ante.

5 Learning and Skills Act 2000 s 124(1)(b).

6 Ibid s 124(4)(a).

7 Ibid s 124(4)(b).

8 Ibid s 124(4)(c).

9 Ibid s 124(4)(d).

10 Ibid s 124(2)(a). For the meaning of 'young persons' see PARA 1155 note 6 ante.

11 Ibid s 124(2)(b).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(2) PROVISION OF SERVICES IN WALES/1158. Educational institutions' duty to provide information and access.

### **1158. Educational institutions' duty to provide information and access.**

Where a person is involved in the provision of youth support services<sup>1</sup>, any: (1) community, foundation and voluntary schools<sup>2</sup>; (2) community or foundation special schools (other than those established in hospitals)<sup>3</sup>; (3) city technology colleges and city colleges for the technology of the arts<sup>4</sup>; (4) pupil referral units<sup>5</sup>; (5) institutions within the further education sector<sup>6</sup>; and (6) institutions in receipt of funding from the National Council for Education and Training for Wales<sup>7</sup>, must, for the purpose of the provision of those services<sup>8</sup>:

- 2072 (a) provide him on request with the name and address of a pupil or student<sup>9</sup>;
- 2073 (b) provide him on request with the name and address of a parent<sup>10</sup> of a pupil or student<sup>11</sup>;
- 2074 (c) provide him on request with information in the institution's possession about a pupil or student<sup>12</sup>;
- 2075 (d) permit him to have access to a pupil or student on the institution's premises<sup>13</sup> at reasonable times<sup>14</sup>;
- 2076 (e) make available to him, so far as is reasonably convenient, facilities on the institution's premises for providing services to individual pupils or students or groups of pupils or students<sup>15</sup>.

However, information must not be provided under head (c) above: (i) in the case of a pupil or student who has not attained the age of 16, if a parent of his has instructed the institution not to provide information of that kind<sup>16</sup>; or (ii) in the case of a pupil or student who has attained the age of 16, if he has instructed the institution not to provide information of that kind<sup>17</sup>.

1 le in pursuance of the Learning and Skills Act 2000 s 123(1)(a) or s 123(1)(b): see PARA 1155 ante. For the meaning of 'youth support services' see PARA 1155 ante.

2 Ibid s 126(3)(a). As to community, foundation and voluntary schools see PARA 102 et seq ante.

3 Ibid s 126(3)(b). As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

4 Ibid s 126(3)(c). As to city technology colleges and city colleges for the technology of the arts see PARA 496 ante.

5 Ibid s 126(3)(d). As to pupil referral units see PARAS 457-464 ante.

6 Ibid s 126(3)(e). As to references to institutions within the further education sector see PARA 579 ante.

7 Ibid s 126(3)(f). As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

8 Ibid s 126(1).

9 Ibid s 126(1)(a).

10 'Parent', in relation to a child, means a person who has parental responsibility for him within the meaning of the Children Act 1989 s 3 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134): Learning and Skills Act 2000 s 129(1).

11 Ibid s 126(1)(b).

- 12 Ibid s 126(1)(c).
- 13 As to the provision of sites and premises see PARA 1352 et seq post.
- 14 Learning and Skills Act 2000 s 126(1)(d).
- 15 Ibid s 126(1)(e).
- 16 Ibid s 126(2)(a).
- 17 Ibid s 126(2)(b).

## **UPDATE**

### **1158 Educational institutions' duty to provide information and access**

TEXT AND NOTE 7--Reference to National Council for Education and Training for Wales is now to the National Assembly for Wales in the discharge of its functions under the 2000 Act Pt 2 (ss 30-51): s 126(3)(f) (amended by SI 2005/3238).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(2) PROVISION OF SERVICES IN WALES/1159. Supply of information by public bodies.

### **1159. Supply of information by public bodies.**

For the purpose of the provision in Wales of youth support services<sup>1</sup>, training and careers services<sup>2</sup>, and services relating to careers in industry<sup>3</sup>: (1) a local authority<sup>4</sup>; (2) a health authority<sup>5</sup>; (3) a local health board<sup>6</sup>; (3) the National Council for Education and Training for Wales<sup>7</sup>; (4) a chief officer of police<sup>8</sup>; (5) a local probation board<sup>9</sup>; and (6) a youth offending team<sup>10</sup>, may supply information about a young person to a local authority<sup>11</sup> and any other person or body involved in the provision of the services<sup>12</sup>.

1 Learning and Skills Act 2000 s 138(1), (2)(a). The text refers to services provided in pursuance of s 123: see PARA 1155 ante. For the meaning of 'youth support services' see PARA 1155 ante.

2 Ibid s 138(1), (2)(b). The text refers to services provided in pursuance of the Employment and Training Act 1973 s 2 (as substituted and amended), s 8 (as substituted), s 9 (as substituted) and s 10 (as substituted): see PARA 1160 post; and EMPLOYMENT vol 40 (2009) PARA 563 et seq.

3 Learning and Skills Act 2000 s 138(1), (2)(c). The text refers to services wholly or partly funded in pursuance of the Industrial Development Act 1982 s 12: see TRADE AND INDUSTRY vol 97 (2010) PARA 948.

4 Learning and Skills Act 2000 s 138(1), (3)(a).

5 Ibid s 138(1), (3)(b). As to health authorities see HEALTH SERVICES vol 54 (2008) PARA 75 et seq.

6 Ibid s 138(1), (3)(ba) (s 138(3)(ba) added by the National Health Service Reform and Health Care Professions Act 2002 s 6(2), Sch 5 para 47). As to local health boards see HEALTH SERVICES vol 54 (2008) PARA 74.

7 Learning and Skills Act 2000 s 138(1), (3)(c). As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

8 Ibid s 138(1), (3)(d). As to chief officers of police see POLICE vol 36(1) (2007 Reissue) PARA 178 et seq.

9 Ibid s 138(1), (3)(e). Local probation boards have replaced probation committees: see the Criminal Justice and Court Services Act 2000 s 4. As to local probation boards see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 737 et seq.

10 Learning and Skills Act 2000 s 138(1), (3)(f).

11 Ibid s 138(1)(a).

12 Ibid s 138(1)(b).

### **UPDATE**

#### **1159 Supply of information by public bodies**

TEXT AND NOTES 1-10--2000 Act s 138(3) further amended: SI 2008/912.

TEXT AND NOTE 5--Head (2) omitted: 2000 Act s 138(3)(b) repealed by SI 2007/961.

TEXT AND NOTE 7--Reference to National Council for Education and Training for Wales now to National Assembly for Wales: Learning and Skills Act 2000 s 138(3)(c) (amended by SI 2005/3238).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/10. SUPPORT AND SERVICES FOR YOUNG PEOPLE/(3) CAREERS EDUCATION AND GUIDANCE/1160. Provision of careers services for young persons in education.

### **(3) CAREERS EDUCATION AND GUIDANCE**

#### **1160. Provision of careers services for young persons in education.**

The Secretary of State<sup>1</sup> is under a duty to secure the provision of career services for: (1) assisting persons undergoing relevant education<sup>2</sup> to decide what are suitable employments for them when they finish such education, and what training or education is or will be required and available in order to fit them for those employments; and (2) assisting persons finishing relevant education to obtain such employments, training and education<sup>3</sup>. The Secretary of State also has power to arrange for the provision of careers services for other persons<sup>4</sup>.

The Secretary of State may perform such duty and exercise such power by: (a) making arrangements with local education authorities, persons of any other description, or local education authorities and persons of any other description acting jointly, under which they undertake to provide, or arrange for the provision of, services in accordance with the arrangements; and (b) giving directions to local education authorities requiring them to provide, or arrange for the provision of, services in accordance with the directions<sup>5</sup>.

The functions of a local education authority include power to enter into agreements for the supply of certain goods or services with any person (other than an authority) who provides, or arranges for the provision of, relevant services and is a person with whom such arrangements may be made<sup>6</sup>.

Her Majesty's Chief Inspector of Schools in England<sup>7</sup>: (i) must advise the Secretary of State on request about matters relating to career services provided in England<sup>8</sup>; (ii) may give the Secretary of State other advice about those matters; (iii) must, when requested to do so by the Secretary of State, inspect and report on the provision of those services by any person or institution; and (iv) may undertake such other inspections of the provision of those services by persons or institutions as he thinks fit<sup>9</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'relevant education' see EMPLOYMENT vol 40 (2009) PARA 567.

3 See the Employment and Training Act 1973 s 8 (as substituted); and EMPLOYMENT vol 40 (2009) PARA 567.

4 See *ibid* s 9 (as substituted); and EMPLOYMENT vol 40 (2009) PARA 568.

5 See *ibid* s 10 (as substituted); and EMPLOYMENT vol 40 (2009) PARA 569.

6 See *ibid* s 10A (as added); and EMPLOYMENT vol 40 (2009) PARA 571.

7 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 post.

8 *ie* in pursuance of the Employment and Training Act 1973 s 8 (as substituted) or s 9 (as substituted).

9 See *ibid* s 10B (as added and amended); and EMPLOYMENT vol 40 (2009) PARA 570.

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### **1161. Provision of careers education in schools.**

All registered pupils<sup>1</sup> at: (1) community, foundation and voluntary schools<sup>2</sup>; (2) community or foundation special schools (other than those established in hospitals)<sup>3</sup>; (3) city technology colleges, city colleges for the technology of the arts and academies<sup>4</sup>; and (4) pupil referral units<sup>5</sup>, must be provided, during the relevant phase<sup>6</sup> of their education, with a programme of careers education<sup>7</sup>. It is the duty of each of the following to secure that this requirement is complied with, namely: (a) in the case of a school falling within head (1) or head (2) above, the governing body of the school and its head teacher<sup>8</sup>; (b) in the case of a school falling within head (3) above, the proprietors of the school and its head teacher<sup>9</sup>; and (c) in the case of head (4) above, the local education authority<sup>10</sup> maintaining the unit and the teacher in charge of it<sup>11</sup>.

In relation to Wales, persons attending institutions within the further education sector<sup>12</sup> (whether attending full-time or part-time) who have attained the age of 16 but who have not attained the age of 20 must be provided with careers education<sup>13</sup>. It is the duty of the governing bodies of those institutions and the principals or other heads of those institutions to secure that a programme of careers education is provided for those persons<sup>14</sup>.

1 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 1997 s 56(2).

2 Ibid s 43(2)(a) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 207, 217(a)). As to community, foundation and voluntary schools see PARA 102 et seq ante.

3 Education Act 1997 s 43(2)(c) (substituted by the School Standards and Framework Act 1998 Sch 30 paras 207, 217(c)). As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

4 Education Act 1997 s 43(2)(d) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 71; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 8). As to city technology colleges, city colleges for the technology of the arts and academies see PARA 496 et seq ante.

The Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions: see PARA 57 ante) and s 497 (as amended) (general default powers: see PARA 58 ante), in relation to the duty imposed by the Education Act 1997 s 43(3) (see the text and notes 8-11 infra), have effect as if any reference to a body to which that provision applies included a reference to the proprietors of a school falling within s 43(2)(d) (as amended): s 43(4). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 56(2).

5 Ibid s 43(2)(e). As to pupil referral units see PARAS 457-464 ante.

6 The 'relevant phase' of a pupil's education is the period: (1) beginning at the same time as the school year in which the majority of pupils in his class attain the age of 14 (ibid s 43(5)(a)); and (2) ending with the expiry of the school year in which the majority of pupils in his class attain the age of 16 (s 43(5)(b)). Regulations may extend the scope of operation of s 43 (as amended) by substituting for the period specified in s 43(5) such other period as is specified in the regulations: s 46(1). In relation to Wales, s 43 (as amended) and s 44 (as amended) (see PARA 1162 post) have effect as if there were substituted for the period specified in s 43(5) as the relevant phase of a pupil's education the period: (a) beginning at the same time as the school year in which the majority of pupils in his class attain the age of 14 (Education (Extension of Careers Education) (Wales) Regulations 2001, SI 2001/1987, reg 2(a)); and (b) ending with the expiry of the school year in which the majority of pupils in his class attain the age of 19 (reg 2(b)). In relation to England, the Education Act 1997 s 43 (as amended) has effect as if there were substituted for the period specified in s 43(5) as the relevant phase of a pupil's education the period: (i) beginning at the same time as the school year in which the majority of pupils in his class attain the age of 12 (Education (Extension of Careers Education) (England) Regulations 2003, SI 2003/2645, reg 2(a)); and (ii) ending with the expiry of the school year in which the majority of pupils in his class attain the age of 16

(reg 2(b)). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by virtue of the Education Act 1997 s 56(2). 'Class', in relation to a particular pupil, means: (A) the teaching group in which he is regularly taught (s 43(6)(a)); or (B) if he is taught in different groups for different subjects, such one of those groups as is designated by the head teacher of the school or, in the case of a pupil at a pupil referral unit, by the teacher in charge of the unit (s 43(6)(b)). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 56(2).

7 Ibid s 43(1). 'Careers education' means education designed to prepare persons for taking decisions about their careers and to help them implement such decisions: s 43(6). 'Career' includes the undertaking of any training, employment or occupation or any course of education: s 43(6). As to the duty of schools and other institutions to co-operate with careers advisors see PARA 1162 post; and as to the provision of careers information see PARA 1163 post.

Regulations may make provision for extending the scope of operation of s 43 (as amended) to primary schools or to any specified description of such schools: s 46(2). At the date at which this volume states the law, no such regulations had been made. For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of s 56(2).

8 Ibid s 43(3)(a).

9 Ibid s 43(3)(b).

10 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under ibid s 43 may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (k).

11 Education Act 1997 s 43(3)(c).

12 As to references to institutions within the further education sector see PARA 579 ante.

13 See the Education Act 1997 s 46(3); and the Education (Extension of Careers Education) (Wales) Regulations 2001, SI 2001/1987, reg 3(1). 'Careers education' (or 'addysg gyrfaoedd') means education designed to prepare persons for taking decisions about their careers and to help them implement such decisions: reg 3(3). 'Careers' (or 'gyrfaoedd') includes the undertaking of any training, employment or occupation or any course of education: reg 3(3).

14 See the Education Act 1997 s 46(3); and the Education (Extension of Careers Education) (Wales) Regulations 2001, SI 2001/1987, reg 3(2).

## UPDATE

### 1161 Provision of careers education in schools

TEXT AND NOTES--Education Act 1997 s 43(2A), (2B) added, s 43(3), (6) amended: Education and Skills Act 2008 s 81(2) (in force 1 September 2009: SI 2009/1513).

See also Education Act 1997 s 45A (added by Education and Skills Act 2008 s 81(4)) (guidance as to discharge of duties) (in force 1 September 2009: SI 2009/1513).



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### **1162. Schools' and other institutions' co-operation with careers advisers.**

Where a careers adviser<sup>1</sup> has responsibilities in relation to persons attending: (1) community, foundation and voluntary schools<sup>2</sup>; (2) community or foundation special schools (other than those established in hospitals)<sup>3</sup>; (3) city technology colleges, city colleges for the technology of the arts and academies<sup>4</sup>; or (4) institutions within the further education sector<sup>5</sup>, he must on request<sup>6</sup> be provided with: (a) the name and address of every relevant pupil<sup>7</sup> or student<sup>8</sup> at the institution<sup>9</sup>; and (b) any information in the institution's possession about any such pupil or student which the careers adviser needs in order to be able to provide him with advice and guidance on decisions about his career or with other information relevant to such decisions<sup>10</sup>.

Such a careers adviser<sup>11</sup> must on request<sup>12</sup> be permitted to have, in the case of any relevant pupil or student specified by him, access to that person: (i) on the institution's premises<sup>13</sup>; and (ii) at a reasonable time agreed by or on behalf of the head teacher<sup>14</sup>, principal or other head of the institution<sup>15</sup>, for the purpose of enabling him to provide that person with advice and guidance on decisions about his career and with any other information relevant to such decisions<sup>16</sup>. Such access includes an opportunity for the careers adviser to interview that person about his career, if he agrees to be so interviewed<sup>17</sup>.

Such a careers adviser<sup>18</sup> must on request<sup>19</sup> be permitted to have, in the case of any group of relevant pupils or students specified by him, access to that group of persons in the manner specified in heads (i) and (ii) above<sup>20</sup> and to such of the institution's facilities as can conveniently be made available for his use<sup>21</sup>, for the purpose of enabling him to provide those persons with group sessions on any matters relating to careers or to advice or guidance about careers<sup>22</sup>.

It is the duty of each of the following to secure that the requirements described above<sup>23</sup> are complied with, namely<sup>24</sup>: (A) in the case of a school falling within heads (1) and (2) above or an institution within the further education sector, the governing body of the school or institution and its head teacher, principal or other head<sup>25</sup>; and (B) in the case of a school falling within head (3) above, the proprietors of the school and its head teacher<sup>26</sup>.

1 'Careers adviser' means a person who is employed by a body providing services in pursuance of arrangements made or directions given under the Employment and Training Act 1973 s 10 (as substituted) (see EMPLOYMENT vol 40 (2009) PARA 569) and who is acting, in the course of his employment by that body, for the purposes of the provision of any such services: Education Act 1997 s 44(11)(a). Regulations may amend the definition of careers adviser in s 44(11)(a): see s 46(4). At the date at which this volume states the law, no such regulations have been made. A careers adviser has responsibilities for any persons if his employment by that body includes the provision of any such services for it: s 44(11)(b). As to the meaning of 'career' see PARA 1161 note 7 ante; definition applied by s 44(12).

2 Ibid s 43(2)(a) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 207, 217(a)); Education Act 1997 s 44(1), (8)(a). As to community, foundation and voluntary schools see PARA 102 et seq ante.

3 Ibid s 43(2)(c) (substituted by the School Standards and Framework Act 1998 Sch 30 paras 207, 217(c)); Education Act 1997 s 44(1), (8)(a). As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

4 Ibid s 43(2)(d) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 71; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 8); Education Act 1997 s 44(1), (8)(a). As to city technology colleges, city colleges for the technology of the arts and academies see PARA 496 et seq ante.

5 Ibid s 44(8)(b). As to references to institutions within the further education sector see PARA 579 ante.

6 Any request made under ibid s 44(1) must be made in writing to the head teacher, principal or other head of the institution in question: s 44(7).

7 A pupil at a school is a 'relevant pupil': (1) at any time during the period which is the relevant phase of his education for the purposes of ibid s 43 (as amended) (see PARA 1161 note 6 ante) (s 44(10)(a)(i)); or (2) if he is over compulsory school age and receiving secondary education (s 44(10)(a)(ii)). Regulations may extend the scope of operation of s 44 (as amended) by substituting for the period specified in s 44(10)(a)(i) such other period as is specified in the regulations: s 46(1). As to the scope of operation of s 44 (as amended) see the Education (Extension of Careers Education) (Wales) Regulations 2001, SI 2001/1987, reg 2; and PARA 1161 note 6 ante. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 1997 s 56(2). As to compulsory school age see PARA 15 ante. For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of s 56(2).

8 A person is a 'relevant student' at an institution within the further education sector if he is receiving at the institution either full-time education, or part-time education of a description commonly undergone by persons in order to fit them for employment: ibid s 44(10)(b).

9 Ibid s 44(1)(a). If the registered address of a parent of any such pupil is different from the pupil's registered address, s 44(1)(a) requires the parent's address to be provided as well: s 44(2). For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of s 56(2). As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of s 56(2).

However, the provisions of s 44(1)(a) or s 44(1)(b) (see the text to note 10 *infra*) do not apply to any pupil or student to the extent that (where he is under the age of 16) a parent of his or, (where he has attained that age) he himself, has indicated that any information falling within s 44(1)(a) or s 44(1)(b) should not be provided to the careers adviser: s 44(3) (amended by the Learning and Skills Act 2000 Sch 9 paras 1, 72).

10 Education Act 1997 s 44(1)(b). See note 9 *supra*. Regulations may make provision for extending the scope of operation of s 44 (as amended) to primary schools or to any specified description of such schools: s 46(2). At the date at which this volume states the law, no such regulations had been made. For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of s 56(2).

11 Ie a careers adviser who has responsibilities in relation to persons attending an educational institution under any of heads (1)-(4) in the text.

12 Any request made under the Education Act 1997 s 44(4) must be made in writing to the head teacher, principal or other head of the institution in question: s 44(7).

13 Ibid s 44(4)(a). As to the provision of sites and premises see PARA 1352 *et seq post*.

14 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 56(2).

15 Ibid s 44(4)(b).

16 Ibid s 44(4).

17 Ibid s 44(5).

18 See note 11 *supra*.

19 Any request made under the Education Act 1997 s 44(6) must be made in writing to the head teacher, principal or other head of the institution in question: s 44(7).

20 Ibid s 44(6)(a).

21 Ibid s 44(6)(b).

22 Ibid s 44(6).

23 Ie the requirements of ibid s 44(1), (4), (6): see the text and notes 1-22 *supra*.

24 The Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions: see PARA 57 ante) and s 497 (as amended) (general default powers: see PARA 58 ante), in relation to the duty imposed by the Education Act 1997 s 44(9), have effect as if any reference to a body to which that provision applies included a reference to the proprietors of a school falling within s 43(2)(d) (as amended) (see the text to

note 4 supra): ss 43(4), 44(9). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 56(2).

25 Ibid s 44(9)(a).

26 Ibid s 44(9)(b).

## **UPDATE**

### **1162 Schools' and other institutions' co-operation with careers advisers**

TEXT AND NOTES--See also Education Act 1997 s 45A (added by Education and Skills Act 2008 s 81(4)) (guidance as to discharge of duties) (in force 1 September 2009: SI 2009/1513).

TEXT AND NOTES 2-4--See further Education Act 1997 s 43(2A), (2B) (added by Education and Skills Act 2008 s 81(2)(a)) (in force 1 September 2009: SI 2009/1513).

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### **1163. Provision of careers information at schools and other institutions.**

Persons attending: (1) community, foundation and voluntary schools<sup>1</sup>; (2) community or foundation special schools (other than those established in hospitals)<sup>2</sup>; (3) city technology colleges, city colleges for the technology of the arts and academies<sup>3</sup>; and (4) institutions within the further education sector<sup>4</sup>, must be provided with access to both guidance materials and a wide range of up-to-date reference materials relating to careers education<sup>5</sup> and career<sup>6</sup> opportunities<sup>7</sup>. It is the duty of each of the following to secure that this requirement is complied with, namely<sup>8</sup>: (a) in the case of an educational institution within heads (1) and (2) above or an institution within the further education sector, the governing body of the school or institution and its head teacher<sup>9</sup>, principal or other head<sup>10</sup>; and (b) in the case of a school falling within head (3) above, the proprietors of the school and its head teacher<sup>11</sup>.

1 Education Act 1997 s 43(2)(a) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 paras 207, 217(a)); Education Act 1997 s 45(1), (2)(a). As to community, foundation and voluntary schools see PARA 102 et seq ante.

2 Ibid s 43(2)(c) (substituted by the School Standards and Framework Act 1998 Sch 30 paras 207, 217(c)); Education Act 1997 s 45(1), (2)(a). As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

3 Ibid s 43(2)(d) (amended by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 71; and the Education Act 2002 s 65(3), Sch 7 Pt 2 para 8); Education Act 1997 s 45(1), (2)(a). As to city technology colleges, city colleges for the technology of the arts and academies see PARA 496 et seq ante.

4 Ibid s 45(2)(b). As to institutions within the further education sector see PARA 579 ante.

5 For the meaning of 'careers education' see PARA 1161 note 7 ante; definition applied by ibid s 45(5).

6 As to the meaning of 'career' see PARA 1161 note 7 ante; definition applied by ibid s 45(5).

7 Ibid s 45(1). Section 45 does not apply to any primary school: s 45(6). Regulations may make provision for extending the scope of operation of s 45 to primary schools or to any specified description of such schools: s 46(2). At the date at which this volume states the law, no such regulations had been made. For the meaning of 'primary school' see PARA 81 ante; definition applied by virtue of s 56(2).

8 The Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions: see PARA 57 ante) and s 497 (as amended) (general default powers: see PARA 58 ante), in relation to the duty imposed by the Education Act 1997 s 45(3), have effect as if any reference to a body to which that provision applies included a reference to the proprietors of a school falling within s 43(2)(d) (as amended) (see the text to note 3 supra): ss 43(4), 45(3). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 56(2).

The persons who are responsible, under s 45(3), for discharging that duty in relation to an institution must seek assistance with discharging it from a body providing services in pursuance of arrangements made or directions given under the Employment and Training Act 1973 s 10 (as substituted) (see PARA 1160 ante; and EMPLOYMENT vol 40 (2009) PARA 569): Education Act 1997 s 45(4).

9 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 56(2).

10 Ibid s 45(3)(a).

11 Ibid s 45(3)(b).

### **UPDATE**

### **1163 Provision of careers information at schools and other institutions**

TEXT AND NOTES--Education Act 1997 s 45 amended: Education and Skills Act 2008 s 81(3) (in force 1 September 2009: SI 2009/1513). See also Education Act 1997 s 45A (added by Education and Skills Act 2008 s 81(4)) (guidance as to discharge of duties) (in force 1 September 2009: SI 2009/1513).

TEXT AND NOTES 1-3--See further Education Act 1997 s 43(2A), (2B) (added by Education and Skills Act 2008 s 81(2)(a)) (in force 1 September 2009: SI 2009/1513).

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## **11. INSPECTION AND INTERVENTION**

### **(1) INTRODUCTION**

#### **1164. Bodies responsible for inspections.**

The Office for Standards in Education ('OFSTED') is a non-ministerial government department which is accountable to Parliament and comprises Her Majesty's Chief Inspector of Schools in England<sup>1</sup> and his staff, including Her Majesty's Inspectors of Schools in England<sup>2</sup>. The purpose of OFSTED is to improve the standards of achievement and quality of nurseries<sup>3</sup>, education in schools<sup>4</sup> and in institutions providing further education or adult learning<sup>5</sup> or teacher training<sup>6</sup>, and to provide services to encourage, enable and assist effective participation by young persons in education or training<sup>7</sup> in England. This is achieved through regular inspection, public reporting and informed advice. OFSTED also has joint responsibility with the Audit Commission<sup>8</sup> for the inspection of local education authorities<sup>9</sup>. OFSTED's primary function is the inspection of schools in England. Under the Education Act 2005<sup>10</sup>, the principal duty of Her Majesty's Chief Inspector of Schools in England is to establish and maintain a system for the regular inspection by independent inspectors of schools, including sixth forms, in England<sup>11</sup>. OFSTED sets and monitors the framework for those inspections, which are carried out by both Her Majesty's Inspectors and by teams made up of additional inspectors recruited, trained and assessed by regional inspection providers to a standard set by OFSTED<sup>12</sup>.

The Office of Her Majesty's Inspectorate for Education and Training in Wales (or 'Arolygiaeth Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru') ('Estyn') is a non-ministerial government department comprising Her Majesty's Chief Inspector of Education and Training in Wales<sup>13</sup> and his staff, including Her Majesty's Inspectors of Education and Training in Wales<sup>14</sup>. The purpose of Estyn is to improve the quality and standards in education and training in Wales, and for that purpose has similar functions to OFSTED. The School Inspections Act 1996 sets out Estyn's functions in relation to the inspection of schools, including sixth forms, in Wales<sup>15</sup>, carried out by registered inspectors<sup>16</sup>. Although the School Inspections Act 1996 has been prospectively repealed, the system of registered inspectors is preserved for Wales under the Education Act 2005, which when it comes into force will provide that no person may conduct an inspection of any school in Wales unless he is a member of the inspectorate, or registered as an inspector in a register kept by Her Majesty's Chief Inspector of Education and Training in Wales<sup>17</sup>. The Auditor General for Wales<sup>18</sup> may assist with any inspection of a local education authority in Wales, if requested to do so by Her Majesty's Chief Inspector of Education and Training in Wales<sup>19</sup>.

In relation to adult learning and further education, inspections are carried out in England by the Adult Learning Inspectorate<sup>20</sup> or Her Majesty's Chief Inspector of Schools in England or both acting together, and are carried out in Wales by Her Majesty's Chief Inspector of Education and Training in Wales. Inspections of higher education are carried out by the Quality Assurance Agency for Higher Education<sup>21</sup>.

1 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 et seq post.

2 As to Her Majesty's Inspectors of Schools in England see PARA 1168 post.

3 As to nursery education generally see PARA 85 et seq ante. As to the inspection of nursery education see PARA 1291 et seq post. OFSTED is also responsible for the regulation and inspection of childminding and day care: see the Children Act 1989 Pt XA (ss 79A-79X) (as added and amended); and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1070 et seq.

Provision is made for Her Majesty's Chief Inspector of Schools in England and the National Assembly for Wales to have additional functions relating to the approval of persons who are to be regarded as providing child care for the purposes of working tax credit: see the Education Act 2002 s 151; and the Education (Additional Functions of Her Majesty's Chief Inspector of Schools in England) Order 2003, SI 2003/469. As to working tax credit see SOCIAL SECURITY AND PENSIONS. As to the National Assembly for Wales see PARA 53 ante.

4 As to the inspection of schools in England see PARA 1167 et seq post.

5 As to further education see PARA 579 et seq ante. As to the inspection of further education and adult learning see PARA 1303 et seq post.

6 As to the training of teachers see PARA 784 et seq ante. As to the inspection of institutions for training teachers for schools in England see PARA 1346 post.

7 As to the provision of such services see PARA 1149 et seq ante; and as to the inspection of such services in England see PARA 1348 post.

8 As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

9 As to local education authorities see PARA 20 ante; and as to the inspection of local education authorities see PARAS 1350-1351 post.

10 See PARA 1167 et seq post.

11 As to the inspection of schools see PARA 1167 et seq post.

12 As to inspection teams and the appointment of additional inspectors see PARA 1169 post.

13 As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 post; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 post.

14 As to Her Majesty's Inspectors of Education and Training in Wales see PARA 1188 post.

15 As to the inspection of schools in Wales see PARA 1187 et seq post; as to the inspection of nursery education in Wales see PARA 1295 et seq post; as to the inspection of further education and adult learning see PARA 1303 et seq post; as to the inspection of institutions for training teachers for schools in Wales see PARA 1347 post; and as to the inspection of services to encourage, enable and assist effective participation by young persons in education or training in Wales see PARA 1349 post.

16 For the meaning of 'registered inspector' under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1194 note 5 post.

17 As to inspections in Wales under the Education Act 2005 see PARA 1226 et seq post; and as to registered inspectors under the Education Act 2005 see PARA 1233 et seq post. For the meaning of 'member of the inspectorate' see PARA 1233 note 4 post.

18 As to the Auditor General for Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 796 et seq.

19 As to the inspection of local education authorities see PARAS 1350-1351 post.

20 As to the Adult Learning Inspectorate see PARA 1304 et seq post.

21 As to the Quality Assurance Agency for Higher Education see PARA 732 ante.

## **UPDATE**

### **1164 Bodies responsible for inspections**

TEXT AND NOTES--Office for Standards in Education replaced by Office for Standards in Education, Children's Services and Skills: see PARAS 1164A, 1164B. The new Office is

responsible for determining the strategic priorities of Her Majesty's Chief Inspector of Education, Children's Services and Skills (who supersedes Her Majesty's Chief Inspector of Schools in England): see *PARA 1167A*.

Reference to Her Majesty's Chief Inspector of Schools in England now to Her Majesty's Chief Inspector of Education, Children's Services and Skills: 2002 Act s 151 (amended by the Education and Inspections Act 2006 Sch 14 para 72).



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### **1164A. Inspections under the Education and Inspections Act 2006.**

Provision has been made establishing the Office for Standards in Education, Children's Services and Skills ('OFSTED')<sup>1</sup>, the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>2</sup> and the Children's Rights Director<sup>3</sup>. The Chief Inspector's functions are those of the former Chief Inspector<sup>4</sup>, the children's social care remit of the Commission for Social Care Inspection<sup>5</sup>, the inspection of the performance of the functions of the Children and Family Court Advisory and Support Service ('CAFCASS')<sup>6</sup>, the inspection remit of the former Adult Learning Inspectorate<sup>7</sup>, the inspection of secure training centres<sup>8</sup>, the inspection of premises which are used by a local authority in England in its performance of relevant adoption and fostering functions<sup>9</sup> and the inspection and review of local authorities' performance of specific statutory functions in England<sup>10</sup>.

The Chief Inspector works in conjunction with a number of other inspection authorities and he has power to delegate any of his inspection functions to another public authority<sup>11</sup>. As well as inspection duties, his responsibilities include the preparation and publication of reports<sup>12</sup>. Information obtained by the Chief Inspector in connection with any of his functions may be used by him in connection with any of his other functions<sup>13</sup>.

1 See the Education and Inspections Act 2006 ss 112, 116, 117, Sch 11; and PARA 1164B. As to the allocation of rights and liabilities between OFSTED and Her Majesty's Chief Inspector of Education, Children's Services and Skills see the Office for Standards in Education, Children's Services and Skills and Her Majesty's Chief Inspector for Standards in Education, Children's Services and Skills (Allocation of Rights and Liabilities) Order 2007, SI 2007/600.

2 See the 2006 Act ss 113-115, 118, 119, 121, 122, 146-156, Schs 12, 13; and PARA 1167A.1.

3 See *ibid* s 120; and PARA 1164D.

4 *Ibid* s 122. The reference is to the office of Her Majesty's Chief Inspector of Schools in England, which was abolished by s 113(8).

5 The functions referred to are the functions of the Commission for social care inspection (1) under the Care Standards Act 2000 Pt 2 (ss 11-42) (registration and standards) as the registration authority in relation to (a) children's homes; (b) residential family centres; (c) fostering agencies; (d) voluntary adoption agencies; and (e) adoption support agencies; and (2) under the Children Act 1989 ss 65, 87-87D (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARAS 978, 982, 1197-1201); 2006 Act s 148. As to the Commission for Social Care Inspection see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1011A.

6 See *ibid* Pt 8 Ch 5 (ss 143-145); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 244. As to CAFCASS see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 230 et seq. The functions of Her Majesty's Inspectorate of Court Administration no longer include the inspection of the performance of CAFCASS functions: see Courts Act 2003 s 59(1) (amended by 2006 Act Sch 14 para 79(2)).

7 See *ibid* Pt 8 Ch 3 (ss 123-134); and PARA 1304 et seq. The Adult Learning Inspectorate was abolished by s 134.

8 See *ibid* s 146; and PRISONS.

9 See *ibid* s 147; Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) Regulations 2007, SI 2007/694, reg 19; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 196. Regulations made by the Secretary of State may require a local authority in England to pay to the Chief Inspector an annual fee in respect of the discharge by the authority of any of its relevant adoption and fostering functions: see 2006 Act s 155. As to such annual fees see SI 2007/694 Pt 4 (regs 14-18) (amended by SI 2009/2724, SI 2010/617).

10 See 2006 Act ss 135-142; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 196. He may inspect the overall performance by any local authority in England of the functions to which Pt 8 Ch 4 (ss 135-142) applies, or the performance by any such authority of any particular function or functions comprised in the functions to which Pt 8 Ch 4 applies: see s 136. The functions to which Pt 8 Ch 4 applies are (1) the functions conferred on the local authority under the Childcare Act 2006 Pt 1 (ss 1-21) (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1106) (2006 Act s 135(1)(a)); (2) the functions conferred on or exercisable by the authority in its capacity as a local education authority (s 135(1)(b)); (3) the functions conferred on the authority under the Children Act 2004 ss 10, 12, 17-19 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 187-188, 190) (2006 Act s 135(1)(c)); (4) the social services functions of the authority, so far as relating to persons aged under 18 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 844 et seq; and SOCIAL SERVICES AND COMMUNITY CARE) (s 135(1)(d)); (5) functions conferred on or exercisable by the authority under the Children Act 1989, the Adoption (Intercountry Aspects) Act 1999 or the Adoption and Children Act 2002 and functions continuing to be exercisable by the authority under the Adoption Act 1976 (Education and Inspections Act 2006 s 135(1)(e)); and (6) such other functions of the authority as may be prescribed by regulations made by the Secretary of State (s 135(1)(f), (4)).

On completing the inspection, the Chief Inspector must make and publish a report: see s 137; the Education and Inspections Act 2006 (Inspection of Local Authorities) Regulations 2007, SI 2007/462.

11 See 2006 Act s 149, Sch 13; and PARA 1167A.3.

12 See *ibid* ss 150-152; and PARAS 1167A.4, 1177, 1186.

13 See *ibid* s 153; and PARA 1167A.2.

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## **1164B. The Office for Standards in Education, Children's Services and Skills.**

### **1. Constitution and members**

There is a body corporate known as the Office for Standards in Education, Children's Services and Skills ('OFSTED')<sup>1</sup>, which consists of a chairman appointed by the Secretary of State<sup>2</sup>, not less than five and not more than ten other members appointed by the Secretary of State ('the appointed members')<sup>3</sup> and Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>4</sup>. The chairman and the appointed members hold and vacate office in accordance with the terms of their respective appointments<sup>5</sup>, but must not be appointed for a term of more than five years<sup>6</sup>, may at any time resign by giving written notice to the Secretary of State<sup>7</sup> and may be removed from office by the Secretary of State on the grounds that he is unable or unfit to carry out the duties of his office<sup>8</sup>.

OFSTED must pay to the chairman and each of the appointed members such remuneration and allowances as may be determined by the Secretary of State<sup>9</sup>. OFSTED must, if required to do so by the Secretary of State, pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has held office as chairman or appointed member<sup>10</sup>, or make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person<sup>11</sup>. If, where a person ceases to hold office as chairman or appointed member, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, OFSTED must pay to him such amount by way of compensation as the Secretary of State may determine<sup>12</sup>.

OFSTED has power to appoint staff for the purposes of the performance of its own functions and for the purposes of the performance of functions of the Chief Inspector<sup>13</sup>, but that power is exercisable only by the Chief Inspector acting on behalf of OFSTED<sup>14</sup>. The Secretary of State may transfer property of the former Chief Inspector<sup>15</sup>, the Secretary of State, the Lord Chancellor, the former Adult Learning Inspectorate, the Commission for Social Care Inspection to OFSTED<sup>16</sup>.

OFSTED is subject to investigation by the Parliamentary Commissioner for Administration<sup>17</sup>, and its members are disqualified from membership of the House of Commons<sup>18</sup>.

1 Education and Inspections Act 2006 s 112(1). OFSTED is to perform its functions on behalf of the Crown: s 112(3).

2 Ibid Sch 11 para 1(a).

3 Ibid Sch 11 para 1(b).

4 Ibid Sch 11 para 1(c). As to the Chief Inspector see PARA 1167A.1.

5 Ibid Sch 11 para 2(1), (2). As to the holding and vacation of office by the Chief Inspector see PARA 1167A.1.

6 Ibid Sch 11 para 3(a).

7 Ibid Sch 11 para 3(b).

8 Ibid Sch 11 para 3(c). The previous appointment of a person as chairman or appointed member does not affect his eligibility for appointment to either office: Sch 11 para 4.

9 Ibid Sch 11 para 5(1).

10 Ibid Sch 11 para 5(2)(a).

11 Ibid Sch 11 para 5(2)(b). As to the remuneration and other payments made to and in respect of the Chief Inspector see PARA 1167A.1.

12 Ibid Sch 11 para 5(3).

13 Ibid Sch 11 para 6(1). As to the Chief Inspector's functions see PARA 1167A.2. One of the persons so appointed is to be appointed as Children's Rights Director (see PARA 1164A.1): s 120(1).

14 Ibid Sch 11 para 6(2). The conditions of service of persons so appointed are to be determined by the Chief Inspector, subject to the approval of the Minister for the Civil Service: Sch 11 para 6(3). As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 550. The management of the staff of OFSTED is to be the responsibility of the Chief Inspector: Sch 11 para 6(4). Nothing in Sch 11 para 6 is to be read as preventing any delegation by the Chief Inspector under Sch 12 para 9 (see PARA 1167A.4): Sch 11 para 6(5). The Secretary of State has power to make a scheme transferring employees of the former Adult Learning Inspectorate, which was abolished by s 134, and the Commission for Social Care Inspection to OFSTED: see Sch 15 para 1.

15 Ibid Sch 15 para 2. The reference is to the office of Her Majesty's Chief Inspector of Schools in England, which was abolished by s 113(8).

16 See ibid Sch 15 para 2.

17 See Parliamentary Commissioner Act 1967 s 4(1), Sch 2; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

18 See House of Commons Disqualification Act 1975 s 1(1), Sch 1 Pt II; and PARLIAMENT vol 78 (2010) PARA 908.

## 2. Proceedings

OFSTED<sup>1</sup> may establish committees, and any committee so established may establish sub-committees<sup>2</sup>. OFSTED may make arrangements for the payment of such remuneration and allowances as it thinks fit to any person who is a member of a committee or sub-committee, but is not a member of OFSTED<sup>3</sup>. OFSTED may make such provision as it thinks fit to regulate its own proceedings, including quorum, and the procedure, including quorum, of its committees and sub-committees<sup>4</sup>. The validity of any proceedings of OFSTED, or any of its committees or sub-committees, is not affected by any vacancy in the office of chairman or in the membership of OFSTED or, as the case may be, of the committee or sub-committee<sup>5</sup>, or any defect in the appointment of the chairman or any other member of OFSTED or, as the case may be, of any member of the committee or sub-committee<sup>6</sup>.

Anything authorised or required to be done by OFSTED may be done by any member of OFSTED who is authorised for the purpose by OFSTED, whether generally or specially, or any committee or sub-committee of OFSTED which has been so authorised<sup>7</sup>. The application of the seal of OFSTED must be authenticated by the signature of any member of OFSTED or some other person who has been authorised for that purpose by OFSTED, whether generally or specially<sup>8</sup>. Subject to certain restrictions<sup>9</sup>, OFSTED may do anything that it considers is necessary or expedient for the purposes of, or in connection with, its functions<sup>10</sup>. In particular, it may enter into contracts, acquire and dispose of land or other property, and arrange for the provision of accommodation, in connection with the performance of its own functions or in connection with the performance of functions of Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>11</sup>.

1 As to OFSTED see PARA 1164B.1.

2 Education and Inspections Act 2006 Sch 11 para 7(1). The members of a committee of OFSTED may include persons who are not members of OFSTED, and the members of a sub-committee may include persons who are not members of the committee or of OFSTED: Sch 11 para 7(2).

3 Ibid Sch 11 para 7(3).

4 Ibid Sch 11 para 8(1).

5 Ibid Sch 11 para 8(2)(a).

6 Ibid Sch 11 para 8(2)(b).

7 Ibid Sch 11 para 9.

8 Ibid Sch 11 para 10. The method of proof of documents provided by the Documentary Evidence Act 1868 (see CIVIL PROCEDURE vol 11 (2009) PARAS 892-894) applies to documents issued by or under the authority of OFSTED: 2006 Act Sch 11 para 11. 'Document' means anything in which information of any description is recorded, including personal records as defined the Police and Criminal Evidence Act 1984 s 12 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 875): 2006 Act s 159(1).

9 Ibid Sch 11 para 13(2), referring to the restrictions provided for in Sch 11 paras 6, 12.

10 Ibid Sch 11 para 13(1).

11 Ibid Sch 11 para 12(1). See further Sch 11 para 12(2)-(4). As to the Chief Inspector see PARA 1167A.1. The reference to functions of the Chief Inspector refers to functions conferred on him in his capacity as holder of that office: Sch 12 para 7(3).

### 3. Functions

OFSTED<sup>1</sup> has the following functions: (1) to determine strategic priorities for Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>2</sup> in connection with the performance of his functions<sup>3</sup>; (2) to determine strategic objectives and targets relating to such priorities<sup>4</sup>; (3) to secure that the Chief Inspector's functions<sup>5</sup> are performed efficiently and effectively<sup>6</sup>; and (4) such other functions in connection with the performance of the Chief Inspector's functions as may be assigned to it by the Secretary of State<sup>7</sup>.

OFSTED is to perform its functions for the general purpose of encouraging the improvement of activities within the Chief Inspector's remit<sup>8</sup>, the carrying on of such activities as user-focused activities<sup>9</sup> and the efficient and effective use of resources in the carrying on of such activities<sup>10</sup>.

In performing its functions OFSTED is to have regard to: (a) the need to safeguard and promote the rights and welfare of children<sup>11</sup>; (b) views expressed by relevant persons<sup>12</sup> about activities within the Chief Inspector's remit<sup>13</sup>; (c) levels of satisfaction with such activities on the part of relevant persons<sup>14</sup>; (d) the need to promote the efficient and effective use of resources in the carrying on of such activities<sup>15</sup>; (e) the need to ensure that action by the Chief Inspector in relation to such activities is proportionate to the risks against which it would afford safeguards<sup>16</sup>; (f) any developments in approaches to inspection or regulatory action<sup>17</sup>; and (g) best practice amongst persons performing functions comparable to those of the Chief Inspector<sup>18</sup>. In performing its functions OFSTED must also have regard to such aspects of government policy as the Secretary of State may direct<sup>19</sup>.

1 As to OFSTED see PARA 1164B.1.

2 As to the Chief Inspector see PARA 1167A.1.

3 Education and Inspections Act 2006 s 116(1)(a).

4 Ibid s 116(1)(b).

5 As to the Chief Inspector's functions see PARA 1167A.1.

6 2006 Act s 116(1)(c).

7 Ibid s 116(2).

8 As to activities within the Chief Inspector's remit see PARA 1167A.2.

9 The reference to the carrying on of activities as 'user-focused' activities refers to the carrying on of the activities in a way that focuses on the needs of those for whose benefit the activities are carried on: 2006 Act s 159(2).

10 Ibid s 117(1).

11 Ibid s 117(2)(a). 'Children' means persons under the age of 18: s 117(4)(a).

12 'Relevant persons', in relation to activities within the Chief Inspector's remit, means persons who have an interest in such activities, whether (1) as persons for whose benefit they are carried on, or (2) as parents, if they are carried on for the benefit of children, or (3) as employers: ibid s 117(4)(b). 'Parents' includes persons (a) who are not parents of children but have parental responsibility for them within the meaning of the Children Act 1989 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 134); or (b) who have care of children: 2006 Act s 117(4)(c).

13 Ibid s 117(2)(b).

14 Ibid s 117(2)(c).

15 Ibid s 117(2)(d).

16 Ibid s 117(2)(e).

17 Ibid s 117(2)(f).

18 Ibid s 117(2)(g).

19 Ibid s 117(3).

#### 4. Children's Rights Director

One of the persons appointed to the staff of OFSTED<sup>1</sup> is to be appointed as Children's Rights Director<sup>2</sup>. He has functions relating to the welfare of children in boarding schools and colleges<sup>3</sup>, the registration and regulation of agencies<sup>4</sup>, and the inspection and review of local authorities in England<sup>5</sup>. He has such functions in relation to the performance by Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>6</sup> of these functions<sup>7</sup> as may be prescribed by regulations made by the Secretary of State<sup>8</sup>. In particular, the Children's Rights Director must advise and assist the Chief Inspector in relation to the Chief Inspector's duty when performing his functions<sup>9</sup> to have regard to: (1) the need to safeguard and promote the rights and welfare of children<sup>10</sup>; and (2) views expressed by relevant persons about activities within his remit<sup>11</sup>, in particular by ascertaining the views of children (and, where appropriate, their parents) about those activities, and reporting such views to the Chief Inspector<sup>12</sup>. He must also inform the Chief Inspector of any matters in relation to the rights and welfare of children that he considers significant<sup>13</sup>.

1 As to OFSTED see PARA 1164B. Such an appointment is made under the Education and Inspections Act 2006 Sch 11 para 6: see PARA 1164B.1.

2 Ibid s 120(1).

3 I.e. functions under the Children Act 1989 s 87 (see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1197): 2006 Act s 120(3)(a).

4 I.e. functions under the Care Standards Act 2000 Pt 2 (ss 11-42) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARAS 1042A, 1042B): 2006 Act s 120(3)(b).

5     le functions under *ibid* Pt 8 Ch 4 (ss 135-142) in connection with the inspection and review of the performance by such authorities of their functions within s 135(1)(d), (e) (see *CHILDREN AND YOUNG PERSONS* vol 5(3) (2008 Reissue) PARA 196): s 120(3)(c).

6     As to the Chief Inspector see PARA 1167A.1.

7     le the functions listed in the 2006 Act s 120(3).

8     *Ibid* s 120(2). As to the regulations that have been made see TEXT AND NOTES 9-13.

9     le his functions under *ibid* s 120(3).

10    Office for Standards in Education, Children's Services and Skills (Children's Rights Director) Regulations 2007, SI 2007/460, reg 2(a)(i).

11    *Ibid* reg 2(a)(ii).

12    *Ibid* reg 2(a).

13    *Ibid* reg 2(b).

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### **1165. Schemes for transfers.**

The Secretary of State<sup>1</sup> may make:

- 2077 (1) a scheme providing for the transfer of any of his property, rights and liabilities to the Learning and Skills Council for England<sup>2</sup>, Her Majesty's Chief Inspector of Schools in England<sup>3</sup> or the Adult Learning Inspectorate<sup>4</sup> (which are referred to as the 'listed persons')<sup>5</sup>;
- 2078 (2) a scheme providing for the transfer of any of the property, rights and liabilities of a listed person to any other listed person<sup>6</sup>;
- 2079 (3) a scheme providing for the transfer to any listed person of any of the property, rights and liabilities of a person with whom the Secretary of State has made certain arrangements<sup>7</sup> regarding employment<sup>8</sup>.

Such a scheme may include such supplementary, incidental, consequential or transitional provisions as the Secretary of State thinks are appropriate<sup>9</sup>. Such a scheme comes into force on the day it specifies<sup>10</sup>, and when it comes into force it has effect to transfer (in accordance with its provisions) the property, rights and liabilities to which it applies<sup>11</sup>.

Stamp duty is not chargeable on any such scheme<sup>12</sup>; and a land transaction<sup>13</sup> effected by such a scheme is exempt from charge for the purposes of stamp duty land tax<sup>14</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the Learning and Skills Council for England see PARA 1072 et seq ante.

3 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 et seq post.

4 As to the Adult Learning Inspectorate see PARA 1304 et seq post.

5 Learning and Skills Act 2000 s 92(1), (4).

6 Ibid s 92(2).

7 I.e arrangements under the Employment and Training Act 1973 s 2 (as substituted and amended): see EMPLOYMENT vol 40 (2009) PARA 563.

8 Learning and Skills Act 2000 s 92(3). A scheme under s 92(3) is invalid unless it is made with the consent of the person from whom the transfer is to be made: s 92(10).

9 Ibid s 92(5).

10 Ibid s 92(6). If a scheme under s 92(1) included provision for the transfer of liabilities, the day specified by the scheme for it to come into force must not have fallen after the end of the period of three years starting with 1 April 2001 (ie the day appointed under s 154 for the commencement of s 89: see PARA 1072 note 2 ante): s 92(8). The day specified by a scheme under s 92(2) or s 92(3) for the scheme to come into force must not have fallen after the end of the period of three years starting with 1 April 2001: s 92(9).

11 Ibid s 92(7).

12 Ibid s 94(2). As to stamp duty generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

13 For the meaning of 'land transaction' see PARA 1073 note 13 ante.



14 Learning and Skills Act 2000 s 94A(1) (s 94A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 31). Relief under the Learning and Skills Act 2000 s 94A (as added) must be claimed in a land transaction return or an amendment of such a return: s 94A(2) (as so added). For the meaning of 'land transaction return' see PARA 1073 note 14 ante. As to stamp duty land tax generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX.

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### **1166. Inspection of independent schools.**

The Secretary of State<sup>1</sup> may at any time require Her Majesty's Chief Inspector of Schools in England<sup>2</sup> to inspect any registered independent school<sup>3</sup> in England<sup>4</sup>, or arrange for the inspection of any registered school in England by a body approved by the Secretary of State for the purpose<sup>5</sup>. Such an inspection must relate to such of the independent school standards<sup>6</sup> as are, at the time of the inspection, specified by the Secretary of State for the purpose in relation to any category of school into which that school falls, or if he so determines, such of the independent school standards as he may specify in relation to that school<sup>7</sup>.

The National Assembly for Wales<sup>8</sup> may at any time require Her Majesty's Chief Inspector of Education and Training in Wales<sup>9</sup> to inspect any registered independent school in Wales<sup>10</sup>, or to secure its inspection by one or more registered inspectors<sup>11</sup>, or arrange for the inspection of any registered school in Wales by a body approved by the Assembly for the purpose<sup>12</sup>. Such an inspection must relate to such of the independent school standards as are, at the time of the inspection, specified by the Assembly for the purpose in relation to any category of school into which that school falls, or if it so determines, such of the independent school standards as it may specify in relation to that school<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to Her Majesty's Chief Inspector of Schools in England: see PARA 1168 post.

3 As to the regulation of independent schools see PARA 478 et seq ante. For the meaning of 'independent school' see PARA 465 ante; definition applied by virtue of the Education Act 2002 s 212(2), (3).

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 See the Education Act 2002 s 162A (as added); and PARA 483 ante.

6 As to the independent school standards see *ibid* s 157; and PARA 478 ante.

7 See *ibid* s 162A (as added); and PARA 483 ante.

8 As to the National Assembly for Wales see PARA 53 ante.

9 As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 post; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 post.

10 For the meaning of 'Wales' see PARA 52 note 13 ante.

11 For the meaning of 'registered inspector' under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1194 note 5 post. As to inspections in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1226 et seq post; and as to registered inspectors under the Education Act 2005 see PARA 1233 et seq post.

12 See the Education Act 2002 s 163 (repealed in relation to England; prospectively substituted in relation to Wales); and PARA 484 ante.

13 See *ibid* s 163 (repealed in relation to England; prospectively substituted in relation to Wales); and PARA 484 ante.

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## **(2) SCHOOLS**

### **(i) Inspection of Schools in England**

#### ***A. HER MAJESTY'S INSPECTORATE***

##### **1167. In general.**

Part 1 of the Education Act 2005 makes provision for the inspection of schools in England<sup>1</sup>. These provisions supersede the School Inspections Act 1996<sup>2</sup>, which is repealed in relation to England<sup>3</sup>.

1 See the Education Act 2005 Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63); and PARA 1168 et seq post. For the meaning of 'England' see PARA 52 note 11 ante. Separate provision is made for the inspection of schools in Wales: see Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in relation to Wales); and PARA 1226 et seq post. For the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the School Inspections Act 1996 see PARA 1187 et seq post.

3 Education Act 2005 s 60. Section 60 comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, that day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq post.

#### **UPDATE**

##### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

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### **1167A. The Chief Inspector of Education, Children's Services and Skills and other inspectors.**

#### **1. Her Majesty's Chief Inspector of Education, Children's Services and Skills**

Her Majesty may by Order in Council appoint a person to the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>1</sup>, who is to be a member of the Office for Standards in Education, Children's Services and Skills ('OFSTED')<sup>2</sup>. The Chief Inspector holds and vacates office in accordance with the terms of his appointment<sup>3</sup>, which are to be determined by the Secretary of State<sup>4</sup>, but (1) must not be appointed for a term of more than five years<sup>5</sup>; (2) may at any time resign by giving written notice to the Secretary of State<sup>6</sup>; and (3) may be removed from office by Her Majesty on the grounds that he is unable or unfit to carry out the duties of his office<sup>7</sup>. The previous appointment of a person as Chief Inspector does not affect his eligibility for appointment<sup>8</sup>.

OFSTED is to pay the Chief Inspector such remuneration, and such travelling and other allowances, as the Secretary of State may determine<sup>9</sup>. In the case of any Chief Inspector determined by the Secretary of State, OFSTED is to pay such pension, allowance or gratuity to or in respect of him<sup>10</sup>, or such contributions or payments towards provision for such a pension, allowance or gratuity<sup>11</sup>, as the Secretary of State may determine<sup>12</sup>. If, when any person ceases to hold office as Chief Inspector, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, OFSTED may pay to him such sum by way of compensation as the Secretary of State may determine<sup>13</sup>.

If there is a vacancy in the office of Chief Inspector, the Secretary of State may appoint a person to be Chief Inspector during such period, not exceeding one year, as he thinks fit<sup>14</sup>, on such terms as he may determine<sup>15</sup>. The Chief Inspector may designate an HMI<sup>16</sup> to perform his functions during any period when he is absent or unable to act<sup>17</sup>.

The Secretary of State may transfer property of the former Chief Inspector<sup>18</sup>, the Secretary of State, the Lord Chancellor, the former Adult Learning Inspectorate, the Commission for Social Care Inspection to the Chief Inspector<sup>19</sup>.

The application of the Chief Inspector's seal must be authenticated by the signature of the Chief Inspector or some other person who has been authorised for that purpose by the Chief Inspector, whether generally or specially<sup>20</sup>. The Chief Inspector and any person authorised to act on his behalf are to be treated as certifying officers for the purposes of proving certain documents<sup>21</sup>.

1 Education and Inspections Act 2006 s 113(1), (2). The office of Her Majesty's Chief Inspector of Schools in England is abolished (s 113(8)), but any person holding that office immediately before the day on which s 113 comes into force (ie 1 April 2007: SI 2007/935) becomes, from that day, the Chief Inspector (s 113(9)-(11)). See the Education (Chief Inspector of Schools in England) Order 2005, SI 2005/3505.

2 2006 Act s 113(3), Sch 11 para 1(c). As to OFSTED see PARA 1164B.1.

3 Ibid s 113(4).

4 Ibid s 113(5).

5 Ibid s 113(6)(a).

6 Ibid s 113(6)(b).

7 Ibid s 113(6)(c).

8 Ibid s 113(7).

9 Ibid Sch 12 para 1(1).

10 Ibid Sch 12 para 1(2)(a).

11 Ibid Sch 12 para 1(2)(b).

12 Ibid Sch 12 para 1(2).

13 Ibid Sch 12 para 1(3). Service as Chief Inspector is one of the kinds of service to which a scheme under the Superannuation Act 1972 s 1 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) can apply: 2006 Act Sch 12 para 1(4). OFSTED must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to Sch 12 para 1(4) in the sums payable out of money provided by Parliament under the 1972 Act: 2006 Act Sch 12 para 1(5).

14 Ibid Sch 12 para 2(1).

15 Ibid Sch 12 para 2(2). Those terms may include provision for the Secretary of State to terminate the appointment before the time when it would otherwise end: Sch 12 para 2(3).

16 Ie one of Her Majesty's Inspectors of Education, Children's Services and Skills: see PARA 1167A.4.

17 2006 Act Sch 12 para 3(1). If, at a time when no such designation is in force, it appears to the chairman of OFSTED that the Chief Inspector is, as a result of any incapacity, unable to act and unable to make such a designation, the chairman may designate an HMI to perform the Chief Inspector's functions so long as he remains in office and is unable to act: Sch 12 para 3(2). For the purposes of Sch 12 para 3 the Chief Inspector's functions include his functions as a member of OFSTED: Sch 12 para 3(3). As to the Chief Inspector's functions see PARA 1167A.2.

18 Ibid Sch 15 para 2. The reference is to the office of Her Majesty's Chief Inspector of Schools in England: see NOTE 1.

19 See ibid Sch 15 para 2.

20 Ibid Sch 12 para 4.

21 See the 2006 Act Sch 12 para 5, applying with modifications the Documentary Evidence Act 1868 s 2, Schedule (see CIVIL PROCEDURE vol 11 (2009) PARAS 892-894). For the meaning of 'document' see PARA 1164B.2.

## 2. Functions of the Chief Inspector

The Chief Inspector<sup>1</sup> has the general duty of keeping the Secretary of State informed about: (1) the quality of activities within the Chief Inspector's remit and, where appropriate, the standards achieved by those for whose benefit such activities are carried on<sup>2</sup>; (2) improvements in the quality of such activities and in any such standards<sup>3</sup>; (3) the extent to which such activities are being carried on as user-focused activities<sup>4</sup>; and (4) the efficient and effective use of resources in the carrying on of such activities and services<sup>5</sup>. Activities<sup>6</sup> are within the Chief Inspector's remit if he exercises any inspection function in relation to them or if they are services of the kind provided by persons in respect of whom he is the registration authority by virtue of any enactment<sup>7</sup>.

If requested to do so by the Secretary of State, the Chief Inspector must provide the Secretary of State with information or advice on such matters relating to activities within the Chief Inspector's remit as are specified in the request<sup>8</sup>. The Chief Inspector may at any time give advice to the Secretary of State on any matter connected with any activities within his remit, including advice relating to a particular establishment, institution or agency<sup>9</sup>. The Chief Inspector is to have such other functions in connection with activities within his remit as may be assigned to him by the Secretary of State<sup>10</sup>. The Chief Inspector may do anything that he

considers necessary or expedient for the purposes of, or in connection with, his functions<sup>11</sup>, and information obtained by the Chief Inspector in connection with any of his functions may be used by him in connection with any of his other functions<sup>12</sup>.

The functions conferred on the Chief Inspector<sup>13</sup> are conferred on him in his capacity as holder of that office and not in his capacity as a member of OFSTED<sup>14</sup>. Any proceedings brought in respect of any such function of the Chief Inspector are to be brought against the Chief Inspector in his capacity as holder of that office<sup>15</sup>. Subject to any order made by the Secretary of State, for all purposes relating to the government department constituted by OFSTED, the Chief Inspector is to be regarded as part of that government department as performing his functions on behalf of it<sup>16</sup>.

The Chief Inspector is to perform his functions for the general purpose of encouraging: (a) the improvement of activities within his remit<sup>17</sup>; (b) the carrying on of such activities as user-focused activities<sup>18</sup>; and (c) the efficient and effective use of resources in the carrying on of such activities<sup>19</sup>. He must ensure that his functions are performed efficiently and effectively and that, so far as practicable, those functions are performed in a way that responds to the needs of persons for whose benefit activities within his remit are carried on and the views expressed by other relevant persons<sup>20</sup> about such activities<sup>21</sup>. In performing his functions the Chief Inspector must have regard to the matters to which OFSTED is to have regard to in performing its functions<sup>22</sup>, and such aspects of government policy as the Secretary of State may direct<sup>23</sup>.

The Chief Inspector must make an annual report to the Secretary of State, who must lay a copy of it before each House of Parliament<sup>24</sup>. Further, the Chief Inspector may make to the Secretary of State such other reports relating to matters which fall within the scope of the Chief Inspector's functions as he considers appropriate<sup>25</sup>, and may arrange for any report made by him<sup>26</sup> to be published in such manner as he considers appropriate<sup>27</sup>.

1    le Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.1.

2    Education and Inspections Act 2006 s 118(1)(a).

3    Ibid s 118(1)(b).

4    Ibid s 118(1)(c). The reference to the carrying on of activities as 'user-focused' activities refers to the carrying on of the activities in a way that focuses on the needs of those for whose benefit the activities are carried on: s 159(2).

5    Ibid s 118(1)(d). Nothing in s 118 prejudices the operation of any other enactment relating to functions of the Chief Inspector: s 118(8). The functions of the former office of Her Majesty's Chief Inspector of Schools in England under or by virtue of any enactment are transferred to the Chief Inspector, and anything done by or in relation to the former Chief Inspector is to be treated as done by or in relation to the Chief Inspector: see s 122, Sch 15 para 3. See further Sch 15 paras 4, 5, 7.

6    For the purposes of ibid Pt 8 (ss 112-159), 'activities' includes the provision of any form of education, training or care, the provision of any form of services or facilities and the performance of any function: see s 117(5), (6)(a), (c).

7    Ibid ss 117(5), (6)(b), 159(1).

8    Ibid s 118(2). Where the Chief Inspector is so requested, any enactment by virtue of which (1) an inspection may be conducted by the Chief Inspector in relation to the activities in question, whether or not in pursuance of any duty, or (2) any power of entry, power to inspect documents or a power conferred in connection with the inspection of documents is exercisable by him in relation to those activities, is to have effect, with any necessary modifications, so as to enable him to conduct an inspection, or exercise any such power, for the purpose of complying with the request: s 118(5)-(7). For the meaning of 'document' see PARA 1164B.2.

9    Ibid s 118(3).

10   Ibid s 118(4).

11 Ibid Sch 12 para 6.

12 Ibid s 153.

13 Ie by virtue of ibid Pt 8 (ss 112-159), except s 114(1), Sch 11 para 6 or 12 or Sch 12 para 3, or any other enactment: Sch 12 para 7(1), (2).

14 Ibid Sch 12 para 7(1). 'OFSTED' means the Office for Standards in Education, Children's Services and Skills: see PARA 1164B.1. References in ibid Pt 8 (ss 112-159) to functions of the Chief Inspector are references to functions conferred on him in his capacity as holder of that office: Sch 12 para 7(3).

15 Ibid Sch 12 para 7(4).

16 See ibid Sch 12 para 8.

17 Ibid s 119(1)(a).

18 Ibid s 119(1)(b).

19 Ibid s 119(1)(c).

20 For the meaning of 'relevant persons' see ibid s 117(4) (see PARA 1164B.3 NOTE 11); definition applied by s 119(4).

21 Ibid s 119(2).

22 Ie the matters mentioned in ibid s 117(2) (see PARA 1164B.3): s 119(3)(a).

23 Ibid s 119(3)(b).

24 Ibid s 121(1), (2). As to the Chief Inspector's first annual report, see Sch 15 para 8.

25 Ibid s 121(3).

26 Ie any report made under ibid s 121.

27 Ibid s 121(4).

### **3. The Chief Inspector's interaction with other authorities**

Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>1</sup> may delegate any of his inspection functions<sup>2</sup>, to such extent as he may determine, to another public authority<sup>3</sup>, but if the carrying out of an inspection is so delegated, it is nevertheless to be regarded for the purposes of any enactment as carried out by the Chief Inspector<sup>4</sup>. The Chief Inspector must from time to time, or at such times as the Secretary of State may specify by order, prepare a document setting out what inspections he proposes to carry out (an 'inspection programme')<sup>5</sup> and a document setting out the manner in which he proposes to carry out his functions of inspecting and reporting (an 'inspection framework')<sup>6</sup>. Before preparing an inspection programme or an inspection framework the Chief Inspector must consult: (1) the Secretary of State<sup>7</sup>; (2) Her Majesty's Chief Inspector of Prisons<sup>8</sup>; (3) Her Majesty's Chief Inspector of Constabulary<sup>9</sup>; (4) Her Majesty's Chief Inspector of the Crown Prosecution Service<sup>10</sup>; (5) Her Majesty's Chief Inspector of Probation for England and Wales<sup>11</sup>; (6) Her Majesty's Chief Inspector of Court Administration<sup>12</sup>; (7) the Care Quality Commission<sup>13</sup>; (8) the Audit Commission for Local Authorities and the National Health Service in England<sup>14</sup>; and (9) any other person or body specified by an order made by the Secretary of State<sup>15</sup>. Once it is prepared, the Chief Inspector must send to each of those persons or bodies a copy of each programme or framework<sup>16</sup>.

If any person or body mentioned in heads (2)-(9) above is proposing to carry out an inspection that would involve inspecting a specified institution<sup>17</sup> and the Chief Inspector considers that the proposed inspection would impose an unreasonable burden on that institution, or would do so if carried out in a particular manner, the Chief Inspector must give a notice to that authority requiring it not to carry out the proposed inspection, or not to carry it out in that manner<sup>18</sup>.

The Chief Inspector must co-operate with (a) Her Majesty's Chief Inspector of Prisons<sup>19</sup>; (b) Her Majesty's Inspectors of Constabulary<sup>20</sup>; (c) Her Majesty's Chief Inspector of the Crown Prosecution Service<sup>21</sup>; (d) Her Majesty's Inspectorate of Probation for England and Wales<sup>22</sup>; (e) Her Majesty's Inspectorate of Court Administration<sup>23</sup>; (f) the Care Quality Commission<sup>24</sup>; (g) the Audit Commission for Local Authorities and the National Health Service in England<sup>25</sup>; and (h) any other public authority specified by order made by the Secretary of State<sup>26</sup>, where it is appropriate to do so for the efficient and effective exercise of his functions<sup>27</sup>.

The Chief Inspector may (i) act jointly with another public authority where it is appropriate to do so for the efficient and effective exercise of his functions<sup>28</sup>; (ii) if he thinks it appropriate to do so, provide advice or assistance to another public authority for the purpose of the exercise by that authority of its functions<sup>29</sup>; (iii) make arrangements with a public authority for the carrying out by him of inspections of any institution or matter which he is not required or authorised to carry out by virtue of any other enactment<sup>30</sup>.

1 As to the Chief Inspector see PARA 1167A.1.

2 'Inspection functions' means functions relating to, or connected with, inspections: Education and Inspections Act 2006 Sch 13 para 1(4).

3 Ibid Sch 13 para 3(1). 'Public authority' includes any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament: Sch 13 para 2(1). Subject to Sch 13 para 8(3), references to a public authority do not include a public authority outside the United Kingdom: Sch 13 para 2(2).

4 Ibid Sch 13 para 3(2).

5 Ibid Sch 13 para 4(1)(a).

6 Ibid Sch 13 para 4(1)(b). The Chief Inspector may determine that any document or combination of documents prepared for the purposes of any other enactment or enactments is to be treated as a document prepared for the purposes Sch 13 para 4(1)(b), so long as any requirements applying under or by virtue of Sch 13 para 4 are complied with in relation to the document or documents concerned: Sch 13 para 4(4). For the meaning of 'document' see PARA 1164B.2.

7 Ibid Sch 13 para 4(2)(a).

8 Ibid Sch 13 paras 1(2)(a), 4(2)(b).

9 Ibid Sch 13 paras 1(2)(b), 4(2)(b).

10 Ibid Sch 13 paras 1(2)(c), 4(2)(b).

11 Ibid Sch 13 paras 1(2)(d), 4(2)(b) (Sch 13 para 1(2)(d) amended by SI 2008/912).

12 2006 Act Sch 13 paras 1(2)(e), 4(2)(b).

13 Ibid Sch 13 paras 1(2)(g), 4(2)(b) (Sch 13 para 1(2)(g) substituted by Health and Social Care Act 2008 Sch 5 para 81(2)(a)).

14 2006 Act Sch 13 paras 1(2)(h), 4(2)(b) (Sch 13 para 1(2)(h) amended by Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)(y), Sch 18 Pt 9).

15 2006 Act Sch 13 para 4(2)(c).

16 Ibid Sch 13 para 4(2). The Secretary of State may by order specify the form that inspection programmes or inspection frameworks are to take: Sch 13 para 4(3).

17 'Specified institution' means a person or body specified by order made by the Secretary of State: ibid Sch 13 para 5(2). A person or body may be so specified only if the person or body discharges functions or carries on other activities in relation to which the Chief Inspector exercises inspection functions by virtue of any enactment, or is a person or body in respect of whom the Chief Inspector is the registration authority by virtue of any enactment: Sch 13 para 5(3). See also Sch 13 para 5(4).



18 Ibid Sch 13 para 5(1). However, the Secretary of State may by order specify cases or circumstances in which a notice need not, or may not, be given under Sch 13 para 5: Sch 13 para 5(5). See also Sch 13 para 5(6), (7). The Secretary of State may by order make provision supplementing that made by Sch 13 para 5: Sch 13 para 5(8).

19 Ibid Sch 13 paras 1(3)(a), 6(a).

20 Ibid Sch 13 paras 1(3)(b), 6(a).

21 Ibid Sch 13 paras 1(3)(c), 6(a).

22 Ibid Sch 13 paras 1(3)(d), 6(a) (Sch 13 para 1(3)(d) amended by SI 2008/912).

23 2006 Act Sch 13 paras 1(3)(e), 6(a).

24 Ibid Sch 13 paras 1(2)(g), (3)(f), 6(a) (Sch 13 para 1(2)(g) substituted, Sch 13 para 1(3)(f) amended by Health and Social Care Act 2008 Sch 5 para 81(2)).

25 2006 Act Sch 13 paras 1(2)(h), (3)(f), 6(a) (Sch 13 para 1(2)(h) amended: see NOTE 15).

26 Ibid Sch 13 para 6(b).

27 Ibid Sch 13 para 6.

28 Ibid Sch 13 para 7.

29 See ibid Sch 13 para 8. The Chief Inspector may, with the consent of the Secretary of State, enter into arrangements for charges to be made for providing such advice or assistance: Sch 13 para 10(a).

30 See ibid Sch 13 para 9. The reference is to any enactment other than the 2006 Act: Sch 13 para 9. The Chief Inspector may, with the consent of the Secretary of State, enter into arrangements for charges to be made for carrying out such inspections: Sch 13 para 10(b).

#### **4. Her Majesty's Inspectors of Education, Children's Services and Skills**

Her Majesty may by Order in Council appoint a person as one of Her Majesty's Inspectors of Education, Children's Services and Skills (an 'HMI')<sup>1</sup>. An HMI is to serve, in accordance with the terms of his appointment, as a member of the staff of OFSTED<sup>2</sup>. Those terms of appointment are to be determined by Her Majesty's Chief Inspector of Education, Children's Services and Skills<sup>3</sup>, and a person's appointment as an HMI ends when he ceases to serve as a member of the staff of OFSTED<sup>4</sup>.

Anything authorised or required by or under any enactment to be done by the Chief Inspector may be done by any HMI, any other member of the staff of OFSTED, or any additional inspector, who is authorised generally or specially for the purpose by the Chief Inspector<sup>5</sup>. Where an HMI, a member of the staff of OFSTED or an additional inspector is authorised to act on behalf of the Chief Inspector in connection with the carrying out of any of the activities within his remit<sup>6</sup>, the Chief Inspector must ensure that the person concerned has such qualifications, experience and skills as are necessary to secure that he is able to perform the function or, as the case may be, assist with its performance, in an effective manner<sup>7</sup>. The Chief Inspector may arrange for additional inspectors to assist him in the performance of his functions<sup>8</sup>.

1 Education and Inspections Act 2006 s 114(1), (2). Orders made under s 114(1) are beyond the scope of this work. Any person who is one of Her Majesty's Inspectors of Schools in England immediately before the day on which s 114 comes into force (ie 1 April 2007: SI 2007/935), and is then serving as member of the staff of Her Majesty's Chief Inspector of Schools in England or of the Adult Learning Inspectorate, is to become, as from that day, one of Her Majesty's Inspectors of Education, Children's Services and Skills: 2006 Act s 114(6)-(8).

2 Ibid s 114(3). As to OFSTED see PARA 1164B.1.

3 Ibid s 114(4). As to the Chief Inspector see PARA 1167A.1.

4 Ibid s 114(5).

5 Ibid Sch 12 para 9(1). Schedule 12 para 9(1) has effect subject to Sch 12 para 9(3), 10(2) and 11(4), and any contrary provision made by any enactment: Sch 12 para 9(2). The making of any report of an inspection of a school under the Education Act 2005 s 5 which states the opinion that special measures are required to be taken in relation to the school must be personally authorised by the Chief Inspector or an HMI who is authorised by the Chief Inspector for this purpose: 2006 Act Sch 12 para 9(3). Without prejudice to the generality of Sch 12 para 9(1), references to the Chief Inspector in (1) the 2005 Act s 10 (power of entry for purposes of inspection under s 5 (see PARA 1173) or 8 (see PARA 1176); or (2) any other enactment by virtue of which any power of entry is exercisable by the Chief Inspector, or otherwise having effect in connection with any such power of entry, include references to any person authorised to act on his behalf under the 2006 Act Sch 12 para 9(1): see Sch 12 para 9(4), (5). Any person exercising such power must, if so required, produce a duly authenticated document showing his authority to exercise the power concerned: see s 150. For the meaning of 'document' see PARA 1164B.2.

6 Ibid Sch 12 para 10(1).

7 Ibid Sch 12 para 10(2).

8 See ibid Sch 12 paras 11, 12.

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(i) Inspection of Schools in England/A. HER MAJESTY'S INSPECTORATE/1168. Her Majesty's Inspectorate of Schools in England.

### **1168. Her Majesty's Inspectorate of Schools in England.**

Her Majesty may by Order in Council<sup>1</sup> appoint a person to the office of Her Majesty's Chief Inspector of Schools in England ('the Chief Inspector for England')<sup>2</sup>, and may also by Order in Council appoint persons as Her Majesty's Inspectors of Schools in England<sup>3</sup>. Any person appointed as one of Her Majesty's Inspectors of Schools in England must serve, in accordance with the terms and conditions on which he is appointed, as a member of the staff of the Chief Inspector for England<sup>4</sup>. The Chief Inspector for England holds and vacates office in accordance with the terms of his appointment, but: (1) must not be appointed for a term of more than five years<sup>5</sup>; (2) may at any time resign by giving written notice to the Secretary of State<sup>6</sup>; and (3) may be removed from office by Her Majesty on the ground of incapacity or misconduct<sup>7</sup>. The previous appointment of a person as Chief Inspector for England does not affect his eligibility for re-appointment<sup>8</sup>.

1 As to the making of orders under the Education Act 2005 see PARA 62 note 1 ante.

2 Education Act 2005 s 1(1). The Education (Chief Inspector of Schools in England) Order 2005, SI 2005/3505, has been made under the Education Act 2005 s 1(1), (4) (see heads (1)-(3) in the text).

As to the application of Pt 1 (ss 1-63), with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

3 Education Act 2005 s 1(2). The following Orders in Council have been made under s 1(2) or have effect, by virtue of the Interpretation Act 1978 s 17(2)(b), as if so made: the Education (Inspectors of Schools in England) Order 1992, SI 1992/1713; the Education (Inspectors of Schools in England) Order 1996, SI 1996/2594; the Education (Inspectors of Schools in England) Order 1997, SI 1997/2564; the Education (Inspectors of Schools in England) Order 1999, SI 1999/1122; the Education (Inspectors of Schools in England) Order 2000, SI 2000/3058; the Education (Inspectors of Schools in England) Order 2001, SI 2001/955; the Education (Inspectors of Schools in England) (No 2) Order 2001, SI 2001/2124; the Education (Inspectors of Schools in England) (No 3) Order 2001, SI 2001/3496; the Education (Inspectors of Schools in England) (No 4) Order 2001, SI 2001/3934; the Education (Inspectors of Schools in England) Order 2002, SI 2002/1821; the Education (Inspectors of Schools in England) (No 2) Order 2002, SI 2002/3156; the Education (Inspectors of Schools in England) Order 2003, SI 2003/1872; the Education (Inspectors of Schools in England) Order 2004, SI 2004/713; the Education (Inspectors of Schools in England) (No 2) Order 2004, SI 2004/1286; the Education (Inspectors of Schools in England) (No 3) Order 2004, SI 2004/2032; the Education (Inspectors of Schools in England) (No 4) Order 2004, SI 2004/2672; the Education (Inspectors of Schools in England) Order 2005, SI 2005/241; the Education (Inspectors of Schools in England) (No 2) Order 2005, SI 2005/1959 (amended by SI 2005/3427); and the Education (Inspectors of Schools in England) (No 3) Order 2005, SI 2005/2764.

4 Education Act 2005 s 1(3).

5 Ibid s 1(4)(a).

6 Ibid s 1(4)(b). As to the Secretary of State see PARA 52 ante.

7 Ibid s 1(4)(c).

8 Ibid s 1(5). Further provision is made by Sch 1 (see PARAS 1169-1171 post) with respect to the Chief Inspector for England and his staff: s 1(6).

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

**1168-1172 Her Majesty's Inspectorate of Schools in England ... Functions of the Chief Inspector**

Repealed: Education and Inspections Act 2006 Sch 14 paras 99, 107, Sch 18 Pt 5.

**1168 Her Majesty's Inspectorate of Schools in England**

NOTE 2--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 21.

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### **1169. Power of the Chief Inspector to appoint staff and additional inspectors.**

The Chief Inspector<sup>1</sup> may appoint such staff, in addition to inspectors who are members of his staff<sup>2</sup>, as he thinks fit<sup>3</sup> and may arrange further for such persons as he thinks fit to assist him in the discharge of any of his functions<sup>4</sup> in relation to a particular case or class of case<sup>5</sup>. Such an additional inspector acting within the authority conferred on him by the Chief Inspector has all the powers of one of Her Majesty's Inspectors of Schools in England<sup>6</sup>.

The Chief Inspector must ensure that additional inspectors have the necessary qualifications, experience and skills to assist him in the effective discharge of his functions<sup>7</sup>. If the Chief Inspector has entered into arrangements with persons who are not themselves additional inspectors ('inspection service providers') for the provision by the inspection service providers of the services of inspectors, the Chief Inspector must publish, at intervals of not more than 12 months, a list of the names of those persons who, as at a specified date, are currently notified to him by any inspection service provider as persons with whom the inspection service provider proposes to make arrangements for the carrying out of inspections on behalf of the Chief Inspector<sup>8</sup>.

1    Ile Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante.

2    Ile by virtue of ibid s 1(3) (see PARA 1168 ante): s 1(6), Sch 1 para 1.

3    Ibid Sch 1 para 1.

4    As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 122(2), (3).

5    Ibid Sch 1 para 2(1). Any person assisting the Chief Inspector under any such arrangements is known as an 'additional inspector': Sch 1 para 2(2).

6    Ibid Sch 1 para 2(7). However, the Chief Inspector may not authorise an additional inspector to conduct an inspection of a school under s 5 (see PARA 1173 post) unless: (1) the inspection is to be supervised by one of Her Majesty's Inspectors of Schools in England; or (2) the additional inspector has previously conducted an inspection under s 5 under the supervision of one of Her Majesty's Inspectors of Schools in England ('the supervising inspector') to the satisfaction of the supervising inspector: Sch 1 para 2(8). As to Her Majesty's Inspectors of Schools in England see PARA 1168 ante.

7    Ibid Sch 1 para 2(3). In pursuance of the duty imposed by Sch 1 para 2(3), the Chief Inspector must publish in such manner as he thinks fit, and may from time to time revise, a statement of: (1) the qualifications or experience (or both) that are to be required of additional inspectors who are not members of his staff; and (2) the standards that such additional inspectors are to be required to meet in the exercise of their functions and the skills that they are to be required to demonstrate in the exercise of those functions: Sch 1 para 2(4). Any arrangements which provide for assistance by persons who are not members of the Chief Inspector's staff must be made on terms that require the person with whom the arrangements are made to secure compliance with any requirements that are from time to time published under Sch 1 para 2(4): Sch 1 para 2(5).

8    Ibid Sch 1 para 2(6).

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

**1168-1172 Her Majesty's Inspectorate of Schools in England ... Functions of the Chief Inspector**

Repealed: Education and Inspections Act 2006 Sch 14 paras 99, 107, Sch 18 Pt 5.

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### **1170. Remuneration, pensions etc of the Chief Inspector.**

There is paid to the Chief Inspector<sup>1</sup> such remuneration, and such travelling and other allowances, as the Secretary of State<sup>2</sup> may determine<sup>3</sup>. In the case of any such Chief Inspector as may be determined by the Secretary of State, there must be paid such pension, allowance or gratuity to or in respect of him, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined<sup>4</sup>. If, when any person ceases to hold office as Chief Inspector, the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, there may be paid to him such sum by way of compensation as may be determined by the Secretary of State<sup>5</sup>.

1    le Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante.

2    As to the Secretary of State see PARA 52 ante.

3    Education Act 2005 s 1(6), Sch 1 para 3(1).

4    Ibid Sch 1 para 3(2).

5    Ibid Sch 1 para 3(3).

### **UPDATE**

#### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

#### **1168-1172 Her Majesty's Inspectorate of Schools in England ... Functions of the Chief Inspector**

Repealed: Education and Inspections Act 2006 Sch 14 paras 99, 107, Sch 18 Pt 5.

### **1170 Remuneration, pensions etc of the Chief Inspector**

TEXT AND NOTES--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 20.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(i) Inspection of Schools in England/A. HER MAJESTY'S INSPECTORATE/1171. Official seal of the Chief Inspector and performance of functions.

### **1171. Official seal of the Chief Inspector and performance of functions.**

The Chief Inspector<sup>1</sup> continues to have an official seal for the authentication of documents required for the purposes of his functions<sup>2</sup>. Anything authorised or required by or under Part I of the Education Act 2005<sup>3</sup> or any other enactment to be done by the Chief Inspector may be done by any of Her Majesty's Inspectors of Schools in England, any other member of his staff, or any additional inspector<sup>4</sup>, who, in each case, is authorised generally or specially in that behalf by the Chief Inspector<sup>5</sup>. The Chief Inspector and any person authorised to act on his behalf are to be treated as certifying officers for the purposes of proving certain documents<sup>6</sup>.

1    Ie Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante.

2    Ibid s 1(6), Sch 1 para 4. As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 122(2), (3). As to the functions of the Chief Inspector for England see PARA 1172 post.

3    Ie ibid Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63): see PARA 1168 et seq ante.

4    As to Her Majesty's Inspectors of Schools in England see PARA 1168 ante. As to additional inspectors see PARA 1169 ante.

5    Education Act 2005 Sch 1 para 5(1). Without prejudice to the generality of Sch 1 para 5(1), the references to the Chief Inspector in s 4 (powers of entry for purposes of s 2: see PARA 1172 post) and s 10 (powers of entry for purposes of ss 5, 8: see PARAS 1173, 1176 post) include references to any person authorised to act on his behalf under Sch 1 para 5(1): Sch 1 para 5(2). The making of any report of an inspection of a school under s 5 (duty to inspect certain schools at prescribed intervals: see PARA 1173 post) which states the opinion that special measures are required to be taken in relation to the school must be personally authorised by either the Chief Inspector or one of Her Majesty's Inspectors of Schools in England who is authorised by the Chief Inspector for this purpose: Sch 1 para 5(3). As to references to special measures being required to be taken in relation to a school see PARA 1178 note 3 post. As to combined reports under the inspection enactments see PARA 1186 post.

6    See the Documentary Evidence Act 1868 s 2, Schedule (both as amended); Education Act 2005 Sch 1 para 6. As to the Documentary Evidence Act 1868 see CIVIL PROCEDURE vol 11 (2009) PARAS 892-894.

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

### **1168-1172 Her Majesty's Inspectorate of Schools in England ... Functions of the Chief Inspector**

Repealed: Education and Inspections Act 2006 Sch 14 paras 99, 107, Sch 18 Pt 5.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(i) Inspection of Schools in England/A. HER MAJESTY'S INSPECTORATE/1172. Functions of the Chief Inspector.

### **1172. Functions of the Chief Inspector.**

The Chief Inspector<sup>1</sup> has the general duty of keeping the Secretary of State<sup>2</sup> informed about:

- 2080 (1) the quality of the education provided by schools<sup>3</sup> in England<sup>4</sup>;
- 2081 (2) how far that education meets the needs of the range of pupils<sup>5</sup> at those schools<sup>6</sup>;
- 2082 (3) the educational standards achieved in those schools<sup>7</sup>;
- 2083 (4) the quality of the leadership in and management of those schools, including whether the financial resources made available to those schools are managed efficiently<sup>8</sup>;
- 2084 (5) the spiritual, moral, social and cultural development of pupils at those schools<sup>9</sup>;
- 2085 (6) the contribution made by those schools to the well-being of those pupils<sup>10</sup>;
- 2086 (7) the extent to which those schools are developing rigorous internal procedures of self-evaluation<sup>11</sup>; and
- 2087 (8) the behaviour and attendance of pupils at those schools<sup>12</sup>.

When asked to do so by the Secretary of State, the Chief Inspector must give advice to the Secretary of State on such matters as may be specified in the Secretary of State's request<sup>13</sup>, and inspect and report on such school, or class of school, in England as may be so specified<sup>14</sup>. In addition, the Chief Inspector must keep under review the extent to which any requirement imposed by or under Part 1 of the Education Act 2005<sup>15</sup>, or any other enactment, on any local education authority<sup>16</sup>, proprietor<sup>17</sup> of a school or governing body<sup>18</sup> in relation to inspections of schools in England is complied with<sup>19</sup>.

The Chief Inspector may at any time give advice to the Secretary of State on any matter connected with school, or a particular school, in England<sup>20</sup>. The Chief Inspector has such other functions<sup>21</sup> in connection with schools in England, including functions with respect to the training of teachers for such schools<sup>22</sup>, as may be assigned to him by the Secretary of State<sup>23</sup>. In exercising his functions the Chief Inspector must have regard to such aspects of government policy as the Secretary of State may direct<sup>24</sup>.

The Chief Inspector:

- 2088 (a) must make an annual report to the Secretary of State, who must lay a copy of it before each House of Parliament<sup>25</sup>;
- 2089 (b) may make such other reports to the Secretary of State, with respect to matters which fall within the scope of his functions, as he considers appropriate<sup>26</sup>; and
- 2090 (c) may arrange for such any report made by him<sup>27</sup> to be published in such manner as he considers appropriate<sup>28</sup>.

For the purposes of the exercise of any function so conferred, the Chief Inspector<sup>29</sup> has at all reasonable times:

- 2091 (i) a right of entry to the premises of any school in England<sup>30</sup>; and

- 2092 (ii) a right to inspect, and take copies of, any records kept by any school in England, and any other documents containing information relating to the school, which he requires for those purposes<sup>31</sup>; and
- 2093 (iii) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in England, any pupils who are registered<sup>32</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>33</sup>, are provided with part of their education by any person ('the provider')<sup>34</sup>;
- 2094 (iv) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>35</sup>; and
- 2095 (v) a right to inspect and take copies of any records kept by the provider relating to the provision of that education, and any other documents containing information so relating, which the Chief Inspector requires for those purposes<sup>36</sup>.

It is an offence intentionally to obstruct the Chief Inspector in the exercise of his functions in relation to the inspection of a school<sup>37</sup>, or in the exercise of any right of entry, inspection and copying of records and documents<sup>38</sup> for the purposes of the exercise of any other function<sup>39</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>40</sup>.

1     le Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante.

2     As to the Secretary of State see PARA 52 ante.

3     For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

As to the application of Pt 1 (ss 1-63), with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

4     Education Act 2005 s 2(1)(a). For the meaning of 'England' see PARA 52 note 11 ante.

5     For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of *ibid* s 122(2), (3).

6     *Ibid* s 2(1)(b).

7     *Ibid* s 2(1)(c).

8     *Ibid* s 2(1)(d).

9     *Ibid* s 2(1)(e).

10    *Ibid* s 2(1)(f). For these purposes, 'well-being', in relation to pupils at a school, is a reference to their well-being having regard to the matters mentioned in the Children Act 2004 s 10(2) (co-operation to improve well-being: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 187): Education Act 2005 s 12.

11    *Ibid* s 2(1)(g).

12    *Ibid* s 2(1)(h).

13    *Ibid* s 2(2)(a).

14    *Ibid* s 2(2)(b). If the Chief Inspector so elects in the case of any inspection under s 2(2)(b) of a school to which s 5 (inspections at prescribed intervals: see PARA 1173 post) applies, that inspection is to be treated for the purposes of s 5(1) and of Pt 1 Ch 2 (ss 13-18) (see PARA 1178 et seq post) as if it were an inspection under s 5: ss 5(6), 9. As to combined reports under the inspection enactments see PARA 1186 post.

15    le *ibid* Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63): see PARA 1168 et seq ante.

16    As to local education authorities see PARA 20 ante.

- 17 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).
- 18 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.
- 19 Education Act 2005 s 2(3).
- 20 Ibid s 2(4).
- 21 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 122(2), (3).
- 22 As to the training of teachers see PARA 784 et seq ante.
- 23 Education Act 2005 s 2(5). In respect of childcare see the Education (Additional Functions of Her Majesty's Chief Inspector of Schools in England) Order 2003, SI 2003/469, made under the Education Act 2002 s 151(1); and PARA 1164 note 3 ante.
- 24 Education Act 2005 s 2(6). As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.
- 25 Ibid s 3(a). The annual reports of the Chief Inspector required by s 3(a) to be made to the Secretary of State must include an account of the exercise of the functions imposed or conferred on him by the School Standards and Framework Act 1998 s 122(1), Sch 26 (as amended) (nursery education: see PARAS 1291-1294 post); Sch 26 para 14(1) (substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 21).
- 26 Education Act 2005 s 3(b). The power conferred by s 3(b) to make other reports to the Secretary of State includes a power to make reports with respect to matters which fall within the scope of his functions by virtue of the School Standards and Framework Act 1998 Sch 26 (as amended) (nursery education: see PARAS 1295-1302 post); Sch 26 para 14(1) (as substituted: see note 25 supra).
- 27 Ie any report made under the Education Act 2005 s 3.
- 28 Ibid s 3(c).
- 29 See ibid s 1(6), Sch 1 para 5; and PARA 1171 note 5 ante.
- 30 Ibid s 4(1)(a). As to the meaning of 'premises', in relation to a school, see PARA 1352 note 3 post; definition applied by virtue of s 122(2), (3).
- 31 Ibid s 4(1)(b). Any person authorised by any provision of Pt 1 to inspect records or other documents: (1) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question; and (2) may require the person by whom or on whose behalf the computer is or has been so used, or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such assistance as he may reasonably require, including, in particular, the making of information available for inspection or copying in a legible form: s 58.
- 32 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).
- 33 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 122(2), (3).
- 34 Ibid s 4(2)(a).
- 35 Ibid s 4(2)(b).
- 36 Ibid s 4(2)(c). See note 31 supra.
- 37 Ibid s 4(3)(a). The text refers to functions in relation to the inspection of a school for the purposes of s 2(2)(b): see the text to note 14 supra.
- 38 Ie under ibid s 4(1) or s 4(2): see the text to notes 29-36 supra.
- 39 Ibid s 4(3)(b).
- 40 Ibid s 4(4). The fine must not exceed level 4 on the standard scale: s 4(4). As to the standard scale see PARA 481 note 4 ante.

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

### **1168-1172 Her Majesty's Inspectorate of Schools in England ... Functions of the Chief Inspector**

Repealed: Education and Inspections Act 2006 Sch 14 paras 99, 107, Sch 18 Pt 5.

### **1172 Functions of the Chief Inspector**

NOTE 3--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 21.

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### **1173. Duty to inspect certain schools at prescribed intervals.**

It is the duty of the Chief Inspector<sup>1</sup> to inspect, at such intervals as may be prescribed<sup>2</sup>, every school<sup>3</sup> in England<sup>4</sup> within the following categories<sup>5</sup>, namely: (1) community, foundation and voluntary schools<sup>6</sup>; (2) community and foundation special schools<sup>7</sup>; (3) maintained nursery schools<sup>8</sup>; (4) academies<sup>9</sup>; (5) city technology colleges<sup>10</sup>; (6) city colleges for the technology of the arts<sup>11</sup>; and (7) special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State<sup>12</sup>. However, this duty does not apply to any school which is a closing school<sup>13</sup>, and in respect of which the Chief Inspector has decided, having regard to the date on which the closure is to take effect, that no useful purpose would be served by the school being so inspected<sup>14</sup>.

When conducting such an inspection, it is the general duty of the Chief Inspector to report on:

- 2096 (a) the quality of the education provided in the school<sup>15</sup>;
- 2097 (b) how far the education provided in the school meets the needs of the range of pupils<sup>16</sup> at the school<sup>17</sup>;
- 2098 (c) the educational standards achieved in the school<sup>18</sup>;
- 2099 (d) the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed effectively<sup>19</sup>;
- 2100 (e) the spiritual, moral, social and cultural development of the pupils at the school<sup>20</sup>; and
- 2101 (f) the contribution made by the school to the well-being of those pupils<sup>21</sup>.

When the inspection has been completed, it is the duty of the Chief Inspector to make a report of the inspection in writing<sup>22</sup>.

When inspecting a school at prescribed intervals, the Chief Inspector<sup>23</sup> has at all reasonable times:

- 2102 (i) a right of entry to the premises<sup>24</sup> of the school<sup>25</sup>;
- 2103 (ii) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who are registered<sup>26</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>27</sup>, are receiving part of their education from any person ('the provider')<sup>28</sup>;
- 2104 (iii) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>29</sup>;
- 2105 (iv) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he considers relevant to the discharge of his functions<sup>30</sup>; and
- 2106 (v) a right to inspect and take copies of any records kept by the provider relating to the provision of education for pupils registered at the school, and any other documents containing information so relating, which the Chief Inspector considers relevant to the discharge of his functions<sup>31</sup>.

It is an offence intentionally to obstruct the Chief Inspector in relation to the inspection of a school at prescribed intervals<sup>32</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>33</sup>.

1 The Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante. As to references to the Chief Inspector for England see also s 1(6), Sch 1 para 5(1), (3); and PARA 1171 note 5 ante.

2 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under ibid Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante): s 12. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the intervals prescribed under s 5(1)(a) see the Education (School Inspection) (England) Regulations 2005, SI 2005/2038; and note 5 infra. Regulations under the Education Act 2005 Pt 1 (ss 1-63) may, in particular, include provision for the designation by the Secretary of State, in accordance with the regulations, of particular schools or categories of school for the purposes of the application of particular provisions of the regulations in relation to such schools: s 120(3).

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

As to the application of Pt 1, with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

4 For the meaning of 'England' see PARA 52 note 11 ante.

5 Education Act 2005 s 5(1)(a). If the Chief Inspector so elects in the case of any inspection under s 2(2)(b) (see PARA 1172 ante) or s 8 (see PARA 1176 post) of a school to which s 5 applies, that inspection is to be treated for the purposes of s 5(1) and of Pt 1 Ch 2 (ss 13-18) (see PARA 1178 et seq post) as if it were an inspection under s 5: ss 5(6), 9.

The Chief Inspector must inspect each school to which the Education Act 2005 s 5 applies by 1 August 2009 and, following that inspection, must thereafter inspect each such school within three school years from the end of the school year in which the last inspection of the school took place: Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 3. As to the application of reg 3 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

6 Education Act 2005 s 5(1)(a), (2)(a). As to community, foundation and voluntary schools see PARA 102 et seq ante.

7 Ibid s 5(1)(a), (2)(b). As to community special schools and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

8 Ibid s 5(1)(a), (2)(c). As to maintained nursery schools see PARA 94 et seq ante.

9 Ibid s 5(1)(a), (2)(d). As to the meaning of 'academy' see PARA 496 ante.

10 Ibid s 5(1)(a), (2)(e). For the meaning of 'city technology college' see PARA 496 ante.

11 Ibid s 5(1)(a), (2)(f). For the meaning of 'city college for the technology of the arts' see PARA 496 ante.

12 Ibid s 5(1)(a), (2)(g). As to the Secretary of State see PARA 52 ante. The text refers to special schools which are for the time being approved under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante): Education Act 2005 s 5(2)(g).

13 Ibid s 5(3)(a). For this purpose, a 'closing school' means:

91 (1) any community, foundation or voluntary school, community or foundation special school or maintained nursery school in respect of which proposals to discontinue the school have been approved, adopted or determined under any enactment (s 5(4)(a));

92 (2) a foundation or voluntary school in respect of which the governing body has given notice of discontinuance under the School Standards and Framework Act 1998 s 30 (as amended) (see PARA 135 ante) (Education Act 2005 s 5(4)(b));

93 (3) a community, foundation or voluntary or community or foundation special school in respect of which the Secretary of State has given a direction to discontinue the school under s 19 (as

amended) (power of Secretary of State to direct closure of school: see PARA 1273 post) or s 32 (direction requiring discontinuance of community or foundation special school: see PARA 149 ante) (Education Act 2005 s 5(4)(c));

94 (4) a city technology college, city college for the technology of the arts or academy in respect of which notice of termination of an agreement made under the Education Act 1996 s 482 (as substituted) (see PARA 496 ante) has been given (Education Act 2005 s 5(4)(d)); or

95 (5) a special school which is not a community or foundation special school but is for the time being approved by the Secretary of State under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante) and which the proprietor has decided to close (Education Act 2005 s 5(4)(e)).

14 Ibid s 5(3)(b).

15 Ibid s 5(5)(a). As to combined reports under the inspection enactments see PARA 1186 post.

16 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 122(2), (3).

17 Ibid s 5(5)(b).

18 Ibid s 5(5)(c).

19 Ibid s 5(5)(d).

20 Ibid s 5(5)(e). However, an inspection which is required under s 5 must not extend to denominational education, or to the content of collective worship which falls to be inspected under s 48 (inspection of religious education: see PARA 1183 post): s 5(7). For the meaning of 'denominational education' see PARA 1183 note 6 post.

21 Ibid s 5(5)(f). For the meaning of 'well-being', in relation to pupils at a school, see PARA 1172 note 10 ante.

22 Ibid s 5(1)(b).

23 See ibid s 1(6), Sch 1 para 5(1), (2); and PARA 1171 note 5 ante.

24 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 122(2), (3).

25 Ibid s 10(1)(a).

26 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).

27 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 122(2), (3).

28 Ibid s 10(1)(b).

29 Ibid s 10(1)(c).

30 Ibid s 10(1)(d). As to the inspection of computers and associated apparatus or material used in connection with the records or other documents in question see PARA 1172 note 31 ante.

31 Ibid s 10(1)(e). See note 30 supra.

32 Ibid s 10(2). The text refers to the inspection of a school for the purposes of s 5 (see the text to notes 1-14 supra): s 10(2).

33 Ibid s 10(3). The fine must not exceed level 4 on the standard scale: s 10(3). As to the standard scale see PARA 481 note 4 ante.

## UPDATE

### 1167-1177 Her Majesty's Inspectorate

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

### **1173 Duty to inspect certain schools at prescribed intervals**

NOTE 3--SI 2005/2038 amended: SI 2008/1723, SI 2009/1564.

NOTES 3, 5--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 21, 27.

NOTE 3--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

NOTE 5--Reference to 2005 Act s 2(2)(b) (repealed) omitted: s 9 (amended by the Education and Inspections Act 2006 Sch 14 para 101, Sch 18 Pt 5).

TEXT AND NOTE 12--Education Act 2005 s 5(2)(g) substituted: Education and Skills Act 2008 Sch 1 para 26 (not yet in force).

NOTE 13--Head (3). References to the 1998 Act s 19 or s 32 now to Education and Inspections Act 2006 s 17 or 68: 2005 Act s 5(4)(c) (amended by the 2006 Act Sch 7 para 23).

TEXT AND NOTE 21--Add head (g) the contribution made by the school to community cohesion: Education Act 2005 s 5(5)(g) (added by the Education and Inspections Act 2006 s 154).



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#### **1174. Duty to notify parents of inspections at prescribed intervals.**

If the appropriate authority for a school<sup>1</sup> is notified by, or under arrangements made by, the Chief Inspector<sup>2</sup> that the Chief Inspector is proposing to inspect the school under his duty to inspect schools at prescribed intervals<sup>3</sup>, the appropriate authority must take such steps as are reasonably practicable to notify the registered<sup>4</sup> parents<sup>5</sup> of registered pupils<sup>6</sup> at the school<sup>7</sup>, and such other persons as may be prescribed<sup>8</sup>, of the time when the inspection is to take place<sup>9</sup>.

1    le a school to which the Education Act 2005 s 5 (inspections at prescribed intervals: see PARA 1173 ante) applies, namely: (1) a community, foundation or voluntary school; (2) a community or foundation special school; (3) a maintained nursery school; (4) an academy; (5) a city technology college; (6) a city college for the technology of the arts; or (7) a special school which is not a community or foundation special school but is for the time being approved by the Secretary of State under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante): see s 5(2); and PARA 1173 ante. For these purposes, 'appropriate authority' means: (a) in relation to a school falling within any of heads (1)-(3) supra, the school's governing body or, if the school does not have a delegated budget, the local education authority; and (b) in relation to a school falling within any of heads (4)-(7) supra, the proprietor of the school: s 6(3). For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 122(2), (3). For the meaning of 'school' generally see PARA 81 ante; definition applied by virtue of s 122(2), (3). For the meaning of 'delegated budget' see PARA 320 ante; definition applied by s 63(1). For the meaning of 'city technology college' see PARA 496 ante; definition applied by virtue of s 122(2), (3). For the meaning of 'city college for the technology of the arts' see PARA 496 ante; definition applied by virtue of s 122(2), (3). As to local education authorities see PARA 20 ante; as to maintained nursery schools see PARA 94 et seq ante; as to community, foundation and voluntary schools see PARA 102 et seq ante; as to community and foundation special schools see PARA 102 et seq ante; as to the governing bodies of maintained schools in England see PARA 203 et seq ante; as to special schools see PARA 1027 ante; and as to the meaning of 'academy' see PARA 496 ante.

As to the application of Pt 1 (ss 1-63), as modified in relation to s 6(3), in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

2    le Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante.

3    le under *ibid* s 5: see PARA 1173 ante.

4    For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).

5    As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of *ibid* s 122(2), (3).

6    For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).

7    *Ibid* s 6(1)(a). Any notification given under s 6(1)(a) must include a statement, in a form approved by the Chief Inspector, inviting the registered parents of registered pupils to inform the Chief Inspector of their views on matters relating to the school: s 6(2).

8    *Ibid* s 6(1)(b). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante): s 12. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante; and as to the making of regulations under Pt 1 see PARA 1173 note 2 ante. As to the persons prescribed under s 6(1)(b) see the Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 4. As to the application of reg 4, with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

9    Education Act 2005 s 6(1).

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

### **1174 Duty to notify parents of inspections at prescribed intervals**

NOTES 1, 8--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 21, 27.

NOTE 1--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

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**1175. Duty to have regard to views when conducting inspections at prescribed intervals.**

In conducting an inspection of a school<sup>1</sup> under his duty to inspect schools at prescribed intervals<sup>2</sup>, the matters to which the Chief Inspector for England<sup>3</sup> must have regard include any views expressed to him by any of the following persons<sup>4</sup>:

- 2107 (1) the head teacher<sup>5</sup>;
- 2108 (2) in the case of a maintained school, the governing body<sup>6</sup>;
- 2109 (3) in the case of any other school, the proprietor<sup>7</sup> of the school<sup>8</sup>;
- 2110 (4) any person notified of the inspections as prescribed<sup>9</sup>;
- 2111 (5) members of the staff of the school<sup>10</sup>;
- 2112 (6) registered pupils<sup>11</sup> at the school<sup>12</sup>; and
- 2113 (7) the registered<sup>13</sup> parents<sup>14</sup> of registered pupils<sup>15</sup>.

<sup>1</sup> For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

As to the application of Pt 1 (ss 1-63), with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

<sup>2</sup> Ie under the Education Act 2005 s 5: see PARA 1173 ante.

<sup>3</sup> Ie Her Majesty's Chief Inspector of Schools in England: see ibid s 12; and PARA 1168 ante.

<sup>4</sup> Ibid s 7.

<sup>5</sup> Ibid s 7(a). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 122(2), (3).

<sup>6</sup> Ibid s 7(b). As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

<sup>7</sup> For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 122(2), (3).

<sup>8</sup> Ibid s 7(c).

<sup>9</sup> Ibid s 7(d). The text refers to any person prescribed for the purposes of s 6(1)(b) (see PARA 1174 ante): s 7(d).

<sup>10</sup> Ibid s 7(e). As to the staffing of schools generally see PARA 333 et seq ante.

<sup>11</sup> For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).

<sup>12</sup> Ibid s 7(f).

<sup>13</sup> For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).

<sup>14</sup> As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 122(2), (3).

<sup>15</sup> Ibid s 7(g).

**UPDATE**

## **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

### **1175 Duty to have regard to views when conducting inspections at prescribed intervals**

NOTE 1--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11. SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 21.

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### **1176. Power to make inspection at Chief Inspector's discretion.**

The Chief Inspector<sup>1</sup> may inspect any school<sup>2</sup> in England<sup>3</sup>, in circumstances where he is not required to do so when asked by the Secretary of State<sup>4</sup> or where he is not required to do so under his duty to inspect schools at prescribed intervals<sup>5</sup>. When inspecting a school at his discretion, the Chief Inspector<sup>6</sup> has at all reasonable times:

- 2114 (1) a right of entry to the premises<sup>7</sup> of the school<sup>8</sup>;
- 2115 (2) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who are registered<sup>9</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>10</sup>, are receiving part of their education from any person ('the provider')<sup>11</sup>;
- 2116 (3) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>12</sup>;
- 2117 (4) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he considers relevant to the discharge of his functions<sup>13</sup>; and
- 2118 (5) a right to inspect and take copies of any records kept by the provider relating to the provision of education for pupils registered at the school, and any other documents containing information so relating, which the Chief Inspector considers relevant to the discharge of his functions<sup>14</sup>.

It is an offence intentionally to obstruct the Chief Inspector in relation to the inspection of a school made at the Chief Inspector's discretion<sup>15</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>16</sup>.

1    I.e. Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante. See also note 6 infra.

2    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3).

As to the application of Pt 1 (ss 1-63), with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

3    For the meaning of 'England' see PARA 52 note 11 ante.

4    I.e. under the Education Act 2005 s 2(2)(b): see PARA 1172 ante. As to the Secretary of State see PARA 52 ante.

5    *Ibid* s 8. The text refers to the Chief Inspector's duty to inspect schools at prescribed intervals under s 5 (see PARA 1173 ante): s 8. If the Chief Inspector so elects in the case of any inspection under s 8 of a school to which s 5 applies, that inspection is to be treated for the purposes of s 5(1) and of Pt 1 Ch 2 (ss 13-18) (see PARA 1178 et seq post) as if it were an inspection under s 5: ss 5(6), 9.

6    See *ibid* s 1(6), Sch 1 para 5(1), (2); and PARA 1171 note 5 ante.

7    As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of *ibid* s 122(2), (3).

8    *Ibid* s 10(1)(a).

- 9 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 10 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 11 *Ibid* s 10(1)(b).
- 12 *Ibid* s 10(1)(c).
- 13 *Ibid* s 10(1)(d). As to the inspection of computers and associated apparatus or material used in connection with the records or other documents in question see PARA 1172 note 31 ante.
- 14 *Ibid* s 10(1)(e). See note 13 *supra*.
- 15 *Ibid* s 10(2). The text refers to the inspection of a school for the purposes of s 8 (see the text to notes 1-5 *supra*): s 10(2).
- 16 *Ibid* s 10(3). The fine must not exceed level 4 on the standard scale: s 10(3). As to the standard scale see PARA 481 note 4 ante.

## UPDATE

### 1167-1177 Her Majesty's Inspectorate

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

### 1176 Power to make inspection at Chief Inspector's discretion

TEXT AND NOTES 1-5--If requested to do so by the Secretary of State, Her Majesty's Chief Inspector of Education, Children's Services and Skills ('the Chief Inspector') must inspect and report on such school, or class of school, in England as is specified in the request: 2005 Act s 8(1) (s 8 substituted by the Education and Inspections Act 2006 Sch 14 para 100). The Chief Inspector may inspect any school in England in circumstances where he is not required to do so by the 2005 Act s 5 or s 8(1): s 8(2) (as so substituted). As to the Chief Inspector see PARA 1167A.1.

The Chief Inspector has power to investigate certain complaints by parents about schools: see ss 11A-11C; and PARA 1176A.

NOTE 2--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11. SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 21.

TEXT AND NOTES 6-16--The Chief Inspector may publish an interim statement between inspections that he considers it is not necessary for the school to be inspected under the 2005 Act s 5 for at least a year: see Education Act 2005 s 10A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 225(2)).

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### **1176A. Power of Chief Inspector's to investigate complaints by parents about schools.**

The Chief Inspector<sup>1</sup> may investigate a qualifying complaint if he thinks it is appropriate to do so<sup>2</sup> (1) for the purpose of determining whether it is or may be appropriate to have regard to the matters raised by the complaint in carrying out any of his functions in relation to schools in England<sup>3</sup>; and (2) in particular, for the purpose of determining, in the light of the complaint, when to carry out an inspection of a school<sup>4</sup>, and whether it would be appropriate to carry out an inspection under his discretionary powers<sup>5</sup>. A complaint is a qualifying complaint if it is (a) about a matter relating to a relevant school<sup>6</sup> and that matter falls within a prescribed description<sup>7</sup>, and does not fall within any prescribed exception<sup>8</sup>; (b) made in writing to the Chief Inspector<sup>9</sup>; and (c) made by a person who satisfies prescribed conditions<sup>10</sup>.

The following provisions apply where a qualifying complaint is made to the Chief Inspector by a person who is a registered parent of a registered pupil<sup>11</sup> at the school to which the complaint relates<sup>12</sup>. If the Chief Inspector so requests for the purposes of an investigation of the complaint, the governing body<sup>13</sup> of the school to which the complaint relates must provide him with such information it holds as may be specified or described in the Chief Inspector's request<sup>14</sup>, and such other information it holds as it considers may be relevant to the investigation<sup>15</sup>. If the complaint relates to a maintained school<sup>16</sup> and the Chief Inspector so requests for the purposes of an investigation of the complaint, the local education authority<sup>17</sup> which maintains the school must provide him with such information it holds as may be specified or described in the Chief Inspector's request<sup>18</sup>, and such other information it holds as it considers may be relevant to the investigation<sup>19</sup>. If, for the purposes of an investigation of the complaint, it appears to the Chief Inspector to be appropriate to hold a meeting for registered parents of registered pupils at the school to which the complaint relates, he must give notice to that effect to the governing body of the school<sup>20</sup>. However, if the school is a maintained school which does not have a delegated budget, the Chief Inspector must give notice to that effect to the local education authority which maintains the school<sup>21</sup>. On being so notified, the governing body or, as the case may be, the local education authority must co-operate with the Chief Inspector in the making of arrangements for the meeting<sup>22</sup>.

Where, for the purposes of an investigation of a qualifying complaint, the Chief Inspector requests specified information<sup>23</sup> or gives notice that he considers it appropriate to hold a meeting<sup>24</sup>, he may, if he considers it appropriate to do so, prepare a report of the outcome of the investigation by him of the complaint<sup>25</sup>. If the Chief Inspector prepares such a report, he must send a copy of it to the governing body of the school<sup>26</sup>. However, if the school is a maintained school which does not have a delegated budget, the Chief Inspector must give notice to that effect to the local education authority which maintains the school<sup>27</sup>. The body to which a report is so sent must, if so requested by the Chief Inspector, provide a copy of it to the registered parents of registered pupils at the school to which the complaint relates<sup>28</sup>.

1    Ie Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.1.

2    Education Act 2005 s 11A(1) (ss 11A-11C added by the Education and Inspections Act 2006 s 160).

As to the application of the 2005 Act Pt 1 (ss 1-63), with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1,

3, Sch 1 para 21; and the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

3 2005 Act s 11A(1)(a).

4 Ibid s 11A(1)(b)(i). The reference is to an inspection at a prescribed interval under s 5 (see PARA 1173).

5 Ibid s 11A(1)(b)(ii). The reference is to an inspection under s 8(2) (see PARA 1176).

6 'Relevant school' means any of the schools mentioned in ibid s 5(2)(a)-(g): s 11A(5).

7 Ibid s 11A(2)(a)(i). A complaint is of a prescribed description if it is about one or more of the following areas: (1) the quality of the education provided in the school; (2) how far the education provided in the school meets the needs of the range of pupils at the school; (3) the educational standards achieved in the school; (4) the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed effectively; (5) the spiritual, moral, social and cultural development of the pupils at the school; and (7) the contribution made by the school to the well-being of those pupils: Education (Investigation of Parents' Complaints) (England) Regulations 2007, SI 2007/1089, reg 3 (amended by SI 2008/1723).

8 2005 Act s 11A(2)(a)(ii). A complaint is not a qualifying complaint if it is about a matter falling to be dealt with in accordance with any procedures established or required to be established in relation to the school by or under any enactment other than the Education Act 2002 s 29(1)(a) (see PARA 233): SI 2007/1089 reg 4.

9 2005 Act s 11A(2)(b).

10 Ibid s 11A(2)(c). The conditions prescribed for the purposes of s 11A(2)(c) may, in particular, require that the person has, before making the complaint to the Chief Inspector, taken advantage of other procedures of a prescribed description for dealing with the complaint: s 11A(3) (as so added). Regulations may enable the Chief Inspector to determine that a condition prescribed for the purposes of s 11A(2)(c) by virtue of s 11A(3) is not to apply in relation to a person making a complaint: s 11A(4). For the purposes of s 11A(2)(c), a person making a complaint satisfies the prescribed condition if, before making the complaint, that person has followed any complaints procedure: (1) where the school falls within the 2005 Act s 5(2)(a), (b) or (c), established by the governing body of the relevant school pursuant to the Education Act 2002 s 29(1)(a); or (2) where the school falls within the 2005 Act s 5(2)(d), (e), (f) or (g), established in relation to the school: SI 2007/1089 reg 5. However, the Chief Inspector may determine that the condition in reg 5 is not to apply in relation to a person making a complaint: reg 6.

11 For the meaning of 'registered pupil' see PARA 512; definition applied by virtue of the 2005 Act s 122(2), (3).

12 Ibid s 11B(1).

13 'Governing body', in relation to a relevant school which is not a maintained school, means the proprietor of the school: ibid s 11B(7).

14 Ibid s 11B(2)(a).

15 Ibid s 11B(2)(b).

16 'Maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: ibid s 11B(7). As to community, foundation or voluntary schools and community or foundation special schools see PARA 102 et seq. For the meaning of 'nursery school' see PARA 81.

17 As to local education authorities see PARA 20.

18 2005 Act s 11B(3)(a).

19 Ibid s 11B(3)(b).

20 Ibid s 11B(4)(a)(i).

21 Ibid s 11B(4)(a)(ii).

22 Ibid s 11B(4)(b). In particular, the governing body or, as the case may be, the local education authority must if so requested by the Chief Inspector (1) allow the meeting to be held on the premises of the school; (2) fix a date for the meeting which is consistent with any request made by the Chief Inspector for that purpose;



and (3) take such steps as are specified by the Chief Inspector to give the registered parents of registered pupils at the school and, if the school is a maintained school which has a delegated budget, the local education authority which maintains the school, such notice as the Chief Inspector may specify of the date, time and place of the meeting and of its purpose: s 11B(5) (as so added). In addition to the registered parents of registered pupils at the school, the following persons may attend a meeting held in pursuance of s 11B(5): (a) a representative of the governing body of the school; and (b) if the school is a maintained school, a representative of the local education authority which maintains the school: s 11B(6) (as so added).

23    Ie under ibid s 11B(2) or (3): s 11C(1)(a).

24    Ie under in pursuance of ibid s 11B(4)(a): s 11C(1)(b).

25    Ibid s 11C(2).

26    Ibid s 11C(3)(a).

27    Ibid s 11C(3)(b).

28    Ibid s 11C(4).

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

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### **1177. Publication of inspection reports.**

The Chief Inspector<sup>1</sup> may arrange for any report of an inspection carried out by him under any provision of Chapter 1 of Part 1 of the Education Act 2005<sup>2</sup> (whether the report is required by any such provision or is otherwise made in pursuance of his functions under that provision) to be published in such manner as he considers appropriate<sup>3</sup>; and he may arrange for any such report to be published by electronic means<sup>4</sup>.

1    Ie Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 12; and PARA 1168 ante.

2    Ie ibid Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante).

3    Ibid s 11(1). As to combined reports under the inspection enactments see PARA 1186 post.

4    Ibid s 11(2). Section 11(2) is expressed to be without prejudice to the generality of s 3(c) (arrangements for publication of reports under s 3: see PARA 1172 head (c) ante) or s 11(1) (see the text and notes 1-3 supra): s 11(2). For the purposes of the law of defamation, any report published by the Chief Inspector under either of those provisions is privileged unless the publication is shown to be made with malice: s 11(3). This provision does not limit any privilege subsisting apart from s 11(3): s 11(4). As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

## **UPDATE**

### **1167-1177 Her Majesty's Inspectorate**

The office of Her Majesty's Chief Inspector of Schools in England has been superseded by the office of Her Majesty's Chief Inspector of Education, Children's Services and Skills: see PARA 1167A.

### **1177 Publication of inspection reports**

TEXT AND NOTE 4--2005 Act s 11(2)-(4) repealed: Education and Inspections Act 2006 Sch 14 para 102, Sch 18 Pt 5. For the purposes of the law of defamation, a report made by the Chief Inspector which is published under any enactment, or is not so published but is made in pursuance of his functions under any enactment, is privileged unless its publication is shown to have been made with malice: s 151(1). Where by virtue of any enactment the Chief Inspector has power to arrange for a report made by him to be published in a manner determined by him, he may, if he considers it appropriate to do so, arrange for the report to be published by electronic means only: s 151(2). Nothing in s 151 limits any privilege subsisting apart from s 151(1), or prejudices the generality of any power of the Chief Inspector subsisting apart from s 151(2): s 151(4). As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

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## ***B. PROCEDURE FOR SCHOOL INSPECTION***

### **1178. Duties of Chief Inspector where school causes or has caused concern.**

Where, on the completion of any inspection of a school under his duty to inspect schools at prescribed intervals<sup>1</sup>, the Chief Inspector<sup>2</sup> is of the opinion: (1) that special measures are required to be taken in relation to the school<sup>3</sup>; or (2) that the school requires significant improvement<sup>4</sup>, he must: (a) send a draft of the report of the inspection to the governing body<sup>5</sup> (in the case of a maintained school)<sup>6</sup>, and to the proprietor<sup>7</sup> of the school (in the case of any other school)<sup>8</sup>; and (b) consider any comments on the draft that are made to him within the prescribed period<sup>9</sup> by the governing body or proprietor, as the case may be<sup>10</sup>.

If, after complying with heads (a) and (b) above, the Chief Inspector is of the opinion that the case falls within head (1) or head (2) above, he must without delay give a notice in writing, stating that the case falls within head (1) or head (2) above, to the Secretary of State<sup>11</sup>, to the local education authority<sup>12</sup> (in the case of a maintained school)<sup>13</sup>, and to the proprietor of the school (in the case of any other school)<sup>14</sup>, and he must state his opinion in the report of the inspection<sup>15</sup>. If a report of a school inspection carried out at a prescribed interval<sup>16</sup> is made in circumstances where:

2119 (i) in the latest report of an inspection of the school, the Chief Inspector stated that in his opinion special measures were required to be taken in relation to the school<sup>17</sup>; but

2120 (ii) he is of the opinion that special measures are not required to be taken in relation to the school<sup>18</sup>,

he must state his opinion in the report<sup>19</sup>. If a report of a school inspection carried out at a prescribed interval<sup>20</sup> is made in circumstances where:

2121 (A) in the latest report of an inspection of the school, the Chief Inspector stated that in his opinion the school required significant improvement<sup>21</sup>; but

2122 (B) he is of the opinion that the school does not require significant improvement and that special measures are not required to be taken in relation to the school<sup>22</sup>,

he must state his opinion in the report<sup>23</sup>.

1 He under the Education Act 2005 s 5 (see PARA 1173 ante). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 122(2), (3). As to the schools to which s 5 applies see PARA 1173 ante.

As to the application of Pt 1 (ss 1-63), with modifications, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

2 He Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 18; and PARA 1168 ante.

3 Ibid s 13(1)(a). For the purposes of Pt 1 (ss 1-63) (see PARA 1168 et seq ante), special measures are required to be taken in relation to a school if: (1) the school is failing to give its pupils an acceptable standard of education; and (2) the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school: ss 44(1), 63(2). See generally *R v Secretary of State for Education and Employment and the North East London Education Association, ex p M* [1996] ELR 162, CA (decided under previous legislation). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

4 Ibid s 13(1)(b). For the purposes of Pt 1 (ss 1-63) (see PARA 1168 et seq ante), a school requires significant improvement if, although not falling within s 44(1) (see note 3 supra), it is performing significantly less well than it might in all the circumstances reasonably be expected to perform: ss 44(2), 63(3).

5 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

6 Education Act 2005 s 13(2)(a)(i). For the purposes of Pt 1 Ch 2 (ss 13-18), 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: s 18. As to maintained nursery schools see PARA 94 et seq ante; as to community, foundation and voluntary schools see PARA 102 et seq ante; as to community special schools and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

7 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 122(2), (3).

8 Ibid s 13(2)(a)(ii).

9 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under ibid Pt 1 Ch 2 (see PARA 1179 et seq post): s 18. As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante; and as to the making of regulations under Pt 1 see PARA 1173 note 2 ante. A period of five working days from the date of receipt of the draft report has been prescribed for the purpose of s 13(2)(b): see the Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 5. As to the application of reg 5 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

10 Education Act 2005 s 13(2)(b).

11 Ibid s 13(3)(a)(i).

12 As to the local education authority see PARA 20 ante.

13 Education Act 2005 s 13(3)(a)(ii).

14 Ibid s 13(3)(a)(iii).

15 Ibid s 13(3)(b).

16 Ie under ibid s 5 (see PARA 1173 ante).

17 Ibid s 13(4)(a).

18 Ibid s 13(4)(b).

19 Ibid s 13(4). The Chief Inspector must state his opinion in the report as mentioned in the text whether or not he is required by s 13(3)(b) (see the text and note 15 supra) also to state the opinion that the school requires significant improvement: s 13(4).

20 Ie under ibid s 5 (see PARA 1173 ante).

21 Ibid s 13(5)(a).

22 Ibid s 13(5)(b).

23 Ibid s 13(5).

## UPDATE

### 1178 Duties of Chief Inspector where school causes or has caused concern

NOTES 1, 9--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 21, 27.

NOTE 1--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

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### **1179. Destination of reports of inspections of maintained schools.**

The Chief Inspector<sup>1</sup> must ensure that a copy of the report of any inspection of a maintained school<sup>2</sup> carried out under his duty to inspect schools at prescribed intervals<sup>3</sup> is sent without delay to the appropriate authority<sup>4</sup> for the school<sup>5</sup>. The Chief Inspector must ensure that copies of the report are sent: (1) to the head teacher<sup>6</sup> of the school<sup>7</sup>; (2) to whichever of the local education authority and the governing body is not the appropriate authority<sup>8</sup>; (3) in the case of a school having foundation governors<sup>9</sup>, to the person who appoints them and (if different) to the appropriate appointing authority<sup>10</sup>; and (4) in such circumstances as may be prescribed<sup>11</sup>, to such other persons (if any) as may be prescribed<sup>12</sup>. If the school provides full-time education suitable to the requirements of pupils over compulsory school age<sup>13</sup>, the Chief Inspector must ensure that a copy of the report is also sent to the Learning and Skills Council for England<sup>14</sup>.

The appropriate authority must:

- 2123 (a) make a copy of any report sent to it<sup>15</sup> available for inspection by members of the public at such times and at such place as may be reasonable<sup>16</sup>;
- 2124 (b) provide a copy of the report, free of charge or in prescribed cases on payment of such fee as it thinks fit, not exceeding the cost of supply<sup>17</sup>, to any person who asks for one<sup>18</sup>; and
- 2125 (c) take such steps as are reasonably practicable to secure that every registered<sup>19</sup> parent<sup>20</sup> of a registered pupil<sup>21</sup> at the school receives a copy of the report within such period following receipt of the report by the authority as may be prescribed<sup>22</sup>.

1    Ie Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 18; and PARA 1168 ante.

2    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3). For the meaning of 'maintained school' see PARA 1178 note 6 ante.

3    Ie under *ibid* s 5 (see PARA 1173 ante). As to the schools to which s 5 applies see PARA 1173 ante.

As to the application of Pt 1 (ss 1-63), as modified by the omission of s 14(2)(b), (c) (see the text and notes 8-10 *infra*), in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

4    For these purposes, 'the appropriate authority', in relation to a maintained school, means the school's governing body or, if the school does not have a delegated budget, the local education authority: Education Act 2005 s 18. For the meaning of 'delegated budget' see PARA 320 ante; definition applied by s 63(1). As to the governing bodies of maintained schools in England see PARA 203 *et seq* ante. As to local education authorities see PARA 20 ante.

5    *Ibid* s 14(1).

6    As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 122(2), (3).

7    *Ibid* s 14(2)(a).

8    *Ibid* s 14(2)(b).

9 As to schools having foundation governors see PARA 104 et seq ante.

10 Education Act 2005 s 14(2)(c). For these purposes, 'the appropriate appointing authority', in relation to a voluntary aided school, means: (1) the appropriate diocesan authority, if it is a Church of England school, a Church in Wales school or a Roman Catholic Church school; or (2) in any other case, the person who appoints the foundation governors: s 18. For the meaning of 'the appropriate diocesan authority' see PARA 42 note 15 ante; definition applied by s 63(1). For the meaning of 'Church of England school' see PARA 42 note 15 ante; definition applied by s 63(1). For the meaning of 'Church in Wales school' see PARA 42 note 15 ante; definition applied by s 63(1). For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante; definition applied by s 63(1). As to voluntary schools see PARA 102 et seq ante.

11 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under ibid Pt 1 Ch 2 (ss 13-18): s 18. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante; and as to the making of regulations under Pt 1 see PARA 1173 note 2 ante. At the date at which this volume states the law, no regulations had been made in relation to s 14(2)(d).

12 Ibid s 14(2)(d).

13 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 122(2), (3).

14 Ibid s 14(3). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

15 Ie under ibid s 14(1) (see the text and notes 1-5 supra).

16 Ibid s 14(4)(a).

17 The appropriate authority may in all cases require payment of a fee (not exceeding the cost of supply) under ibid s 14(4)(b): Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 8. As to the application of reg 8 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

18 Education Act 2005 s 14(4)(b).

19 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).

20 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 122(2), (3).

21 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).

22 Ibid s 14(4)(c). A period of five working days from the date of receipt of the report by the authority has been prescribed for the purposes of s 14(4)(c): Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 6. As to the application of reg 6 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

## UPDATE

### 1179 Destination of reports of inspections of maintained schools

TEXT AND NOTES--The Chief Inspector must also ensure that a copy of any interim statement (see PARA 1176) about a maintained school is sent without delay to the appropriate authority for the school: see Education Act 2005 s 14A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 225(4)).

NOTES 3, 17, 22--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 21, 27.

NOTE 3--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

NOTE 10--In the definition of 'appropriate appointing authority' omit words ', a Church in Wales school': 2005 Act s 18 (amended by the Education and Inspections Act 2006 Sch 7 para 24, Sch 18 Pt 4).

NOTE 17--SI 2005/2038 reg 8 substituted: SI 2008/1723.



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### **1180. Special measures by appropriate authority in relation to maintained schools.**

Where, in a report of an inspection of a maintained school<sup>1</sup> carried out under his duty to inspect schools at prescribed intervals<sup>2</sup>, the Chief Inspector<sup>3</sup> stated: (1) that in his opinion special measures were required to be taken in relation to the school<sup>4</sup>; or (2) that in his opinion the school required significant improvement<sup>5</sup>, the local education authority<sup>6</sup> must:

- 2126 (a) prepare a written statement of any action it proposes to take in the light of the report, and the period within which it proposes to take such action, or, if it does not propose to take any such action, of its reasons for not doing so<sup>7</sup>; and
- 2127 (b) send a copy of the statement prepared under head (a) above to the Chief Inspector and, in the case of a voluntary aided school<sup>8</sup>, to the person who appoints the foundation governors<sup>9</sup> and, if different, to the appropriate appointing authority<sup>10</sup>.

It is the duty of the local education authority to prepare the statement within the period allowed, that is such period as may be prescribed<sup>11</sup>, or if the report states that the Chief Inspector is of the opinion that special measures are required to be taken in relation to the school<sup>12</sup>, and the Secretary of State is of the opinion that the urgency of the case requires a shorter period<sup>13</sup>, such shorter period as the Secretary of State may direct<sup>14</sup>. However, this does not relieve the local education authority of any duty to prepare a statement which has not been performed within that period<sup>15</sup>.

1 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3). For the meaning of 'maintained school' see PARA 1178 note 6 ante.

2 Ie under ibid s 5 (see PARA 1173 ante). As to the schools to which s 5 applies see PARA 1173 ante.

As to the application of Pt 1 (ss 1-63), as modified, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

3 Ie Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 18; and PARA 1168 ante.

4 Ibid s 15(1)(a). As to references to special measures being required to be taken in relation to a school see PARA 1178 note 3 ante.

5 Ibid s 15(1)(b). As to schools requiring significant improvement see PARA 1178 note 4 ante.

6 As to local education authorities see PARA 20 ante.

7 Education Act 2005 s 15(2)(a).

8 As to voluntary schools see PARA 102 et seq ante.

9 As to schools having foundation governors see PARA 104 et seq ante.

10 Education Act 2005 s 15(2)(b). For the meaning of 'the appropriate appointing authority' see PARA 1179 note 10 ante.

11 Ibid s 15(3)(a). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under Pt 1 Ch 2 (ss 13-18): s 18. As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante; and as to the making of regulations under Pt 1 see PARA 1173 note 2 ante. A period of ten working days from the date of receipt of the report by the local education authority has been prescribed for the purposes of s 15(3)(a): Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 7. As to the application of reg 7 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

12 Education Act 2005 s 15(3)(b)(i).

13 Ibid s 15(3)(b)(ii).

14 Ibid s 15(3)(b). As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.

15 Ibid s 15(3)(b).

## UPDATE

### **1180 Special measures by appropriate authority in relation to maintained schools**

NOTES 2, 11--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 21, 27.

NOTE 2--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

TEXT AND NOTES 7-10--Replaced. Now heads (a) consider what action to take in the light of the report; (b) consider what arrangements to make for the purpose of informing registered parents of the proposed action, ascertaining their views on the proposed action and taking account of those views; (c) consider whether those arrangements are to include the appointment of a specified person for that purpose; (d) prepare a written statement (i) of the action it proposes to take, and the period within which it proposes to take that action, or, if it does not propose to take such action, of its reasons for not doing so, and (ii) of the arrangements it proposes to make for the purpose mentioned in head (b); and (e) send a copy of the statement so prepared to (i) the Chief Inspector; (ii) in the case of a voluntary aided school, the person who appoints the foundation governors and, if different, the appropriate appointing authority, and (iii) such other persons as the Secretary of State may specify: 2005 Act s 15(2) (s 15(2), (2A)-(2C) substituted, s 15(4) added, by the Education and Inspections Act 2006 Sch 7 para 1(3), (5)). As to the Secretary of State's power to give a notice to the local education authority where the case of a particular school has become urgent, see the 2005 Act s 15(2A)-(2C). In performing its functions under s 15(2) and s 15(2B), the local education authority must have regard to any guidance given from time to time by the Secretary of State: s 15(4).

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**1181. Destination of reports of inspections of a school which is not a maintained school.**

The Chief Inspector<sup>1</sup> must ensure that a copy of the report of any inspection of a school other than a maintained school<sup>2</sup> carried out under his duty to inspect schools at prescribed intervals<sup>3</sup> is sent without delay to the proprietor<sup>4</sup> of the school<sup>5</sup>. In the case of a special school<sup>6</sup> which is not a community or foundation special school<sup>7</sup>, the proprietor must without delay send a copy of any such report to any local education authority<sup>8</sup> that is paying fees in respect of the attendance of a registered pupil<sup>9</sup> at the school<sup>10</sup>.

The proprietor of the school must:

- 2128 (1) make any report and summary sent to the authority<sup>11</sup> available for inspection by members of the public at such times and at such place as may be reasonable<sup>12</sup>;
- 2129 (2) provide a copy of the report and summary, free of charge or in prescribed cases on payment of such fee as it thinks fit, not exceeding the cost of supply<sup>13</sup>, to any person who asks for one<sup>14</sup>; and
- 2130 (3) take such steps as are reasonably practicable to secure that every registered<sup>15</sup> parent<sup>16</sup> of a registered pupil at the school receives a copy of the summary within such period following receipt of the report by the authority as may be prescribed<sup>17</sup>.

1    Ie Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 18; and PARA 1168 ante.

2    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3). For the meaning of 'maintained school' see PARA 1178 note 6 ante.

3    Ie under ibid s 5 (see PARA 1173 ante). As to the schools to which s 5 applies see PARA 1173 ante.

As to the application of Pt 1 (ss 1-63), as modified, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

4    For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

5    Ibid s 16(1).

6    As to special schools see PARA 1027 ante.

7    As to community and foundation special schools see PARA 102 et seq ante.

8    As to local education authorities see PARA 20 ante.

9    For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

10   Ibid s 16(2).

11   Ie under ibid s 16(1): see the text and notes 1-5 supra.

12 Ibid s 16(3)(a).

13 The proprietor may in all cases require payment of a fee (not exceeding the cost of supply) under ibid s 16(3)(b): Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 8. As to the application of reg 8 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

14 Education Act 2005 s 16(3)(b).

15 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).

16 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 122(2), (3).

17 Ibid s 16(3)(c). A period of five working days from the date of receipt of the report by the proprietor of the school has been prescribed for the purposes of s 16(3)(c): Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 6. As to the application of reg 6 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

## UPDATE

### **1181 Destination of reports of inspections of a school which is not a maintained school**

TEXT AND NOTES--The Chief Inspector must also ensure that a copy of any interim statement (see PARA 1176) about a school other than a maintained school is sent without delay to the proprietor of the school: see Education Act 2005 s 16A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 225(6)).

NOTES 3, 13, 17--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 21, 27.

NOTE 3--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

NOTE 13--SI 2005/2038 reg 8 substituted: SI 2008/1723.

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**1182. Statement to be prepared by proprietor of a school causing concern which is not a maintained school.**

Where there is sent to the proprietor<sup>1</sup> of a school<sup>2</sup> other than a maintained school<sup>3</sup> a report of any inspection carried out under the duty of the Chief Inspector<sup>4</sup> to inspect schools at prescribed intervals<sup>5</sup> in which the Chief Inspector states: (1) that he is of the opinion that special measures are required to be taken in relation to the school<sup>6</sup>; or (2) that he is of the opinion that the school requires significant improvement<sup>7</sup>, the proprietor of the school must prepare a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take it<sup>8</sup>.

It is the duty of the proprietor of the school to prepare the statement within the period allowed, that is such period as may be prescribed<sup>9</sup>, or if the report states that the Chief Inspector is of the opinion that special measures are required to be taken in relation to the school<sup>10</sup>, and the Secretary of State is of the opinion that the urgency of the case requires a shorter period<sup>11</sup>, such shorter period as the Secretary of State may direct<sup>12</sup>. However, this does not relieve the proprietor of the school of any duty to prepare a statement which has not been performed within that period<sup>13</sup>.

Where such a statement has been prepared by the proprietor of the school, he must, before the end of the prescribed period, send copies of it to the Chief Inspector<sup>14</sup>, and, in such circumstances as may be prescribed, to such other persons (if any) as may be prescribed<sup>15</sup>. In the case of a special school<sup>16</sup> which is not a community or foundation special school<sup>17</sup>, the proprietor of the school must, before the end of the prescribed period, send a copy of any such statement prepared by him to any local education authority<sup>18</sup> that is paying fees in respect of the attendance of a registered pupil<sup>19</sup> at the school<sup>20</sup>.

1 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3).

3 For the meaning of 'maintained school' see PARA 1178 note 6 ante.

As to the application of *ibid* Pt 1 (ss 1-63), as modified, in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 11. For the meaning of 'pupil referral unit' see PARA 457 ante.

4 *Ie* Her Majesty's Chief Inspector of Schools in England: see the Education Act 2005 s 18; and PARA 1168 ante.

5 *Ie* under *ibid* s 5 (see PARA 1173 ante).

6 *Ibid* s 17(1)(a). As to references to special measures being required to be taken in relation to a school see PARA 1178 note 3 ante.

7 *Ibid* s 17(1)(b). As to schools requiring significant improvement see PARA 1178 note 4 ante.

8 *Ibid* s 17(1).

9 *Ibid* s 17(2)(a). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under Pt 1 Ch 2 (ss 13-18) (see PARA 1178 *et seq* ante): s 18. As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1

ante; and as to the making of regulations under Pt 1 see PARA 1173 note 2 ante. A period of ten working days from the date of receipt of the report by the proprietor of the school has been prescribed for the purposes of s 17(2)(a): Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 7. As to the application of reg 7 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

10 Education Act 2005 s 17(2)(b)(i).

11 Ibid s 17(2)(b)(ii).

12 Ibid s 17(2)(b). As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.

13 Ibid s 17(2)(b).

14 Ibid s 17(3)(a).

15 Ibid s 17(3)(b). At the date at which this volume states the law, no regulations had been made in relation to s 17(3).

16 As to special schools see PARA 1027 ante.

17 As to community and foundation special schools see PARA 102 et seq ante.

18 As to local education authorities see PARA 20 ante.

19 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

20 Ibid s 17(4).

## UPDATE

### **1182 Statement to be prepared by proprietor of a school causing concern which is not a maintained school**

NOTES 3, 9--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 paras 21, 27.

NOTE 3--As to the application of the 2005 Act Pt 1, with modifications, in relation to pupil referral units in Wales see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 11.

TEXT AND NOTE 8--Now, where head (1) or (2) applies, the proprietor must (a) consider what action to take in the light of the report; (b) consider what arrangements to make for the purpose of informing registered parents of the proposed action, ascertaining their views on the proposed action and taking account of those views; (c) consider whether those arrangements are to include the appointment of a specified person for that purpose; and (d) prepare a written statement (i) of the action he proposes to take, and the period within which he proposes to take that action, or, if he does not propose to take such action, of his reasons for not doing so, and (ii) of the arrangements he proposes to make for the purpose mentioned in head (b): 2005 Act s 17(1A) (s 17(1) amended, s 17(1A)-(1D), (5) added by the Education and Inspections Act 2006 Sch 7 para 2(3), (5), Sch 18 Pt 4). As to the Secretary of State's power to give a notice to the proprietor where the case of the school has become urgent, see the 2005 Act s 17(1A)-(1D). In performing his functions under s 15(1A) and s 15(1C), the proprietor must have regard to any guidance given from time to time by the Secretary of State: s 17(5).

TEXT AND NOTE 14--The proprietor must also send a statement under the 2005 Act s 17(1C) to the Secretary of State: s 17(3)(aa) (added by the Education and Inspections Act 2006 Sch 7 para 2(4)).



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## **C. OTHER INSPECTIONS**

### **(A) INSPECTION OF RELIGIOUS EDUCATION**

#### **1183. Inspection of religious education.**

It is the duty of the governing body<sup>1</sup> of any voluntary or foundation school<sup>2</sup> in England<sup>3</sup>, which has been designated by the Secretary of State<sup>4</sup> as having a religious character<sup>5</sup>, to secure that denominational education<sup>6</sup> given to any pupils<sup>7</sup>, and the content of the school's collective worship<sup>8</sup>, are inspected<sup>9</sup>. Such an inspection must be conducted by a person chosen: (1) in the case of a voluntary controlled school, by the foundation governors<sup>10</sup> after consultation with any person prescribed<sup>11</sup> for these purposes in relation to the religion or religious denomination that is specified<sup>12</sup> in relation to the school<sup>13</sup>; and (2) by the governing body after consultation with any person so prescribed, in any other case<sup>14</sup>. Such inspections must be carried out at such intervals as may be prescribed<sup>15</sup>.

It is the general duty of a person conducting an inspection of religious education to report on the quality of the denominational education provided by the school for pupils to whom denominational education is given by the school<sup>16</sup>, or to report on the content of the school's collective worship<sup>17</sup>, and any such person may report on the spiritual, moral, social and cultural development of pupils at the school<sup>18</sup>. A person conducting such an inspection may do so with the assistance of such other persons chosen by him as are in his opinion fit and proper persons for carrying out the inspection<sup>19</sup>.

1 As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3). As to voluntary and foundation schools see PARA 102 et seq ante.

3 For the meaning of 'England' see PARA 52 note 11 ante.

4 As to the Secretary of State see PARA 52 ante.

5 Ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 note 9 ante).

6 In the Education Act 2005 Pt 1 (ss 1-63), 'denominational education', in relation to a school, means religious education which is required by the Education Act 2002 s 80(1)(a) (ie in relation to England: see PARA 914 ante) to be included in the school's basic curriculum (Education Act 2005 ss 47(a), 63(1)), but is not required by any enactment to be given in accordance with an agreed syllabus (ss 47(b), 63(1)). For the meaning of 'agreed syllabus' see PARA 947 note 2 ante; definition applied by virtue of s 122(2), (3). As to the curriculum in England see PARA 913 et seq ante.

7 Ibid s 48(1)(a). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 122(2), (3).

8 Ibid s 48(1)(b). In s 48 and s 49 (see PARA 1184 post), 'collective worship' means collective worship required by the School Standards and Framework Act 1998 s 70 (see PARA 957 ante): Education Act 2005 s 48(6).

9 Ibid s 48(1).

10 As to schools having foundation governors see PARA 104 et seq ante.



11 'Prescribed' means prescribed by regulations made by the Secretary of State: Education Act 2005 s 49(6). As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the persons prescribed for the purpose of s 48(2) see the Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 9. As to the application of reg 9 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15. For the meaning of 'pupil referral unit' see PARA 457 ante.

12 le specified under the School Standards and Framework Act 1998 s 69(4) (see PARA 951 note 9 ante).

13 Education Act 2005 s 48(2)(a).

14 Ibid s 48(2)(b).

15 Ibid s 48(3). The governing body must secure that any denominational education given to pupils and the content of the school's collective worship is inspected by 1 August 2009 and, following that inspection, must thereafter secure that further such inspections are carried out within three school years from the end of the school year in which the last such inspection took place: Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 10. As to the application of reg 10 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

16 Education Act 2005 s 48(4)(a).

17 Ibid s 48(4)(b).

18 Ibid s 48(4). As to combined reports under the inspection enactments see PARA 1186 post.

19 Ibid s 48(5).

## **UPDATE**

### **1183 Inspection of religious education**

NOTES 11, 15--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 27.

NOTE 15--SI 2005/2038 reg 10 substituted: SI 2009/1564.

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#### **1184. Procedure for inspection of religious education.**

An inspection<sup>1</sup> of denominational education<sup>2</sup> and collective worship<sup>3</sup> must be carried out within such period as may be prescribed<sup>4</sup>. When an inspection has been completed, the person conducting the inspection<sup>5</sup> must, before the end of the prescribed period<sup>6</sup>, prepare in writing a report of the inspection<sup>7</sup>. The person conducting the inspection must, without delay, send the report to the governing body<sup>8</sup> for the school<sup>9</sup> concerned<sup>10</sup>. The governing body must:

- 2131 (1) make any such report available for inspection by members of the public, at such times and at such a place as may be reasonable<sup>11</sup>;
- 2132 (2) take such steps as are reasonably practicable to secure that every parent<sup>12</sup> of a registered pupil<sup>13</sup> at the school for whom the school provides denominational education, or who takes part in acts of collective worship<sup>14</sup>, as the case may be, receives a copy of the report as soon as is reasonably practicable<sup>15</sup>; and
- 2133 (3) provide a copy of the report, free of charge or in prescribed cases on payment of such fee as it thinks fit, not exceeding the cost of supply<sup>16</sup>, to any other person who asks for one<sup>17</sup>.

1    Is carried out under the Education Act 2005 s 48 (see PARA 1183 ante).

2    For the meaning of 'denominational education' see PARA 1183 note 6 ante.

3    For the meaning of 'collective worship' see PARA 1183 note 8 ante.

4    Education Act 2005 s 49(1). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 49(6). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. For the purpose of s 49(1), there is prescribed, as the period within which an inspection must be carried out, the period of ten working days: Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 11(1). As to the application of reg 11 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15. For the meaning of 'pupil referral unit' see PARA 457 ante.

5    As to the persons conducting such an inspection see PARA 1183 ante.

6    For the purpose of the Education Act 2005 s 49(2), there is prescribed, as the period in which the person conducting the inspection must prepare a report in writing of the inspection, the period of 15 working days from completion of the inspection: Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 11(2). See also note 4 supra.

7    Education Act 2005 s 49(2). As to combined reports under the inspection enactments see PARA 1186 post.

8    As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

9    For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3). As to the schools to which ss 48, 49 apply see PARA 1183 ante.

10   Ibid s 49(3).

11   Ibid s 49(4)(a).

12   As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 122(2), (3).

13   For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).

14     le the content of which falls to be inspected under *ibid* s 48: see PARA 1183 ante.

15     *Ibid* s 49(4)(b).

16     The governing body may require payment of a fee (not exceeding the cost of supply) in all cases where it provides a copy of the report under *ibid* s 49(4)(c): see the Education (School Inspection) (England) Regulations 2005, SI 2005/2038, reg 12. As to the application of reg 12 in relation to pupil referral units see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 15.

17     Education Act 2005 s 49(4)(c).

## **UPDATE**

### **1184 Procedure for inspection of religious education**

NOTES 4, 16--SI 2005/2039 replaced: see now Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 27.

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## (B) INSPECTION BY LOCAL EDUCATION AUTHORITY

### **1185. Power of local education authority to inspect maintained school for specific purpose.**

Where, for the purpose of enabling it to exercise any of its functions<sup>1</sup>, a local education authority<sup>2</sup> requires information about any matter in connection with a school<sup>3</sup> which is maintained by it<sup>4</sup>, and it is not reasonably practicable for it to obtain the information in any other manner<sup>5</sup>, it may cause an inspection of the school to be made by one or more of its officers for the purpose of obtaining the information<sup>6</sup>.

An officer of a local education authority inspecting a school under this power has at all reasonable times a right of entry to the premises<sup>7</sup> of the school<sup>8</sup>.

1 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

2 As to local education authorities see PARA 20 ante.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

4 Ibid s 51(1)(a). As to maintained schools see PARA 102 et seq ante.

5 Ibid s 51(1)(b).

6 Ibid s 51(1).

7 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 122(2), (3).

8 Ibid s 51(2).

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## ***D. REPORTS UNDER THE INSPECTION ENACTMENTS***

### **1186. Combined reports under the inspection enactments.**

Where, following inspections conducted under two or more inspection enactments<sup>1</sup> by one person or two or more different persons, that person is, or those persons are, required to make a report under each of those enactments, nothing in any of those enactments is to be regarded as preventing him, or them, from<sup>2</sup>:

- 2134 (1) including those reports in a single document ('a combined report')<sup>3</sup>; and
- 2135 (2) to such extent as he considers, or they consider, appropriate, combining the substantive reports required by those enactments<sup>4</sup>.

Where a combined report is made, any reference in the inspection enactments to the publication of a report, or to the giving, or making available, to any person of a copy of a report is to be read so far as necessary as a reference to the publication of the combined report, or to the giving or making available to that person of a copy of the combined report<sup>5</sup>.

The Chief Inspector<sup>6</sup> may arrange for a combined report to be published in any manner he considers appropriate, but this does not limit any duty as to publication imposed by any of the inspection enactments<sup>7</sup>.

1 For the purposes of the Education Act 2005 s 59, 'the inspection enactments' are: (1) Pt 1 (ss 1-63) (see PARA 1167 et seq ante); (2) the Children Act 1989 Pt XA (ss 79A-79X) (as added) (child minding and day care for children: see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1070 et seq); (3) the School Standards and Framework Act 1998 s 122, Sch 26 (as amended) (nursery education: see PARA 1291 et seq post); and (4) the Education Act 2002 Pt 10 Ch 1 (ss 157-171) (as amended) (regulation of independent schools: see PARA 478 et seq ante): Education Act 2005 s 59(1).

2 Ibid s 59(2).

3 Ibid s 59(2)(a).

4 Ibid s 59(2)(b).

5 Ibid s 59(3).

6 Ie Her Majesty's Chief Inspector of Schools in England: see PARA 1168 ante.

7 Education Act 2005 s 59(4).

## **UPDATE**

### **1186 Combined reports under the inspection enactments**

TEXT AND NOTES--2005 Act s 59(2) applies to Her Majesty's Chief Inspector of Education and Training in Wales, but does not apply so as to authorise the making of a combined report by Her Majesty's Chief Inspector of Education, Children's Services and Skills (see PARA 1167A.1): see s 59(2A), (5) (added by the Education and Inspections Act 2006 Sch

14 para 105). Equivalent provision is made allowing the Her Majesty's Chief Inspector of Education, Children's Services and Skills to make combined reports in relation to reports required to be made by him under any enactment or enactments: see s 152.

NOTE 1--2005 Act s 59(1) amended: Childcare Act 2006 Sch 2 para 44, Sch 3 Pt 2. As from a day to be appointed 2005 Act s 59(1) further amended: Education and Skills Act 2008 Sch 1 para 28, Sch 2.

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## **(ii) Inspection of Schools in Wales**

### ***A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996***

#### **(A) HER MAJESTY'S INSPECTORATE**

##### **1187. In general.**

Until a day to be appointed, the School Inspections Act 1996, which repealed and replaced the Education (Schools) Act 1992 and parts of the Education Act 1993, makes provision as regards the inspection of schools in Wales<sup>1</sup>.

The repeal, or revocation, and re-enactment of provisions by the School Inspections Act 1996 does not affect the continuity of the law<sup>2</sup>, and this has effect subject to any amendments of the law which give effect to recommendations of the Law Commission<sup>3</sup>. Any subordinate legislation made or other thing done, or having effect as if done, under or for the purposes of any provision repealed and re-enacted by the School Inspections Act 1996, if in force or effective immediately before the commencement of the corresponding provision of that Act, has effect after that as if made or done under or for the purposes of that corresponding provision<sup>4</sup>. Any reference, express or implied, in any enactment or in any instrument or document to any provision repealed and re-enacted by the School Inspections Act 1996, or to things done or falling to be done under or for the purposes of any such provision, must (so far as the context permits) be construed as including, in relation to times, circumstances or purposes in relation to which the corresponding provision of that Act has effect, a reference, as the case may be, to that corresponding provision, or to things done or falling to be done under or for the purposes of that corresponding provision<sup>5</sup>.

Any reference to an enactment repealed by the School Inspections Act 1996 which is contained in a document made, served or issued after the commencement of that repeal must be construed, except so far as a contrary intention appears, as a reference to or, as the context may require, including a reference to the corresponding provision of the School Inspections Act 1996<sup>6</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the School Inspections Act 1996 see PARA 1188 et seq post; and as to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 School Inspections Act 1996 s 47(3), Sch 8 para 1(1). See note 1 supra.

3 Ibid Sch 8 para 1(6). Schedule 8 para 1(1)-(5) has effect instead of the Interpretation Act 1978 s 17(2) (but is without prejudice to any other provision of the Interpretation Act 1978): School Inspections Act 1996 Sch 8 para 1(6). See note 1 supra.

4 Ibid Sch 8 para 1(2). Any reference, express or implied, in the School Inspections Act 1996 or any other enactment or in any instrument or document to any provision of that Act, or to things done or falling to be done under or for the purposes of any provision of that Act, must (so far as the context permits) be construed as including, in relation to times, circumstances or purposes in relation to which the corresponding provision repealed by that Act had effect, a reference, as the case may be, to that corresponding provision, or to things done or falling to be done under or for the purposes of that corresponding provision: Sch 8 para 1(3). See note 1 *supra*.

5 Ibid Sch 8 para 1(4). Without prejudice to the generality of Sch 8 para 1(4), where a power conferred by an Act is expressed to be exercisable in relation to enactments contained in Acts passed before or in the same session as the Act conferring the power, the power is also exercisable in relation to provisions of the School Inspections Act 1996 which reproduce such enactments: Sch 8 para 1(5). See note 1 *supra*.

6 Ibid Sch 8 para 2. Section 5(9) (as substituted and amended) (offence wilfully to obstruct the Chief Inspector for Wales in the exercise of his functions: see PARA 1192 post) does not have effect in relation to anything done before it came into force: Sch 8 para 3. See note 1 *supra*.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(A) Her Majesty's Inspectorate/1188. Her Majesty's Inspectorate of Schools in Wales.

### **1188. Her Majesty's Inspectorate of Schools in Wales.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Her Majesty may by Order in Council appoint a person to the office of Her Majesty's Chief Inspector of Education and Training in Wales (or 'Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru') ('the Chief Inspector for Wales')<sup>2</sup>. Her Majesty may also by Order in Council appoint persons as Her Majesty's Inspectors of Education and Training in Wales (or 'Arolgwyr Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru')<sup>3</sup>. Any person appointed as one of Her Majesty's Inspectors of Education and Training in Wales must serve, in accordance with the terms and conditions on which he is appointed, as a member of the staff of the Chief Inspector for Wales<sup>4</sup>. The Chief Inspector for Wales holds and vacates office in accordance with the terms of his appointment, but: (1) must not be appointed for a term of more than five years<sup>5</sup>; (2) may at any time resign by giving written notice to the National Assembly for Wales<sup>6</sup>; and (3) may be removed from office by Her Majesty on the ground of incapacity or misconduct<sup>7</sup>. The previous appointment of a person as Chief Inspector for Wales does not affect his eligibility for re-appointment<sup>8</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 School Inspections Act 1996 s 4(1) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(a)). See note 1 supra. The Education (Chief Inspector of Education and Training in Wales) Order 2002, SI 2002/260, has been made under the School Inspections Act 1996 s 4(1) (as amended). See note 1 supra. As to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 post.

3 School Inspections Act 1996 s 4(2) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(b)). See note 1 supra. The following Orders in Council have been made under the School Inspections Act 1996 s 4(2) (as amended) or, by virtue of s 47(3), Sch 8 para 1(2) (see PARA 1187 ante), have effect as if so made: the Education (Inspectors of Schools in Wales) Order 1992, SI 1992/1740 (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)); the Education (Inspectors of Schools in Wales) Order 1995, SI 1995/1628 (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)); the Education (Inspectors of Schools in Wales) Order 1998, SI 1998/1078 (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)); the Education (Inspectors of Schools in Wales) (No 2) Order 1998, SI 1998/1765 (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)); the Education (Inspectors of Schools in Wales) Order 1999, SI 1999/657 (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)); the Education (Inspectors of Schools in Wales) (No 2) Order 1999, SI 1999/1129 (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)); the Education (Inspectors of Schools in Wales) (No 3) Order 1999, SI 1999/2039 (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)); the Education (Inspectors of Education and Training in Wales) Order 2001, SI 2001/1455; the Education (Inspectors of Education and Training in Wales) (No 2) Order 2001, SI 2001/3505; the Education (Inspectors of Education and Training in Wales) Order 2002, SI 2002/1079; the Education (Inspectors of Education and Training in Wales) (No 2) Order 2002, SI 2002/2632; and the Education (Inspectors of Education and Training in Wales) Order 2003, SI 2003/3205.

4 School Inspections Act 1996 s 4(3) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(b)). See note 1 supra.

5 School Inspections Act 1996 s 4(4)(a). See note 1 supra.

6 Ibid s 4(4)(b). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 Ibid s 4(4)(c). See note 1 supra.

8 Ibid s 4(5). Further provision is made by Sch 1 (as amended) (see PARAS 1189-1191 post) with respect to the Chief Inspector and his staff: s 4(6). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(A) Her Majesty's Inspectorate/1189. Power of the Chief Inspector to appoint staff and additional inspectors.

### **1189. Power of the Chief Inspector to appoint staff and additional inspectors.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> may, with the approval of the National Assembly for Wales<sup>3</sup> as to numbers and terms and conditions of service, appoint such staff, in addition to inspectors who are members of his staff<sup>4</sup>, as he thinks fit<sup>5</sup>.

Further, the Chief Inspector may arrange for such persons as he thinks fit to assist him in the discharge of any of his functions<sup>6</sup> in relation to a particular case or class of case<sup>7</sup>. Such an additional inspector acting within the authority conferred on him by the Chief Inspector has all the powers of an inspector<sup>8</sup>. Any arrangements which provide for assistance by persons who are not members of the Chief Inspector's staff must be made on terms agreed by him with the Assembly<sup>9</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 In relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 In virtue of the School Inspections Act 1996 s 4(3) (as amended) (see PARA 1188 ante): s 1(6), Sch 1 para 1. See note 1 supra.

5 Ibid Sch 1 para 1 (amended by the Education Act 2002 s 188, Sch 16 para 9(1), (2)). See note 1 supra.

6 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

7 Ibid Sch 1 para 2(1). Any person assisting the Chief Inspector under any such arrangements is known as an 'additional inspector': Sch 1 para 2(2). See note 1 supra.

8 Ibid Sch 1 para 2(4). See note 1 supra.

9 Ibid Sch 1 para 2(3) (amended by the Education Act 2002 Sch 16 para 9(1), (3)). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(A) Her Majesty's Inspectorate/1190. Remuneration, pensions etc of the Chief Inspector.

### **1190. Remuneration, pensions etc of the Chief Inspector.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

There is paid to the Chief Inspector<sup>2</sup> such remuneration, and such travelling and other allowances, as the National Assembly for Wales<sup>3</sup> may determine<sup>4</sup>. In the case of any such Chief Inspector as may be determined by the Assembly, there must be paid such pension, allowance or gratuity to or in respect of him, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined<sup>5</sup>. If, when any person ceases to hold office as Chief Inspector, the Assembly determines that there are special circumstances which make it right that he should receive compensation, there may be paid to him such sum by way of compensation as may be determined by the Assembly<sup>6</sup>. Any determination of the Assembly under these provisions requires the approval of the Minister for the Civil Service<sup>7</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 In relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 School Inspections Act 1996 s 1(6), Sch 1 para 3(1). See note 1 supra.

5 Ibid Sch 1 para 3(2). See note 1 supra.

6 Ibid Sch 1 para 3(3). See note 1 supra.

7 Ibid Sch 1 para 3(4); National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 2, Sch 1. See note 1 supra. As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 395, 427.

### **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(A) Her Majesty's Inspectorate/1191. Official seal of the Chief Inspector and performance of functions.

### **1191. Official seal of the Chief Inspector and performance of functions.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> has an official seal for the authentication of documents required for the purposes of his functions<sup>3</sup>. Anything authorised or required by or under Part I of the School Inspections Act 1996<sup>4</sup> or any other enactment to be done by the Chief Inspector may be done by any of Her Majesty's Inspectors of Education and Training in Wales (or 'Arolgwyr Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru'), any other member of his staff, or any additional inspector<sup>5</sup>, who is authorised generally or specially in that behalf by the Chief Inspector<sup>6</sup>. The Chief Inspector and any person authorised on his behalf are to be treated as certifying officers for the purposes of proving certain documents<sup>7</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 Ibid s 1(6), Sch 1 para 4. See note 1 supra. As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 46(4). As to the functions of the Chief Inspector under the School Inspections Act 1996 see PARA 1192 post.

4 Ie ibid Pt I (ss 4-25) (as amended): see PARA 1188 et seq ante.

5 As to additional inspectors appointed under the School Inspections Act 1996 see PARA 1189 ante.

6 School Inspections Act 1996 Sch 1 para 5(2) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(b)). Without prejudice to the generality of the School Inspections Act 1996 Sch 1 para 5(2) (as amended), the references to the Chief Inspector in s 5(8), (9) (as substituted and amended) (see PARA 1192 post) include references to any person authorised to act on his behalf under Sch 1 para 5(2) (as amended): Sch 1 para 5(3) (amended by the Education Act 1997 s 42, Sch 6 paras 1, 9). See note 1 supra.

7 See the Documentary Evidence Act 1868 s 2, Schedule (both as amended); School Inspections Act 1996 Sch 1 para 6. See note 1 supra. As to the Documentary Evidence Act 1868 see CIVIL PROCEDURE vol 11 (2009) PARAS 892-894.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

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### **1192. Functions of the Chief Inspector.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> has the general duty of keeping the National Assembly for Wales<sup>3</sup> informed about:

- 2136 (1) the quality of the education provided by schools in Wales<sup>4</sup>;
- 2137 (2) the educational standards achieved in those schools<sup>5</sup>;
- 2138 (3) the quality of the leadership in and management of those schools, including whether the financial resources made available to those schools are managed efficiently<sup>6</sup>; and
- 2139 (4) the spiritual, moral, social and cultural development of pupils<sup>7</sup> at those schools<sup>8</sup>.

When asked to do so by the Assembly, the Chief Inspector must give advice to the Assembly on such matters as may be specified in its request<sup>9</sup>, and inspect and report on such school, or class of school, in Wales as may be so specified<sup>10</sup>.

The Chief Inspector has, in addition, the following specific duties:

- 2140 (a) establishing and maintaining the register of inspectors<sup>11</sup>;
- 2141 (b) giving guidance to inspectors registered in that register, and such other persons as he considers appropriate, in connection with inspections of schools in Wales<sup>12</sup> and the making of reports of such inspections<sup>13</sup>;
- 2142 (c) keeping under review the system of inspecting schools<sup>14</sup> and, in particular, the standard of such inspections and of the reports made by registered inspectors<sup>15</sup>;
- 2143 (d) keeping under review the extent to which any requirement imposed by or under the School Inspections Act 1996, or any other enactment, on any registered inspector, local education authority<sup>16</sup>, proprietor<sup>17</sup> of a school or governing body<sup>18</sup> in relation to inspections of schools in Wales is complied with<sup>19</sup>;
- 2144 (e) promoting efficiency in the conduct and reporting of inspections of schools in Wales by encouraging competition in the provision of services by registered inspectors<sup>20</sup>.

The Chief Inspector may at any time give advice to the Assembly on any matter connected with schools, or a particular school, in Wales<sup>21</sup>. The Chief Inspector has such other functions<sup>22</sup> in connection with schools in Wales, including functions with respect to the training of teachers for such schools, as may be assigned to him by the Assembly<sup>23</sup>. In exercising his functions the Chief Inspector must have regard to such aspects of government policy as the Assembly may direct<sup>24</sup>. The Chief Inspector:

- 2145 (i) must make an annual report to the Assembly, which must publish the matter contained in the report<sup>25</sup>;
- 2146 (ii) may make such other reports to the Assembly, with respect to matters which fall within the scope of his functions, as he considers appropriate<sup>26</sup>; and

- 2147 (iii) may arrange for any such report made by him<sup>27</sup> to be published in such manner as he considers appropriate<sup>28</sup>.

For the purposes of the exercise of any function so conferred the Chief Inspector<sup>29</sup> has at all reasonable times:

- 2148 (A) a right of entry to the premises<sup>30</sup> of any school in Wales<sup>31</sup>;
- 2149 (B) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he requires for those purposes<sup>32</sup>;
- 2150 (C) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in Wales, any pupils who are registered<sup>33</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>34</sup>, are provided with part of their education by any person ('the provider')<sup>35</sup>;
- 2151 (D) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>36</sup>; and
- 2152 (E) a right to inspect and take copies of any records kept by the provider relating to the provision of that education, and any other documents containing information so relating, which the Chief Inspector requires for those purposes<sup>37</sup>.

It is an offence wilfully to obstruct the Chief Inspector in the exercise of his functions in relation to the inspection of a school<sup>38</sup>, or in the exercise of any right of entry, inspection, and copying of records and documents<sup>39</sup> for the purposes of the exercise of any other function<sup>40</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>41</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 le in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 School Inspections Act 1996 s 5(1)(a). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). Section 5 (as amended) does not apply in relation to education which is brought within the remit of Her Majesty's Chief Inspector of Education and Training in Wales by the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively amended) (extended remit of the Chief Inspector: see PARA 1331 et seq post): School Inspections Act 1996 s 5(11) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 65). See note 1 supra.

5 School Inspections Act 1996 s 5(1)(b). See note 1 supra.

6 Ibid s 5(1)(c) (substituted by the Education Act 2002 s 188, Sch 16 para 2). See note 1 supra.

7 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

8 Ibid s 5(1)(d). See note 1 supra.

9 Ibid s 5(2)(a). See note 1 supra.

10 Ibid s 5(2)(b). See note 1 supra.

- 11 Ibid s 5(3)(a). See note 1 supra. The text refers to the register established under s 7(2): see PARA 1194 post.
- 12 Ie under ibid s 10 (as amended) (see PARA 1200 post) so far as it relates to schools in Wales: s 5(3)(b). See note 1 supra.
- 13 Ibid s 5(3)(b). See note 1 supra.
- 14 Ie under ibid s 10 (as amended) (see PARA 1200 post). See note 1 supra.
- 15 Ibid s 5(3)(c). See note 1 supra. For the meaning of 'registered inspector' see PARA 1194 note 5 post.
- 16 As to local education authorities see PARA 20 ante.
- 17 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.
- 18 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.
- 19 School Inspections Act 1996 s 5(3)(d). See note 1 supra.
- 20 Ibid s 5(3)(e). See note 1 supra.
- 21 Ibid s 5(4). See note 1 supra.
- 22 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.
- 23 Ibid s 5(5). See note 1 supra. In respect of childcare see the Education Act 2002 s 151(2); and PARA 1164 note 3 ante.
- 24 School Inspections Act 1996 s 5(6); and see the Government of Wales Act 1998 s 45. The reference to 'government policy' is a reference to policy adopted or formulated by the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. See note 1 supra.
- 25 School Inspections Act 1996 s 5(7)(a). See note 1 supra. The annual report of the Chief Inspector required by s 5(7)(a) must include an account of the exercise of the functions imposed or conferred on him by the School Standards and Framework Act 1998 s 122(1), Sch 26 (as amended) (nursery education: see PARA 1295 et seq post): Sch 26 para 14. As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 14 is substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 21: see PARA 1231 post. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.
- 26 School Inspections Act 1996 s 5(7)(b). See note 1 supra. The power conferred by s 5(7)(b) to make other reports includes a power to make reports with respect to matters which fall within the scope of his functions by virtue of the School Standards and Framework Act 1998 Sch 26 (as amended) (see PARA 1295 et seq post): Sch 26 para 14 (prospectively substituted: see note 25 supra).
- 27 Ie any report made under the School Inspections Act 1995 s 5(7). See note 1 supra.
- 28 Ibid s 5(7)(c). See note 1 supra.
- 29 Without prejudice to the generality of ibid Sch 1 para 5(2) (as amended) (see PARA 1191 ante), the references to the Chief Inspector in s 5(8), (9) (as substituted and amended) (see the text and notes 30-32, 38-40 infra) include references to any person authorised to act on his behalf under Sch 1 para 5(2) (as amended): Sch 1 para 5(3) (amended by the Education Act 1997 s 42, Sch 6 paras 1, 9). See note 1 supra.
- 30 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.
- 31 Ibid s 5(8)(a) (s 5(8), (9) substituted by the Education Act 1997 s 42, Sch 6 paras 1, 3). See note 1 supra.
- 32 School Inspections Act 1996 s 5(8)(b) (as substituted: see note 31 supra). Any person authorised by any provision of Pt I (ss 4-25) (as amended) (see PARA 1188 et seq ante) to inspect records or other documents: (1) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question; and (2) may require the person by whom or on whose behalf the computer is or has



been so used, or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such assistance as he may reasonably require, including, in particular, the making of information available for inspection or copying in a legible form: s 42 (amended by the Education Act 1997 s 42, Sch 6 paras 1, 8). See note 1 supra.

33 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

34 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

35 Ibid s 5(8A)(a) (s 5(8A) added by the Education Act 2002 s 179(1), (4)(a)). See note 1 supra.

36 School Inspections Act 1996 s 5(8A)(b) (as added: see note 35 supra). See note 1 supra.

37 Ibid s 5(8A)(c) (as added: see note 35 supra). See note 1 supra. See also note 32 supra.

38 Ie for the purposes of ibid s 5(2)(b): see the text to note 10 supra. See note 1 supra.

39 Ie under ibid s 5(8) (as substituted) (see heads (A), (B) in the text) or under s 5(8A) (as added) (see heads (C)-(E) in the text). See note 1 supra.

40 Ibid s 5(9) (as substituted (see note 31 supra); and amended by the Education Act 2002 s 179(1), (4)(b)). See note 1 supra.

41 School Inspections Act 1996 s 5(10). The fine must not exceed level 4 on the standard scale: s 5(10). See note 1 supra. As to the standard scale see PARA 481 note 4 ante.

## **UPDATE**

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### **1193. Power of Chief Inspector to arrange for inspections.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> may cause any school<sup>3</sup> in Wales to be inspected by one or more of Her Majesty's Inspectors of Education and Training in Wales<sup>4</sup>. Where an inspection of a school in Wales is being conducted by a registered inspector<sup>5</sup>, the Chief Inspector may arrange for that inspection to be monitored by one or more of Her Majesty's Inspectors of Education and Training in Wales<sup>6</sup>. Any of Her Majesty's Inspectors of Education and Training in Wales inspecting a school or monitoring an inspection has at all reasonable times:

- 2153 (1) a right of entry to the premises<sup>7</sup> of the school<sup>8</sup>;
- 2154 (2) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who are registered<sup>9</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>10</sup>, are receiving part of their education from any person ('the provider')<sup>11</sup>;
- 2155 (3) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>12</sup>;
- 2156 (4) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he considers relevant to the discharge of his functions<sup>13</sup>; and
- 2157 (5) a right to inspect and take copies of any records kept by the provider relating to the provision of education for pupils registered at the school, and any other documents containing information so relating, which the inspector considers relevant to the discharge of his functions<sup>14</sup>.

It is an offence wilfully to obstruct any of Her Majesty's Inspectors of Education and Training in Wales in the exercise of any of these functions<sup>15</sup>, and a person guilty of such an offence is liable on summary conviction to a fine<sup>16</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 In relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

4 Ibid s 6(1) (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b)). An inspection of a school conducted under the School Inspections Act 1996 s 6(1) (as amended) may not extend to any education of a kind brought within the remit of Her Majesty's Chief Inspector of Education and Training in Wales by the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively amended) (extended remit of the Chief

Inspector: see PARA 1331 et seq post) that is provided by the school: School Inspections Act 1996 s 6(6) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 66). See note 1 supra. The Learning and Skills Act 2000 Sch 9 para 66 refers to the School Inspections Act 1996 s 6(11), but it is submitted that the reference should be a reference to s 6(6). As to the appointment of inspectors see PARA 1188 ante.

5 le under the School Inspections Act 1996 s 10 (as amended) (see PARA 1200 post). See note 1 supra. For the meaning of 'registered inspector' see PARA 1194 note 5 post.

6 Ibid s 6(2). See note 1 supra.

7 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 46(4). See note 1 supra.

8 Ibid s 6(3)(a). See note 1 supra.

9 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

10 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

11 Ibid s 6(3)(aa) (added by the Education Act 2002 s 179(1), (5)(a)). See note 1 supra.

12 School Inspections Act 1996 s 6(3)(ab) (added by the Education Act 2002 s 179(1), (5)(a)). See note 1 supra.

13 School Inspections Act 1996 s 6(3)(b). As to the inspection of computers and associated apparatus or material used in connection with the records or other documents in question see PARA 1192 note 32 ante. As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 46(4). See note 1 supra.

14 Ibid s 6(3)(c) (added by the Education Act 2002 s 179(1), (5)(b)). See notes 1, 13 supra.

15 School Inspections Act 1996 s 6(4). See note 1 supra.

16 Ibid s 6(5). The fine must not exceed level 4 on the standard scale: s 6(5). See note 1 supra. As to the standard scale see PARA 481 note 4 ante.

## **UPDATE**

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## (B) REGISTERED INSPECTORS

### **1194. Registration of inspectors.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

No person may conduct an inspection of any school<sup>2</sup> in Wales<sup>3</sup> unless he is registered as an inspector in a register kept by the Chief Inspector<sup>4</sup> for the purposes of Part I of the School Inspections Act 1996<sup>5</sup>. The Chief Inspector must not register<sup>6</sup> a person unless, having regard to any conditions that he proposes to impose<sup>7</sup>, it appears to him that that person: (1) is a fit and proper person for discharging the functions<sup>8</sup> of a registered inspector<sup>9</sup>; and (2) will be capable of conducting inspections under Part I of the School Inspections Act 1996 competently and effectively<sup>10</sup>, and no person may be so registered if he falls within a category of persons prescribed<sup>11</sup> for these purposes<sup>12</sup>.

An application for registration must be made in such manner, and be accompanied by such particulars, as the Chief Inspector may direct, and it must be accompanied by the prescribed fee<sup>13</sup>. On an application duly made, the Chief Inspector: (a) register the applicant<sup>14</sup>; (b) refuse to register him<sup>15</sup>; or (c) register him subject to such conditions as the Chief Inspector considers it appropriate to impose<sup>16</sup>. Conditions imposed under head (c) above may be conditions applying generally in relation to all cases or particular classes of case, or such conditions together with specific conditions applying in the particular case<sup>17</sup>. Where a person is registered subject to such conditions, he must be taken to be authorised to act as a registered inspector only so far as those conditions permit<sup>18</sup>. The period for which any registration has effect must be determined by the Chief Inspector and must be entered in the register kept by him<sup>19</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

3 Ie under ibid s 10(2): see PARA 1200 post. See note 1 supra.

4 Ie in relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

5 Ibid s 7(2). The text refers to Pt I (ss 4-25) (as amended): see PARA 1188 et seq ante. Section 7(2) has effect subject to s 12 (as amended) (inspections by members of the inspectorate: see PARA 1208 post): s 7(10). 'Registered inspector' means a person so registered under s 7(2): s 46(1). See note 1 supra.

6 Ie under ibid s 7. See note 1 supra.

7 Ie under ibid s 7(5)(c) (see the text to note 16 infra). For the purposes of the School Inspections Act 1996, any reference to a condition imposed under s 7(5)(c) includes a reference to a condition imposed under s 8(3) (see PARA 1195 post): s 46(3). See note 1 supra.

8 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 46(4). See note 1 *supra*.

9 *Ibid* s 7(3)(a). See note 1 *supra*.

10 *Ibid* s 7(3)(b). See note 1 *supra*.

11 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). At the date at which this volume states the law, no regulations had been made under s 7(3) (as amended). See note 1 *supra*.

Any power conferred by the School Inspections Act 1996 to make an order or regulations is exercisable by statutory instrument: s 45(1) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 201(a), Sch 31). Any order or regulations made under the School Inspections Act 1996 may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the National Assembly for Wales thinks fit: s 45(3). Without prejudice to the generality of s 45(3), any such regulations may include provision for the designation by the National Assembly for Wales, in accordance with the regulations, of particular schools or classes of school for the purposes of the application of particular provisions of the regulations in relation to such schools: s 45(4). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

12 *Ibid* s 7(3) (amended by the School Standards and Framework Act 1998 s 135, Sch 28 para 2). See note 1 *supra*. The text refers to a category of persons prescribed for the purposes of the School Inspections Act 1996 s 7(3) (as amended). See note 11 *supra*.

13 *Ibid* s 7(4). See note 1 *supra*.

14 *Ibid* s 7(5)(a). See note 1 *supra*.

15 *Ibid* s 7(5)(b). See note 1 *supra*. At the date at which this volume states the law, no such regulations had been made for these purposes under s 7 (as amended). However, by virtue of s 47(3), Sch 8 para 1(2) (see PARA 1187 ante) the Education (Registered Inspectors) (Fees) Regulations 1992, SI 1992/2025, have effect as if so made. The prescribed fee is £150: art 2. Any sums received by the Chief Inspector under the School Inspections Act 1996 s 7(4)(b) must be paid into the Consolidated Fund: s 43(a). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

16 *Ibid* s 7(5)(c). See note 1 *supra*.

17 *Ibid* s 7(6). See note 1 *supra*.

18 *Ibid* s 7(7). See note 1 *supra*.

19 *Ibid* s 7(8). Nothing in s 7(8) is to be taken as preventing a registered inspector from applying for a fresh registration to take effect immediately on the expiry of his current registration: s 7(9). See note 1 *supra*.

## UPDATE

### 1187-1225 Inspection of Schools under the School Inspections Act 1996

Repeal of these provisions now in force: SI 2006/1338.

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### **1195. Removal from register and imposition or variation of conditions.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

If the Chief Inspector<sup>2</sup> is satisfied that any of the conditions mentioned in heads (1) to (4) below is satisfied with respect to an inspector registered in his register, he may remove the name of that inspector from that register<sup>3</sup>. The conditions are that:

- 2158 (1) he is no longer a fit and proper person for discharging the functions<sup>4</sup> of a registered inspector<sup>5</sup> under Part I of the School Inspections Act 1996<sup>6</sup>;
- 2159 (2) he is no longer capable of conducting inspections under Part I of the School Inspections Act 1996 competently and effectively<sup>7</sup>;
- 2160 (3) there has been a significant failure on his part to comply with any condition imposed by the Chief Inspector<sup>8</sup> subject to which his registration has effect<sup>9</sup>;
- 2161 (4) he has, without reasonable explanation, produced a report of an inspection which is, in whole or in part, seriously misleading<sup>10</sup>.

If the Chief Inspector is satisfied that he is thereby authorised to remove the name of an inspector from his register, or that it would otherwise be in the public interest to act, he may vary any condition subject to which the registration of that inspector has effect or vary that registration by imposing a condition subject to which it has effect<sup>11</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 Ibid s 8(1). See note 1 supra.

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

5 For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

6 School Inspections Act 1996 8(2)(a). The text refers to Pt I (ss 4-25) (as amended): see PARA 1188 et seq ante. See note 1 supra.

7 Ibid s 8(2)(b). See note 1 supra.

8 Ie imposed under ibid s 7(5)(c) (see PARA 1194 ante). For the purposes of the School Inspections Act 1996, any reference to a condition imposed under s 7(5)(c) includes a reference to a condition imposed under s 8(3) (see the text to note 11 infra): s 46(3). See note 1 supra.

9 Ibid s 8(2)(c). See note 1 supra.

10 Ibid s 8(2)(d) (amended by the Education Act 1997 s 42, Sch 6 paras 1, 4). See note 1 supra.

11 School Inspections Act 1996 s 8(3). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(B) Registered Inspectors/1196. Appeals in relation to registration.

### **1196. Appeals in relation to registration.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Any person who is aggrieved<sup>2</sup> by: (1) the refusal of the Chief Inspector<sup>3</sup> to renew his registration<sup>4</sup>; (2) the imposition or variation of any condition subject to which he is so registered<sup>5</sup>; or (3) the removal of his name from the relevant register<sup>6</sup>, may appeal against the Chief Inspector's decision to a tribunal<sup>7</sup>.

No such decision of the Chief Inspector has effect until the disposal of any appeal against it<sup>8</sup>, or the period within which an appeal may be made has expired without an appeal having been made<sup>9</sup>, unless the Chief Inspector: (a) is satisfied that the circumstances of the case justify the decision in question taking effect immediately, or earlier than would otherwise be the case<sup>10</sup>; and (b) notifies the person concerned to that effect<sup>11</sup>.

On determining any such appeal, the tribunal may confirm, reverse or vary the decision appealed against<sup>12</sup>, or it may remit the case to the Chief Inspector with directions as to the action to be taken by him<sup>13</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

3 In relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

4 Ibid s 9(1)(a). The text refers to registration under s 7 (as amended): see PARA 1194 ante. See note 1 supra.

5 Ibid s 9(1)(b). See note 1 supra. See also note 4 supra.

6 Ibid s 9(1)(c). The text refers to the removal of his name under s 8 (as amended): see PARA 1195 ante. See note 1 supra.

7 Ibid s 9(1). The text refers to a tribunal constituted in accordance with Sch 2 (see PARAS 1197-1198 post). Further provision is made by Sch 2 with respect to tribunals constituted to hear appeals under s 9 (as amended): s 9(5). See note 1 supra. As to the regulations that have been made under s 9(5), Sch 2 see the Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999, SI 1999/265 (amended by SI 2001/1149).

8 School Inspections Act 1996 s 9(2)(a). The text refers to any appeal which is duly made under s 9 (as amended): s 9(2)(a). See note 1 supra.

9 Ibid s 9(2)(b). See note 1 supra.

10 Ibid s 9(3)(a) (amended by the School Standards and Framework Act 1998 ss 135, 140(3), Sch 28 para 3, Sch 31). See note 1 supra.

11 School Inspections Act 1996 s 9(3)(b). See note 1 supra.



12 Ibid s 9(4)(a). See note 1 supra.

13 Ibid s 9(4)(b). See note 1 supra.

### **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(B) Registered Inspectors/1197. Constitution of tribunals.

### **1197. Constitution of tribunals.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

A tribunal constituted to hear an appeal<sup>2</sup> consists of a chairman appointed by the Lord Chancellor<sup>3</sup>, and two other members appointed by the National Assembly for Wales<sup>4</sup>. To be qualified for appointment as chairman of a tribunal, a person must have a seven year general qualification<sup>5</sup>. A person must not be appointed after the day on which he attains the age of 70 to be the chairman of a tribunal<sup>6</sup>.

The Assembly may make such provision as it thinks fit for: (1) the allocation of staff for any tribunal<sup>7</sup>; (2) the remuneration of members of tribunals and the reimbursement of their expenses<sup>8</sup>; and (3) defraying any reasonable expenses incurred by any tribunal<sup>9</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie under the School Inspections Act 1996 s 9 (as amended): see PARA 1196 ante. See note 1 supra.

3 Any recommendation or appointment to the office of chairman of a tribunal in exercise of the function under ibid Sch 2 para 1(1) must be made, by virtue of the Constitutional Reform Act 2005 s 85(1)(b), Sch 14 Pt 3, in accordance with ss 85-93, 96: see COURTS. Any function of the Lord Chancellor under the School Inspections Act 1996 Sch 2 para 1(1) is a 'protected function' within the meaning of the Constitutional Reform Act 2005 and may not be transferred, modified or abolished by an order under s 19(1): see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

4 School Inspections Act 1996 s 9(5), Sch 2 para 1(1). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The appeal tribunal constituted in accordance with Sch 2 is under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1)(a), Sch 1 Pt I (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

5 School Inspections Act 1996 Sch 2 para 1(2). See note 1 supra. The text refers to a seven year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 742.

6 School Inspections Act 1996 Sch 2 para 1(3). See note 1 supra.

7 Ibid Sch 2 para 3(a). See note 1 supra.

8 Ibid Sch 2 para 3(b). See note 1 supra.

9 Ibid Sch 2 para 3(c). See note 1 supra.

### **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(B) Registered Inspectors/1198. Procedure of tribunals.

### **1198. Procedure of tribunals.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The National Assembly for Wales<sup>2</sup> may by regulations<sup>3</sup> make provision with respect to the making of appeals to, and the procedure to be followed by, tribunals<sup>4</sup>. The regulations may, in particular, make provision:

- 2162 (1) as to the period within which, and manner in which, appeals must be brought<sup>5</sup>;
- 2163 (2) for the holding of hearings in private in prescribed<sup>6</sup> circumstances<sup>7</sup>;
- 2164 (3) as to the persons who may appear on behalf of the parties<sup>8</sup>;
- 2165 (4) for enabling hearings to be conducted even though a member of the tribunal, other than the chairman, is absent<sup>9</sup>;
- 2166 (5) as to the disclosure by the appellant, and others, of documents and the inspection of documents<sup>10</sup>;
- 2167 (6) requiring persons to attend the proceedings and give evidence<sup>11</sup>;
- 2168 (7) as to the payment of expenses incurred by persons compelled to attend proceedings by regulations made by virtue of head (6) above<sup>12</sup>;
- 2169 (8) authorising the administration of oaths to witnesses<sup>13</sup>;
- 2170 (9) as to the withdrawal of appeals<sup>14</sup>;
- 2171 (10) as to costs and expenses incurred by any party to the proceedings<sup>15</sup>; and
- 2172 (11) authorising preliminary or incidental matters in relation to an appeal to be dealt with by the chairman of the tribunal hearing that appeal<sup>16</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 'Regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the regulations that have been made under s 9(5), Sch 2 para 2 see the Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999, SI 1999/265 (amended by SI 2001/1149). As to the provisions made in relation to the making of an appeal to the tribunal and the reply by the Chief Inspector see the Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999, SI 1999/265, Pt 2 (regs 3-13). As to the provisions made in relation to preparation for the hearing see Pt 3 (regs 14-22). As to the determination of appeals see Pt 4 (regs 23-30). As to the additional powers of, and provisions relating to, the tribunal see Pt 5 (regs 31-34), Pt 6 (regs 35-37) (reg 36 amended by SI 2001/1149).

4 School Inspections Act 1996 Sch 2 para 2(1). See note 1 supra.

5 Ibid Sch 2 para 2(2)(a). See note 1 supra.

6 'Prescribed' means prescribed by regulations: see ibid s 46(1). See notes 1, 3 supra.

- 7 Ibid Sch 2 para 2(2)(b). See note 1 supra.
- 8 Ibid Sch 2 para 2(2)(c). See note 1 supra.
- 9 Ibid Sch 2 para 2(2)(d). See note 1 supra.
- 10 Ibid Sch 2 para 2(2)(e). See note 1 supra.
- 11 Ibid Sch 2 para 2(2)(f). See note 1 supra.
- 12 Ibid Sch 2 para 2(2)(g). See note 1 supra.
- 13 Ibid Sch 2 para 2(2)(h). See note 1 supra.
- 14 Ibid Sch 2 para 2(2)(i). See note 1 supra.
- 15 Ibid Sch 2 para 2(2)(j). See note 1 supra.
- 16 Ibid Sch 2 para 2(2)(k). See note 1 supra.

#### **UPDATE**

#### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(B) Registered Inspectors/1199. Appeals to the High Court.

### **1199. Appeals to the High Court.**

If any party to proceedings before a tribunal constituted in accordance with the School Inspections Act 1996<sup>1</sup> is dissatisfied in point of law with a decision<sup>2</sup> of the tribunal he may, according as rules of court may provide, either appeal from the tribunal to the High Court or require the tribunal to state and sign a case for the opinion of the High Court<sup>3</sup>. Rules of court may provide for authorising or requiring the tribunal, in the course of proceedings before it, to state a special case for the decision of the High Court on any question of law arising in the proceedings<sup>4</sup>. Appeal from the decision of the High Court lies to the Court of Appeal<sup>5</sup>.

<sup>1</sup> In accordance with the School Inspections Act 1996 s 9(5), Sch 2 (prospectively repealed) (see PARAS 1197-1198 ante). See also note 3 infra.

<sup>2</sup> As to the meaning of 'decision' see PARA 1035 note 6 ante.

<sup>3</sup> Tribunals and Inquiries Act 1992 ss 1, 11(1) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt 2 paras 19, 20(a)); Tribunals and Inquiries Act 1992 Sch 1 para 15(d) (amended by the School Inspections Act 1996 s 47(1), Sch 6 para 5; and the School Standards and Framework Act 1998 s 140(1), Sch 30 para 47(b)).

As from a day to be appointed under the Education Act 2005 s 125(4), the reference in the Tribunals and Inquiries Act 1992 Sch 1 para 15(d) (as amended) to the School Inspections Act 1996 Sch 2 (prospectively repealed) is repealed: see the Education Act 2005 s 61, Sch 9 para 6. At the date at which this volume states the law, no such day had been appointed.

<sup>4</sup> See the Tribunals and Inquiries Act 1992 s 11(3)-(5) (as amended).

<sup>5</sup> See note 4 supra.

### **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(B) Registered Inspectors/1200. Inspection of certain schools by registered inspectors.

### **1200. Inspection of certain schools by registered inspectors.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

It is the duty of the Chief Inspector<sup>2</sup> to secure that every school<sup>3</sup> in Wales of the types listed in heads (1) to (7) below is inspected, at such intervals as may be prescribed<sup>4</sup>, by a registered inspector<sup>5</sup>. The schools which may be inspected are<sup>6</sup>:

- 2173 (1) community, foundation and voluntary schools<sup>7</sup>;
- 2174 (2) community and foundation special schools<sup>8</sup>;
- 2175 (3) special schools which are not community or foundation special schools but are for the time being approved by the National Assembly for Wales<sup>9</sup>;
- 2176 (4) city technology colleges<sup>10</sup>;
- 2177 (5) city colleges for the technology of the arts<sup>11</sup>;
- 2178 (6) academies<sup>12</sup>; and
- 2179 (7) maintained nursery schools<sup>13</sup>.

However, there is no requirement to inspect any school which is a closing school<sup>14</sup>, and in respect of which the Chief Inspector has decided, having regard to the date on which the closure is to take effect, that no useful purpose would be served by the school being inspected<sup>15</sup>.

It is the general duty of any registered inspector conducting an inspection to report on:

- 2180 (a) the quality of the education provided by the school<sup>16</sup>;
- 2181 (b) the educational standards achieved in the school<sup>17</sup>;
- 2182 (c) the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed efficiently<sup>18</sup>; and
- 2183 (d) the spiritual, moral, social and cultural development of pupils<sup>19</sup> at the school<sup>20</sup>.

An inspection does not extend to: (i) denominational education<sup>21</sup>; (ii) education which is brought within the remit the Chief Inspector by Part IV of the Learning and Skills Act 2000<sup>22</sup>; or (iii) the content of collective worship<sup>23</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 In relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 46(4). See note 1 *supra*.

4 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). In prescribing the intervals mentioned in s 10(2), the National Assembly for Wales may make provision as to the period within which the first inspection of a school under this provision is to begin: s 10(6). See note 1 *supra*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the regulations that have been made under s 10(2), (6) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866 (amended by SI 1999/1440; SI 2001/3710; SI 2004/784; SI 2005/2913; and modified by SI 1999/711). In relation to any school in Wales, the first inspection under the School Inspections Act 1996 s 10 (as amended) must have taken place before 1 September 2005 (or, in the case of a secondary school, 1 September 2004) and after that first inspection the prescribed interval is every six years: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 4. Separate dates are prescribed in the regulations for inspections of denominational education. For the meaning of 'denominational education' see PARA 1221 note 6 post.

5 School Inspections Act 1996 s 10(2). The text refers to inspection by a registered inspector under s 7(2) (see PARA 1194 ante). Section 10(2) has effect subject to s 12 (as amended) (power of the Chief Inspector to secure inspections by members of the inspectorate in certain circumstances: see PARA 1208 post): s 10(7). Further provision is made by Sch 3 (as amended) (see PARAS 1201-1207 post) with respect to inspections under s 10 (as amended; prospectively amended): s 10(9). See note 1 *supra*. For the meaning of 'registered inspector' see PARA 1194 note 5 ante. For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 post; and see PARA 1208 note 6 post. As to the inspection of independent schools see PARA 1166 ante.

6 *Ibid* s 10(3) (amended by the Education Act 1997 s 42, Sch 6 para 6(2); and the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 191(2)(a), Sch 31). This is expressed to be subject to the School Inspections Act 1996 s 10(4A) (as added): see the text to notes 14-15 *infra*. See note 1 *supra*.

7 *Ibid* s 10(3)(a) (substituted by the School Standards and Framework Act 1998 Sch 30 para 191(2)(b)). See notes 1, 6 *supra*. As to community, foundation and voluntary schools see PARA 102 *et seq* ante.

8 School Inspections Act 1996 s 10(3)(c) (substituted by the School Standards and Framework Act 1998 Sch 30 para 191(2)(d)). See notes 1, 6 *supra*. As to community and foundation special schools see PARA 102 *et seq* ante.

9 School Inspections Act 1996 s 10(3)(d) (substituted by the School Standards and Framework Act 1998 Sch 30 para 191(2)(e)). See notes 1, 6 *supra*. The text refers to approval under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante). As to special schools see PARA 1027 ante.

10 School Inspections Act 1996 s 10(3)(f). See notes 1, 6 *supra*. For the meaning of 'city technology college' see PARA 496 ante; definition applied by virtue of s 46(4).

11 *Ibid* s 10(3)(g) (amended by the Learning and Skills Act 2000 s 153, Sch 11). See notes 1, 6 *supra*. For the meaning of 'city colleges for the technology of the arts' see PARA 496 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4).

12 *Ibid* s 10(3)(gg) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 67(1), (2); and amended by the Education Act 2002 s 65(3), Sch 7 Pt 2 para 7(1), (2)(a)). See notes 1, 6 *supra*. For the meaning of 'academy' see PARA 496 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4).

13 *Ibid* s 10(3)(h). See notes 1, 6 *supra*. As to maintained nursery schools see PARA 94 *et seq* ante.

14 For the purposes of *ibid* s 10(4A) (as added), a 'closing school' means:

96 (1) a community, foundation or voluntary or community or foundation special school or maintained nursery school in respect of which proposals to discontinue the school have been approved, adopted or determined under any enactment (see PARA 131 *et seq* ante) (s 10(4B)(a) (s 10(4B) added by the Education Act 1997 s 42, Sch 6 para 6(3); and substituted by the School Standards and Framework Act 1998 Sch 30 para 191(4); and the School Inspections Act 1996 s 10(4B)(a) amended by the Learning and Skills Act 2000 Sch 9 paras 1, 67(1), (3); and the Education Act 2002 s 215(1), Sch 21 para 59));

97 (2) a foundation or voluntary school in respect of which the governing body has given notice of discontinuance under the School Standards and Framework Act 1998 s 30 (as amended) (see PARA 135 ante) (School Inspections Act 1996 s 10(4B)(b) (as so added and substituted));



- 98 (3) a community, foundation or voluntary or community or foundation special school in respect of which the National Assembly for Wales has given a direction to discontinue the school under the School Standards and Framework Act 1998 s 19 (as amended) (power to direct closure of school: see PARA 1273 post) or s 32 (direction requiring discontinuance of community or foundation special school: see PARA 149 ante) (School Inspections Act 1996 s 10(4B)(c) (as so added and substituted)); or
- 99 (4) a special school which is not a community or foundation special school but which is for the time being approved by the Assembly under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante) and which the proprietor has decided to close (School Inspections Act 1996 s 10(4B)(e) (as so added and substituted)).

For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 46(4). See note 1 supra.

15 Ibid s 10(4A) (added by the Education Act 1997 Sch 6 para 6(3)). See note 1 supra.

16 School Inspections Act 1996 s 10(5)(a). See note 1 supra.

17 Ibid s 10(5)(b). See note 1 supra.

18 Ibid s 10(5)(c) (substituted by the Education Act 2002 s 188, Sch 16 para 3). See note 1 supra.

19 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

20 Ibid s 10(5)(d). See note 1 supra.

21 Ibid s 10(8)(a). See note 1 supra.

22 Ibid s 10(8)(aa) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 67(1), (5)). See note 1 supra. The text refers to the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively amended) (see PARA 1331 et seq post).

23 Ibid s 10(8)(b). See note 1 supra. The text refers to the content of collective worship which falls to be inspected under s 23 (as amended): see PARA 1221 post.

## UPDATE

### 1187-1225 Inspection of Schools under the School Inspections Act 1996

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(B) Registered Inspectors/1201. Selection of registered inspectors.

### **1201. Selection of registered inspectors.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Before entering into any arrangement for an inspection<sup>2</sup>, the Chief Inspector<sup>3</sup> must invite tenders from at least two persons who can reasonably be expected to tender for the proposed inspection and to do so at arm's length from each other, and each of whom is: (1) a registered inspector<sup>4</sup>; or (2) a person who the Chief Inspector is satisfied would, if his tender were successful, arrange with a registered inspector for the inspection to be carried out<sup>5</sup>.

Before an inspection takes place the Chief Inspector must consult the appropriate authority<sup>6</sup> about the inspection<sup>7</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For these purposes, 'inspection' means an inspection under the School Inspections Act 1996 s 10 (as amended) (see PARA 1200 ante): ss 10(9), 11(6), Sch 3 para 1. See note 1 supra.

3 In relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

4 Ibid Sch 3 para 2(1)(a) (Sch 3 para 2 substituted by the Education Act 1997 s 42, Sch 6 para 10). See note 1 supra. For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

5 School Inspections Act 1996 Sch 3 para 2(1)(b) (as substituted: see note 4 supra). See note 1 supra.

6 'Appropriate authority' means:

100 (1) in relation to a community, foundation or voluntary or community or foundation special school or a maintained nursery school, the school's governing body or, if the school does not have a delegated budget within the meaning of the School Standards and Framework Act 1998 s 49 (as amended) (see PARA 320 ante), the local education authority (School Inspections Act 1996 Sch 3 para 1(a) (Sch 3 para 1(a), (c) substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 203; and the School Inspections Act 1996 Sch 3 para 1(a) amended by the Education Act 2002 s 215(1), Sch 21 para 67));

101 (2) in the case of a school falling within the School Inspections Act 1996 s 10(3)(d) (as substituted), s 10(3)(f) or s 10(3)(g) (as amended) (see PARA 1200 ante), the proprietor of the school (Sch 3 para 1(c) (as so substituted; and amended by the Education Act 2002 s 215(2), Sch 22 Pt 3)).

As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante. As to local education authorities see PARA 20 ante. As to maintained nursery schools see PARA 94 et seq ante. For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

7 Ibid Sch 3 para 2(2) (as substituted: see note 4 supra). See note 1 supra.

**UPDATE**

**1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

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## **1202. Inspection teams.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Every inspection<sup>2</sup> is to be conducted by a registered inspector<sup>3</sup> with the assistance of a team (an 'inspection team')<sup>4</sup>. No person is to act as a member of an inspection team unless he is enrolled in the list kept by the Chief Inspector<sup>5</sup> or he is a member of the inspectorate<sup>6</sup> and, if he is not the Chief Inspector, is authorised so to act by the Chief Inspector<sup>7</sup>. It is the duty of the registered inspector to ensure that:

- 2184 (1) at least one member of the inspection team is a person: (a) without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor or in any other voluntary capacity)<sup>8</sup>; and (b) whose primary function on the team is not that of providing financial or business expertise<sup>9</sup>; and
- 2185 (2) no member of the inspection team falls within a category of person prescribed<sup>10</sup> for these purposes<sup>11</sup>.

Otherwise, the composition of the inspection team must be determined by the registered inspector, subject to his complying with any imposed conditions<sup>12</sup>. Any experience of a kind mentioned in head (1) above which it is reasonable to regard as insignificant<sup>13</sup> may be ignored by the registered inspector<sup>14</sup>. It is the duty of the registered inspector to ensure that no person takes any part in an inspection if he has, or has at any time had, any connection with: (i) the school in question<sup>15</sup>; (ii) any person who is employed at the school<sup>16</sup>; (iii) any person who is a member of the school's governing body<sup>17</sup>; or (iv) the proprietor<sup>18</sup> of the school<sup>19</sup>, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to that school<sup>20</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 For the meaning of 'registered inspector' see PARA 1194 note 5 ante. The Chief Inspector may, if he considers it expedient, secure that the school is inspected instead by a member of the inspectorate under the School Inspections Act 1996 s 12 (as amended): see PARA 1208 post. In relation to any school in Wales or registration under s 7(2) (see PARA 1194 ante), a reference to the Chief Inspector is a reference to Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

4 Ibid s 10(9), Sch 3 para 3(1) (substituted by the Education Act 2002 s 188, Sch 16 para 5). See note 1 supra.

5 School Inspections Act 1996 Sch 3 para 3(1)(a) (as substituted: see note 4 supra). The text refers to the list kept by the Chief Inspector under Sch 3 para 3A (as added and amended) (see PARA 1203 post). See note 1 supra.

6 'Member of the inspectorate' means the Chief Inspector for Wales, any of Her Majesty's Inspectors of Schools in Wales and any additional inspector authorised under *ibid* Sch 1 para 2 (see *PARA 1189 ante*): s 46(1). See also *PARA 1208 note 6 post*. See note 1 *supra*.

7 *Ibid* Sch 3 para 3(1)(b) (as substituted: see note 4 *supra*). See note 1 *supra*.

8 *Ibid* Sch 3 para 3(2)(a)(i). See note 1 *supra*.

9 *Ibid* Sch 3 para 3(2)(a)(ii). See note 1 *supra*.

10 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 *supra*. As to the making of regulations under the School Inspections Act 1996 generally see *PARA 1194 note 11 ante*. At the date at which this volume states the law, no regulations had been made for these purposes.

11 *Ibid* Sch 3 para 3(2)(b). See note 1 *supra*.

12 *Ibid* Sch 3 para 3(3). The text refers to any condition imposed under s 7(5)(c) (see *PARA 1194 ante*). For the purposes of the School Inspections Act 1996, any reference to a condition imposed under s 7(5)(c) includes a reference to a condition imposed under s 8(3) (see *PARA 1195 ante*): s 46(3). See note 1 *supra*.

13 *Ie* having regard to the purposes of *ibid* Sch 3 para 3(2): see the text to notes 8-11 *supra*. See note 1 *supra*.

14 *Ibid* Sch 3 para 3(4). See note 1 *supra*.

15 *Ibid* Sch 3 para 3(5)(a). See note 1 *supra*.

16 *Ibid* Sch 3 para 3(5)(b). See note 1 *supra*.

17 *Ibid* Sch 3 para 3(5)(c). See note 1 *supra*. As to the governing bodies of maintained schools in Wales see *PARA 251 et seq ante*.

18 For the meaning of 'proprietor' see *PARA 60 note 7 ante*; definition applied by virtue of *ibid* s 46(4). See note 1 *supra*.

19 *Ibid* Sch 3 para 3(5)(d). See note 1 *supra*.

20 *Ibid* Sch 3 para 3(5). See note 1 *supra*.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(B) Registered Inspectors/1203. Enrolment of persons to act as team members.

### **1203. Enrolment of persons to act as team members.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> must keep a list of persons who may act as members of an inspection team<sup>3</sup>, and no person may act as a member of an inspection team unless he is enrolled in the list<sup>4</sup>. The Chief Inspector must not enrol any person in the list unless, having regard to any conditions that he proposes to impose<sup>5</sup>, it appears to him that that person is a fit and proper person for carrying out an inspection<sup>6</sup> and will be capable of assisting in an inspection competently and effectively<sup>7</sup>. An application for enrolment in the list must, except in such circumstances as may be prescribed<sup>8</sup>, be accompanied by the prescribed fee<sup>9</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 In relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 As to inspection teams under the School Inspections Act 1996 see PARA 1202 ante. See note 1 supra.

4 Ibid s 10(9), Sch 3 para 3A(1) (Sch 3 para 3A added by the School Standards and Framework Act 1998 s 135, Sch 28 para 4(2); and the School Inspections Act 1996 Sch 3 para 3A(1) substituted by the Education Act 2002 s 188, Sch 16 para 6). See note 1 supra. The provisions of the School Inspections Act 1996 s 7(5)-(9) (conditions imposed on registration, and the period for which registration is to have effect: see PARA 1194 ante) apply in relation to the enrolment of a person in the list and to acting as a member of an inspection team as they apply in relation to the registration of a person under s 7(2) (see PARA 1194 ante) and to acting as a registered inspector: Sch 3 para 3A(4) (as so added). For the meaning of 'registered inspector' see PARA 1194 note 5 ante. Section 8 (as amended) (removal from register and imposition or variation of conditions: see PARA 1195 ante), s 9 (as amended) (appeals in relation to registration: see PARA 1196 ante), and Sch 2 (tribunals hearing appeals in relation to registration: see PARAS 1197-1198 ante), apply with any necessary modifications in relation to enrolment in the list and to a person so enrolled as they apply in relation to registration under s 7(2) and to a person so registered: Sch 3 para 3A(5) (as so added). Further specific modification is made in relation to s 8 (as amended): see Sch 3 para 3A(6) (as so added). For the purposes of the School Inspections Act 1996, any reference to a condition imposed under s 7(5)(c) (see PARA 1194 ante) includes a reference to a condition imposed under s 8(3) (see PARA 1195 ante): s 46(3).

Without prejudice to the generality of Sch 2 para 2(1) (regulations may make provision as to the period and manner for the making of appeals: see PARA 1198 ante), regulations under that provision may provide that, where a person is appealing simultaneously: (1) against a decision of the Chief Inspector relating to that person's registration; and (2) against a decision of the Chief Inspector relating to that person's enrolment in the list, both appeals are to be heard at the same time: Sch 3 para 3A(7) (as so added). 'Regulations' means regulations made under the School Inspections Act 1996: s 46(1). As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. At the date at which this volume states the law, no regulations had been made under Sch 3 para 3A (as added and amended).

5 In under ibid s 7(5)(c) (see PARA 1194 ante), as it applies in accordance with Sch 3 para 3A(4) (as added) (see note 4 supra). See note 1 supra.

6 Ibid Sch 3 para 3A(2)(a) (as added: see note 4 supra). See note 1 supra. For the meaning of 'inspection' see PARA 1201 note 2 ante.

- 7 Ibid Sch 3 para 3A(2)(b) (as added: see note 4 supra). See note 1 supra.
- 8 'Prescribed' means prescribed by regulations: ibid s 46(1). See notes 1, 4 supra.
- 9 Ibid Sch 3 para 3A(3) (as added: see note 4 supra). See notes 1, 4 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

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## **1204. Training for inspections.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

No person may conduct an inspection<sup>2</sup> of a school<sup>3</sup> in Wales, or act as a member of an inspection team<sup>4</sup> for such a school, unless he has, in the opinion of the Chief Inspector<sup>5</sup>, satisfactorily completed a course of training provided by, or complying with arrangements approved by, the Chief Inspector<sup>6</sup>. Where the Chief Inspector provides such training he may charge such fees as are reasonable for the purpose of recovering the whole, or part, of the cost of providing it<sup>7</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

4 As to inspection teams under the School Inspections Act 1996 see PARA 1202 ante. See note 1 supra.

5 In relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

6 Ibid s 10(9), Sch 3 para 5(1). Schedule 3 para 5(1) does not apply in such circumstances as may be specified, either generally or in relation to a particular case or class of case, by the Chief Inspector: Sch 3 para 5(3). See note 1 supra.

7 Ibid Sch 3 para 5(2). Any sums received by the Chief Inspector under para 5(2) must be paid into the Consolidated Fund: s 43(b). See note 1 supra. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.



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### **1205. Meeting with parents.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where an inspection<sup>2</sup> is arranged, the appropriate authority<sup>3</sup> for the school<sup>4</sup> concerned must: (1) take such steps as are reasonably practicable to notify the parents<sup>5</sup> of registered pupils<sup>6</sup> at the school, and such other persons as may be prescribed<sup>7</sup>, of the time when the inspection is to take place<sup>8</sup>; and (2) arrange a meeting, in accordance with such provisions as may be prescribed<sup>9</sup>, between the inspector conducting the inspection and those parents of registered pupils at the school who wish to attend<sup>10</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 For the meaning of 'appropriate authority' see PARA 1201 note 6 ante.

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

5 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

6 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 46(4). See note 1 supra.

7 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the persons prescribed see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 5 (amended by SI 1999/1440; SI 2001/3710; SI 2005/2913).

8 School Inspections Act 1996 s 10(9), Sch 3 para 6(a). See note 1 supra.

9 As to the provisions relating to the meeting with parents see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 6 (amended by SI 1999/1440; SI 2001/3710).

10 School Inspections Act 1996 Sch 3 para 6(b). See note 1 supra.

### **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

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### **1206. Rights of entry and inspection.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

A registered inspector<sup>2</sup> conducting an inspection<sup>3</sup>, and the members of his inspection team<sup>4</sup>, have at all reasonable times:

- 2186 (1) a right of entry to the premises<sup>5</sup> of the school<sup>6</sup>;
- 2187 (2) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he requires for the purposes of the inspection<sup>7</sup>;
- 2188 (3) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by the school, any pupils<sup>8</sup> who are registered<sup>9</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>10</sup>, are receiving part of their education from any person ('the provider')<sup>11</sup>;
- 2189 (4) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>12</sup>;
- 2190 (5) a right to inspect and take copies of any records kept by the provider relating to the provision of that education, and any other documents containing information so relating, which the inspector or (as the case may be) member of the team requires for the purposes of the inspection<sup>13</sup>.

Where pupils registered at the school concerned are, by arrangement with another school, receiving part of their education at the other school<sup>14</sup>, and the inspector is satisfied that he cannot properly discharge his duty<sup>15</sup> in relation to the school concerned without inspecting the provision made for those pupils at that other school<sup>16</sup>, heads (1) and (2) above apply in relation to that other school as it applies in relation to the school concerned<sup>17</sup>.

It is an offence wilfully to obstruct a registered inspector, or a member of an inspection team, in the exercise of his functions<sup>18</sup> in relation to an inspection of a school<sup>19</sup>. Any person guilty of such an offence is liable on summary conviction to a fine<sup>20</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

3 For the meaning of 'inspection' see PARA 1201 note 2 ante.

4 As to inspection teams under the School Inspections Act 1996 see PARA 1202 ante.

5 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 46(4). See note 1 supra.

6 Ibid s 10(9), Sch 3 para 7(1)(a) (Sch 3 para 7(1) renumbered by the Education Act 1997 s 42, Sch 6 para 12(1)). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

7 Ibid Sch 3 para 7(1)(b) (as renumbered: see note 6 supra). See note 1 supra. As to the inspection of computers and associated apparatus or material used in connection with the records or other documents in question see PARA 1192 note 32 ante.

8 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

9 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

10 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

11 Ibid Sch 3 para 7(3)(a) (Sch 3 para 7(3) added by the Education Act 2002 s 179(1), (6)). See note 1 supra.

12 School Inspections Act 1996 Sch 3 para 7(3)(b) (as added: see note 11 supra). See note 1 supra.

13 Ibid Sch 3 para 7(3)(c) (as added: see note 11 supra). See notes 1, 7 supra.

14 Ibid Sch 3 para 7(2)(a) (Sch 3 para 7(2) added by the Education Act 1997 Sch 6 para 12(2)). See note 1 supra.

15 le under the School Inspections Act 1996 s 10(5) (as amended): see PARA 1200 ante. See note 1 supra.

16 Ibid Sch 3 para 7(2)(b) (as added: see note 14 supra). See note 1 supra.

17 Ibid Sch 3 para 7(2) (as added: see note 14 supra). See note 1 supra.

18 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

19 Ibid Sch 3 para 8(1). See note 1 supra.

20 Ibid Sch 3 para 8(2). The fine must not exceed level 4 on the standard scale: Sch 3 para 8(2). See note 1 supra. As to the standard scale see PARA 481 note 4 ante.

## **UPDATE**

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### **1207. Replacement of inspector during course of inspection.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, during an inspection<sup>2</sup>, at any time after the meeting with parents<sup>3</sup> is held, but before the making of the report of the inspection is completed, the inspector conducting the inspection becomes, for any reason, unable to continue to discharge his functions<sup>4</sup> as an inspector in relation to the inspection<sup>5</sup>, and if the conditions set out below are satisfied<sup>6</sup>:

- 2191 (1) the Chief Inspector<sup>7</sup> may arrange for that person to be replaced as the inspector conducting the inspection by another registered inspector<sup>8</sup>; and
- 2192 (2) if he does so, anything done by or in relation to that person in connection with the inspection must, so far as necessary for his effectual replacement by that other inspector, be regarded as done by or in relation to that other inspector<sup>9</sup>.

The conditions are that the appropriate authority<sup>10</sup> for the school<sup>11</sup> concerned has given the Chief Inspector notice in writing of its agreement to the inspector mentioned above<sup>12</sup> being replaced, and that the replacement inspector does not have, and has not at any time had, any connection<sup>13</sup> with the school in question or with any other person mentioned there<sup>14</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 He required by the School Inspections Act 1996 s 10(9), Sch 3 para 6 (see PARA 1205 ante). As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of s 46(4). See note 1 supra.

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

5 Ibid Sch 3 para 9(1) (Sch 3 para 9 added by the School Standards and Framework Act 1998 s 135, Sch 28 para 5). See note 1 supra.

6 School Inspections Act 1996 Sch 3 para 9(2) (as added: see note 5 supra). The text refers to the conditions set out in Sch 3 para 9(3) (as added): see the text and notes 10-14 infra. See note 1 supra.

7 He in relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

8 Ibid Sch 3 para 9(2)(a) (as added: see note 5 supra). See note 1 supra. For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

9 Ibid Sch 3 para 9(2)(b) (as added: see note 5 supra). See note 1 supra.

10 For the meaning of 'appropriate authority' see PARA 1201 note 6 ante.

11 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

12 le mentioned in ibid Sch 3 para 9(1) (as added); see the text and notes 2-5 supra. See note 1 supra.

13 le any connection of the kind mentioned in ibid Sch 3 para 3(5); see PARA 1202 ante. See note 1 supra.

14 Ibid Sch 3 para 9(3) (as added: see note 5 supra). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1208. Inspections by members of the inspectorate.

## (C) PROCEDURE FOR SCHOOL INSPECTIONS

### **1208. Inspections by members of the inspectorate.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In any case where an inspection of a school<sup>2</sup> is required<sup>3</sup> to be carried out by a registered inspector<sup>4</sup>, the Chief Inspector for Wales<sup>5</sup> may, if he considers it expedient to do so, secure that the school is instead inspected by a member of the inspectorate<sup>6</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

3 le by virtue of ibid s 10 (as amended): see PARA 1200 ante. See note 1 supra.

4 For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

5 le in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

6 Ibid s 12(1) (substituted by the Education Act 2002 s 188, Sch 16 para 4). For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. Where such an inspection is conducted by a member of the inspectorate by virtue of s 12 (as amended), the following provisions, namely, s 10(2), (5) (as amended) (see PARA 1200 ante), s 10(9), Sch 3 (as amended) (see PARAS 1201-1207 ante), and s 13(1) (see PARA 1209 post), unless the context otherwise requires, have effect in relation to the inspection as if the member of the inspectorate were a registered inspector: s 12(2). If the Chief Inspector so elects in the case of any inspection of a school by a member of the inspectorate under s 5(2)(b) (see PARA 1192 ante), or s 6(1) (as amended) (see PARA 1193 ante), that inspection must be treated for the purposes of the relevant provisions: (1) as if it were an inspection under s 10 (as amended) (see PARA 1200 ante); and (2) in the case of ss 10(2), 13(1), as if the member of the inspectorate were a registered inspector: s 12(3). For the purposes of s 12(3), 'the relevant provisions' means s 10(2) (see PARA 1200 ante), s 13(1) (see PARA 1209 post), s 14 (see PARA 1210 post), and: (a) in the case of an inspection of a school falling within s 11(2) (as amended) (see PARA 1209 note 4 post), ss 16-19 (as amended) (see PARAS 1213-1216 post); and (b) (in the case of an inspection of a school falling within s 11(3) (see PARA 1209 note 4 post)), ss 20-22 (as amended) (see PARAS 1217-1219 post): s 12(4). See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1209. Inspections by registered inspectors.

### **1209. Inspections by registered inspectors.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where an inspection<sup>2</sup> by a registered inspector<sup>3</sup> has been completed, the inspector must make in writing a report of the inspection and a summary of the report<sup>4</sup>. Where the inspector is of the opinion that special measures are required to be taken in relation to the school<sup>5</sup> he must submit a draft of the report of the inspection to the Chief Inspector<sup>6</sup>. If the Chief Inspector so requests, an inspector who has submitted such a draft must provide the Chief Inspector with such further information as the Chief Inspector may specify<sup>7</sup>. The Chief Inspector must inform an inspector who has submitted such a draft whether he agrees or disagrees with the inspector's opinion<sup>8</sup>.

Where the Chief Inspector informs the inspector that he disagrees with the inspector's opinion<sup>9</sup>, but the inspector remains of the opinion that special measures are required to be taken in relation to the school<sup>10</sup>, the inspector may not make a report stating that opinion unless the terms in which he makes the report are substantially the same<sup>11</sup> as the draft or as a subsequent draft submitted to the Chief Inspector<sup>12</sup>.

Where a subsequent draft is so submitted, the Chief Inspector must inform the inspector whether he agrees or disagrees with the inspector's opinion<sup>13</sup>. A report made by a registered inspector who is of the opinion that special measures are required to be taken in relation to the school must state his opinion<sup>14</sup>, and must state whether the Chief Inspector agrees or disagrees with his opinion<sup>15</sup>. If a report of an inspection of a school by a registered inspector is made in circumstances where he is of the opinion that special measures are not required to be taken in relation to the school<sup>16</sup>, but in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the inspectorate, or the report stated that the Chief Inspector agreed with his opinion<sup>17</sup>, the registered inspector must state his opinion in the report<sup>18</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

4 School Inspections Act 1996 s 13(1). Except as is otherwise provided in s 15 (as amended) (see PARA 1211 post), ss 13-15 (as amended) (see also PARAS 1210-1211 post), in their application to inspections under s 5(2)(b) (see PARA 1192 ante) or s 6(1) (as amended) (see PARA 1193 ante) by a member of the inspectorate or inspections under s 10 (as amended; prospectively amended) (see PARA 1200 ante), apply irrespective of the nature of the schools inspected: s 11(1). For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante; and see PARA 1208 note 6 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). As to the inspectorate see PARA 1188 et seq ante. Except as is otherwise provided in s 18 (as amended) (see PARA 1215 post), ss 16-19 (as amended) (see PARAS 1213-1216 post), in their application to such inspections, apply with respect to community, foundation or voluntary or community or foundation special schools or maintained nursery schools: s 11(2) (amended by the School

Standards and Framework Act 1998 s 140(1), Sch 30 para 192(2); and the Education Act 2002 s 215(1), Sch 21 para 60(1), (2)). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante. The School Inspections Act 1996 ss 20-22 (as amended) (see PARAS 1217-1219 post), in their application to such inspections, apply with respect to schools not falling within s 11(2) (as amended): s 11(3). See note 1 supra.

5 For the purposes of the School Inspections Act 1996, special measures are required to be taken in relation to a school if the school is failing or likely to fail to give its pupils an acceptable standard of education: s 13(9). See generally *R v Secretary of State for Education and Employment and the North East London Education Association, ex p M* [1996] ELR 162, CA (decided under previous legislation). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Inspections Act 1996 s 64(4). See note 1 supra.

6 Ibid s 13(2). In relation to any school in Wales or registration under s 7(2) (see PARA 1194 ante), a reference to the Chief Inspector is a reference to Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

7 Ibid s 13(3). See note 1 supra.

8 Ibid s 13(4). See note 1 supra.

9 Ibid s 13(5)(a). See note 1 supra.

10 Ibid s 13(5)(b). See note 1 supra.

11 Ie except as to the statement required by ibid s 13(7)(b): see the text to note 15 infra.

12 Ibid s 13(5). See note 1 supra.

13 Ibid s 13(6). See note 1 supra.

14 Ibid s 13(7)(a). See note 1 supra.

15 Ibid s 13(7)(b). See note 1 supra.

16 Ibid s 13(8)(a). See note 1 supra.

17 Ibid s 13(8)(b). See note 1 supra.

18 Ibid s 13(8). See note 1 supra.

## UPDATE

### 1187-1225 Inspection of Schools under the School Inspections Act 1996

Repeal of these provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1210. Reports of inspections by members of the inspectorate.

### **1210. Reports of inspections by members of the inspectorate.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where on the completion of any inspection of a school<sup>2</sup> by a member of the inspectorate<sup>3</sup>, that person is of the opinion that special measures are required to be taken in relation to the school<sup>4</sup>, he must prepare in writing a report of the inspection and a summary of the report<sup>5</sup>, and he must state his opinion in the report<sup>6</sup>. If on the completion of any such inspection of a school by a member of the inspectorate in circumstances where:

2193 (1) he is of the opinion that special measures are not required to be taken in relation to the school<sup>7</sup>; but

2194 (2) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the inspectorate or the report stated that the Chief Inspector<sup>8</sup> agreed with his opinion<sup>9</sup>,

the member of the inspectorate must prepare in writing a report of the inspection and a summary of the report and state his opinion in the report<sup>10</sup>.

A report of an inspection<sup>11</sup> of a school by a member of the inspectorate must, if he is of the opinion that special measures are required to be taken in relation to the school, state his opinion<sup>12</sup>. If a report of such an inspection of a school by a member of the inspectorate is made in circumstances where he is of the opinion that special measures are not required to be taken in relation to the school<sup>13</sup>, but in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the inspectorate or the report stated that the Chief Inspector agreed with his opinion<sup>14</sup>, the member of the inspectorate must state his opinion in the report<sup>15</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie under the School Inspections Act 1996 s 5(2)(b) (see PARA 1192 ante) or s 6(1) (as amended) (see PARA 1193 ante). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). For the schools to which s 14 applies see s 11(1); and PARA 1209 note 4 ante. See note 1 supra.

3 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. As to the inspectorate see PARA 1188 et seq ante. See note 1 supra.

4 School Inspections Act 1996 s 14(1). References in the School Inspections Act 1996 to special measures being, or not being, required to be taken in relation to a school must be construed in accordance with s 13(9) (see PARA 1209 note 5 ante): s 46(2). See note 1 supra.

5 Ibid s 14(1)(a). See note 1 supra.

6 Ibid s 14(1)(b). See note 1 supra.

7 Ibid s 14(2)(a). See note 1 supra.

8 le in relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

9 Ibid s 14(2)(b). See note 1 supra.

10 Ibid s 14(2). See note 1 supra.

11 For the meaning of 'inspection' see PARA 1201 note 2 ante.

12 School Inspections Act 1996 s 14(3). See note 1 supra.

13 Ibid s 14(4)(a). See note 1 supra.

14 Ibid s 14(4)(b). See note 1 supra.

15 Ibid s 14(4). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1211. Timing of inspections by registered inspectors.

### **1211. Timing of inspections by registered inspectors.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The carrying out of an inspection<sup>2</sup> (not being one carried out by a member of the inspectorate<sup>3</sup>) must be completed by the time allowed, and the making of the required report<sup>4</sup> must be completed within the period allowed<sup>5</sup>. The time, and the period, allowed are such as may be prescribed<sup>6</sup>, subject to any such extension of the period as the Chief Inspector<sup>7</sup> may consider necessary to make, but the total period allowed must not exceed the prescribed period<sup>8</sup> extended by three months<sup>9</sup>. In the case of an inspection of community, foundation or voluntary schools or community or foundation special schools or maintained nursery schools<sup>10</sup> the Chief Inspector must give notice in writing of any extension to the inspector, the local education authority<sup>11</sup> (in the case of a community, foundation or voluntary or community or foundation special school or maintained nursery school), and the governing body<sup>12</sup>.

In the case of an inspection of schools which are not community, foundation or voluntary schools or community or foundation special schools or maintained nursery schools<sup>13</sup> (not being one carried out by a member of the inspectorate<sup>14</sup>) the Chief Inspector must give notice in writing of any such extension to the inspector, the appropriate authority<sup>15</sup> and the National Assembly for Wales<sup>16</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 School Inspections Act 1996 s 15(5). See note 1 supra. For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. As to the inspectorate see PARA 1188 et seq ante.

4 Ie the report required under ibid s 13: see PARA 1209 ante. See note 1 supra.

5 Ibid s 15(1). See note 1 supra. The text refers to the period allowed under s 15(2): see the text and notes 6-9 infra.

6 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. The carrying out of an inspection must be completed by the expiry of the period of two weeks beginning when the inspection begins to be carried out: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 7(1). For the purposes of the School Inspections Act 1996 s 15(2), there is prescribed, as the period within which the making of the report of an inspection is to be completed, the period of 35 working days from the date on which the inspection is completed: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 7(2) (amended by SI 2004/784).

7 Ie in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 post), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

8 See note 6 supra.

9 School Inspections Act 1996 s 15(2). See note 1 supra.

10 le schools falling within *ibid* s 11(2) (as amended): see PARA 1209 note 4 ante. See note 1 supra. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante.

11 As to local education authorities see PARA 20 ante.

12 School Inspections Act 1996 s 15(3) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 193; and the Education Act 2002 s 215(1), Sch 21 para 61(a)). See note 1 supra. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

13 le schools falling within the School Inspections Act 1996 s 11(3): see PARA 1209 note 4 ante.

14 *Ibid* s 15(5). See note 1 supra.

15 In *ibid* Pt I Ch II (ss 11-22) (as amended), in its application to an inspection of a school falling within s 11(2) (as amended) (see PARA 1209 note 4 ante), 'appropriate authority' means in relation to a community, foundation or voluntary or community or foundation special school or a maintained nursery school, the school's governing body or, if the school does not have a delegated budget within the meaning of the School Standards and Framework Act 1998 s 49 (as amended) (see PARA 320 ante), the local education authority: School Inspections Act 1996 s 11(4) (definition substituted by the School Standards and Framework Act 1998 Sch 30 para 192(3)(b); and amended by the Education Act 2002 Sch 21 para 60(1), (3)). See note 1 supra. As to transitional provisions made in relation to the amended definition of 'appropriate body' see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 21; and PARAS 1213-1215 post.

16 School Inspections Act 1996 s 15(4) (amended by the Education Act 2002 s 215, Sch 21 para 61(b), Sch 22 Pt 3). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1212. Duty to notify where inspection shows maintained school causing concern.

## **1212. Duty to notify where inspection shows maintained school causing concern.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In relation to a community, foundation or voluntary school or a community or foundation special school or maintained nursery school<sup>2</sup>, where: (1) following an inspection<sup>3</sup> of the school by a member of the inspectorate<sup>4</sup>, that member has informed the Chief Inspector<sup>5</sup> of his opinion either that the school has serious weaknesses<sup>6</sup>, or that special measures are required to be taken in relation to the school<sup>7</sup>; (2) following an inspection of the school by a registered inspector<sup>8</sup>, the Chief Inspector has been notified in writing by the inspector of the inspector's opinion that the school has serious weaknesses<sup>9</sup>; or (3) the Chief Inspector agrees with the opinion of a registered inspector, expressed in a draft report submitted to the Chief Inspector<sup>10</sup>, that special measures are required to be taken in relation to the school<sup>11</sup>, the Chief Inspector must without delay give the National Assembly for Wales<sup>12</sup> a notice in writing stating that the case falls within head (1), (2) or (3) above<sup>13</sup>. On receiving such a notice, the Assembly must without delay give the local education authority<sup>14</sup> a notice in writing stating that it has been informed by the Chief Inspector that the case falls within head (1), (2) or (3) above<sup>15</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. a school falling within the School Inspections Act 1996 s 11(2) (as amended) (see PARA 1209 note 4 ante). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante.

3 I.e. under ibid Pt I (ss 4-25) (as amended) (see PARA 1188 et seq ante). See note 1 supra. For the meaning of 'inspection' see PARA 1201 note 2 ante.

4 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

5 I.e. in relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

6 Ibid s 16A(1)(a)(i) (s 16A added by the Education Act 2002 s 54). For the purposes of the School Inspections Act 1996 s 16A (as added), a school has serious weaknesses if, although giving its pupils in general an acceptable standard of education, it has significant weaknesses in one or more areas of its activities: s 16A(4) (as so added). See note 1 supra.

7 Ibid s 16A(1)(a)(ii) (as added: see note 6 supra). See note 1 supra. As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.

8 I.e. under ibid Pt I (ss 4-25) (as amended) (see PARA 1188 et seq ante). See note 1 supra. For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

9 Ibid s 16A(1)(b) (as added: see note 6 supra). See note 1 supra.

- 10 le under ibid s 13(2) (see PARA 1209 ante). See note 1 supra.
- 11 Ibid s 16A(1)(c) (as added: see note 6 supra). See note 1 supra.
- 12 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 13 School Inspections Act 1996 s 16A(2) (as added: see note 6 supra). See note 1 supra.
- 14 As to local education authorities see PARA 20 ante.
- 15 School Inspections Act 1996 s 16A(3) (as added: see note 6 supra). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1213. Destination of reports of inspections of community, foundation or voluntary schools or community or foundation special schools.

**1213. Destination of reports of inspections of community, foundation or voluntary schools or community or foundation special schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In the case of a report of an inspection<sup>2</sup> of a community, foundation or voluntary school or a community or foundation special school or maintained nursery school<sup>3</sup>, the person making the report must without delay:

- 2195 (1) send a copy of the report together with the summary of it to the appropriate authority<sup>4</sup> for the school<sup>5</sup>; and
- 2196 (2) if, in the case of a community, foundation or voluntary or community or foundation special school or maintained nursery school, the report states that the person making it is of the opinion that special measures are required to be taken in relation to the school<sup>6</sup>, and: (a) that person is a member of the inspectorate<sup>7</sup>; or (b) the report states that the Chief Inspector<sup>8</sup> agrees with his opinion, send a copy of the report and summary to the National Assembly for Wales<sup>9</sup>.

In a case where a report of an inspection of such a school<sup>10</sup> is made by a member of the inspectorate, and he is required<sup>11</sup> to state in the report that he is of the opinion that special measures are required to be taken in relation to the school, the member of the inspectorate must send a copy of the report together with the summary of it to the appropriate authority for the school and the Assembly<sup>12</sup>.

In any case, copies of the report and summary must be sent by the person who made the report: (i) to the Chief Inspector, unless the report was made by a member of the inspectorate<sup>13</sup>; (ii) to the head teacher<sup>14</sup> of the school<sup>15</sup>; (iii) in the case of a community, foundation or voluntary or community or foundation special school or maintained nursery school, to whichever of the local education authority<sup>16</sup> and the governing body<sup>17</sup> is not the appropriate authority<sup>18</sup>; (iv) in the case of a school having foundation governors<sup>19</sup>, to the person who appoints them and, if different, to the appropriate appointing authority<sup>20</sup>; and (v) in such circumstances as may be prescribed<sup>21</sup>, to such other persons, if any, as may be prescribed<sup>22</sup>. The appropriate authority<sup>23</sup> must:

- 2197 (A) make a copy of any report and summary sent to the authority<sup>24</sup> available for inspection by members of the public at such times and at such place as may be reasonable<sup>25</sup>;
- 2198 (B) provide a copy of the report and summary, free of charge or in prescribed<sup>26</sup> cases on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>27</sup>; and
- 2199 (C) take such steps as are reasonably practicable to secure that every registered<sup>28</sup> parent<sup>29</sup> of a registered pupil<sup>30</sup> at the school receives a copy of the summary within such period following receipt of the report by the authority as may be prescribed<sup>31</sup>.

If the inspection was carried out by a registered inspector<sup>32</sup>, or a member of the inspectorate, and the school provides full-time education suitable to the requirements of pupils over compulsory school age<sup>33</sup>, the person making the report must send a copy (together with a copy of the summary, if there is one) to the National Council for Education and Training for Wales<sup>34</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 Ie a school falling within the School Inspections Act 1996 s 11(2) (as amended): see PARA 1209 note 4 ante. See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante.

4 For the meaning of 'appropriate authority' see PARA 1211 note 15 ante. See also note 23 infra.

5 School Inspections Act 1996 s 16(1)(a) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 194(2)(a), Sch 31). See note 1 supra.

6 As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.

7 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante; and see PARA 1208 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

8 Ie in relation to any school in Wales or registration under *ibid* s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

9 *Ibid* s 16(1)(b) (amended by the School Standards and Framework Act 1998 Sch 30 para 194(2)(b); and the Education Act 2002 s 215(1), Sch 21 para 62). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

10 Ie a school falling within the School Inspections Act 1996 s 11(2) (as amended) (namely, a community, foundation or voluntary school or a community or foundation special school or maintained nursery school): see PARA 1209 note 4 ante. See note 1 supra.

11 Ie required by *ibid* s 14(1)(b) (prospectively repealed): see PARA 1210 ante. See note 1 supra.

12 *Ibid* s 16(2). See note 1 supra.

13 *Ibid* s 16(3)(a). See note 1 supra.

14 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 46(4). See note 1 supra.

15 *Ibid* s 16(3)(b). See note 1 supra.

16 As to local education authorities see PARA 20 ante.

17 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

18 School Inspections Act 1996 s 16(3)(c) (amended by the School Standards and Framework Act 1998 Sch 30 para 194(3)(a)(i), (ii); and the Education Act 2002 s 215(1), Sch 21 para 62). See note 1 supra.

19 As to schools having foundation governors see PARA 104 et seq ante.

20 School Inspections Act 1996 s 16(3)(d). In Pt I Ch II (ss 11-22) (as amended), in its application to an inspection of a school falling within s 11(2) (as amended) (namely, a community, foundation or voluntary school



or a community or foundation special school or maintained nursery school) (see PARA 1209 note 4 ante), 'appropriate appointing authority' means, in relation to any voluntary aided school, the appropriate diocesan authority, if it is a Church of England school, Church in Wales school or Roman Catholic Church school, and, in any other case, the person who appoints the foundation governor: s 11(4) (amended by the School Standards and Framework Act 1998 Sch 30 para 192(3)(a)). For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 ante; definition applied by the School Inspections Act 1996 s 46(1) (amended by the School Standards and Framework Act 1998 Sch 30 para 202(2)). For the meanings of 'Church of England school', 'Church in Wales school', and 'Roman Catholic Church school' see PARA 42 note 15 ante; definitions applied by the School Inspections Act 1996 s 46(1) (amended by the School Standards and Framework Act 1998 Sch 30 para 202(2)). See note 1 supra.

21 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. At the date at which this volume states the law, no regulations had been made under s 16(3)(as amended).

22 Ibid s 16(3)(da) (added by the Education Act 2002 s 188, Sch 16 para 7). See note 1 supra.

23 Despite the amendments made to the definition of 'appropriate body' in the School Inspections Act 1996 s 11(4) (definition as substituted and amended) (see PARA 1211 note 15 ante), the references to 'appropriate body' in s 16(4) (as amended) in relation to an inspection of a maintained nursery school that took place before a governing body was constituted for that school are to have effect as if they were references to the local education authority: Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 21. See note 1 supra.

24 Ie under the School Inspections Act 1996 s 16(1) or s 16(2) (as amended): see the text and notes 1-12 supra. See note 1 supra.

25 Ibid s 16(4)(a). See note 1 supra.

26 As to the prescribed cases under ibid s 16(4)(b) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 10(a). As to transitional provisions made in relation to reg 10 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).

27 School Inspections Act 1996 s 16(4)(b). See note 1 supra.

28 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

29 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

30 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

31 Ibid s 16(4)(c) (amended by the Education Act 1997 s 42, Sch 6 para 7). See note 1 supra. The period of ten working days from the date of receipt of the report by the appropriate authority is prescribed for the purposes of the School Inspections Act 1996 s 16(4)(c) (as amended): Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 7(3).

32 Ie under the School Inspections Act 1996 s 10 (as amended): see PARA 1200 ante. See note 1 supra.

33 Ibid s 16(5) (s 16(5), (6) added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 68). See note 1 supra. As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4).

34 Ibid s 16(6)(b) (as added: see note 33 supra). See note 1 supra. As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

## UPDATE

### 1187-1225 Inspection of Schools under the School Inspections Act 1996

Repeal of these provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1214. Special measures by appropriate authority in relation to community, foundation or voluntary schools or community or foundation special schools.

**1214. Special measures by appropriate authority in relation to community, foundation or voluntary schools or community or foundation special schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where there is sent to the appropriate authority<sup>2</sup> for a community, foundation or voluntary school or a community or foundation special school or maintained nursery school<sup>3</sup> either a report of an inspection<sup>4</sup> of the school, or a report of an inspection of the school by a member of the inspectorate<sup>5</sup> in which that person is required<sup>6</sup> to state that he is of the opinion that special measures are required to be taken in relation to the school<sup>7</sup>, the appropriate authority must prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>8</sup>.

It is the duty of the appropriate authority to prepare the statement within the period allowed, that is:

- 2200 (1) such period as may be prescribed<sup>9</sup>; or
- 2201 (2) if: (a) the report states that the person making it is of the opinion that special measures are required to be taken in relation to the school<sup>10</sup>; (b) either that person is a member of the inspectorate or the report states that the Chief Inspector<sup>11</sup> agrees with his opinion<sup>12</sup>; and (c) the National Assembly for Wales is of the opinion that the urgency of the case requires a shorter period<sup>13</sup>, such shorter period as the Assembly may direct<sup>14</sup>,

but this does not relieve the appropriate authority of any duty to prepare a statement which has not been performed within that period<sup>15</sup>.

Where such a statement has been prepared by the appropriate authority, that authority must, before the end of the prescribed period<sup>16</sup>, send copies of it<sup>17</sup>: (i) to the Chief Inspector<sup>18</sup>; (ii) in the case of a community, foundation or voluntary or community or foundation special school or maintained nursery school, to whichever of the governing body<sup>19</sup> and the local education authority<sup>20</sup> is not the appropriate authority<sup>21</sup>; and (iii) in such circumstances as may be prescribed, to such other persons, if any, as may be prescribed<sup>22</sup>.

If in the case of a community, foundation or voluntary or community or foundation special school or maintained nursery school, the statement is prepared in response to a report of an inspection of the school in which the person who made the report states that in his opinion special measures are required to be taken in relation to the school, and either that person is a member of the inspectorate or the report states that the Chief Inspector agrees with his opinion, the appropriate authority must, before the end of the prescribed period<sup>23</sup>, send a copy of the statement to the Assembly<sup>24</sup>. The appropriate authority must also send a copy of the statement in the case of a school having foundation governors<sup>25</sup>, to the person who appoints them and, if different, to the appropriate appointing authority<sup>26</sup>. The appropriate authority must:

- 2202 (A) make any such statement prepared by it available for inspection by members of the public, at such times and at such place as may be reasonable<sup>27</sup>;
- 2203 (B) provide a copy of the statement, free of charge or in prescribed cases<sup>28</sup> on payment of such fee as it thinks fit, not exceeding the cost of supply<sup>29</sup>; and
- 2204 (C) take such steps as are reasonably practicable to secure that every registered<sup>30</sup> parent<sup>31</sup> of a registered pupil<sup>32</sup> at the school receives a copy of the statement as soon as is reasonably practicable<sup>33</sup>.

Where the governing body of a school has prepared such a statement, it must in the governors' report<sup>34</sup> state the extent to which the proposals set out in the statement (or if there is more than one, the most recent statement) have been carried into effect<sup>35</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'appropriate authority' see PARA 1211 note 15 ante. Despite the amendments made to the definition of 'appropriate body' in the School Inspections Act 1996 s 11(4) (definition as substituted and amended) (see PARA 1211 note 15 ante), the references to 'appropriate body' in s 17 (as amended) in relation to an inspection of a maintained nursery school that took place before a governing body was constituted for that school are to have effect as if they were references to the local education authority: Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 21. See note 1 supra.

3 I.e. a school falling within the School Inspections Act 1996 s 11(2) (as amended) (see PARA 1209 note 4 ante). See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante.

4 For the meaning of 'inspection' see PARA 1201 note 2 ante.

5 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

6 I.e. required by *ibid* s 14(1)(b) (prospectively repealed): see PARA 1210 ante. See note 1 supra.

7 As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.

8 School Inspections Act 1996 s 17(1). See note 1 supra.

9 *Ibid* s 17(2)(a). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the period prescribed for the purposes of s 17(2)(a) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(1) (amended by SI 2004/784). As to transitional provisions made in relation to reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).

10 School Inspections Act 1996 s 17(2)(b)(i). See note 1 supra.

11 I.e. in relation to any school in Wales or registration under *ibid* s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

12 *Ibid* s 17(2)(b)(ii). See note 1 supra.

13 *Ibid* s 17(2)(b)(iii). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

14 *Ibid* s 17(2)(b). See note 1 supra.

15 Ibid s 17(2). See note 1 supra.

16 As to the period prescribed for the purposes of ibid s 17(3) (as amended) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(2), (4). As to transitional provisions made in relation to reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2). See note 1 supra.

17 School Inspections Act 1996 s 17(3) (amended by the Education Act 2002 s 188, Sch 16 para 8(a)). See note 1 supra.

18 School Inspections Act 1996 s 17(3)(a). Where the report in question is a report of an inspection of the school under s 10 (as amended) (see PARA 1200 ante), s 17(3)(a) does not require a copy of the statement to be sent to the Chief Inspector unless the report states that the person making it is of the opinion: (1) that special measures are required to be taken in relation to the school; or (2) that the school had serious weaknesses (within the meaning of the School Standards and Framework Act 1998 s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (see PARA 1266 post)): School Inspections Act 1996 s 17(3A) (added by the Education Act 2002 Sch 16 para 8(b)). See note 1 supra.

19 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

20 As to local education authorities see PARA 20 ante.

21 School Inspections Act 1996 s 17(3)(b) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 195(2)(a)(i), (ii); and the Education Act 2002 s 215(1), Sch 21 para 63(a)). See note 1 supra.

22 School Inspections Act 1996 s 17(3)(d). See note 1 supra. As to the persons prescribed see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(3) (amended by SI 2001/3710). As to transitional provisions made in relation to reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2). See note 1 supra.

23 As to the period prescribed for the purposes of the School Inspections Act 1996 s 17(4) (as amended) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(2), (4). As to transitional provisions made in relation to reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).

24 School Inspections Act 1996 s 17(4) (amended by the School Standards and Framework Act 1998 Sch 30 para 195(3); and the Education Act 2002 Sch 21 para 63(a)). See note 1 supra.

25 As to schools having foundation governors see PARA 104 et seq ante.

26 School Inspections Act 1996 s 17(5) (amended by the School Standards and Framework Act 1998 Sch 30 para 195(4), Sch 31). See note 1 supra. For the meaning of the 'appropriate appointing authority' see PARA 1213 note 20 ante.

27 School Inspections Act 1996 s 17(6)(a). See note 1 supra.

28 As to the prescribed cases under ibid s 17(6)(b) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 10(b). As to transitional provisions made in relation to reg 10 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).

29 School Inspections Act 1996 s 17(6)(b). See note 1 supra.

30 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

31 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

32 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

33 Ibid s 17(6)(c). See note 1 supra. The duty under s 17(6)(c) must be taken to be satisfied by the appropriate authority if it:

102 (1) takes such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives, as soon as is reasonably practicable, a copy of a document prepared by it which: (a) summarises the statement; and (b) contains a statement of the right to request a copy of it under s 17(6A)(b) (as added) (see head (2) infra) (s 17(6A)(a) (s 17(6A) added by the Deregulation (Provisions of School Act Plans) Order 1997, SI 1997/1142, art 1(1)); and

103 (2) provides a copy of the statement to every registered parent of a registered pupil at the school who asks for one (School Inspections Act 1996 s 17(6A)(b) (as so added)).

34 le under the Education Act 2002 s 30 (as amended) (governors' reports: see PARA 296 ante).

35 School Inspections Act 1996 s 17(7) (amended by the School Standards and Framework Act 1998 Sch 30 para 195(5); and the Education Act 2002 Sch 21 para 63(b)). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1215. Additional special measures by local education authority.

### **1215. Additional special measures by local education authority.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In circumstances where: (1) in a report of an inspection<sup>2</sup> of a community, foundation or voluntary or community or foundation special school or maintained nursery school<sup>3</sup>, the governing body<sup>4</sup> of which has a delegated budget<sup>5</sup>, the person who made the report stated that in his opinion special measures were required to be taken in relation to the school<sup>6</sup>; and (2) that person was a member of the inspectorate<sup>7</sup> or the report stated that the Chief Inspector<sup>8</sup> agreed with his opinion<sup>9</sup>; and (3) the local education authority<sup>10</sup> has received a copy of a statement<sup>11</sup> in response to the report or the prescribed period<sup>12</sup> has expired<sup>13</sup>, the local education authority must<sup>14</sup>:

- 2205 (a) prepare a written statement of any action it proposes to take in the light of the report, and the period within which it proposes to take such action, or, if it does not propose to take any such action, of its reasons for not doing so<sup>15</sup>; and
- 2206 (b) send a copy of the statement prepared under head (a) above, together with its comments on any statement<sup>16</sup> of which it has received a copy, to the National Assembly for Wales and the Chief Inspector and, in the case of a voluntary aided school to the person who appoints the foundation governors<sup>17</sup>, and, if different, to the appropriate appointing authority<sup>18</sup>.

It is the duty of the local education authority to prepare the statement within the period allowed, that is such period as may be prescribed<sup>19</sup>, or if the Assembly is of the opinion that the urgency of the case requires a shorter period, such shorter period as the Assembly may direct<sup>20</sup>, but this does not relieve the local education authority of any duty to prepare a statement which has not been performed within that period<sup>21</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra. As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante.

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 For the meaning of 'delegated budget' see PARA 320 ante; definition applied by the School Inspections Act 1996 s 46(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 202(3)). See note 1 supra.

6 School Inspections Act 1996 s 18(1)(a) (amended by the School Standards and Framework Act 1998 Sch 30 para 196(2); and the Education Act 2002 s 215(1), Sch 21 para 64). See note 1 supra. The amendment made by the Education Act 2002 Sch 21 para 64 (which added maintained nursery schools to the list of schools whose inspection reports fall within the School Inspections Act 1996 s 18(1)(a) (as amended)) is not to have effect in relation to an inspection of a maintained nursery school that took place before a governing body was constituted for that school: Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 21. As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.

7 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

8 Ie in relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

9 Ibid s 18(1)(b). See note 1 supra.

10 As to local education authorities see PARA 20 ante.

11 Ie prepared under the School Inspections Act 1996 s 17 (as amended): see PARA 1214 ante. See note 1 supra.

12 Ie the prescribed period for the purposes of ibid s 17(3) (as amended) (see PARA 1214 ante). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the period prescribed for the purposes of s 17(3) (as amended) see PARA 1214 note 16 ante. See note 1 supra.

13 Ibid s 18(1)(c). See note 1 supra.

14 Ibid s 18(2). See note 1 supra.

15 Ibid s 18(2)(a). See note 1 supra.

16 Ie prepared under ibid s 17 (as amended): see PARA 1214 ante. See note 1 supra.

17 As to schools having foundation governors see PARA 104 et seq ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

18 School Inspections Act 1996 s 18(2)(b) (amended by the School Standards and Framework Act 1998 Sch 30 para 196(3)). See note 1 supra. For the meaning of the 'appropriate appointing authority' see PARA 1213 note 20 ante.

19 School Inspections Act 1996 s 18(3)(a). See note 1 supra. As to the period prescribed for the purposes of s 18(3)(a) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 9.

20 School Inspections Act 1996 s 18(3)(b). See note 1 supra.

21 Ibid s 18(3). See note 1 supra.

## UPDATE

### 1187-1225 Inspection of Schools under the School Inspections Act 1996

Repeal of these provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1216. Monitoring special measures and further inspections.

### **1216. Monitoring special measures and further inspections.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In circumstances where:

- 2207 (1) in a report of an inspection<sup>2</sup> of a community, foundation or voluntary school or a community or foundation special school or maintained nursery school<sup>3</sup>, the person who made it stated that in his opinion special measures were required to be taken in relation to the school<sup>4</sup>;
- 2208 (2) that person was a member of the inspectorate<sup>5</sup> or the report stated that the Chief Inspector<sup>6</sup> agreed with his opinion<sup>7</sup>; and
- 2209 (3) a statement has been prepared<sup>8</sup> or the prescribed period<sup>9</sup> has expired<sup>10</sup>; and
- 2210 (4) if any registered inspector<sup>11</sup> or member of the inspectorate has made a later report of an inspection of the school, he did not state in the report that in his opinion special measures were not required to be taken in relation to the school<sup>12</sup>,

regulations<sup>13</sup> may make provision with a view to securing that any measures taken by the appropriate authority<sup>14</sup> and, in the case of a school which has a delegated budget<sup>15</sup>, the local education authority<sup>16</sup>, for improving the standard of education at the school are monitored in accordance with the regulations by such persons as may be prescribed<sup>17</sup>. The regulations may, in particular, provide for reports to be made by such persons and at such intervals as may be prescribed<sup>18</sup>. The regulations may authorise the National Assembly for Wales to require the Chief Inspector to conduct further inspections of the school and prepare further reports of such inspections<sup>19</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 I.e. a school falling within the School Inspections Act 1996 s 11(2) (as amended) (see PARA 1209 note 4 ante). See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante.

4 Ibid s 19(1)(a). See note 1 supra. As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.

5 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

- 6 le in relation to any school in Wales or registration under *ibid* s 7(2) (see *PARA 1194 ante*), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and *PARA 1188 ante*. See note 1 *supra*.
- 7 *Ibid* s 19(1)(b). See note 1 *supra*.
- 8 le under *ibid* s 17 (as amended): see *PARA 1214 ante*. See note 1 *supra*.
- 9 le the prescribed period for the purposes of *ibid* s 17(3) (as amended) (see *PARA 1214 ante*). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 *supra*. As to the making of regulations under the School Inspections Act 1996 generally see *PARA 1194 note 11 ante*. At the date at which this volume states the law, no regulations had been made under s 19 (prospectively repealed). As to the period prescribed for the purposes of s 17(3) (as amended) see *PARA 1214 note 16 ante*.
- 10 *Ibid* s 19(1)(c). See note 1 *supra*.
- 11 For the meaning of 'registered inspector' see *PARA 1194 note 5 ante*.
- 12 School Inspections Act 1996 s 19(1)(d). See note 1 *supra*.
- 13 See note 9 *supra*.
- 14 School Inspections Act 1996 s 19(2)(a). See note 1 *supra*. For the meaning of 'appropriate authority' see *PARA 1211 note 15 ante*.
- 15 For the meaning of 'delegated budget' see *PARA 320 ante*; definition applied by *ibid* s 46(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 202(3)). See note 1 *supra*.
- 16 School Inspections Act 1996 s 19(2)(b). See note 1 *supra*. As to local education authorities see *PARA 20 ante*.
- 17 *Ibid* s 19(2). See notes 1, 9 *supra*.
- 18 *Ibid* s 19(3). See notes 1, 9 *supra*.
- 19 *Ibid* s 19(4). See note 1 *supra*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see *PARA 53 ante*. In respect of cases where:
- 104 (1) any report prepared in pursuance of a requirement imposed by virtue of s 19(4) states that, in the opinion of the person who prepared it, special measures are required to be taken in relation to the school concerned, but the grounds for that opinion are substantially different from the grounds for the opinion in any preceding report by a registered inspector or member of the inspectorate (s 19(5)(a)); or
- 105 (2) any report prepared in pursuance of any such requirement states that, in the opinion of the person who prepared it, special measures are not required to be taken in relation to the school concerned (s 19(5)(b)),
- the regulations may make provision corresponding to any of the provisions of Pt I Ch II (ss 11-22) (as amended) so far as it has effect in relation to schools falling within s 11(2) (as amended) (namely, community, foundation or voluntary schools or community or foundation special schools or maintained nursery schools) (see *PARA 1209 note 4 ante*): s 19(5).

## UPDATE

### 1187-1225 Inspection of Schools under the School Inspections Act 1996

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1217. Destination of reports of inspections of a school which is not a community, foundation or voluntary school or a community or foundation special school.

**1217. Destination of reports of inspections of a school which is not a community, foundation or voluntary school or a community or foundation special school.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In the case of a report of an inspection<sup>2</sup> of a school which is not a community, foundation or voluntary school or a community or foundation special school or maintained nursery school<sup>3</sup>, the person making the report must without delay:

- 2211 (1) send a copy of the report together with the summary of it to the appropriate authority<sup>4</sup> for the school, and (unless the person making it is a member of the inspectorate<sup>5</sup>) to the Chief Inspector<sup>6</sup>; and
- 2212 (2) if the report states that the person making it is of the opinion that special measures are required to be taken in relation to the school<sup>7</sup>, and either that person is a member of the inspectorate or the report states that the Chief Inspector agrees with his opinion, send a copy of the report and summary to the National Assembly for Wales<sup>8</sup>.

In a case where a report of an inspection of such a school<sup>9</sup> is made by a member of the inspectorate, and he is required<sup>10</sup> to state in the report that he is of the opinion that special measures are required to be taken in relation to the school, the member of the inspectorate must send a copy of the report together with the summary of it to the appropriate authority for the school and to the Assembly<sup>11</sup>. In the case of a special school<sup>12</sup> which is not a community or foundation special school, the appropriate authority must without delay send a copy of any such report and summary sent to it<sup>13</sup> to any local education authority, if the authority is paying fees in respect of the attendance of a registered pupil<sup>14</sup> at the school<sup>15</sup>.

The appropriate authority must:

- 2213 (a) make any report and summary sent to the authority<sup>16</sup> available for inspection by members of the public at such times and at such place as may be reasonable<sup>17</sup>;
- 2214 (b) provide a copy of the report and summary, free of charge or in prescribed<sup>18</sup> cases on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>19</sup>; and
- 2215 (c) take such steps as are reasonably practicable to secure that every registered parent<sup>20</sup> of a registered pupil at the school receives a copy of the summary within such period following receipt of the report by the authority as may be prescribed<sup>21</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in

England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 Ie a school falling within the School Inspections Act 1996 s 11(3): see PARA 1209 note 4 ante. See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 et seq ante.

4 In ibid Pt I Ch II (ss 11-22) (as amended), in its application to an inspection of a school falling within s 11(3) (namely, a school which is not a community, foundation or voluntary school or a community or foundation special school or maintained nursery school) (see PARA 1209 note 4 ante), 'appropriate authority' means:

106 (1) in the case of a school falling within s 10(3)(d) (as substituted), s 10(3)(f), s 10(3)(g) (as amended) or s 10(3)(gg) (as added and amended) (see PARA 1200 ante), the proprietor of the school (s 11(5)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 192(4)(a); and the Education Act 2002 ss 65(3), 215(1), (2), Sch 7 Pt 2 para 7(1), (3), Sch 21 para 60(1), (4)(a), Sch 22 Pt 3)); and

107 (2) in any other case, the school's governing body (School Inspections Act 1996 s 11(5)(c)).

For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 46(4). See note 1 supra. As to maintained nursery schools see PARA 102 et seq ante. As to local education authorities see PARA 20 ante; and as to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

6 School Inspections Act 1996 s 20(1)(a). In relation to any school in Wales or registration under s 7(2) (see PARA 1194 ante), a reference to Chief Inspector is a reference to Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

7 As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.

8 School Inspections Act 1996 s 20(1)(b). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 Ie a school falling within ibid s 11(3) (namely, a school which is not a community, foundation or voluntary school or a community or foundation special school: see PARA 104 ante). See note 1 supra.

10 Ie by ibid s 14(1)(b) (prospectively repealed): see PARA 1210 ante. See note 1 supra.

11 Ibid s 20(2). See note 1 supra.

12 As to special schools see PARA 1027 ante.

13 Ie under the School Inspections Act 1996 s 20(1) or s 20(2): see the text and notes 1-11 supra. See note 1 supra.

14 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

15 Ibid s 20(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 197(a), (b), Sch 31; and the Education Act 2002 Sch 22 Pt 3). See note 1 supra.

16 Ie under the School Inspections Act 1996 s 20(1) or s 20(2): see the text and notes 1-11 supra. See note 1 supra.

17 Ibid s 20(4)(a). See note 1 supra.

18 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the prescribed cases under s 20(4) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 10(a). As to transitional provisions made in

relation to reg 10 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).

19 School Inspections Act 1996 s 20(4)(b). See note 1 supra.

20 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

21 Ibid s 20(4)(c) (amended by the Education Act 1997 s 42, Sch 6 para 7). See note 1 supra. The period of ten working days from the date of receipt of the report by the appropriate authority is prescribed for the purposes of the School Inspections Act 1996 s 20(4)(c) (as amended): Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 7(3).

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1218. Special measures by appropriate authority in relation to schools which are not community, foundation or voluntary schools or community or foundation special schools.

**1218. Special measures by appropriate authority in relation to schools which are not community, foundation or voluntary schools or community or foundation special schools.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where there is sent to the appropriate authority<sup>2</sup> for a school which is not a community, foundation or voluntary school or a community or foundation special school or maintained nursery school<sup>3</sup>: (1) a report of an inspection<sup>4</sup> of the school<sup>5</sup>; or (2) a report of an inspection of the school made by a member of the inspectorate<sup>6</sup> in which that person is required<sup>7</sup> to state that he is of the opinion that special measures are required to be taken in relation to the school<sup>8</sup>, the appropriate authority must prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>9</sup>. It is the duty of the appropriate authority to prepare the statement within the period allowed, that is: (a) such period as may be prescribed<sup>10</sup>; or (b) if the report states that the person making it is of the opinion that special measures are required to be taken in relation to the school, and either that person is a member of the inspectorate or the report states that the Chief Inspector<sup>11</sup> agrees with his opinion, and the National Assembly for Wales is of the opinion that the urgency of the case requires a shorter period, such shorter period as the Assembly may direct<sup>12</sup>, but this does not relieve the appropriate authority of any duty to prepare a statement which has not been performed within that period<sup>13</sup>.

Where such a statement has been prepared by the appropriate authority it must, before the end of the prescribed period<sup>14</sup>, send copies of it: (i) to the Chief Inspector<sup>15</sup>; (ii) to the Assembly<sup>16</sup>; and (iii) in such circumstances as may be prescribed, to such other persons, if any, as may be prescribed<sup>17</sup>. In the case of a special school which is not a community or foundation special school<sup>18</sup>, the appropriate authority must, before the end of the prescribed period<sup>19</sup>, send a copy of any such statement prepared by it to any local education authority<sup>20</sup>, if the authority is paying fees in respect of the attendance of a registered pupil<sup>21</sup> at the school<sup>22</sup>. The appropriate authority must:

- 2216 (A) make any such statement prepared by it available for inspection by members of the public, at such times and at such place as may be reasonable<sup>23</sup>;
- 2217 (B) provide a copy of the statement, free of charge or in prescribed cases<sup>24</sup> on payment of such fee as it thinks fit, not exceeding the cost of supply<sup>25</sup>; and
- 2218 (C) take such steps as are reasonably practicable to secure that every registered parent<sup>26</sup> of a registered pupil at the school receives a copy of the statement as soon as is reasonably practicable<sup>27</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

- 2 For the meaning of 'appropriate authority' see PARA 1217 note 4 ante.
- 3 Ie a school falling within the School Inspections Act 1996 s 11(3): see PARA 1209 note 4 ante. See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 ante.
- 4 For the meaning of 'inspection' see PARA 1201 note 2 ante.
- 5 School Inspections Act 1996 s 21(1)(a). See note 1 supra.
- 6 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.
- 7 Ie by *ibid* s 14(1)(b) (prospectively repealed): see PARA 1210 ante. See note 1 supra.
- 8 *Ibid* s 21(1)(b). See note 1 supra. As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.
- 9 *Ibid* s 21(1). See note 1 supra.
- 10 *Ibid* s 21(2)(a). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. The period of 45 working days from the date that the appropriate authority receives the report is prescribed for the purposes of s 21(2)(a): see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(1) (amended by SI 2004/784). As to transitional provisions made in relation to the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).
- 11 Ie in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.
- 12 *Ibid* s 21(2)(b). See note 1 supra. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.
- 13 *Ibid* s 21(2). See note 1 supra.
- 14 As to the period prescribed for the purposes of *ibid* s 21(3) (as amended) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(2), (4). As to transitional provisions made in relation to reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).
- 15 School Inspections Act 1996 s 21(3)(a). See note 1 supra.
- 16 *Ibid* s 21(3)(b) (amended by the Education Act 2002 s 215, Sch 21 para 65, Sch 22 Pt 3). See note 1 supra. As to maintained nursery schools see PARA 94 et seq ante.
- 17 School Inspections Act 1996 s 21(3)(c). See note 1 supra. As to the persons prescribed see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(3) (amended by SI 2001/3710). As to transitional provisions made in relation to the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).
- 18 As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.
- 19 As to the period prescribed for the purposes of the School Inspections Act 1996 s 21(4) (as amended) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 8(2), (4). As to transitional provisions made in relation to reg 8 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).
- 20 As to local education authorities see PARA 20 ante.
- 21 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

22 Ibid s 21(4) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 198(a), (b), Sch 31; and the Education Act 2002 Sch 22 Pt 3). See note 1 supra.

23 School Inspections Act 1996 s 21(5)(a). See note 1 supra.

24 As to the prescribed cases under ibid s 21(5)(b) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 10(a). As to transitional provisions made in relation to reg 10 see the Education Act 2002 (Transitional Provisions and Consequential Amendments) (Wales) Regulations 2005, SI 2005/2913, reg 22(2).

25 School Inspections Act 1996 s 21(5)(b). See note 1 supra.

26 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 46(4).

27 Ibid s 21(5)(c). The duty under s 21(5)(c) is taken to be satisfied by the appropriate authority if it: (1) takes such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives, as soon as is reasonably practicable, a copy of a document prepared by it which summarises the statement, and contains a statement of the right to request a copy of it under s 21(6)(b) (as added) (see head (2) infra) (s 21(6)(a) (s 21(6) added by the Deregulation (Provisions of School Act Plans) Order 1997, SI 1997/1142, art 3)); and (2) provides a copy of the statement to every registered parent of a registered pupil at the school who asks for one (School Inspections Act 1996 s 21(6)(b) (as so added)). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1219. Monitoring special measures.

### **1219. Monitoring special measures.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

In circumstances where:

- 2219 (1) in a report of an inspection<sup>2</sup> of schools which are not community, foundation or voluntary schools or a community or foundation special schools or maintained nursery schools<sup>3</sup>, the person who made it stated that in his opinion special measures were required to be taken in relation to the school<sup>4</sup>;
- 2220 (2) that person was a member of the inspectorate<sup>5</sup> or the report stated that the Chief Inspector<sup>6</sup> agreed with his opinion<sup>7</sup>;
- 2221 (3) a statement has been prepared<sup>8</sup> or the prescribed period<sup>9</sup> has expired<sup>10</sup>; and
- 2222 (4) if any registered inspector<sup>11</sup> or member of the inspectorate has made a later report of an inspection of the school, he did not in the report state that, in his opinion, special measures were not required to be taken in relation to the school<sup>12</sup>,

regulations<sup>13</sup> may make provision with a view to securing that any measures taken by the appropriate authority<sup>14</sup> for improving the standard of education at the school are monitored in accordance with the regulations by such persons as may be prescribed<sup>15</sup>. The regulations may, in particular, provide for reports to be made by such persons and at such intervals as may be prescribed<sup>16</sup>. The regulations may authorise the National Assembly for Wales to require the Chief Inspector to conduct further inspections of the school and prepare further reports of such inspections<sup>17</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1201 note 2 ante.

3 I.e. schools falling within the School Inspections Act 1996 s 11(3): see PARA 1209 note 4 ante. See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante; as to special schools see PARA 1027 ante; and as to maintained nursery schools see PARA 94 ante.

4 Ibid s 22(1)(a). See note 1 supra. As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.

5 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante; and see PARA 1208 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

6 I.e. in relation to any school in Wales or registration under ibid s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. See note 1 supra.

7 Ibid s 22(1)(b). See note 1 supra.

8 le under *ibid* s 21 (as amended): see PARA 1218 ante. See note 1 *supra*.

9 le the prescribed period for the purposes of *ibid* s 21(3) (as amended) (see PARA 1218 ante). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 *supra*. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the period prescribed for the purposes of s 21(3) (as amended) see PARA 1218 note 14 ante.

10 *Ibid* s 22(1)(c). See note 1 *supra*.

11 For the meaning of 'registered inspector' see PARA 1194 note 5 ante.

12 School Inspections Act 1996 s 22(1)(d). See note 1 *supra*.

13 See note 9 *supra*. At the date at which this volume states the law, no regulations had been made under *ibid* s 22 (as amended). See note 1 *supra*.

14 For the meaning of 'appropriate authority' see PARA 1217 note 4 ante.

15 School Inspections Act 1996 s 22(2). See notes 1, 9 *supra*. At the date at which this volume states the law, no such regulations had been made.

16 *Ibid* s 22(3). See notes 1, 9 *supra*. At the date at which this volume states the law, no such regulations had been made.

17 *Ibid* s 22(4). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. In respect of cases where: (1) any report prepared in pursuance of a requirement imposed by virtue of s 22(4) states that, in the opinion of the person who prepared it, special measures are required to be taken in relation to the school concerned, but the grounds for that opinion are substantially different from the grounds for the opinion in any preceding report by a registered inspector or member of the inspectorate; or (2) any report prepared in pursuance of any such requirement states that, in the opinion of the person who prepared it, special measures are not required to be taken in relation to the school concerned, the regulations may make provision corresponding to any of the provisions of Pt I Ch I (ss 11-22) (as amended) (see PARA 1208 et seq ante) so far as it has effect in relation to schools falling within s 11(3) (namely, schools which are not community, foundation or voluntary schools or community or foundation special schools or maintained nursery schools) (see PARA 1209 note 4 ante): s 22(5). See note 1 *supra*.

## UPDATE

### 1187-1225 Inspection of Schools under the School Inspections Act 1996

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(C) Procedure for School Inspections/1220. Manner of publication of inspection reports.

## **1220. Manner of publication of inspection reports.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> may arrange for:

- 2223 (1) any report by a member of the inspectorate<sup>3</sup> of an inspection carried out by him under any provision of the School Inspections Act 1996, whether the report is required by any such provision or is otherwise made in pursuance of his functions<sup>4</sup> under that provision<sup>5</sup>; or
- 2224 (2) any report of an inspection<sup>6</sup>, other than one made by a member of the inspectorate<sup>7</sup>,

to be published in such manner as he considers appropriate<sup>8</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 In relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2) (see PARA 1194 ante), Her Majesty's Chief Inspector of Education and Training in Wales: see s 46(1); and PARA 1188 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

3 For the meaning of 'member of the inspectorate' under the School Inspections Act 1996 see PARA 1202 note 6 ante. See note 1 supra. As to the inspectorate see PARA 1188 et seq ante.

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

5 Ibid s 42A(1)(a) (s 42A added by the School Standards and Framework Act 1998 s 134(1)). See note 1 supra.

6 In relation to the School Inspections Act 1996 s 10 (as amended): see PARA 1200 ante. See note 1 supra.

7 Ibid s 42A(1)(b) (as added: see note 5 supra). See note 1 supra.

8 Ibid s 42A(1) (as added: see note 5 supra). Without prejudice to the generality of s 5(7)(c) (see PARA 1192 ante) or s 42A(1) (as added), the Chief Inspector may arrange for a report to which that provision applies to be published by electronic means: s 42A(2) (as so added). For the purposes of the law of defamation, any report published by the Chief Inspector under either of those provisions is privileged unless the publication is shown to be made with malice: s 42A(3) (as so added). This provision does not limit any privilege subsisting apart from s 42A(3) (as added): s 42A(4) (as so added). See note 1 supra. As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(D) Other Inspections/1221. Inspection of religious education.

## (D) OTHER INSPECTIONS

### **1221. Inspection of religious education.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

It is the duty of the governing body<sup>2</sup> of any voluntary or foundation school<sup>3</sup>, which has been designated by the National Assembly for Wales<sup>4</sup> as having a religious character<sup>5</sup>, to secure that denominational education<sup>6</sup> given to any pupils, and the content of the school's collective worship<sup>7</sup>, are inspected<sup>8</sup>. Such an inspection must be conducted by a person chosen by the foundation governors<sup>9</sup>, in the case of a voluntary controlled school, and the governing body, in any other case<sup>10</sup>. The person chosen need not be a registered inspector<sup>11</sup>. Such inspections must be carried out at such intervals as may be prescribed<sup>12</sup>, and in prescribing the intervals the Assembly may make provision as to the period within which the first inspection with respect to a school is to begin<sup>13</sup>.

It is the general duty of a person conducting an inspection of religious education to report on the quality of the denominational education provided by the school for pupils to whom denominational education is given by the school, or to report on the content of the school's collective worship, and any such person may report on the spiritual, moral, social and cultural development of pupils at the school<sup>14</sup>. A person conducting such an inspection may do so with the assistance of such other persons chosen by him as are in his opinion fit and proper persons for carrying out the inspection<sup>15</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra. As to voluntary and foundation schools see PARA 102 et seq ante.

4 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 Ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 note 9 ante).

6 'Denominational education', in relation to a school, means religious education which is required by the Education Act 2002 s 101(1)(a) (ie in relation to Wales: see PARA 927 ante) to be included in the school's basic curriculum (School Inspections Act 1996 s 23(4)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 66)), but is not required by any enactment to be given in accordance with an agreed syllabus (School Inspections Act 1996 s 23(4)(b)). For the meaning of 'agreed syllabus' see PARA 947 note 2 ante; definition applied by virtue of s 46(4). In s 23 (as amended), 'the required provision for religious education' means the provision for religious education for pupils at the school which is required as mentioned in s 23(4)(a): s 23(4)(i). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 46(4). See note 1 supra.

7 Ie required by the School Standards and Framework Act 1998 s 70 (see PARA 957 ante). In the School Inspections Act 1996 s 23, references to collective worship are references to collective worship required by the

School Standards and Framework Act 1998 s 70: School Inspections Act 1996 s 23(4)(ii) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 199(4)). See note 1 supra.

8 School Inspections Act 1996 s 23(1) (substituted by the School Standards and Framework Act 1998 Sch 30 para 199(2)). See note 1 supra.

9 As to schools having foundation governors see PARA 104 et seq ante.

10 School Inspections Act 1996 s 23(5) (amended by the School Standards and Framework Act 1998 Sch 30 para 199(5)). See note 1 supra.

11 School Inspections Act 1996 s 23(6). For the meaning of 'registered inspector' see PARA 1194 note 5 ante. See note 1 supra.

12 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the intervals prescribed see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 12 (amended by SI 1999/1440).

13 School Inspections Act 1996 s 23(7). See note 1 supra.

14 Ibid s 23(8) (amended by the School Standards and Framework Act 1998 Sch 30 para 199(6)(a), (b), Sch 31). See note 1 supra.

15 School Inspections Act 1996 s 23(9). Further provision is made by Sch 4 (as amended) (see PARAS 1222-1223 post) with respect to inspections under s 23 (as amended): s 23(10). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(D) Other Inspections/1222. Inspectors' reports of denominational education and collective worship.

## **1222. Inspectors' reports of denominational education and collective worship.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

An inspection<sup>2</sup> of denominational education<sup>3</sup> and collective worship<sup>4</sup> must be carried out within such period as may be prescribed<sup>5</sup>. When an inspection has been completed, the inspector<sup>6</sup> must, before the end of the prescribed period<sup>7</sup>, prepare in writing a report of the inspection and a summary of the report<sup>8</sup>. The inspector must, without delay, send the report and summary to the governing body<sup>9</sup> for the school concerned<sup>10</sup>; and the governing body must:

- 2225 (1) make any such report and its accompanying summary available for inspection by members of the public, at such times and at such a place as may be reasonable<sup>11</sup>;
- 2226 (2) provide a copy of the report and summary, free of charge or in prescribed cases<sup>12</sup> on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>13</sup>; and
- 2227 (3) take such steps as are reasonably practicable to secure that every parent<sup>14</sup> of a registered pupil<sup>15</sup> at the school for whom the school provides denominational education, or who takes part in acts of collective worship<sup>16</sup>, as the case may be, receives a copy of the summary as soon as is reasonably practicable<sup>17</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the purposes of the School Inspections Act 1996 s 23(10), Sch 4 (as amended), 'inspection' means an inspection of a school under s 23 (as amended) (see PARA 1221 ante): Sch 4 para 1. See note 1 supra.

3 For the meaning of 'denominational education' see PARA 1221 note 6 ante.

4 As to the meaning of 'collective worship' see PARA 1221 note 7 ante.

5 School Inspections Act 1996 Sch 4 para 2(1). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. The regulations made under Sch 4 para 2(1) prescribe a period not exceeding two weeks as the period during which such an inspection must be carried out: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 13(1).

6 For these purposes, 'inspector' means the person conducting the inspection: School Inspections Act 1996 Sch 4 para 1. See note 1 supra.

7 The period prescribed for the inspector to prepare a report of the inspection and a summary of the report is 35 working days from the date when the inspection is completed: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 13(2) (amended by SI 2004/784).

8 School Inspections Act 1996 Sch 4 para 2(2). See note 1 supra.

- 9 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.
- 10 School Inspections Act 1996 Sch 4 para 2(3). See note 1 supra.
- 11 Ibid Sch 4 para 2(4)(a). See note 1 supra.
- 12 As to the cases prescribed under ibid Sch 4 para 2(4)(b) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 14(1)(a), (2).
- 13 School Inspections Act 1996 Sch 4 para 2(4)(b). See note 1 supra.
- 14 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.
- 15 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.
- 16 Ie the content of which falls to be inspected under ibid s 23 (as amended): see PARA 1221 ante.
- 17 Ibid Sch 4 para 2(4)(c). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(D) Other Inspections/1223. Action plans following inspection of religious education.

### **1223. Action plans following inspection of religious education.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

The governing body<sup>2</sup> to whom an inspector<sup>3</sup> has reported<sup>4</sup> must, before the end of the prescribed<sup>5</sup> period, prepare a written statement (referred to as 'the action plan') of the action which it proposes to take in the light of his report and the period within which it proposes to take it<sup>6</sup>. Where an action plan has been prepared by a governing body, it must, before the end of the prescribed period<sup>7</sup>, send copies of it to the person who appoints the school's foundation governors<sup>8</sup>, to the local education authority<sup>9</sup> and to such other persons, if any, in such circumstances, as may be prescribed<sup>10</sup>. The governing body must:

- 2228 (1) make any action plan prepared by it available for inspection by members of the public, at such times and at such a place as may be reasonable<sup>11</sup>;
- 2229 (2) provide a copy of the plan, free of charge or in prescribed cases<sup>12</sup> on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>13</sup>; and
- 2230 (3) take such steps as are reasonably practicable to secure that every parent<sup>14</sup> of a registered pupil<sup>15</sup> at the school for whom the school provides denominational education<sup>16</sup>, or who takes part in acts of collective worship<sup>17</sup>, as the case may be, receives a copy of the plan as soon as is reasonably practicable<sup>18</sup>.

Where the governing body of a school has prepared an action plan, it must include in its governors' report<sup>19</sup> a statement of the extent to which the proposals set out in the plan have been carried into effect<sup>20</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the governing bodies of maintained schools see PARA 251 et seq ante.

3 For the meaning of 'inspector' see PARA 1222 note 6 ante.

4 Ie under the School Inspections Act 1996 s 23(10), Sch 4 (as amended): see also PARA 1222 ante. See note 1 supra.

5 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. As to the period prescribed for these purposes see note 6 infra.

6 School Inspections Act 1996 Sch 4 para 3(1). See note 1 supra. The period prescribed for the governing body to prepare an action plan is 45 working days from the date when the inspector reported to it: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 13(3) (amended by SI 2004/784).

7 The prescribed period is five working days from the date of completion of the plan: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 13(4).

8 As to schools having foundation governors see PARA 104 et seq ante.

9 As to local education authorities see PARA 20 ante.

10 School Inspections Act 1996 Sch 4 para 3(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 204(a)). See note 1 supra. The persons prescribed by the regulations are all persons employed as teachers at the school or to participate in the school's collective worship: Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 13(4)(a).

11 School Inspections Act 1996 Sch 4 para 3(3)(a). See note 1 supra.

12 As to the cases prescribed under ibid Sch 4 para 3(3)(b) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 14(1)(b), (2). See note 1 supra.

13 School Inspections Act 1996 Sch 4 para 3(3)(b). See note 1 supra.

14 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

15 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 46(4). See note 1 supra.

16 For the meaning of 'denominational education' see PARA 1221 note 6 ante.

17 le the content of which falls to be inspected under the School Inspections Act 1996 s 23 (as amended): see PARA 1221 ante. See note 1 supra.

18 Ibid Sch 4 para 3(3)(c). See note 1 supra.

19 For this purpose, 'governors' report' means the governors' report under the Education Act 2002 s 30 (as amended) (see PARA 296 ante): School Inspections Act 1996 Sch 4 para 3(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 68). See note 1 supra.

20 School Inspections Act 1996 Sch 4 para 3(4). Schedule 4 para 3(4) applies only in relation to the most recent action plan for the school in question: Sch 4 para 3(6). See note 1 supra.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(D) Other Inspections/1224. Provision of inspection services by local education authorities.

## **1224. Provision of inspection services by local education authorities.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Any local education authority<sup>2</sup> may provide a school inspection service<sup>3</sup> for schools within its area<sup>4</sup>. Any school inspection service provided by a local education authority may, in addition to providing for the inspection of schools which are maintained<sup>5</sup> by it, provide for the inspection of schools which are not maintained by it<sup>6</sup>. Any school inspection service provided by a local education authority must be operated by the authority in such a way as can reasonably be expected to secure that the full cost of providing the service is recovered by way of charges made by the authority to those using the service<sup>7</sup>. The National Assembly for Wales<sup>8</sup> may by regulations<sup>9</sup>:

- 2231 (1) make provision as to the making of tenders by local education authorities<sup>10</sup>;
- 2232 (2) make provision with respect to the accounts to be kept by local education authorities in connection with any school inspection services provided by them<sup>11</sup>; and
- 2233 (3) make such incidental and supplemental provision with respect to school inspection services provided by local education authorities as the Assembly considers appropriate<sup>12</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to local education authorities see PARA 20 ante.

3 For the purposes of the School Inspections Act 1996 s 24, 'school inspection service', in relation to any local education authority, means a service providing for the inspection of schools under s 10 (as amended) (see PARA 1200 ante), or s 23 (as amended) (see PARA 1221 ante) by officers of the authority: s 24(2). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 46(4). See note 1 supra.

4 Ibid s 24(1). See note 1 supra. As to the areas of local education authorities see PARA 20 ante.

5 As to maintained schools see PARA 102 et seq ante.

6 School Inspections Act 1996 s 24(3). See note 1 supra.

7 Ibid s 24(4). See note 1 supra.

8 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 'Regulations' means regulations made under the School Inspections Act 1996: s 46(1). See note 1 supra. As to the making of regulations under the School Inspections Act 1996 generally see PARA 1194 note 11 ante. See also note 11 infra.

10 School Inspections Act 1996 s 24(5)(a). See note 1 *supra*. The text refers to the making of tenders by local education authorities as required by s 10(9), Sch 3 para 2 (as substituted): see *PARA 1201 ante*.

11 *Ibid* s 24(5)(b). See note 1 *supra*. As to the regulations that have been made under s 24(5)(b) see the Education (School Inspection) (Wales) Regulations 1998, SI 1998/1866, reg 15.

12 School Inspections Act 1996 s 24(5)(c). See note 1 *supra*.

## **UPDATE**

### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/A. INSPECTION OF SCHOOLS UNDER THE SCHOOL INSPECTIONS ACT 1996/(D) Other Inspections/1225. Power of local education authority to inspect maintained school for specific purpose.

### **1225. Power of local education authority to inspect maintained school for specific purpose.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, for the purpose of enabling it to exercise any of its functions<sup>2</sup>, a local education authority<sup>3</sup> requires information about any matter in connection with a school<sup>4</sup> which is maintained<sup>5</sup> by it<sup>6</sup>, and it is not reasonably practicable for it to obtain the information in any other manner<sup>7</sup>, it may cause an inspection of the school to be made by one or more of its officers for the purpose of obtaining the information<sup>8</sup>. Any officer of a local education authority inspecting a school under this power must have at all reasonable times a right of entry to the premises<sup>9</sup> of the school<sup>10</sup>.

1 The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c), and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to the inspection of schools in Wales under the Education Act 2005 see PARA 1226 et seq post. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the School Inspections Act 1996 s 46(4). See note 1 supra.

5 As to maintained schools see PARA 102 et seq ante.

6 School Inspections Act 1996 s 25(1)(a). See note 1 supra.

7 Ibid s 25(1)(b). See note 1 supra.

8 Ibid s 25(1). See note 1 supra.

9 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 46(4). See note 1 supra.

10 Ibid s 25(2). See note 1 supra.

### **UPDATE**

#### **1187-1225 Inspection of Schools under the School Inspections Act 1996**

Repeal of these provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(A) Her Majesty's Inspectorate/1226. In general.

## ***B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005***

### **(A) HER MAJESTY'S INSPECTORATE**

#### **1226. In general.**

Part 1 of the Education Act 2005 makes provision for the inspection of schools in Wales<sup>1</sup>. As from a day to be appointed, these provisions supersede the School Inspections Act 1996<sup>2</sup>, which is to be repealed<sup>3</sup>.

The National Assembly for Wales<sup>4</sup> may by order<sup>5</sup>: (1) make provision in relation to Wales corresponding to that made in relation to England by any English inspection provision<sup>6</sup>, or that which could be made in relation to England by regulations under any English inspection provision<sup>7</sup>; (2) repeal any Welsh inspection provision<sup>8</sup> which does not correspond to an English inspection provision<sup>9</sup>; and (3) make such provision as the Assembly thinks fit in connection with any provision made by virtue of head (1) or head (2) above<sup>10</sup>.

1 See the Education Act 2005 Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in relation to Wales); and PARA 1227 et seq post. For the meaning of 'Wales' see PARA 52 note 13 ante. These provisions are to come into force as from a day to be appointed under ss 125(4), 126(1), (2)(c), but at the date at which this volume states the law, no such day had been appointed in relation to Wales.

Separate provision is made for the inspection of schools in England: see Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63); and PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante.

2 As to the School Inspections Act 1996 see PARA 1187 et seq ante.

3 Education Act 2005 s 60. Section 60 is to come into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). At the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales. As to inspections in Wales under the School Inspections Act 1996 see PARA 1187 et seq ante.

4 As to the National Assembly for Wales see PARA 53 ante.

5 Education Act 2005 s 62(1). See note 1 supra. As to the making of orders under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no such order had been made under s 62.

6 Ibid s 62(1)(a)(i). See note 1 supra. For these purposes, 'English inspection provision' means any provision of Pt 1 Chs 1-2 (ss 1-18) (see PARA 1168 et seq ante), ss 48-49 (denominational education in England: see PARAS 1183-1184 ante), the School Standards and Framework Act 1998 s 122(1), Sch 26 (as amended) (nursery education: see PARA 1291 et seq post) so far as relating to England, or the Education Act 2002 ss 162A-162B (as added) (independent schools in England: see PARA 483 ante): Education Act 2005 s 62(4)(a). The power conferred by s 62(1)(a) includes power to amend or repeal any enactment (whenever passed or made), including any provision of the Education Act 2005: s 62(3). 'Enactment' includes an enactment comprised in subordinate legislation, within the meaning of the Interpretation Act 1978 (see STATUTES vol 44(1) (Reissue) PARA 1381): Education Act 2005 s 62(5).

7 Ibid s 62(1)(a)(ii). See note 1 supra.

8 For these purposes, 'Welsh inspection provision' means any provision of ibid Pt 1 Chs 3-4 (ss 19-43) (not yet in force) (see PARA 1227 et seq post), s 50, Sch 6 (not yet in force) (denominational education in Wales: see PARAS 1258-1260 post), s 52 (not yet in force) (provision of inspection services by local education authorities in Wales: see PARA 1261 post), the School Standards and Framework Act 1998 s 122(1), Sch 26 (as amended)

(nursery education: see PARA 1295 et seq post) so far as relating to Wales, or the Education Act 2002 ss 163-164 (repealed in relation to England; prospectively substituted in relation to Wales) (independent schools in Wales: see PARA 484 ante): Education Act 2005 s 62(4)(b). See note 1 supra.

9 Ibid s 62(1)(b). In relation to s 39 (not yet in force) (statement to be prepared by appropriate authority for maintained school: see PARA 1254 post), the power conferred by s 62(1)(b) includes power, instead of repealing the provision, to limit the cases in which it applies: s 62(2). See note 1 supra.

10 Ibid s 62(1)(c). The power conferred by s 62(1)(c) includes power to amend or repeal any enactment (whenever passed or made), including any provision of the Education Act 2005: s 62(3). See note 1 supra.

## **UPDATE**

### **1226 In general**

NOTE 1--Education Act 2005 ss 19-40, 43 now in force, ss 41, 42 in force in part, ss 44-61 now in force in relation to Wales: SI 2006/1338.

NOTE 6--Education Act 2005 s 62(4)(a) amended: Education and Skills Act 2008 Sch 1 para 29 (not yet in force).

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## **1227. Her Majesty's Inspectorate of Schools in Wales.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Her Majesty may by Order in Council appoint a person to the office of Her Majesty's Chief Inspector of Education and Training in Wales (or 'Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru') ('the Chief Inspector for Wales')<sup>2</sup>. Her Majesty may also by Order in Council appoint persons as Her Majesty's Inspectors of Education and Training in Wales (or 'Arolgwyr Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru')<sup>3</sup>. Any person appointed as one of Her Majesty's Inspectors of Education and Training in Wales must serve, in accordance with the terms and conditions on which he is appointed, as a member of the staff of the Chief Inspector for Wales<sup>4</sup>. The Chief Inspector for Wales holds and vacates office in accordance with the terms of his appointment, but: (1) must not be appointed for a term of more than five years<sup>5</sup>; (2) may at any time resign by giving written notice to the National Assembly for Wales<sup>6</sup>; and (3) may be removed from office by Her Majesty on the ground of incapacity or misconduct<sup>7</sup>. The previous appointment of a person as Chief Inspector for Wales does not affect his eligibility for re-appointment<sup>8</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Education Act 2005 s 19(1). If the National Assembly for Wales considers that the power conferred by s 19(1) (not yet in force) ought to be exercised, the Assembly must advise the Secretary of State on any recommendation to be made to Her Majesty as to the exercise of the power: s 19(6). At the date at which this volume states the law, no such order had been made. See note 1 supra. As to the Secretary of State see PARA 52 ante; and as to the National Assembly for Wales see PARA 53 ante.

As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 see PARA 1188 ante.

3 Education Act 2005 s 19(2). If the National Assembly for Wales considers that the power conferred by s 19(2) (not yet in force) ought to be exercised, the Assembly must advise the Secretary of State on any recommendation to be made to Her Majesty as to the exercise of the power: s 19(6). The terms of a person's appointment under s 19(2) (not yet in force) are to be determined by the Chief Inspector with the approval of the National Assembly for Wales: s 19(7). At the date at which this volume states the law, no such order had been made. See note 1 supra.

4 Ibid s 19(3). See note 1 supra.

5 Ibid s 19(4)(a). See note 1 supra.

6 Ibid s 19(4)(b). See note 1 supra.

7 Ibid s 19(4)(c). If the National Assembly for Wales considers that the power conferred by s 19(4)(c) (not yet in force) ought to be exercised, the Assembly must advise the Secretary of State on any recommendation to be made to Her Majesty as to the exercise of the power: s 19(6). See note 1 supra.

8 Ibid s 19(5). Further provision is made by Sch 2 (not yet in force) (see PARAS 1228-1230 post) with respect to the Chief Inspector and his staff: s 19(8). See note 1 supra.



**UPDATE**

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

**1227 Her Majesty's Inspectorate of Schools in Wales**

NOTE 3--See the Education (Inspectors of Education and Training in Wales) Order 2008, SI 2008/3118.

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### **1228. Power of the Chief Inspector to appoint staff and additional inspectors.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> may, with the approval of the National Assembly for Wales<sup>3</sup> as to numbers and terms and conditions of service, appoint such staff, in addition to inspectors who are members of his staff<sup>4</sup>, as he thinks fit<sup>5</sup>.

Further, the Chief Inspector may arrange for such persons as he thinks fit to assist him in the discharge of any of his functions<sup>6</sup> in relation to a particular case or class of case<sup>7</sup>. Such an additional inspector acting within the authority conferred on him by the Chief Inspector has all the powers of one of Her Majesty's Inspectors of Education and Training in Wales<sup>8</sup>. Any arrangements which provide for assistance by persons who are not members of the Chief Inspector's staff must be made on terms agreed by him with the Assembly<sup>9</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 As to the National Assembly for Wales see PARA 53 ante.

4 I.e. by virtue of the Education Act 2005 s 19(3) (not yet in force) (see PARA 1227 ante); s 19(8), Sch 2 para 1. See note 1 supra.

5 Ibid Sch 2 para 1. See note 1 supra.

6 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 122(2), (3).

7 Ibid Sch 2 para 2(1). Any person assisting the Chief Inspector under any such arrangements is known as an 'additional inspector': Sch 2 para 2(2). See note 1 supra.

8 Ibid Sch 2 para 2(4). See note 1 supra. As to Her Majesty's Inspectors of Education and Training in Wales see PARA 1227 ante.

9 Ibid Sch 2 para 2(3). See note 1 supra.

### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

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### **1229. Remuneration, pensions etc of the Chief Inspector.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

There is paid to the Chief Inspector<sup>2</sup> such remuneration, and such travelling and other allowances, as the National Assembly for Wales<sup>3</sup> may determine<sup>4</sup>. In the case of any such Chief Inspector as may be determined by the Assembly, there must be paid such pension, allowance or gratuity to or in respect of him, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined<sup>5</sup>. If, when any person ceases to hold office as Chief Inspector, the Assembly determines that there are special circumstances which make it right that he should receive compensation, there may be paid to him such sum by way of compensation as may be determined by the Assembly<sup>6</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 As to the National Assembly for Wales see PARA 53 ante.

4 Education Act 2005 s 19(8), Sch 2 para 3(1). See note 1 supra.

5 Ibid Sch 2 para 3(2). See note 1 supra.

6 Ibid Sch 2 para 3(3). See note 1 supra.

### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(A) Her Majesty's Inspectorate/1230. Official seal of the Chief Inspector and performance of functions.

### **1230. Official seal of the Chief Inspector and performance of functions.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> has an official seal for the authentication of documents required for the purposes of his functions<sup>3</sup>. Anything authorised or required by or under Part I of the Education Act 2005<sup>4</sup> or any other enactment to be done by the Chief Inspector may be done by any of Her Majesty's Inspectors of Education and Training in Wales, any other member of his staff, or any additional inspector<sup>5</sup>, who is authorised generally or specially in that behalf by the Chief Inspector<sup>6</sup>. The Chief Inspector and any person authorised on his behalf are to be treated as certifying officers for the purposes of proving certain documents<sup>7</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 Ibid s 19(8), Sch 2 para 4. As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 122(2), (3). As to the functions of the Chief Inspector for Wales see PARA 1231 post.

4 I.e. by or under ibid Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in relation to Wales).

5 As to additional inspectors appointed under the Education Act 2005 see PARA 1228 ante.

6 Ibid Sch 2 para 5(1). Without prejudice to the generality of Sch 2 para 5(1) (not yet in force), the references to the Chief Inspector in s 23 (not yet in force) (powers of entry for purposes of s 20 (not yet in force): see PARA 1231 post) include references to any person authorised to act on his behalf under Sch 2 para 5(1) (not yet in force): Sch 2 para 5(2). See note 1 supra.

7 See the Documentary Evidence Act 1868 s 2, Schedule (both as amended); and the Education Act 2005 Sch 2 para 6. See note 1 supra. As to the Documentary Evidence Act 1868 see CIVIL PROCEDURE vol 11 (2009) PARAS 892-894.

### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(A) Her Majesty's Inspectorate/1231. Functions of the Chief Inspector.

### **1231. Functions of the Chief Inspector.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> has the general duty of keeping the National Assembly for Wales<sup>3</sup> informed about:

- 2234 (1) the quality of the education provided by schools<sup>4</sup> in Wales<sup>5</sup>;
- 2235 (2) how far that education meets the needs of the range of pupils<sup>6</sup> at those schools<sup>7</sup>;
- 2236 (3) the educational standards achieved in those schools<sup>8</sup>;
- 2237 (4) the quality of the leadership in and management of those schools, including whether the financial resources made available to those schools are managed efficiently<sup>9</sup>;
- 2238 (5) the spiritual, moral, social and cultural development of pupils at those schools<sup>10</sup>; and
- 2239 (6) the contribution made by those schools to the well-being of those pupils<sup>11</sup>.

When asked to do so by the Assembly, the Chief Inspector must give advice to the Assembly on such matters as may be specified in its request<sup>12</sup>, and inspect and report on such school, or class of school, as may be so specified<sup>13</sup>.

The Chief Inspector has, in addition, the following specific duties:

- 2240 (a) establishing and maintaining the register of inspectors<sup>14</sup>;
- 2241 (b) giving guidance to inspectors registered in that register, and such other persons as he considers appropriate, in connection with inspections of schools in Wales<sup>15</sup> and the making of reports of such inspections<sup>16</sup>;
- 2242 (c) keeping under review the system of inspecting schools<sup>17</sup> and, in particular, the standard of such inspections and of the reports made by registered inspectors<sup>18</sup>;
- 2243 (d) keeping under review the extent to which any requirement imposed by or under Part 1 of the Education Act 2005<sup>19</sup>, or any other enactment, on any registered inspector, local education authority<sup>20</sup>, proprietor<sup>21</sup> of a school or governing body<sup>22</sup> in relation to inspections of schools in Wales is complied with<sup>23</sup>;
- 2244 (e) promoting efficiency in the conduct and reporting of inspections of schools in Wales by encouraging competition in the provision of services by registered inspectors<sup>24</sup>.

The Chief Inspector may at any time give advice to the Assembly on any matter connected with schools, or a particular school, in Wales<sup>25</sup>. The Chief Inspector has such other functions<sup>26</sup> in connection with schools in Wales, including functions with respect to the training of teachers<sup>27</sup> for such schools, as may be assigned to him by the Assembly<sup>28</sup>. In exercising his functions, the Chief Inspector must have regard to such aspects of policy adopted or formulated by the Assembly as the Assembly may direct<sup>29</sup>.

For the purposes of the exercise of any function so conferred<sup>30</sup>, the Chief Inspector<sup>31</sup> has at all reasonable times:

- 2245 (i) a right of entry to the premises<sup>32</sup> of any school in Wales<sup>33</sup>; and
- 2246 (ii) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he requires for those purposes<sup>34</sup>; and
- 2247 (iii) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in Wales, any pupils who are registered<sup>35</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>36</sup>, are provided with part of their education by any person ('the provider')<sup>37</sup>;
- 2248 (iv) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>38</sup>; and
- 2249 (v) a right to inspect and take copies of any records kept by the provider relating to the provision of that education, and any other documents containing information so relating, which the Chief Inspector requires for those purposes<sup>39</sup>.

It is an offence wilfully to obstruct the Chief Inspector in the exercise of his functions in relation to the inspection of a school<sup>40</sup>, or in the exercise of any right of entry, inspection, and copying of records and documents<sup>41</sup> for the purposes of the exercise of any other function<sup>42</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>43</sup>.

The Chief Inspector:

- 2250 (A) must make an annual report to the Assembly<sup>44</sup>, which must publish any report that is so made<sup>45</sup>;
- 2251 (B) may make such other reports to the Assembly, with respect to matters which fall within the scope of his functions, as he considers appropriate<sup>46</sup>; and
- 2252 (C) may arrange for any such report made by him<sup>47</sup> to be published in such manner as he considers appropriate<sup>48</sup>.

The Assembly may by regulations<sup>49</sup> establish a panel for the purpose of providing advice to the Assembly on matters relating to the functions that are at any time exercisable by the Chief Inspector under Part 1 of the Education Act 2005 or any other enactment<sup>50</sup>, and make provision as to the functions of the panel<sup>51</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. As to references to the Chief Inspector in s 23 (not yet in force) (see the text and notes 32-43 infra) see also s 19(8), Sch 2 para 5(2); note 31 infra; and PARA 1230 note 6 ante. See note 1 supra.

3 As to the National Assembly for Wales see PARA 53 ante.

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

5 Ibid s 20(1)(a). Section 20 (not yet in force) does not apply in relation to education which is brought within the remit of the Chief Inspector by the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively

amended) (extended remit of the Chief Inspector: see PARA 1331 et seq post): Education Act 2005 s 20(7). See note 1 supra.

6 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of *ibid* s 122(2), (3).

7 *Ibid* s 20(1)(b). See note 1 supra.

8 *Ibid* s 20(1)(c). See note 1 supra.

9 *Ibid* s 20(1)(d). See note 1 supra.

10 *Ibid* s 20(1)(e). See note 1 supra.

11 *Ibid* s 20(1)(f). For these purposes, 'well-being', in relation to pupils at a school, is a reference to their well-being having regard to the matters mentioned in the Children Act 2004 s 10(2) (co-operation to improve well-being: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 187): Education Act 2005 s 31(1). See note 1 supra.

12 *Ibid* s 20(2)(a). See note 1 supra.

13 *Ibid* s 20(2)(b). See note 1 supra. As to combined reports under the inspection enactments see PARA 1263 post.

14 *Ibid* s 20(3)(a). See note 1 supra. The text refers to the register established under s 25(1) (not yet in force): see PARA 1233 post.

15 *Ie* under *ibid* s 28 (not yet in force) (see PARA 1239 post): s 20(3)(b). See note 1 supra.

16 *Ibid* s 20(3)(b). See note 1 supra.

17 *Ie* under *ibid* s 28 (not yet in force) (see PARA 1239 post): s 20(3)(c). See note 1 supra.

18 *Ibid* s 20(3)(c). See note 1 supra. As to the registration of inspectors under the Education Act 2005 see PARA 1233 post.

19 *Ie* by or under *ibid* Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in relation to Wales).

20 As to local education authorities see PARA 20 ante.

21 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

22 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

23 Education Act 2005 s 20(3)(d). See note 1 supra.

24 *Ibid* s 20(3)(e). See note 1 supra.

25 *Ibid* s 20(4). See note 1 supra.

26 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 122(2), (3).

27 As to the training of teachers see PARA 784 et seq ante.

28 Education Act 2005 s 20(5). See note 1 supra. In respect of childcare see the Education Act 2002 s 151(2); and PARA 1164 note 3 ante.

29 Education Act 2005 s 20(6). See note 1 supra. As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.

30 *Ie* under *ibid* s 20 (not yet in force) (see the text and notes 2-29 supra).

31 Without prejudice to the generality of *ibid* s 19(8), Sch 2 para 5(1) (not yet in force) (see PARA 1230 ante), the references to the Chief Inspector in s 23 include references to any person authorised to act on his behalf under Sch 2 para 5(1): Sch 2 para 5(2). See note 1 supra.

- 32 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of *ibid* s 122(2), (3).
- 33 *Ibid* s 23(1)(a). See note 1 *supra*.
- 34 *Ibid* s 23(1)(b). Any person authorised by any provision of Pt 1 (not yet in force) to inspect records or other documents: (1) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question; and (2) may require the person by whom or on whose behalf the computer is or has been so used, or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such assistance as he may reasonably require, including, in particular, the making of information available for inspection or copying in a legible form: s 58. See note 1 *supra*.
- 35 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 36 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 37 *Ibid* s 23(2)(a). See note 1 *supra*.
- 38 *Ibid* s 23(2)(b). See note 1 *supra*.
- 39 *Ibid* s 23(2)(c). See notes 1, 34 *supra*.
- 40 *Ibid* s 23(3)(a). See note 1 *supra*. The text refers to functions in relation to the inspection of a school for the purposes of s 20(2)(b) (not yet in force): see the text to note 13 *supra*.
- 41 *Ie* under *ibid* s 23(1) (not yet in force) or s 23(2) (not yet in force): see the text to notes 30-39 *supra*.
- 42 *Ibid* s 23(3)(b). See note 1 *supra*.
- 43 *Ibid* s 23(4). The fine must not exceed level 4 on the standard scale: s 23(4). As to the standard scale see PARA 481 note 4 ante. See note 1 *supra*.
- 44 *Ibid* s 21(1)(a). See note 1 *supra*. The annual reports of the Chief Inspector required by s 21(1)(a) (not yet in force) to be made to the National Assembly for Wales must include an account of the exercise of the functions imposed or conferred on him by the School Standards and Framework Act 1998 s 122(1), Sch 26 (as amended) (nursery education: see PARA 1295 et seq post); Sch 26 para 14(2) (substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 21). The School Standards and Framework Act 1998 Sch 26 para 14(2) (as substituted) comes into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2) (c). At the date at which this volume states the law, no such day had been appointed in relation to Wales.
- 45 Education Act 2005 s 21(2). See note 1 *supra*.
- 46 *Ibid* s 21(1)(b). See note 1 *supra*. The power conferred by s 21(1)(b) (not yet in force) to make other reports to the National Assembly for Wales includes a power to make reports with respect to matters which fall within the scope of the Chief Inspector's functions by virtue of the School Standards and Framework Act 1998 Sch 26 (as amended) (see PARA 1295 et seq post); Sch 26 para 14(2) (as substituted; not yet in force (see note 44 *supra*)).
- 47 *Ie* any report made under the Education Act 2005 s 21 (not yet in force): see heads (A)-(C) in the text.
- 48 *Ibid* s 21(1)(c). See note 1 *supra*. As to publication see further PARA 1247 note 10 post.
- 49 For this purpose, 'regulations' means regulations made by the National Assembly for Wales under *ibid* Pt 1 Ch 3 (ss 19-31) (not yet in force): s 31(1). The regulations made under s 22 (not yet in force) may in particular: (1) make provision about the appointment of members of the panel; (2) make provision for remuneration and allowances to be paid to members of the panel; (3) require the panel and the Chief Inspector to co-operate with each other; (4) require the panel to make reports to the Assembly: s 22(2). See note 1 *supra*. At the date at which this volume states the law, no such regulations had been made. Regulations under Pt 1 (ss 1-63) (not yet in force) may, in particular, include provision for the designation by the Assembly, in accordance with the regulations, of particular schools or categories of school for the purposes of the application of particular provisions of the regulations in relation to such schools: s 120(3).
- 50 *Ibid* s 22(1)(a). See note 1 *supra*.
- 51 *Ibid* s 22(1)(b). See note 1 *supra*.



**UPDATE**

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(A) Her Majesty's Inspectorate/1232. Power of Chief Inspector to arrange for inspections.

### **1232. Power of Chief Inspector to arrange for inspections.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> may cause any school<sup>3</sup> in Wales to be inspected by one or more of Her Majesty's Inspectors of Education and Training in Wales<sup>4</sup>. Where an inspection of a school in Wales is being conducted by a registered inspector<sup>5</sup>, the Chief Inspector may arrange for that inspection to be monitored by one or more of Her Majesty's Inspectors of Education and Training in Wales<sup>6</sup>. Any of Her Majesty's Inspectors of Education and Training in Wales inspecting a school or monitoring an inspection has at all reasonable times:

- 2253 (1) a right of entry to the premises<sup>7</sup> of the school<sup>8</sup>;
- 2254 (2) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who are registered<sup>9</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>10</sup>, are receiving part of their education from any person ('the provider')<sup>11</sup>;
- 2255 (3) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>12</sup>;
- 2256 (4) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he considers relevant to the discharge of his functions<sup>13</sup>; and
- 2257 (5) a right to inspect and take copies of any records kept by the provider relating to the provision of education for pupils registered at the school, and any other documents containing information so relating, which the inspector considers relevant to the discharge of his functions<sup>14</sup>.

It is an offence wilfully to obstruct any of Her Majesty's Inspectors of Education and Training in Wales in the exercise of any of these functions<sup>15</sup>, and a person guilty of such an offence is liable on summary conviction to a fine<sup>16</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

4 Ibid s 24(1). An inspection of a school conducted under s 24(1) (not yet in force) may not extend to any education of a kind brought within the remit of Her Majesty's Chief Inspector of Education and Training in Wales by the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively amended) (extended remit of the Chief Inspector: see PARA 1331 et seq post) that is provided by the school: Education Act 2005 s 24(6) See note 1 supra. As to the appointment of inspectors see PARA 1188 ante.

- 5 le under ibid s 28 (not yet in force) (see PARA 1239 post). As to the registration of inspectors under the Education Act 2005 see PARA 1233 post.
- 6 Ibid s 24(2). See note 1 supra.
- 7 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 122(2), (3).
- 8 Ibid s 24(3)(a). See note 1 supra.
- 9 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).
- 10 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 122(2), (3).
- 11 Ibid s 24(3)(b). See note 1 supra.
- 12 Ibid s 24(3)(c). See note 1 supra.
- 13 Ibid s 24(3)(d). As to the inspection of computers and associated apparatus or material used in connection with the records or other documents in question see PARA 1231 note 34 ante. As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of s 122(2), (3).
- 14 Ibid s 24(3)(e). See notes 1, 13 supra.
- 15 Ibid s 24(4). See note 1 supra.
- 16 Ibid s 24(5). The fine must not exceed level 4 on the standard scale: s 24(5). As to the standard scale see PARA 481 note 4 ante. See note 1 supra.

## UPDATE

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1233. Registration of inspectors.

## (B) REGISTERED INSPECTORS

### **1233. Registration of inspectors.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

No person may conduct an inspection of any school<sup>2</sup> in Wales<sup>3</sup> unless he is a member of the inspectorate<sup>4</sup>, or registered as an inspector in a register kept by the Chief Inspector<sup>5</sup>. The Chief Inspector must not register a person unless, having regard to any conditions that he proposes to impose<sup>6</sup>, it appears to him that that person:

2258 (1) is a fit and proper person for discharging the functions<sup>7</sup> of a registered inspector<sup>8</sup>; and

2259 (2) will be capable of conducting inspections under Chapter 3 of Part I of the Education Act 2005 competently and effectively<sup>9</sup>,

and no person may be so registered if he falls within a category of persons prescribed<sup>10</sup> for these purposes<sup>11</sup>.

An application for registration must be made in such manner, and be accompanied by such particulars, as the Chief Inspector may direct<sup>12</sup>, and it must be accompanied by the prescribed fee<sup>13</sup>. On an application duly made, the Chief Inspector may: (a) register the applicant<sup>14</sup>; (b) refuse to register him<sup>15</sup>; or (c) register him subject to such conditions as the Chief Inspector considers it appropriate to impose<sup>16</sup>. The matters to which the Chief Inspector may have regard in deciding whether to register the applicant include, in particular: (i) the extent to which the Chief Inspector proposes to exercise his discretion<sup>17</sup> to secure that regular inspections<sup>18</sup> are conducted by members of the inspectorate rather than registered inspectors<sup>19</sup>; and (ii) the extent to which there is a need for registered inspectors in Wales<sup>20</sup>. Conditions imposed under head (c) above may be conditions applying generally in relation to all cases, or to particular classes of case, or such conditions together with specific conditions applying in the particular case<sup>21</sup>. Where a person is registered subject to conditions, he must be taken to be authorised to act as a registered inspector only so far as those conditions permit<sup>22</sup>.

The period for which any registration has effect must be determined by the Chief Inspector and must be entered in the register kept by him<sup>23</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

3 Ie under ibid s 28 (not yet in force): see PARA 1239 post.

4 Ibid s 25(1)(a). For these purposes, 'member of the inspectorate' means the Chief Inspector, any of Her Majesty's Inspectors of Education and Training in Wales and any additional inspector appointed under s 19(8),

Sch 2 para 2 (not yet in force) (see PARA 1228 ante): s 31(1). 'Chief Inspector' means Her Majesty's Chief Inspector of Education and Training in Wales: see s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra. As to the appointment of Her Majesty's Inspectors under the School Inspections Act 1996 see PARA 1227 ante.

5 Ibid s 25(1)(b). The text refers to a register kept for the purposes of Pt 1 Ch 3 (ss 19-31) (not yet in force): s 25(1)(b). See note 1 supra.

6 Ibid s 25(4)(c) (not yet in force) (see the text to note 16 infra). For the purposes of Pt 1 Ch 3 (not yet in force), any reference to a condition imposed under s 25(4)(c) (not yet in force) includes a reference to a condition imposed under s 26(3) (not yet in force) (see PARA 1234 post): s 31(2). See note 1 supra.

7 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 122(2), (3).

8 Ibid s 25(2)(a). See note 1 supra.

9 Ibid s 25(2)(b). See note 1 supra.

10 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under ibid Pt 1 Ch 3 (not yet in force): s 31(1). As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante; and as to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no such regulations had been made for these purposes. See note 1 supra.

11 Ibid s 25(2). The text refers to a category of persons prescribed for the purposes of s 25(2) (not yet in force): see note 10 supra. See note 1 supra.

12 Ibid s 25(3)(a). See note 1 supra. As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.

13 Ibid s 25(3)(b). See note 1 supra. Any sums received by the Chief Inspector under s 25(3)(b) must be paid into the Consolidated Fund: s 30(1). Section 30(1) (not yet in force) has effect subject to the Government of Wales Act 1998 s 104(6), Sch 6 para 4 (Treasury power to direct that the requirement for payment into Consolidated Fund is not to apply in relation to specified sums received by the Chief Inspector: see CONSTITUTIONAL LAW AND HUMAN RIGHTS): Education Act 2005 s 30(2). See note 1 supra. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

14 Ibid s 25(4)(a). See note 1 supra.

15 Ibid s 25(4)(b). See note 1 supra. At the date at which this volume states the law, no regulations had been made for these purposes.

16 Ibid s 25(4)(c). See note 1 supra.

17 Ibid s 28(1) (not yet in force) (see PARA 1239 post).

18 Ibid s 28 (not yet in force) (see PARA 1239 post).

19 Ibid s 25(5)(a). See note 1 supra.

20 Ibid s 25(5)(b). See note 1 supra.

21 Ibid s 25(6). See note 1 supra.

22 Ibid s 25(7). See note 1 supra.

23 Ibid s 25(8). Nothing in s 25(8) (not yet in force) is to be taken as preventing a registered inspector from applying for a fresh registration to take effect immediately on the expiry of his current registration: s 25(9). See note 1 supra.

## UPDATE

### 1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1234. Removal from register and imposition or variation of conditions.

### **1234. Removal from register and imposition or variation of conditions.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

If the Chief Inspector<sup>2</sup> is satisfied that any of the conditions mentioned in heads (1) to (4) below is satisfied with respect to an inspector registered in his register, he may remove the name of that inspector from that register<sup>3</sup>. The conditions are that:

- 2260 (1) he is no longer a fit and proper person for discharging the functions<sup>4</sup> of a registered inspector<sup>5</sup> under Chapter 3 of Part I of the Education Act 2005<sup>6</sup>;
- 2261 (2) he is no longer capable of conducting inspections under Chapter 3 of Part I of the Education Act 2005 competently and effectively<sup>7</sup>;
- 2262 (3) there has been a significant failure on his part to comply with any condition imposed by the Chief Inspector<sup>8</sup> and subject to which his registration has effect<sup>9</sup>;
- 2263 (4) he has, without reasonable explanation, produced a report of an inspection which is, in whole or in part, seriously misleading<sup>10</sup>.

If the Chief Inspector is satisfied that he is authorised to remove the name of an inspector from his register, or that it would otherwise be in the public interest to act, he may vary any condition subject to which the registration of that inspector has effect or vary that registration by imposing a condition subject to which it has effect<sup>11</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 *le* Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 *Ibid* s 26(1). See note 1 supra.

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 122(2), (3).

5 As to the registration of inspectors under the Education Act 2005 see PARA 1233 ante.

6 Education Act 2005 26(2)(a). The text refers to Pt 1 Ch 3 (ss 19-31) (not yet in force). See note 1 supra.

7 *Ibid* s 26(2)(b). See note 1 supra.

8 *le* imposed under *ibid* s 25(4)(c) (not yet in force) (see PARA 1233 ante). For the purposes of Pt 1 Ch 3 (not yet in force), any reference to a condition imposed under s 25(4)(c) (not yet in force) includes a reference to a condition imposed under s 26(3) (not yet in force): s 31(2). See note 1 supra.

9 *Ibid* s 26(2)(c). See note 1 supra.

10 *Ibid* s 26(2)(d). See note 1 supra.

11 *Ibid* s 26(3). See note 1 supra.

**UPDATE**

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1235. Appeals in relation to registration.

### **1235. Appeals in relation to registration.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Any person who is aggrieved<sup>2</sup> by: (1) the refusal of the Chief Inspector<sup>3</sup> to renew his registration<sup>4</sup>; (2) the imposition or variation of any condition subject to which he is so registered<sup>5</sup>; or (3) the removal of his name from the register<sup>6</sup>, may appeal against the Chief Inspector's decision to a tribunal<sup>7</sup>. Where a decision to refuse to renew a person's registration is expressed to be based on the ground that there is a reduced need for registered inspectors in Wales<sup>8</sup>, or that there is no longer any need for registered inspectors in Wales<sup>9</sup>, and the tribunal is satisfied that the decision was based on one of those grounds<sup>10</sup>, the tribunal must confirm the decision to refuse renewal<sup>11</sup>.

No decision of the Chief Inspector falling within head (2) or head (3) above has effect until the disposal of any appeal against it<sup>12</sup>, or the period within which an appeal may be made has expired without an appeal having been made<sup>13</sup>, unless the Chief Inspector: (a) is satisfied that the circumstances of the case justify the decision in question taking effect immediately, or earlier than would otherwise be the case<sup>14</sup>; and (b) notifies the person concerned to that effect<sup>15</sup>.

On determining any such appeal, the tribunal may confirm, reverse or vary the decision appealed against<sup>16</sup>, or it may remit the case to the Chief Inspector with directions as to the action to be taken by him<sup>17</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

3 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

4 Ibid s 27(1)(a). The text refers to registration under s 25 (not yet in force) (see PARA 1233 ante). See note 1 supra.

5 Ibid s 27(1)(b). See note 1 supra.

6 Ibid s 27(1)(c). The text refers to the removal of his name under s 26 (not yet in force) (see PARA 1234 ante). See note 1 supra.

7 Ibid s 27(1). The text refers to a tribunal constituted in accordance with s 27(1), Sch 3 (not yet in force) (see PARAS 1236-1237 post). Further provision is made by Sch 3 (not yet in force) with respect to tribunals constituted to hear appeals under s 27 (not yet in force): s 27(6). See note 1 supra.

8 Ibid s 27(2)(a)(i). See note 1 supra. See also PARA 1233 ante.

9 Ibid s 27(2)(a)(ii). See note 1 supra. See also PARA 1233 ante.

10 Ibid s 27(2)(b). See note 1 supra.

11 Ibid s 27(2). See note 1 supra.

12 Ibid s 27(3)(a). The text refers to any appeal which is duly made under s 27 (not yet in force): s 27(3)(a). See note 1 supra.

13 Ibid s 27(3)(b). See note 1 supra.

14 Ibid s 27(4)(a). See note 1 supra.

15 Ibid s 27(4)(b). See note 1 supra.

16 Ibid s 27(5)(a). See note 1 supra.

17 Ibid s 27(5)(b). See note 1 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1236. Constitution of tribunals.

### **1236. Constitution of tribunals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

A tribunal constituted to hear an appeal<sup>2</sup> consists of a chairman appointed by the Lord Chancellor<sup>3</sup>, and two other members appointed by the National Assembly for Wales<sup>4</sup>. To be qualified for appointment as chairman of a tribunal, a person must have a seven year general qualification<sup>5</sup>. A person must not be appointed after the day on which he attains the age of 70 to be the chairman of a tribunal<sup>6</sup>.

The Assembly may make such provision as it thinks fit for: (1) the allocation of staff for any tribunal<sup>7</sup>; (2) the remuneration of members of tribunals and the reimbursement of their expenses<sup>8</sup>; and (3) defraying any reasonable expenses incurred by any tribunal<sup>9</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie under the Education Act 2005 s 27 (not yet in force): see PARA 1235 ante.

3 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq. As to appointments made to the tribunal under the School Inspections Act 1996 s 9(5), Sch 2 para 1(1) (prospectively repealed) see PARA 1197 ante.

4 Education Act 2005 s 27(1), Sch 3 para 1(1). See note 1 supra. As to the National Assembly for Wales see PARA 53 ante.

The appeal tribunal constituted in accordance with Sch 3 (not yet in force) (see also PARA 1237 post) is under the general supervision of the Council on Tribunals: see the Tribunals and Inquiries Act 1992 s 1(1)(a), Sch 1 Pt I (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 57.

5 Education Act 2005 Sch 3 para 1(2). See note 1 supra. The text refers to a seven year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 742.

6 Education Act 2005 Sch 3 para 1(3). See note 1 supra.

7 Ibid Sch 3 para 3(a). See note 1 supra.

8 Ibid Sch 3 para 3(b). See note 1 supra.

9 Ibid Sch 3 para 3(c). See note 1 supra.

### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

## **1236 Constitution of tribunals**

TEXT AND NOTES 4-6--Education Act 2005 Sch 3 para 1 amended: Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No 2) Order 2006, SI 2006/1016.

TEXT AND NOTE 5--2005 Act Sch 3 para 1(2) amended: Tribunals, Courts and Enforcement Act 2007 Sch 10 para 42.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1237. Procedure of tribunals.

### **1237. Procedure of tribunals.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The National Assembly for Wales<sup>2</sup> may by regulations<sup>3</sup> make provision with respect to the making of appeals to, and the procedure to be followed by, tribunals<sup>4</sup>. The regulations may, in particular, make provision:

- 2264 (1) as to the period within which, and manner in which, appeals must be brought<sup>5</sup>;
- 2265 (2) for the holding of hearings in private in prescribed<sup>6</sup> circumstances<sup>7</sup>;
- 2266 (3) as to the persons who may appear on behalf of the parties<sup>8</sup>;
- 2267 (4) for enabling hearings to be conducted even though a member of the tribunal, other than the chairman, is absent<sup>9</sup>;
- 2268 (5) as to the disclosure by the appellant, and others, of documents and the inspection of documents<sup>10</sup>;
- 2269 (6) requiring persons to attend the proceedings and give evidence<sup>11</sup>;
- 2270 (7) as to the payment of expenses incurred by persons compelled to attend proceedings by regulations made by virtue of head (6) above<sup>12</sup>;
- 2271 (8) authorising the administration of oaths to witnesses<sup>13</sup>;
- 2272 (9) as to the withdrawal of appeals<sup>14</sup>;
- 2273 (10) as to costs and expenses incurred by any party to the proceedings<sup>15</sup>; and
- 2274 (11) authorising preliminary or incidental matters in relation to an appeal to be dealt with by the chairman of the tribunal hearing that appeal<sup>16</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 'Regulations' means regulations made by the National Assembly for Wales under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (not yet in force): s 31(1). As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 supra.

4 Ibid s 27(1), Sch 3 para 2(1). See note 1 supra.

5 Ibid Sch 3 para 2(2)(a). See note 1 supra.

6 'Prescribed' means prescribed by regulations: see ibid s 31(1). See notes 1, 3 supra.

7 Ibid Sch 3 para 2(2)(b). See note 1 supra.

8 Ibid Sch 3 para 2(2)(c). See note 1 supra.

9 Ibid Sch 3 para 2(2)(d). See note 1 supra.

- 10 Ibid Sch 3 para 2(2)(e). See note 1 supra.
- 11 Ibid Sch 3 para 2(2)(f). See note 1 supra.
- 12 Ibid Sch 3 para 2(2)(g). See note 1 supra.
- 13 Ibid Sch 3 para 2(2)(h). See note 1 supra.
- 14 Ibid Sch 3 para 2(2)(i). See note 1 supra.
- 15 Ibid Sch 3 para 2(2)(j). See note 1 supra.
- 16 Ibid Sch 3 para 2(2)(k). See note 1 supra.

#### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1238. Appeals to the High Court.

### **1238. Appeals to the High Court.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

If any party to proceedings before a tribunal constituted in accordance with the Education Act 2005<sup>2</sup> is dissatisfied in point of law with a decision<sup>3</sup> of the tribunal he may, according as rules of court may provide, either appeal from the tribunal to the High Court or require the tribunal to state and sign a case for the opinion of the High Court<sup>4</sup>. Rules of court may provide for authorising or requiring the tribunal, in the course of proceedings before it, to state a special case for the decision of the High Court on any question of law arising in the proceedings<sup>5</sup>. Appeal from the decision of the High Court lies to the Court of Appeal<sup>6</sup>.

1 As from a day to be appointed under the Education Act 2005 s 125(4), the Tribunals and Inquiries Act 1992 Sch 1 para 15(d) (as amended) is further amended by the Education Act 2005 Sch 9 para 6 so as to refer to a tribunal constituted in accordance with Sch 3 (not yet in force) (see PARAS 1236-1237 ante). At the date at which this volume states the law, no such day had been appointed.

2 Ie in accordance with the Education Act 2002 s 27(1), Sch 3 (not yet in force) (see PARAS 1236-1237 ante). See also note 1 supra.

3 For the meaning of 'decision' see PARA 1035 note 6 ante.

4 Tribunals and Inquiries Act 1992 ss 1, 11(1) (amended by the Special Educational Needs and Disability Act 2001 s 42(1), Sch 8 Pt 2 paras 19, 20(a)); Tribunals and Inquiries Act 1992 Sch 1 para 15(d) (amended by the School Inspections Act 1996 s 47(1), Sch 6 para 5; and the School Standards and Framework Act 1998 s 140(1), Sch 30 para 47(b); and prospectively amended by the Education Act 2005 s 61, Sch 9 para 6). See note 1 supra.

5 See the Tribunals and Inquiries Act 1992 s 11(3)-(5) (as amended).

6 See note 4 supra.

### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1239. Inspection of certain schools by registered inspectors.

### **1239. Inspection of certain schools by registered inspectors.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

It is the duty of the Chief Inspector<sup>2</sup> to secure that every school<sup>3</sup> in Wales of the types listed in heads (1) to (4) below is inspected, at such intervals as may be prescribed<sup>4</sup>, by a registered inspector<sup>5</sup> or by a member of the inspectorate<sup>6</sup>. The schools which may be inspected are:

- 2275 (1) community, foundation and voluntary schools<sup>7</sup>;
- 2276 (2) community and foundation special schools<sup>8</sup>;
- 2277 (3) maintained nursery schools<sup>9</sup>; and
- 2278 (4) special schools which are not community or foundation special schools but are for the time being approved by the National Assembly for Wales<sup>10</sup>.

However, there is no requirement to inspect any school which is a closing school<sup>11</sup>, and in respect of which the Chief Inspector has decided, having regard to the date on which the closure is to take effect, that no useful purpose would be served by the school being inspected<sup>12</sup>.

It is the general duty of any inspector conducting such an inspection to report on:

- 2279 (a) the quality of the education provided by the school<sup>13</sup>;
- 2280 (b) how far that education meets the needs of the range of pupils<sup>14</sup> at the school<sup>15</sup>;
- 2281 (c) the educational standards achieved in the school<sup>16</sup>;
- 2282 (d) the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed effectively<sup>17</sup>;
- 2283 (e) the spiritual, moral, social and cultural development of pupils at the school<sup>18</sup>; and
- 2284 (f) the contribution made by the school to the well-being of those pupils<sup>19</sup>.

An inspection does not extend to: (i) denominational education<sup>20</sup>; (ii) education which is brought within the remit the Chief Inspector by Part IV of the Learning and Skills Act 2000<sup>21</sup>; or (iii) the content of collective worship<sup>22</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).



4 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (not yet in force): s 31(1). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no such regulations had been made. See note 1 supra.

5 Ie an inspector registered under *ibid* s 25 (not yet in force) (see PARA 1233 ante).

6 *Ibid* s 28(1). Section 28(1) (not yet in force) has effect subject to s 32 (not yet in force) (inspections by members of the inspectorate: see PARA 1248 post): s 28(6). Further provision is made by Sch 4 (not yet in force) (see PARAS 1240-1246 post) with respect to inspections under s 28 (not yet in force): s 28(8). See note 1 supra. For the meaning of 'member of the inspectorate' see PARA 1233 note 4 ante. As to the inspection of independent schools see PARA 1166 ante.

7 *Ibid* s 28(2)(a). See note 1 supra. As to community, foundation and voluntary schools see PARA 102 et seq ante.

8 *Ibid* s 28(2)(b). See note 1 supra. As to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

9 *Ibid* s 28(2)(c). See note 1 supra. As to maintained nursery schools see PARA 94 et seq ante.

10 *Ibid* s 28(2)(d). See note 1 supra. The text refers to approval under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante).

11 Education Act 2005 s 28(3)(a). See note 1 supra. For the purposes of s 28(3)(a) (not yet in force), a 'closing school' means:

- 108 (1) a community, foundation or voluntary school, community or foundation special school or maintained nursery school in respect of which proposals to discontinue the school have been approved, adopted or determined under any enactment (see PARA 131 et seq ante) (s 28(4)(a));
- 109 (2) a foundation or voluntary school in respect of which the governing body has given notice of discontinuance under the School Standards and Framework Act 1998 s 30 (as amended) (see PARA 135 ante) (Education Act 2005 s 28(4)(b));
- 110 (3) a community, foundation or voluntary or community or foundation special school in respect of which the National Assembly for Wales has given a direction to discontinue the school under the School Standards and Framework Act 1998 s 19 (as amended) (power to direct closure of school: see PARA 1273 post) or s 32 (direction requiring discontinuance of community or foundation special school: see PARA 149 ante) (Education Act 2005 s 28(4)(c)); or
- 111 (4) a special school which is not a community or foundation special school but which is for the time being approved by the National Assembly for Wales under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante) and which the proprietor has decided to close (Education Act 2005s 28(4)(d)).

For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 122(2), (3). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

12 *Ibid* s 28(3)(b). See note 1 supra.

13 *Ibid* s 28(5)(a). See note 1 supra. As to combined reports under the inspection enactments see PARA 1263 post.

14 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of *ibid* s 122(2), (3).

15 *Ibid* s 28(5)(b). See note 1 supra.

16 *Ibid* s 28(5)(c). See note 1 supra.

17 *Ibid* s 28(5)(d). See note 1 supra.

18 *Ibid* s 28(5)(e). See note 1 supra.

19 *Ibid* s 28(5)(f). See note 1 supra. For the meaning of 'well-being' see PARA 1231 note 11 ante.

20 Ibid s 28(7)(a). See note 1 supra.

21 Ibid s 28(7)(b). See note 1 supra. The text refers to the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively amended) (extended remit of the Chief Inspector: see PARA 1331 et seq post).

22 Education Act 2005 s 28(8)(c). See note 1 supra. The text refers to the content of collective worship which falls to be inspected under s 50 (not yet in force): see PARA 1258 post.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

### **1239 Inspection of certain schools by registered inspectors**

TEXT AND NOTE 10--Education Act 2005 s 28(2)(d) substituted: Education and Skills Act 2008 Sch 1 para 27 (not yet in force).

NOTE 11--Head (1). Now approved, adopted, confirmed or determined under any enactment: 2005 Act s 28(4)(a) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

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## **1240. Selection of registered inspectors.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Before entering into any arrangement for an inspection<sup>2</sup> by a registered inspector<sup>3</sup>, the Chief Inspector<sup>4</sup> must invite tenders from at least two persons who can reasonably be expected to tender for the proposed inspection and to do so at arm's length from each other, and each of whom is either: (1) a registered inspector<sup>5</sup>; or (2) a person who the Chief Inspector is satisfied would, if his tender were successful, arrange with a registered inspector for the inspection to be carried out<sup>6</sup>.

Before an inspection takes place the Chief Inspector must consult the appropriate authority<sup>7</sup> about the inspection<sup>8</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For these purposes, 'inspection' means an inspection under the Education Act 2005 s 28 (not yet in force) (see PARA 1239 ante): s 28(8), Sch 4 para 1. See note 1 supra.

3 I.e. an inspector registered under *ibid* s 25 (not yet in force) (see PARA 1233 ante).

4 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see *ibid* s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

5 *Ibid* Sch 4 para 2(1)(a). See note 1 supra.

6 *Ibid* Sch 4 para 2(1)(b). See note 1 supra.

7 For these purposes, 'appropriate authority' means:

112 (1) in relation to a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school, the school's governing body or, if the school does not have a delegated budget, the local education authority (*ibid* Sch 4 para 1(a));

113 (2) in the case of a school falling within s 28(2)(d) (not yet in force) (see PARA 1239 ante), the proprietor of the school (Sch 4 para 1(b)).

See note 1 supra. For the meaning of 'delegated budget' see PARA 320 ante; definition applied by s 63(1). As to community, foundation and voluntary schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante. As to local education authorities see PARA 20 ante. As to maintained nursery schools see PARA 94 et seq ante. For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of s 122(2), (3).

8 *Ibid* Sch 4 para 2(2). See note 1 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1241. Inspection teams.

### **1241. Inspection teams.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Every inspection<sup>2</sup> must be conducted by a registered inspector<sup>3</sup> or by a member of the inspectorate<sup>4</sup> with the assistance of a team (an 'inspection team')<sup>5</sup>. No person is to act as a member of an inspection team unless he is enrolled in the list kept by the Chief Inspector<sup>6</sup> or he is a member of the inspectorate and, if he is not the Chief Inspector, is authorised so to act by the Chief Inspector<sup>7</sup>. It is the duty of the inspector conducting the inspection to ensure that:

- 2285 (1) at least one member of the inspection team is a person: (a) without personal experience in the management of any school or in the provision of education in any school (otherwise than as a governor or in any other voluntary capacity)<sup>8</sup>; and (b) whose primary function on the team is not that of providing financial or business expertise<sup>9</sup>; and
- 2286 (2) no member of the inspection team falls within a category of person prescribed<sup>10</sup> for these purposes<sup>11</sup>.

Otherwise, the composition of the inspection team must be determined by the inspector conducting the inspection, subject (in the case of a registered inspector) to his complying with any imposed conditions<sup>12</sup>. Any experience of a kind mentioned in head (1) above which it is reasonable to regard as insignificant<sup>13</sup> may be ignored by the inspector conducting the inspection<sup>14</sup>. It is the duty of the inspector conducting the inspection to ensure that no person takes any part in an inspection if he has, or has at any time had, any connection with: (i) the school in question<sup>15</sup>; (ii) any person who is employed at the school<sup>16</sup>; (iii) any person who is a member of the school's governing body<sup>17</sup>; or (iv) the proprietor<sup>18</sup> of the school<sup>19</sup>, of a kind which might reasonably be taken to raise doubts about his ability to act impartially in relation to that school<sup>20</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1240 note 2 ante.

3 ie an inspector registered under the Education Act 2005 s 25 (not yet in force) (see PARA 1233 ante).

4 For the meaning of 'member of the inspectorate' see PARA 1233 note 4 ante.

5 Education Act 2005 s 28(8), Sch 4 para 3(1). See note 1 supra.

6 Ibid Sch 4 para 3(1)(a). The text refers to the list kept by the Chief Inspector under Sch 4 para 4 (not yet in force) (see PARA 1242 post). 'Chief Inspector' means Her Majesty's Chief Inspector of Education and Training in Wales: see s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

7 Ibid Sch 4 para 3(1)(b). See note 1 supra.

8 Ibid Sch 4 para 3(2)(a)(i). See note 1 supra.

9 Ibid Sch 4 para 3(2)(a)(ii). See note 1 supra.

10 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under ibid Pt 1 Ch 3 (ss 19-31) (not yet in force): s 31(1). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 supra.

11 Ibid Sch 4 para 3(2)(b). See note 1 supra.

12 Ibid Sch 4 para 3(3). The text refers to any condition imposed under s 25(4)(c) (not yet in force) (see PARA 1233 ante). For the purposes of Pt 1 Ch 3 (not yet in force), any reference to a condition imposed under s 25(4)(c) (not yet in force) includes a reference to a condition imposed under s 26(3) (not yet in force) (see PARA 1234 ante): s 31(2). See note 1 supra.

13 Ie having regard to the purposes of ibid Sch 4 para 3(2) (not yet in force): see the text to notes 8-11 supra.

14 Ibid Sch 4 para 3(4). See note 1 supra.

15 Ibid Sch 4 para 3(5)(a). See note 1 supra.

16 Ibid Sch 4 para 3(5)(b). See note 1 supra.

17 Ibid Sch 4 para 3(5)(c). See note 1 supra. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

18 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of ibid s 122(2), (3).

19 Ibid Sch 4 para 3(5)(d). See note 1 supra.

20 Ibid Sch 4 para 3(5). See note 1 supra.

## UPDATE

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1242. Enrolment of persons to act as team members.

## **1242. Enrolment of persons to act as team members.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> must keep a list of persons who may<sup>3</sup> act as members of an inspection team<sup>4</sup>. The Chief Inspector may not enrol any person in the list unless, having regard to any conditions that he proposes to impose<sup>5</sup>, it appears to him that that person is a fit and proper person for carrying out an inspection<sup>6</sup> and will be capable of assisting in an inspection competently and effectively<sup>7</sup>. An application for enrolment in the list must, except in such circumstances as may be prescribed<sup>8</sup>, be accompanied by the prescribed fee<sup>9</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see *ibid* s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 I.e. by virtue of *ibid* s 28(8), Sch 4 para 3(1)(a) (not yet in force) (see PARA 1241 ante).

4 *Ibid* Sch 4 para 4(1). As to inspection teams under the Education Act 2005 see PARA 1241 ante. The provisions of the Education Act 2005 s 25(3)(a), (4), (5)(b), (6)-(9) (not yet in force) (conditions imposed on registration, and the period for which registration is to have effect: see PARA 1233 ante) apply in relation to the enrolment of a person in the list and acting as a member of an inspection team as they apply in relation to the registration of a person under s 25(1) (not yet in force) (see PARA 1233 ante) and to acting as a registered inspector, but as if the reference in s 25(5)(b) (not yet in force) (see PARA 1233 ante) to the need for registered inspectors were a reference to the need for enrolled persons: Sch 4 para 4(4). As to registered inspectors under the Education Act 2005 see PARA 1233 ante. Section 26 (not yet in force) (removal from register and imposition or variation of conditions: see PARA 1234 ante), s 27 (not yet in force) (appeals in relation to registration: see PARA 1235 ante) and Sch 3 (not yet in force) (tribunals hearing appeals in relation to registration: see PARAS 1236-1237 ante) apply in relation to enrolment on the list and to a person so enrolled as they apply in relation to registration under s 25(1) (not yet in force) and to a person so registered, but with any necessary modifications: Sch 4 para 4(5). In its application to an enrolled person in accordance with Sch 4 para 4(5) (not yet in force), s 26 (not yet in force) has effect as if conditions mentioned in s 26(2) (not yet in force) (see PARA 1234 ante) were that: (1) that person is no longer a fit and proper person to act as a member of an inspection team; (2) that he is no longer capable of assisting in an inspection competently and effectively; (3) that there has been a significant failure on his part to comply with any condition imposed under s 25(4)(c) (not yet in force) (see PARA 1233 ante) as it applies in accordance with Sch 4 para 4(4) (not yet in force): Sch 4 para 4(6). For the purposes of Pt 1 Ch 3 (ss 19-31) (not yet in force), any reference to a condition imposed under s 25(4)(c) (not yet in force) includes a reference to a condition imposed under s 26(3) (not yet in force) (see PARA 1234 ante): s 31(2). Without prejudice to the generality of Sch 3 para 2(1) (not yet in force) (regulations may make provision as to the period and manner for the making of appeals: see PARA 1237 ante), regulations under that provision may provide that, where a person is appealing simultaneously: (a) against a decision of the Chief Inspector relating to that person's registration; and (b) against a decision of the Chief Inspector relating to that person's enrolment in the list, both appeals are to be heard at the same time: Sch 4 para 4(7). 'Regulations' means regulations made by the National Assembly for Wales under Pt 1 Ch 3 (not yet in force): s 31(1). See note 1 supra. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante; and as to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made under Sch 4 para 4 (not yet in force).

5 I.e. any condition imposed under *ibid* s 25(4)(c) (not yet in force) (see PARA 1233 ante) as it applies in accordance with Sch 4 para 4(4) (not yet in force) (see note 4 supra). See note 1 supra.

- 6 Ibid Sch 4 para 4(2)(a). See note 1 supra. For the meaning of 'inspection' see PARA 1240 note 2 ante.
- 7 Ibid Sch 4 para 4(2)(b). See note 1 supra.
- 8 'Prescribed' means prescribed by regulations: ibid s 31(1). See note 1 supra.
- 9 Ibid Sch 4 para 4(3). Any sums received by the Chief Inspector under Sch 4 para 4(3) (not yet in force) must be paid into the Consolidated Fund: s 30(1). Section 30(1) (not yet in force) has effect subject to the Government of Wales Act 1998 s 104(6), Sch 6 para 4 (Treasury power to direct that the requirement for payment into the Consolidated Fund is not to apply in relation to specified sums received by the Chief Inspector: see CONSTITUTIONAL LAW AND HUMAN RIGHTS): Education Act 2005 s 30(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq. See notes 1, 4 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.



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### **1243. Training for inspections.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>.

No person who is not a member of the inspectorate<sup>2</sup> may conduct an inspection<sup>3</sup> of a school<sup>4</sup> in Wales, or act as a member of an inspection team<sup>5</sup> for such a school, unless he has, in the opinion of the Chief Inspector<sup>6</sup>, satisfactorily completed a course of training provided by, or complying with arrangements approved by, the Chief Inspector<sup>7</sup>. Where the Chief Inspector provides such training, he may charge such fees as are reasonable for the purpose of recovering the whole, or part, of the cost of providing it<sup>8</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'member of the inspectorate' see PARA 1233 note 4 ante.

3 For the meaning of 'inspection' see PARA 1240 note 2 ante.

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

5 As to inspection teams under the Education Act 2005 see PARA 1241 ante.

6 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

7 Ibid s 28(8), Sch 4 para 5(1). Schedule 4 para 5(1) (not yet in force) does not apply in such circumstances as may be specified, either generally or in relation to a particular case or class of case, by the Chief Inspector: Sch 4 para 5(3). See note 1 supra.

8 Ibid Sch 4 para 5(2). Any sums received by the Chief Inspector under Sch 4 para 5(2) (not yet in force) must be paid into the Consolidated Fund: s 30(1). Section 30(1) (not yet in force) has effect subject to the Government of Wales Act 1998 s 104(6), Sch 6 para 4 (Treasury power to direct that the requirement for payment into the Consolidated Fund is not to apply in relation to specified sums received by the Chief Inspector: see CONSTITUTIONAL LAW AND HUMAN RIGHTS): Education Act 2005 s 30(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq. See note 1 supra.

### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1244. Meeting with parents.

#### **1244. Meeting with parents.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where an inspection<sup>2</sup> is arranged, the appropriate authority<sup>3</sup> for the school<sup>4</sup> concerned must: (1) take such steps as are reasonably practicable to notify the parents<sup>5</sup> of registered pupils<sup>6</sup> at the school<sup>7</sup>, and such other persons as may be prescribed<sup>8</sup>, of the time when the inspection is to take place<sup>9</sup>; and (2) arrange a meeting, in accordance with such provisions as may be prescribed, between the inspector conducting the inspection<sup>10</sup> and those parents of registered pupils at the school who wish to attend<sup>11</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1240 note 2 ante.

3 For the meaning of 'appropriate authority' see PARA 1240 note 7 ante.

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

5 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 122(2), (3).

6 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 122(2), (3).

7 Ibid s 28(8), Sch 4 para 6(a)(i). See note 1 supra.

8 Ibid Sch 4 para 6(a)(ii). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under Pt 1 Ch 3 (ss 19-31) (not yet in force): s 31(1). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no such regulations had been made for these purposes. See note 1 supra.

9 Ibid Sch 4 para 6(a). See note 1 supra.

10 As to inspection teams under the Education Act 2005 see PARA 1241 ante.

11 Education Act 2005 Sch 4 para 6(b). See note 1 supra.

#### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1245. Rights of entry and inspection.

### **1245. Rights of entry and inspection.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

An inspector<sup>2</sup> conducting an inspection<sup>3</sup>, and the members of his inspection team<sup>4</sup>, have at all reasonable times:

- 2287 (1) a right of entry to the premises<sup>5</sup> of the school<sup>6</sup> concerned<sup>7</sup>;
- 2288 (2) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he requires for the purposes of the inspection<sup>8</sup>;
- 2289 (3) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by the school, any pupils<sup>9</sup> who are registered<sup>10</sup> at the school and have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age<sup>11</sup>, are receiving part of their education from any person ('the provider')<sup>12</sup>;
- 2290 (4) a right of entry to any premises of the provider used in connection with the provision by him of that education<sup>13</sup>;
- 2291 (5) a right to inspect and take copies of any records kept by the provider relating to the provision of that education, and any other documents containing information so relating, which the inspector or (as the case may be) member of the team requires for the purposes of the inspection<sup>14</sup>.

Where pupils registered at the school concerned are, by arrangement with another school, receiving part of their education at the other school<sup>15</sup>, and the inspector is satisfied that he cannot properly discharge his duty<sup>16</sup> in relation to the school concerned without inspecting the provision made for those pupils at that other school<sup>17</sup>, heads (1) and (2) above apply in relation to that other school as it applies in relation to the school concerned<sup>18</sup>.

It is an offence wilfully to obstruct the inspector conducting the inspection, or a member of an inspection team, in the exercise of his functions<sup>19</sup> in relation to an inspection of a school<sup>20</sup>. Any person guilty of such an offence is liable on summary conviction to a fine<sup>21</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the appointment of inspectors under the Education Act 2005 see PARA 1227 ante.

3 For the meaning of 'inspection' see PARA 1240 note 2 ante.

4 As to inspection teams under the Education Act 2005 see PARA 1241 ante.

5 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the Education Act 2005 s 122(2), (3).

6 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

- 7 Ibid Sch 4 para 7(1)(a). See note 1 supra.
- 8 Ibid Sch 4 para 7(1)(b). See note 1 supra. As to the inspection of computers and associated apparatus or material used in connection with the records or other documents in question see PARA 1231 note 34 ante.
- 9 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 122(2), (3).
- 10 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).
- 11 For the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 122(2), (3).
- 12 Ibid Sch 4 para 7(3)(a). See note 1 supra.
- 13 Ibid Sch 4 para 7(3)(b). See note 1 supra.
- 14 Ibid Sch 4 para 7(3)(c). See notes 1, 8 supra.
- 15 Ibid Sch 4 para 7(2)(a). See note 1 supra.
- 16 Ie under ibid s 28(5) (not yet in force): see PARA 1239 ante.
- 17 Ibid Sch 4 para 7(2)(b). See note 1 supra.
- 18 Ibid Sch 4 para 7(2). See note 1 supra.
- 19 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 122(2), (3).
- 20 Ibid Sch 4 para 8(1). See note 1 supra.
- 21 Ibid Sch 4 para 8(2). The fine must not exceed level 4 on the standard scale: Sch 4 para 8(2). As to the standard scale see PARA 481 note 4 ante. See note 1 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1246. Replacement of inspector during course of inspection.

#### **1246. Replacement of inspector during course of inspection.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, during an inspection<sup>2</sup>, at any time after the required meeting with parents<sup>3</sup> is held, but before the making of the report of the inspection is completed, the inspector conducting the inspection becomes, for any reason, unable to continue to discharge his functions<sup>4</sup> as an inspector in relation to the inspection<sup>5</sup>, and if the conditions set out below are satisfied<sup>6</sup>:

2292 (1) the Chief Inspector<sup>7</sup> may arrange for that person to be replaced as the inspector conducting the inspection by another person who is either a registered inspector<sup>8</sup> or a member of the inspectorate<sup>9</sup>; and

2293 (2) if he does so, anything done by or in relation to that person in connection with the inspection must, so far as necessary for his effectual replacement by that other inspector, be regarded as done by or in relation to that other inspector<sup>10</sup>.

The conditions are that the appropriate authority<sup>11</sup> for the school<sup>12</sup> concerned has given the Chief Inspector notice in writing of its agreement to the inspector mentioned above<sup>13</sup> being replaced<sup>14</sup>, and that the replacement inspector does not have, and has not at any time had, any connection<sup>15</sup> with the school in question or with any other person mentioned there<sup>16</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'inspection' see PARA 1240 note 2 ante.

3 Ie required by the Education Act 2005 s 28(8), Sch 4 para 6 (not yet in force) (see PARA 1244 ante). As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of s 122(2), (3).

4 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 122(2), (3).

5 Ibid Sch 4 para 9(1). See note 1 supra.

6 Ibid Sch 4 para 9(2). The text refers to the conditions set out in Sch 4 para 9(3) (not yet in force): see the text and notes 11-16 infra. See note 1 supra.

7 Ie Her Majesty's Chief Inspector of Education and Training in Wales: see ibid s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

8 As to the registration of inspectors under the Education Act 2005 see PARA 1233 ante.

9 Ibid Sch 4 para 9(2)(a). See note 1 supra. For the meaning of 'member of the inspectorate' see PARA 1233 note 4 ante.

10 Ibid Sch 4 para 9(2)(b). See note 1 supra.

11 For the meaning of 'appropriate authority' see PARA 1240 note 7 ante.

12 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

13 le mentioned in ibid Sch 4 para 9(1) (not yet in force): see the text and notes 2-5 supra.

14 Ibid Sch 4 para 9(3)(a). See note 1 supra.

15 le any connection of the kind mentioned in ibid Sch 4 para 3(5) (not yet in force): see PARA 1241 ante.

16 Ibid Sch 4 para 9(3)(b). See note 1 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(B) Registered Inspectors/1247. Publication of inspection reports.

### **1247. Publication of inspection reports.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The Chief Inspector<sup>2</sup> may arrange for:

- 2294 (1) any report by a member of the inspectorate<sup>3</sup> of an inspection carried out by him under any provision of Chapter 3 of Part 1 of the Education Act 2005<sup>4</sup>, whether the report is required by any such provision or is otherwise made in pursuance of his functions<sup>5</sup> under that provision<sup>6</sup>; or
- 2295 (2) any report of a regular inspection<sup>7</sup> made by a registered inspector<sup>8</sup>,

to be published in such manner as the Chief Inspector considers appropriate<sup>9</sup>; and he may arrange for any such report to be published by electronic means<sup>10</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 31(1) (not yet in force); and PARA 1227 ante. See note 1 supra.

3 For the meaning of 'member of the inspectorate' see PARA 1233 note 4 ante.

4 Ie under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (not yet in force) (see PARA 1227 et seq ante).

5 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of ibid s 122(2), (3).

6 Ibid s 29(1)(a). See note 1 supra.

7 Ie an inspection under ibid s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante).

8 Ibid s 29(1)(b). See note 1 supra. As to the registration of inspectors under the Education Act 2005 see PARA 1233 ante.

9 Ibid s 29(1). See note 1 supra. As to combined reports under the inspection enactments see PARA 1263 post.

10 Ibid s 29(2). Section 29(2) (not yet in force) is expressed to be without prejudice to the generality of s 21(1)(c) (not yet in force) (arrangements for publication of reports: see PARA 1231 ante) or s 29(1) (not yet in force) (see the text and notes 2-9 supra): s 29(2). For the purposes of the law of defamation, any report published by the Chief Inspector under either of those provisions is privileged unless the publication is shown to be made with malice: s 29(3). This provision does not limit any privilege subsisting apart from s 29(3) (not yet in force): s 29(4). See note 1 supra. As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

### **UPDATE**

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1248. Inspections by members of the inspectorate.

## (C) PROCEDURE FOR SCHOOL INSPECTION

### **1248. Inspections by members of the inspectorate.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

If the Chief Inspector<sup>2</sup> so elects in the case of any inspection of a school<sup>3</sup> by a member of the inspectorate<sup>4</sup>, that inspection is to be treated for the purposes of the relevant provisions<sup>5</sup> as if it were a regular inspection<sup>6</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

4 I.e. under ibid s 20(2)(b) (not yet in force) (see PARA 1231 ante) or s 24(1) (not yet in force) (see PARA 1232 ante). For these purposes, 'member of the inspectorate' means the Chief Inspector, any of Her Majesty's Inspectors of Education and Training in Wales and any additional inspector appointed under s 19(8), Sch 2 para 2 (not yet in force) (see PARA 1228 ante): s 43. See note 1 supra. As to the appointment of inspectors under the Education Act 2005 see PARA 1227 ante.

5 For these purposes, 'the relevant provisions' means ibid s 28(1), (5) (not yet in force) (see PARA 1239 ante) and s 35 (not yet in force) (see PARA 1250 post), and (in the case of an inspection of a maintained school) ss 38-40 (not yet in force) (see PARAS 1253-1255 post), and (in the case of an inspection of a school other than a maintained school) ss 41-42 (not yet in force) (see PARAS 1256-1257 post): s 32(2). For these purposes, 'maintained school' means a community, foundation or voluntary school, a community or foundation special school or a maintained nursery school: s 43. As to maintained nursery schools see PARA 94 et seq ante; as to community, foundation and voluntary schools see PARA 102 et seq ante; as to community and foundation special schools see PARA 102 et seq ante; and as to special schools see PARA 1027 ante.

6 Ibid s 32(1). The text refers to a regular inspection under s 28 (not yet in force) (see PARA 1239 ante): s 32(1).

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1249. Regular inspections by registered inspectors.

#### **1249. Regular inspections by registered inspectors.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where a regular inspection<sup>2</sup> by a registered inspector<sup>3</sup> or a member of the inspectorate<sup>4</sup> has been completed, the inspector must make in writing a report of the inspection and a summary of the report<sup>5</sup>. Where the inspection was conducted by a registered inspector and he is of the opinion that special measures are required to be taken in relation to the school<sup>6</sup>, or that the school requires significant improvement<sup>7</sup>, he must submit a draft of the report of the inspection to the Chief Inspector<sup>8</sup>. If the Chief Inspector so requests, an inspector who has submitted such a draft must provide the Chief Inspector with such further information as the Chief Inspector may specify<sup>9</sup>. The Chief Inspector must inform an inspector who has submitted such a draft whether he agrees or disagrees with the inspector's opinion<sup>10</sup>.

Where the Chief Inspector informs the inspector that he disagrees with the inspector's opinion<sup>11</sup>, but the inspector remains of the opinion that special measures are required to be taken in relation to the school or that the school requires significant improvement<sup>12</sup>, the inspector may not make a report stating that opinion unless the terms in which he makes the report are substantially the same<sup>13</sup> as the draft or as a subsequent draft submitted to the Chief Inspector<sup>14</sup>.

Where a subsequent draft is so submitted, the Chief Inspector must inform the inspector whether he agrees or disagrees with the inspector's opinion<sup>15</sup>. A report made by a registered inspector who is of the opinion that special measures are required to be taken in relation to the school or that the school requires significant improvement must state his opinion<sup>16</sup>, and state whether the Chief Inspector agrees or disagrees with his opinion<sup>17</sup>. If a report of an inspection of a school by a registered inspector is made in circumstances where:

- 2296 (1) he is of the opinion that special measures are not required to be taken in relation to the school<sup>18</sup>; but
- 2297 (2) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the inspectorate, or the report stated that the Chief Inspector agreed with his opinion<sup>19</sup>,

the registered inspector must state his opinion in the report<sup>20</sup>. If a report of an inspection of a school by a registered inspector is made in circumstances where:

- 2298 (a) he is of the opinion that the school does not require significant improvement and that special measures are not required to be taken in relation to the school<sup>21</sup>; but
- 2299 (b) in the latest report of an inspection of the school, the person making the report stated that in his opinion the school did require significant improvement and either that person was a member of the inspectorate or the report stated that the Chief Inspector agreed with his opinion<sup>22</sup>,

the registered inspector must state his opinion in the report<sup>23</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie an inspection under the Education Act 2005 s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante).

3 As to the registration of inspectors under the Education Act 2005 see PARA 1233 ante.

4 For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.

5 Education Act 2005 s 33. See note 1 supra. As to combined reports under the inspection enactments see PARA 1263 post.

6 Ibid s 34(1)(a). For the purposes of Pt 1 (ss 1-63) (not yet in force), special measures are required to be taken in relation to a school if: (1) the school is failing to give its pupils an acceptable standard of education; and (2) the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school: s 44(1). See generally *R v Secretary of State for Education and Employment and the North East London Education Association, ex p M* [1996] ELR 162, CA (decided under previous legislation). For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 122(2), (3).

7 Ibid s 34(1)(b). For the purposes of Pt 1 (not yet in force), a school requires significant improvement if, although not falling within s 44(1) (not yet in force) (see note 6 supra), it is performing significantly less well than it might in all the circumstances reasonably be expected to perform: s 44(2). See note 1 supra.

8 Ibid s 34(1). 'Chief Inspector' means Her Majesty's Chief Inspector of Education and Training in Wales: see s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

9 Ibid s 34(2). See note 1 supra.

10 Ibid s 34(3). See note 1 supra.

11 Ibid s 34(4)(a). See note 1 supra.

12 Ibid s 34(4)(b). See note 1 supra.

13 Ie except as to the statement required by ibid s 34(6)(b) (not yet in force): see the text to note 17 infra.

14 Ibid s 34(4). See note 1 supra.

15 Ibid s 34(5). See note 1 supra.

16 Ibid s 34(6)(a). See note 1 supra.

17 Ibid s 34(6)(b). See note 1 supra.

18 Ibid s 34(7)(a). See note 1 supra.

19 Ibid s 34(7)(b). See note 1 supra.

20 Ibid s 34(7). The registered inspector must state his opinion in the report as mentioned in the text whether or not he is required by s 34(6) (not yet in force) (see the text and note 15 supra) also to state his opinion that the school requires significant improvement: s 34(7). See note 1 supra.

21 Ibid s 34(8)(a). See note 1 supra.

22 Ibid s 34(8)(b). See note 1 supra.

23 Ibid s 34(8). See note 1 supra.

## UPDATE

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1250. Reports of inspections by members of the inspectorate.

### **1250. Reports of inspections by members of the inspectorate.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where on the completion of any inspection of a school<sup>2</sup> by a member of the inspectorate<sup>3</sup>, that person is of the opinion that special measures are required to be taken in relation to the school<sup>4</sup> or that the school requires significant improvement<sup>5</sup>, he must prepare in writing a report of the inspection and a summary of the report<sup>6</sup>, and he must state his opinion in the report<sup>7</sup>. If on the completion of any such inspection of a school by a member of the inspectorate in circumstances where:

- 2300 (1) he is of the opinion that special measures are not required to be taken in relation to the school<sup>8</sup>; but
- 2301 (2) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the inspectorate, or the report stated that the Chief Inspector<sup>9</sup> agreed with his opinion<sup>10</sup>,

the member of the inspectorate must prepare a report of the inspection and a summary of the report and state his opinion in the report<sup>11</sup>. If on the completion of any such inspection of a school by a member of the inspectorate in circumstances where:

- 2302 (a) he is of the opinion that the school does not require significant improvement and that special measures are not required to be taken in relation to the school<sup>12</sup>; but
- 2303 (b) in the latest report of an inspection of the school, the person making the report stated that in his opinion the school did require significant improvement and either that person was a member of the inspectorate or the report stated that the Chief Inspector agreed with his opinion<sup>13</sup>,

the member of the inspectorate must prepare a report of the inspection and a summary of the report and state his opinion in the report<sup>14</sup>

A report of a regular inspection<sup>15</sup> of a school by a member of the inspectorate must, if he is of the opinion that special measures are required to be taken in relation to the school or that the school requires significant improvement, state his opinion<sup>16</sup>. If a report of such an inspection of a school by a member of the inspectorate is made in circumstances where:

- 2304 (i) he is of the opinion that special measures are not required to be taken in relation to the school<sup>17</sup>; but
- 2305 (ii) in the latest report of an inspection of the school, the person making the report stated that in his opinion such measures were required to be taken and either that person was a member of the inspectorate, or the report stated that the Chief Inspector agreed with his opinion<sup>18</sup>,

the member of the inspectorate must state his opinion in the report<sup>19</sup>. If a report of such an inspection of a school by a member of the inspectorate is made in circumstances where:

2306 (A) he is of the opinion that the school does not require significant improvement and that special measures are not required to be taken in relation to the school<sup>20</sup>; but

2307 (B) in the latest report of an inspection of the school, the person making the report stated that in his opinion the school did require significant improvement and either that person was a member of the inspectorate or the report stated that the Chief Inspector agreed with his opinion<sup>21</sup>,

the member of the inspectorate must state his opinion in the report<sup>22</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie under the Education Act 2005 s 20(2)(b) (not yet in force) (see PARA 1231 ante) or s 24(1) (not yet in force) (see PARA 1232 ante). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 122(2), (3).

3 For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.

4 As to special measures being required to be taken in relation to a school see PARA 1249 note 6 ante.

5 Education Act 2005 s 35(1). See note 1 supra. As to schools requiring significant improvement see PARA 1249 note 7 ante.

6 Ibid s 35(1)(a). See note 1 supra. As to combined reports under the inspection enactments see PARA 1263 post.

7 Ibid s 35(1)(b). See note 1 supra.

8 Ibid s 35(2)(a). See note 1 supra.

9 Ie Her Majesty's Chief Inspector of Education and Training in Wales: see ibid s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

10 Ibid s 35(2)(b). See note 1 supra.

11 Ibid s 35(2). The member of the inspectorate must state his opinion in the report as mentioned in the text whether or not he is required by s 35(1)(b) (not yet in force) (see the text and note 7 supra) also to state his opinion that the school requires significant improvement: s 35(2). See note 1 supra.

12 Ibid s 35(3)(a). See note 1 supra.

13 Ibid s 35(3)(b). See note 1 supra.

14 Ibid s 35(3). See note 1 supra.

15 Ie an inspection under ibid s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante): s 43. See note 1 supra.

16 Ibid s 35(4). See note 1 supra.

17 Ibid s 35(5)(a). See note 1 supra.

18 Ibid s 35(5)(b). See note 1 supra.

19 Ibid s 35(5). The member of the inspectorate must state his opinion in the report as mentioned in the text whether or not he is required by s 35(4) (not yet in force) (see the text and notes 15-16 supra) also to state his opinion that the school requires significant improvement: s 35(5). See note 1 supra.

20 Ibid s 35(6)(a). See note 1 supra.

21 Ibid s 35(6)(b). See note 1 supra.

22 Ibid s 35(6). See note 1 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1251. Timing of regular inspections by registered inspectors.

### **1251. Timing of regular inspections by registered inspectors.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The carrying out of a regular inspection<sup>2</sup> (not being one carried out by a member of the inspectorate<sup>3</sup>) must be completed by the time allowed, and the making of the required report<sup>4</sup> must be completed within the period allowed<sup>5</sup>. The time, and the period, allowed are such as may be prescribed<sup>6</sup>, subject to any such extension of the period as the Chief Inspector<sup>7</sup> may consider necessary to make, but the total period allowed must not exceed the prescribed period extended by three months<sup>8</sup>.

In the case of an inspection (not being one carried out by a member of the inspectorate<sup>9</sup>) of a maintained school<sup>10</sup>, the Chief Inspector must give notice in writing of any extension to the inspector, the local education authority<sup>11</sup> (in the case of a maintained school), and the governing body<sup>12</sup>. In the case of an inspection (not being one carried out by a member of the inspectorate<sup>13</sup>) of a special school which is not a community or foundation special school but is for the time being approved by the National Assembly for Wales<sup>14</sup>, the Chief Inspector must give notice in writing of any such extension to the inspector, the proprietor<sup>15</sup> of the school, and the Assembly<sup>16</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie an inspection under the Education Act 2005 s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante); s 43. See note 1 supra.

3 Ibid s 36(5). See note 1 supra. For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.

4 Ie the report required under ibid s 33 (not yet in force): see PARA 1249 ante.

5 Ibid s 36(1). See note 1 supra. The text refers to the period allowed under s 36(2) (not yet in force): see the text and notes 6-8 infra.

6 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under ibid Pt 1 Ch 4 (ss 32-43) (not yet in force): s 43. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 supra.

7 Ie Her Majesty's Chief Inspector of Education and Training in Wales: see ibid s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

8 Ibid s 36(2). See note 1 supra.

9 Ibid s 36(5). See note 1 supra.

10 For the meaning of 'maintained school' see PARA 1248 note 5 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).



11 As to local education authorities see PARA 20 ante.

12 Education Act 2005 s 36(3). See note 1 supra. As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

13 Ibid s 36(5). See note 1 supra.

14 le schools falling within ibid s 28(2)(d) (not yet in force) (see PARA 1239 ante). The text refers to approval under the Education Act 1996 s 342 (as substituted) (approval of non-maintained special schools: see PARA 1028 ante).

15 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

16 Ibid s 36(4). See note 1 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1252. Duty to notify where inspection shows maintained school causing concern.

### **1252. Duty to notify where inspection shows maintained school causing concern.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, following an inspection<sup>2</sup> of a maintained school<sup>3</sup> by a member of the inspectorate<sup>4</sup>, that member has informed the Chief Inspector<sup>5</sup> of his opinion: (1) that special measures are required to be taken in relation to the school<sup>6</sup>; or (2) that the school requires significant improvement<sup>7</sup>, or where the Chief Inspector agrees with the opinion of a registered inspector<sup>8</sup>, expressed in a draft report submitted to the Chief Inspector<sup>9</sup>: (a) that special measures are required to be taken in relation to the school<sup>10</sup>; or (b) that the school requires significant improvement<sup>11</sup>, the Chief Inspector must without delay give the National Assembly for Wales<sup>12</sup> and the local education authority<sup>13</sup> notice in writing, stating that the case falls within heads (1) and (2) or heads (a) and (b) above<sup>14</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 Ie under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (not yet in force) (see PARA 1227 et seq ante).

3 For the meaning of 'maintained school' see PARA 1248 note 5 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

4 For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.

5 Ie Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

6 Ibid s 37(1)(a)(i). See note 1 supra. As to special measures being required to be taken in relation to a school see PARA 1249 note 6 ante.

7 Ibid s 37(1)(a)(ii). See note 1 supra. As to schools requiring significant improvement see PARA 1249 note 7 ante.

8 As to the registration of inspectors under the Education Act 2005 see PARA 1233 ante.

9 Ie a draft report submitted under ibid s 34(1): see PARA 1249 ante.

10 Ibid s 37(1)(b)(i). See note 1 supra.

11 Ibid s 37(1)(b)(ii). See note 1 supra.

12 As to the National Assembly for Wales see PARA 53 ante.

13 As to local education authorities see PARA 20 ante.

14 Education Act 2005 s 37(2). See note 1 supra.

### **UPDATE**

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1253. Destination of reports of inspections of maintained schools.

### **1253. Destination of reports of inspections of maintained schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

In the case of a report of a regular inspection<sup>2</sup> of a maintained school<sup>3</sup>, the person making the report must without delay send a copy of the report together with the summary of it to the appropriate authority<sup>4</sup> for the school<sup>5</sup>. In a case where a report of an inspection of a maintained school is made by a member of the inspectorate<sup>6</sup>, and he is required<sup>7</sup> to state in the report that he is of the opinion that special measures are required to be taken in relation to the school<sup>8</sup> or that the school requires significant improvement<sup>9</sup>, the member of the inspectorate must send a copy of the report together with the summary of it to the appropriate authority for the school<sup>10</sup>.

In any case, copies of the report and summary must be sent by the person who made the report: (1) to the Chief Inspector<sup>11</sup>, unless the report was made by a member of the inspectorate<sup>12</sup>; (2) to the head teacher<sup>13</sup> of the school<sup>14</sup>; (3) to whichever of the local education authority and the governing body is not the appropriate authority<sup>15</sup>; (4) in the case of a school having foundation governors<sup>16</sup>, to the person who appoints them and, if different, to the appropriate appointing authority<sup>17</sup>; and (5) in such circumstances as may be prescribed<sup>18</sup>, to such other persons, if any, as may be prescribed<sup>19</sup>. The appropriate authority must:

- 2308 (a) make a copy of any report and summary sent to the authority<sup>20</sup> available for inspection by members of the public at such times and at such place as may be reasonable<sup>21</sup>;
- 2309 (b) provide a copy of the report and summary, free of charge or in prescribed cases on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>22</sup>; and
- 2310 (c) take such steps as are reasonably practicable to secure that every registered<sup>23</sup> parent<sup>24</sup> of a registered pupil<sup>25</sup> at the school receives a copy of the summary within such period following receipt of the report by the authority as may be prescribed<sup>26</sup>.

If the inspection was a regular inspection<sup>27</sup> or was carried out by a member of the inspectorate<sup>28</sup>, and the school provides full-time education suitable to the requirements of pupils over compulsory school age<sup>29</sup>, the person making the report must send a copy (together with a copy of the summary, if there is one) to the National Council for Education and Training for Wales<sup>30</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 ie an inspection under the Education Act 2005 s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante): s 43. See note 1 supra.

3 For the meaning of 'maintained school' see PARA 1248 note 5 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3).

4 In *ibid* Pt 1 Ch 4 (ss 32-43) (not yet in force), 'appropriate authority', in relation to a maintained school, means the school's governing body or, if the school does not have a delegated budget, the local education authority: Education Act 2005 s 43. See note 1 supra. For the meaning of 'delegated budget' see PARA 320 ante; definition applied by s 63(1). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante; and as to local education authorities see PARA 20 ante.

5 *Ibid* s 38(1). See note 1 supra.

6 *Ibid* s 38(2)(a). See note 1 supra. For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.

7 *Ie* required by *ibid* s 35 (not yet in force) (see PARA 1250 ante).

8 As to special measures being required to be taken in relation to a school see PARA 1249 note 6 ante.

9 Education Act 2005 s 38(2)(b). See note 1 supra. As to schools requiring significant improvement see PARA 1249 note 7 ante.

10 *Ibid* s 38(2). See note 1 supra.

11 *Ie* Her Majesty's Chief Inspector of Education and Training in Wales: see *ibid* s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

12 *Ibid* s 38(3)(a). See note 1 supra.

13 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of *ibid* s 122(2), (3).

14 *Ibid* s 38(3)(b). See note 1 supra.

15 *Ibid* s 38(3)(c). See note 1 supra.

16 As to schools having foundation governors see PARA 104 et seq ante.

17 Education Act 2005 s 38(3)(d). See note 1 supra. In Pt 1 Ch 4 (not yet in force), 'appropriate appointing authority', in relation to a voluntary aided school, means the appropriate diocesan authority, if it is a Church in Wales school, a Church of England school or Roman Catholic Church school, or, in any other case, the person who appoints the foundation governor: s 43. For the meaning of 'the appropriate diocesan authority' see PARA 42 note 15 ante; definition applied by s 63(1). For the meanings of 'Church in Wales school', 'Church of England school', and 'Roman Catholic Church school' see PARA 42 note 15 ante; definitions applied by s 63(1).

18 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under *ibid* Pt 1 Ch 4 (not yet in force): s 43. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 supra.

19 *Ibid* s 38(3)(e). See note 1 supra.

20 *Ie* under *ibid* s 38(1) (not yet in force) or s 38(2) (not yet in force) (see the text and notes 2-10 supra). See note 1 supra.

21 *Ibid* s 38(4)(a). See note 1 supra.

22 *Ibid* s 38(4)(b). See note 1 supra.

23 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).

24 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of *ibid* s 122(2), (3).

25 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).

26 *Ibid* s 38(4)(c). See note 1 supra.

27     le an inspection under *ibid* s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante): s 43. See note 1 supra.

28     *Ibid* s 38(5)(a). See note 1 supra.

29     *Ibid* s 38(5)(b). See note 1 supra. As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of s 122(2), (3).

30     *Ibid* s 38(6). See note 1 supra. As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

### **1253 Destination of reports of inspections of maintained schools**

TEXT AND NOTE 30--Reference to National Council for Education and Training for Wales now to National Assembly for Wales: 2005 Act s 38(6) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1254. Special measures by appropriate authority in relation to maintained schools.

#### **1254. Special measures by appropriate authority in relation to maintained schools.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where there is sent to the appropriate authority<sup>2</sup> for a maintained school<sup>3</sup> either a report of a regular inspection<sup>4</sup> of the school<sup>5</sup>, or a report of an inspection of the school by a member of the inspectorate<sup>6</sup> in which that person is required<sup>7</sup> to state that he is of the opinion that special measures are required to be taken in relation to the school<sup>8</sup> or that the school requires significant improvement<sup>9</sup>, the appropriate authority must prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>10</sup>.

It is the duty of the appropriate authority to prepare the statement within the period allowed, that is:

- 2311 (1) such period as may be prescribed<sup>11</sup>; or
- 2312 (2) if: (a) the report states that the person making it is of the opinion that special measures are required to be taken in relation to the school or that the school requires significant improvement<sup>12</sup>; (b) either that person is a member of the inspectorate or the report states that the Chief Inspector<sup>13</sup> agrees with his opinion<sup>14</sup>; and (c) the National Assembly for Wales is of the opinion that the urgency of the case requires a shorter period<sup>15</sup>, such shorter period as the Assembly may direct<sup>16</sup>.

However, this does not relieve the appropriate authority of any duty to prepare a statement which has not been performed within that period<sup>17</sup>.

Where such a statement has been prepared by the appropriate authority, that authority must, before the end of the prescribed period, send copies of it: (i) to the Chief Inspector<sup>18</sup>; (ii) to whichever of the governing body<sup>19</sup> and the local education authority<sup>20</sup> is not the appropriate authority<sup>21</sup>; and (iii) in such circumstances as may be prescribed, to such other persons, if any, as may be prescribed<sup>22</sup>.

If in the case of a maintained school, the statement is prepared in response to a report of an inspection of the school in which the person who made the report states that in his opinion special measures are required to be taken in relation to the school or that the school requires significant improvement<sup>23</sup>, and either that person is a member of the inspectorate or the report states that the Chief Inspector agrees with his opinion<sup>24</sup>, the appropriate authority must, before the end of the prescribed period, send a copy of the statement to the Assembly<sup>25</sup>. The appropriate authority must also send a copy of the statement in the case of a school having foundation governors<sup>26</sup>, to the person who appoints them and, if different, to the appropriate appointing authority<sup>27</sup>. The appropriate authority must:

- 2313 (A) make any such statement prepared by it available for inspection by members of the public, at such times and at such place as may be reasonable<sup>28</sup>;
- 2314 (B) provide a copy of the statement, free of charge or in prescribed cases on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>29</sup>; and

- 2315 (c) take such steps as are reasonably practicable to secure that every registered<sup>30</sup> parent<sup>31</sup> of a registered pupil<sup>32</sup> at the school receives a copy of the statement as soon as is reasonably practicable<sup>33</sup>.

Where the governing body of a school has prepared such a statement, it must in the governors' report<sup>34</sup> state the extent to which the proposals set out in the statement (or if there is more than one, the most recent statement) have been carried into effect<sup>35</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'appropriate authority' see PARA 1253 note 4 ante.

3 For the meaning of 'maintained school' see PARA 1248 note 5 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

4 Ie an inspection under ibid s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante): s 43. See note 1 supra.

5 Ibid s 39(1)(a). See note 1 supra.

6 For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.

7 Ie required by the Education Act 2005 s 35(1)(b) (not yet in force) (see PARA 1250 ante).

8 As to special measures being required to be taken in relation to a school see PARA 1249 note 6 ante.

9 Education Act 2005 s 39(1)(b). See note 1 supra. As to schools requiring significant improvement see PARA 1249 note 7 ante.

10 Ibid s 39(1). See note 1 supra.

11 Ibid s 39(2)(a). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under Pt 1 Ch 4 (ss 32-43) (not yet in force): s 43. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 supra.

12 Ibid s 39(2)(b)(i). See note 1 supra.

13 Ie Her Majesty's Chief Inspector of Education and Training in Wales: see ibid s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

14 Ibid s 39(2)(b)(ii). See note 1 supra.

15 Ibid s 39(2)(b)(iii). See note 1 supra.

16 Ibid s 39(2)(b). See note 1 supra. As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.

17 Ibid s 39(2). See note 1 supra.

18 Ibid s 39(3)(a). Where the report in question is a report of an inspection of a school under s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante), s 39(3)(a) (not yet in force) does not require a copy of the statement to be sent to the Chief Inspector unless the report states that the person making it is of the opinion: (1) that special measures are required to be taken in relation to the school; or (2) that the school requires significant improvement: s 39(4). See note 1 supra.

19 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.



- 20 As to local education authorities see PARA 20 ante.
- 21 Education Act 2005 s 39(3)(b). See note 1 supra.
- 22 Ibid s 39(3)(c). See note 1 supra.
- 23 Ibid s 39(5)(a). See note 1 supra.
- 24 Ibid s 39(5)(b). See note 1 supra.
- 25 Ibid s 39(5). See note 1 supra.
- 26 As to schools having foundation governors see PARA 104 et seq ante.
- 27 Education Act 2005 s 39(6). See note 1 supra. For the meaning of 'appropriate appointing authority' see PARA 1253 note 17 ante.
- 28 Ibid s 39(7)(a). See note 1 supra.
- 29 Ibid s 39(7)(b). See note 1 supra.
- 30 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).
- 31 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 122(2), (3).
- 32 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).
- 33 Ibid s 39(7)(c). See note 1 supra. The duty under s 39(7)(c) (not yet in force) must be taken to be satisfied by the appropriate authority if it:
- 114 (1) takes such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives, as soon as is reasonably practicable, a copy of a document prepared by it which: (a) summarises the statement; and (b) contains a statement of the right to request a copy of it under s 39(8)(b) (not yet in force) (see head (2) infra) (s 39(8)(a)); and
- 115 (2) provides a copy of the statement to every registered parent of a registered pupil at the school who asks for one (s 39(8)(b)).
- 34 Ie under the Education Act 2002 s 30 (as amended) (governors' reports: see PARA 296 ante).
- 35 Education Act 2005 s 39(9). See note 1 supra.

## UPDATE

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1255. Additional special measures by local education authority.

### **1255. Additional special measures by local education authority.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

In circumstances where: (1) in a report of an inspection<sup>2</sup> of a maintained school<sup>3</sup>, the governing body<sup>4</sup> of which has a delegated budget<sup>5</sup>, the person who made the report stated that in his opinion special measures were required to be taken in relation to the school<sup>6</sup> or that the school required significant improvement<sup>7</sup>; and (2) either that person was a member of the inspectorate<sup>8</sup> or the report stated that the Chief Inspector<sup>9</sup> agreed with his opinion<sup>10</sup>; and (3) either the local education authority<sup>11</sup> has received a copy of a statement<sup>12</sup> in response to the report, or the prescribed<sup>13</sup> period has expired<sup>14</sup>, the local education authority must:

- 2316 (a) prepare a written statement of any action it proposes to take in the light of the report, and the period within which it proposes to take such action, or, if it does not propose to take any such action, of its reasons for not doing so<sup>15</sup>; and
- 2317 (b) send a copy of the statement prepared under head (a) above, together with its comments on any statement<sup>16</sup> of which it has received a copy, to the National Assembly for Wales and the Chief Inspector and, in the case of a voluntary aided school<sup>17</sup> to the person who appoints the foundation governors<sup>18</sup>, and, if different, to the appropriate appointing authority<sup>19</sup>.

It is the duty of the local education authority to prepare the statement within the period allowed, that is such period as may be prescribed<sup>20</sup>, or if the Assembly is of the opinion that the urgency of the case requires a shorter period, such shorter period as the Assembly may direct<sup>21</sup>. However, this does not relieve the local education authority of any duty to prepare a statement which has not been performed within that period<sup>22</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 I.e. an inspection under the Education Act 2005 s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante): s 43. See note 1 supra.

3 For the meaning of 'maintained school' see PARA 1248 note 5 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of ibid s 122(2), (3).

4 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

5 For the meaning of 'delegated budget' see PARA 320 ante; definition applied by the Education Act 2005 s 63(1). See note 1 supra.

6 As to special measures being required to be taken in relation to a school see PARA 1249 note 6 ante.

7 Education Act 2005 s 40(1)(a). See note 1 supra. As to schools requiring significant improvement see PARA 1249 note 7 ante.

- 8 For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.
- 9 le Her Majesty's Chief Inspector of Education and Training in Wales: see the Education Act 2005 s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.
- 10 Ibid s 40(1)(b). See note 1 supra.
- 11 As to local education authorities see PARA 20 ante.
- 12 le prepared under the Education Act 2005 s 39 (not yet in force) (see PARA 1254 ante).
- 13 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under ibid Pt 1 Ch 4 (ss 32-43) (not yet in force): s 43. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 supra.
- 14 Ibid s 40(1)(c). See note 1 supra.
- 15 Ibid s 40(2)(a). See note 1 supra.
- 16 le prepared under ibid s 39 (not yet in force) (see PARA 1254 ante).
- 17 As to voluntary schools see PARA 102 et seq ante.
- 18 As to schools having foundation governors see PARA 104 et seq ante.
- 19 Education Act 2005 s 40(2)(b). See note 1 supra. For the meaning of 'appropriate authority' see PARA 1253 note 4 ante.
- 20 Ibid s 40(3)(a). See note 1 supra.
- 21 Ibid s 40(3)(b). See note 1 supra. As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.
- 22 Ibid s 40(3). See note 1 supra.

## UPDATE

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1256. Destination of reports of inspections of a school which is not a maintained school.

**1256. Destination of reports of inspections of a school which is not a maintained school.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

In the case of a report of a regular inspection<sup>2</sup> of a school<sup>3</sup> which is other than a maintained school<sup>4</sup>, the person making the report must without delay:

- 2318 (1) send a copy of the report together with the summary of it to the proprietor<sup>5</sup> of the school, and (unless the person making it is a member of the inspectorate<sup>6</sup>) to the Chief Inspector<sup>7</sup>; and
- 2319 (2) if the report states that the person making it is of the opinion that special measures are required to be taken in relation to the school<sup>8</sup> or that the school required significant improvement<sup>9</sup>, and either that person is a member of the inspectorate or the report states that the Chief Inspector agrees with his opinion, send a copy of the report and summary to the National Assembly for Wales<sup>10</sup>.

In a case where a report of an inspection of a school other than a maintained school is made by a member of the inspectorate<sup>11</sup>, and he is required<sup>12</sup> to state in the report that he is of the opinion that special measures are required to be taken in relation to the school or that the school requires significant improvement<sup>13</sup>, the member of the inspectorate must send a copy of the report together with the summary of it to the proprietor of the school and to the Assembly<sup>14</sup>. In the case of a special school<sup>15</sup> which is not a community or foundation special school<sup>16</sup>, the proprietor of the school must without delay send a copy of any such report and summary sent to him<sup>17</sup> to any local education authority<sup>18</sup> that is paying fees in respect of the attendance of a registered pupil<sup>19</sup> at the school<sup>20</sup>.

The proprietor of the school must:

- 2320 (a) make any report and summary sent to him<sup>21</sup> available for inspection by members of the public at such times and at such place as may be reasonable<sup>22</sup>;
- 2321 (b) provide a copy of the report and summary, free of charge or in prescribed<sup>23</sup> cases on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>24</sup>; and
- 2322 (c) take such steps as are reasonably practicable to secure that every registered<sup>25</sup> parent<sup>26</sup> of a registered pupil at the school receives a copy of the summary within such period following receipt of the report by the authority as may be prescribed<sup>27</sup>.

<sup>1</sup> As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 le an inspection under the Education Act 2005 s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante): s 43. See note 1 supra.

3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3).

4 For the meaning of 'maintained school' see PARA 1248 note 5 ante.

5 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

6 For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.

7 Education Act 2005 s 41(1)(a). 'Chief Inspector' means Her Majesty's Chief Inspector of Education and Training in Wales: see s 43 (not yet in force); and PARA 1227 ante. See note 1 supra.

8 As to special measures being required to be taken in relation to a school see PARA 1249 note 6 ante.

9 As to schools requiring significant improvement see PARA 1249 note 7 ante.

10 Education Act 2005 s 41(1)(b). See note 1 supra. As to the National Assembly for Wales see PARA 53 ante.

11 *Ibid* s 41(2)(a). See note 1 supra.

12 le required by *ibid* s 35(1)(b) (not yet in force) (see PARA 1250 ante).

13 *Ibid* s 41(2)(b). See note 1 supra.

14 *Ibid* s 41(2). See note 1 supra.

15 As to special schools see PARA 1027 ante.

16 As to community and foundation special schools see PARA 102 et seq ante.

17 le under the Education Act 2005 s 41(1) (not yet in force) or s 41(2) (not yet in force) (see the text and notes 2-14 supra).

18 As to local education authorities see PARA 20 ante.

19 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

20 *Ibid* s 41(3). See note 1 supra.

21 le under *ibid* s 41(1) (not yet in force) or a 41(2) (not yet in force) (see the text and notes 2-14 supra).

22 *Ibid* s 41(4)(a). See note 1 supra.

23 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under *ibid* Pt 1 Ch 4 (ss 32-43) (not yet in force): s 43. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 supra.

24 *Ibid* s 41(4)(b). See note 1 supra.

25 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).

26 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of *ibid* s 122(2), (3).

27 *Ibid* s 41(4)(c). See note 1 supra.

## UPDATE

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(C) Procedure for School Inspection/1257. Statement to be prepared by proprietor of a school causing concern which is not a maintained school.

**1257. Statement to be prepared by proprietor of a school causing concern which is not a maintained school.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where there is sent to the proprietor<sup>2</sup> of a school<sup>3</sup> other than a maintained school<sup>4</sup> either: (1) a report of a regular inspection<sup>5</sup> of the school<sup>6</sup>; or (2) a report of an inspection of the school made by a member of the inspectorate<sup>7</sup> in which that person is required<sup>8</sup> to state that he is of the opinion that special measures are required to be taken in relation to the school<sup>9</sup> or that the school required significant improvement<sup>10</sup>, the proprietor of the school must prepare a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take it<sup>11</sup>. It is the duty of the proprietor to prepare the statement within the period allowed, that is: (a) such period as may be prescribed<sup>12</sup>; or (b) if the report states that the person making it is of the opinion that special measures are required to be taken in relation to the school or that the school required significant improvement, and either that person is a member of the inspectorate or the report states that the Chief Inspector<sup>13</sup> agrees with his opinion, and the National Assembly for Wales is of the opinion that the urgency of the case requires a shorter period, such shorter period as the Assembly may direct<sup>14</sup>. However, this does not relieve the proprietor of the school of any duty to prepare a statement which has not been performed within that period<sup>15</sup>.

Where such a statement has been prepared by the proprietor of the school, he must, before the end of the prescribed period, send copies of it: (i) to the Chief Inspector<sup>16</sup>; (ii) to the Assembly<sup>17</sup>; and (iii) in such circumstances as may be prescribed, to such other persons, if any, as may be prescribed<sup>18</sup>. In the case of a special school<sup>19</sup> which is not a community or foundation special school<sup>20</sup>, the proprietor of the school must, before the end of the prescribed period, send a copy of any such statement prepared by him to any local education authority<sup>21</sup>, if the authority is paying fees in respect of the attendance of a registered pupil<sup>22</sup> at the school<sup>23</sup>. The proprietor of the school must:

- 2323 (A) make any such statement prepared by him available for inspection by members of the public, at such times and at such place as may be reasonable<sup>24</sup>;
- 2324 (B) provide a copy of the statement, free of charge or in prescribed cases on payment of such fee as he thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>25</sup>; and
- 2325 (C) take such steps as are reasonably practicable to secure that every registered<sup>26</sup> parent<sup>27</sup> of a registered pupil at the school receives a copy of the statement as soon as is reasonably practicable<sup>28</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the meaning of 'proprietor' see PARA 60 note 7 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

- 3 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 4 For the meaning of 'maintained school' see PARA 1248 note 5 ante.
- 5 *Ie* an inspection under the Education Act 2005 s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante); s 43. See note 1 *supra*.
- 6 *Ibid* s 42(1)(a). See note 1 *supra*.
- 7 For the meaning of 'member of the inspectorate' see PARA 1248 note 4 ante.
- 8 *Ie* required by the Education Act 2005 s 35(1)(b) (not yet in force) (see PARA 1250 ante).
- 9 As to references to special measures required to be taken in relation to a school see PARA 1210 note 4 ante.
- 10 Education Act 2005 s 42(1)(b). See note 1 *supra*. As to schools requiring significant improvement see PARA 1249 note 7 ante.
- 11 *Ibid* s 42(1). See note 1 *supra*.
- 12 *Ibid* s 42(2)(a). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales under Pt 1 Ch 4 (ss 32-43) (not yet in force) (see PARA 1248 et seq ante); s 43. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. As to the making of regulations under Pt 1 (ss 1-63) (not yet in force) see PARA 1231 note 49 ante. At the date at which this volume states the law, no regulations had been made for these purposes. See note 1 *supra*.
- 13 *Ie* Her Majesty's Chief Inspector of Education and Training in Wales: see *ibid* s 43 (not yet in force); and PARA 1227 ante. See note 1 *supra*.
- 14 *Ibid* s 42(2)(b). See note 1 *supra*. As to directions under the Education Act 2005 generally see PARA 175 note 9 ante.
- 15 *Ibid* s 42(2). See note 1 *supra*.
- 16 *Ibid* s 42(3)(a). See note 1 *supra*.
- 17 *Ibid* s 42(3)(b). See note 1 *supra*.
- 18 *Ibid* s 42(3)(c). See note 1 *supra*.
- 19 As to special schools see PARA 1027 ante.
- 20 As to community and foundation special schools see PARA 102 et seq ante.
- 21 As to local education authorities see PARA 20 ante.
- 22 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).
- 23 *Ibid* s 42(4). See note 1 *supra*.
- 24 *Ibid* s 42(5)(a). See note 1 *supra*.
- 25 *Ibid* s 42(5)(b). See note 1 *supra*.
- 26 For the meaning of 'registered' see PARA 512 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 27 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of *ibid* s 122(2), (3).
- 28 *Ibid* s 42(5)(c). See note 1 *supra*. The duty under s 42(5)(c) (not yet in force) is taken to be satisfied by the proprietor of the school if he:
  - 116 (1) takes such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives, as soon as is reasonably practicable, a copy of a document prepared by him which: (a) summarises the statement; and (b) contains a statement



of the right to request a copy of it under s 42(6)(b) (not yet in force) (see head (2) *infra*) (s 42(6)(a)); and

- 117 (2) provides a copy of the statement to every registered parent of a registered pupil at the school who asks for one (s 42(6)(b)).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(D) Other Inspections/(a) Inspection of Religious Education/1258. Inspection of religious education.

## (D) OTHER INSPECTIONS

### *(a) Inspection of Religious Education*

#### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

#### **1258. Inspection of religious education.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

It is the duty of the governing body<sup>2</sup> of any voluntary or foundation school<sup>3</sup> in Wales, which has been designated by the National Assembly for Wales<sup>4</sup> as having a religious character<sup>5</sup>, to secure that denominational education<sup>6</sup> given to pupils<sup>7</sup>, and the content of the school's collective worship<sup>8</sup>, are inspected<sup>9</sup>. Such an inspection must be conducted by a person chosen: (1) in the case of a voluntary controlled school, by the foundation governors<sup>10</sup> after consultation with any person prescribed<sup>11</sup> for these purposes in relation to the religion or religious denomination that is specified<sup>12</sup> in relation to the school<sup>13</sup>; and (2) by the governing body after consultation with any person so prescribed, in any other case<sup>14</sup>. The person chosen need not be a registered inspector<sup>15</sup>. Such inspections must be carried out at such intervals as may be prescribed<sup>16</sup>.

It is the general duty of a person conducting an inspection of religious education: (a) to report on the quality of the denominational education provided by the school for any pupils to whom denominational education is given by the school<sup>17</sup>; and (b) to report on the content of the school's collective worship<sup>18</sup>, and any such person may report on the spiritual, moral, social and cultural development of pupils at the school<sup>19</sup>. A person conducting such an inspection may do so with the assistance of such other persons chosen by him as are in his opinion fit and proper persons for carrying out the inspection<sup>20</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

3 As to voluntary and foundation schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

4 As to the National Assembly for Wales see PARA 53 ante.

5 ie designated under the School Standards and Framework Act 1998 s 69(3) (see PARA 951 note 9 ante).

- 6 For the meaning of 'denominational education' see PARA 1183 note 6 ante.
- 7 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).
- 8 In *ibid* s 50 and Sch 6 (see PARAS 1259-1260 post), 'collective worship' means collective worship required by the School Standards and Framework Act 1998 s 70 (see PARA 957 ante): Education Act 2005 s 50(8). See note 1 *supra*.
- 9 *Ibid* s 50(1). See note 1 *supra*.
- 10 As to schools having foundation governors see PARA 104 et seq ante.
- 11 'Prescribed' means prescribed by regulations made by the National Assembly for Wales: Education Act 2005 s 50(8). As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no such regulations had been made. See note 1 *supra*.
- 12 *Ie* specified under the School Standards and Framework Act 1998 s 69(4) (see PARA 951 note 9 ante).
- 13 Education Act 2005 s 50(2)(a). See note 1 *supra*.
- 14 *Ibid* s 50(2)(b). See note 1 *supra*.
- 15 *Ibid* s 50(3). The text refers to an inspector registered under s 25 (see PARA 1233 ante). See note 1 *supra*.
- 16 *Ibid* s 50(4). See note 1 *supra*.
- 17 *Ibid* s 50(5)(a). See note 1 *supra*. As to combined reports under the inspection enactments see PARA 1263 post.
- 18 *Ibid* s 50(5)(b). See note 1 *supra*.
- 19 *Ibid* s 50(5). See note 1 *supra*.
- 20 *Ibid* s 50(6). Further provision is made by Sch 6 (see PARAS 1259-1260 post) with respect to inspections under s 50: s 50(7). See note 1 *supra*.

## UPDATE

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(D) Other Inspections/(a) Inspection of Religious Education/1259. Inspectors' reports of denominational education and collective worship.

### **1259. Inspectors' reports of denominational education and collective worship.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

An inspection<sup>2</sup> of denominational education<sup>3</sup> and collective worship<sup>4</sup> must be carried out within such period as may be prescribed<sup>5</sup>. When an inspection has been completed, the inspector<sup>6</sup> must, before the end of the prescribed period, prepare in writing a report of the inspection and a summary of the report<sup>7</sup>. The inspector must, without delay, send the report and summary to the governing body<sup>8</sup> for the school concerned<sup>9</sup>; and the governing body must:

- 2326 (1) make any such report and its accompanying summary available for inspection by members of the public, at such times and at such a place as may be reasonable<sup>10</sup>;
- 2327 (2) provide a copy of the report and summary, free of charge or in prescribed cases on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>11</sup>; and
- 2328 (3) take such steps as are reasonably practicable to secure that every parent<sup>12</sup> of a registered pupil<sup>13</sup> at the school for whom the school provides denominational education, or who takes part in acts of collective worship<sup>14</sup>, as the case may be, receives a copy of the summary as soon as is reasonably practicable<sup>15</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the purposes of the Education Act 2005 s 50(7), Sch 6 (see the text and notes 3-15 infra; and PARA 1260 post), 'inspection' means an inspection of a school under s 50 (see PARA 1258 ante): Sch 6 para 1. See note 1 supra.

3 For the meaning of 'denominational education' see PARA 1183 note 6 ante.

4 For the meaning of 'collective worship' see PARA 1258 note 8 ante.

5 Education Act 2005 Sch 6 para 2(1). 'Prescribed' means prescribed by regulations made by the National Assembly for Wales: s 50(8). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no such regulations had been made. See note 1 supra.

6 For these purposes, 'inspector' means the person conducting the inspection: *ibid* Sch 6 para 1. See note 1 supra.

7 *Ibid* Sch 6 para 2(2). See note 1 supra. As to combined reports under the inspection enactments see PARA 1263 post.

8 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

9 Education Act 2005 Sch 6 para 2(3). See note 1 supra.

10 *Ibid* Sch 6 para 2(4)(a). See note 1 supra.

- 11 Ibid Sch 6 para 2(4)(b). See note 1 supra.
- 12 As to the meaning of 'parent' see PARA 510 note 1 ante; definition applied by virtue of ibid s 122(2), (3).
- 13 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by virtue of ibid s 122(2), (3).
- 14 ie the content of which falls to be inspected under ibid s 50 (not yet in force): see PARA 1258 ante.
- 15 Ibid Sch 6 para 2(4)(c). See note 1 supra.

## **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(D) Other Inspections/(a) Inspection of Religious Education/1260. Action plans following inspection of religious education.

## **1260. Action plans following inspection of religious education.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

The governing body<sup>2</sup> to whom an inspector<sup>3</sup> has reported<sup>4</sup> must, before the end of the prescribed<sup>5</sup> period, prepare a written statement (referred to as 'the action plan') of the action which it proposes to take in the light of his report and the period within which it proposes to take it<sup>6</sup>. Where an action plan has been prepared by a governing body, it must, before the end of the prescribed period, send copies of it to the person who appoints the school's foundation governors<sup>7</sup>, to the local education authority<sup>8</sup> and to such other persons, if any, in such circumstances, as may be prescribed<sup>9</sup>. The governing body must:

- 2329 (1) make any action plan prepared by it available for inspection by members of the public, at such times and at such a place as may be reasonable<sup>10</sup>;
- 2330 (2) provide a copy of the plan, free of charge or in prescribed cases on payment of such fee as it thinks fit, not exceeding the cost of supply, to any person who asks for one<sup>11</sup>; and
- 2331 (3) take such steps as are reasonably practicable to secure that every parent<sup>12</sup> of a registered pupil<sup>13</sup> at the school for whom the school provides denominational education<sup>14</sup>, or who takes part in acts of collective worship<sup>15</sup>, as the case may be, receives a copy of the plan as soon as is reasonably practicable<sup>16</sup>.

Where the governing body of a school has prepared an action plan, it must include in its governors' report<sup>17</sup> a statement of the extent to which the proposals set out in the plan have been carried into effect<sup>18</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

3 For the meaning of 'inspector' see PARA 1259 note 6 ante.

4 Ie under the Education Act 2005 s 50(7), Sch 6 (not yet in force): see also PARA 1259 ante.

5 'Prescribed' means prescribed by regulations made by the National Assembly for Wales: ibid s 50(8). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no such regulations had been made. See note 1 supra.

6 Ibid Sch 6 para 3(1). See note 1 supra.

7 As to schools having foundation governors see PARA 104 et seq ante.

8 As to local education authorities see PARA 20 ante.

- 9 Education Act 2005 Sch 6 para 3(2). See note 1 *supra*.
- 10 Ibid Sch 6 para 3(3)(a). See note 1 *supra*.
- 11 Ibid Sch 6 para 3(3)(b). See note 1 *supra*.
- 12 As to the meaning of 'parent' see PARA 510 note 1 *ante*; definition applied by virtue of *ibid* s 122(2), (3).
- 13 For the meaning of 'registered pupil' see PARA 512 *ante*; definition applied by virtue of *ibid* s 122(2), (3).
- 14 For the meaning of 'denominational education' see PARA 1183 note 6 *ante*.
- 15 I.e. the content of which falls to be inspected under the Education Act 2005 s 50 (not yet in force): see PARA 1258 *ante*. For the meaning of 'collective worship' see PARA 1258 note 8 *ante*.
- 16 Ibid Sch 6 para 3(3)(c). See note 1 *supra*.
- 17 I.e. the governors' report under the Education Act 2002 s 30 (as amended) (see PARA 296 *ante*).
- 18 Education Act 2005 Sch 6 para 3(4). Schedule 6 para 3(4) (not yet in force) applies only in relation to the most recent action plan for the school in question: Sch 6 para 3(5). See note 1 *supra*.

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*(b) Inspection by Local Education Authority*

**UPDATE**

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

**1261. Provision of inspection services by local education authorities.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Any local education authority<sup>2</sup> may provide a school inspection service<sup>3</sup> for schools within its area<sup>4</sup>. Any school inspection service provided by a local education authority may, in addition to providing for the inspection of schools which are maintained<sup>5</sup> by it, provide for the inspection of schools which are not maintained by it<sup>6</sup>. Any school inspection service provided by a local education authority must be operated by the authority in such a way as can reasonably be expected to secure that the full cost of providing the service is recovered by way of charges made by the authority to those using the service<sup>7</sup>. The National Assembly for Wales<sup>8</sup> may by regulations<sup>9</sup>:

- 2332 (1) make provision as to the making of tenders by local education authorities<sup>10</sup>;
- 2333 (2) make provision with respect to the accounts to be kept by local education authorities in connection with any school inspection services provided by them<sup>11</sup>; and
- 2334 (3) make such incidental and supplemental provision with respect to school inspection services provided by local education authorities as the Assembly considers appropriate<sup>12</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to local education authorities see PARA 20 ante.

3 For the purposes of the Education Act 2005 s 52 (not yet in force), 'school inspection service', in relation to any local education authority in Wales, means a service providing for the inspection of schools under s 28 (not yet in force) (see PARA 1239 ante), or s 50 (not yet in force) (see PARA 1258 ante) by officers of the authority: s 52(2). See note 1 supra. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 122(2), (3).

4 Ibid s 52(1). See note 1 supra. As to the areas of local education authorities see PARA 20 ante.

5 As to maintained schools see PARA 102 et seq ante.



- 6 Education Act 2005 s 52(3). See note 1 supra.
- 7 Ibid s 52(4). See note 1 supra.
- 8 As to the National Assembly for Wales see PARA 53 ante.
- 9 As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante. At the date at which this volume states the law, no such regulations had been made under the Education Act 2005 s 52 (not yet in force).
- 10 Ibid s 52(5)(a). See note 1 supra. The text refers to the making of tenders by local education authorities as required by s 50(7), Sch 6 para 2 (not yet in force): see PARA 1259 ante.
- 11 Ibid s 52(5)(b). See note 1 supra.
- 12 Ibid s 52(5)(c). See note 1 supra.

#### **UPDATE**

#### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(D) Other Inspections/(b) Inspection by Local Education Authority/1262. Power of local education authority to inspect maintained school for specific purpose.

### **1262. Power of local education authority to inspect maintained school for specific purpose.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, for the purpose of enabling it to exercise any of its functions<sup>2</sup>, a local education authority<sup>3</sup> requires information about any matter in connection with a school<sup>4</sup> which is maintained by it<sup>5</sup>, and it is not reasonably practicable for it to obtain the information in any other manner<sup>6</sup>, it may cause an inspection of the school to be made by one or more of its officers for the purpose of obtaining the information<sup>7</sup>.

An officer of a local education authority inspecting a school under this power has at all reasonable times a right of entry to the premises<sup>8</sup> of the school<sup>9</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

3 As to local education authorities see PARA 20 ante.

4 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 2005 s 122(2), (3).

5 Ibid s 51(1)(a). See note 1 supra. As to maintained schools see PARA 102 et seq ante.

6 Ibid s 51(1)(b). See note 1 supra.

7 Ibid s 51(1). See note 1 supra. As to the provision of inspection services by local education authorities see PARA 1261 ante.

8 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 122(2), (3)

9 Ibid s 51(2). See note 1 supra.

### **UPDATE**

### **1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(ii) Inspection of Schools in Wales/B. INSPECTION OF SCHOOLS UNDER THE EDUCATION ACT 2005/(E) Reports under the Inspection Enactments/1263. Combined reports under the inspection enactments.

## (E) REPORTS UNDER THE INSPECTION ENACTMENTS

### **1263. Combined reports under the inspection enactments.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where, following inspections conducted under two or more inspection enactments<sup>2</sup> by one person or two or more different persons, that person is, or those persons are, required to make a report under each of those enactments, nothing in any of those enactments is to be regarded as preventing him, or them, from<sup>3</sup>:

- 2335 (1) including those reports in a single document ('a combined report')<sup>4</sup>; and
- 2336 (2) to such extent as he considers, or they consider, appropriate, combining the substantive reports required by those enactments<sup>5</sup>.

Where a combined report is made, any reference in the inspection enactments to the publication of a report, or to the giving, or making available, to any person of a copy of a report is to be read so far as necessary as a reference to the publication of the combined report, or to the giving or making available to that person of a copy of the combined report<sup>6</sup>.

The Chief Inspector<sup>7</sup> may arrange for a combined report to be published in any manner he considers appropriate, but this does not limit any duty as to publication imposed by any of the inspection enactments<sup>8</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (not yet in force). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales: see PARA 1187 et seq ante. As to the inspection of schools in England see PARA 1167 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

2 For the purposes of the Education Act 2005 s 59, 'the inspection enactments' are: (1) Pt 1 (ss 1-63) (see PARA 1167 et seq ante); (2) the Children Act 1989 Pt XA (ss 79A-79X) (as added) (child minding and day care for children: see CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1070 et seq); (3) the School Standards and Framework Act 1998 s 122, Sch 26 (as amended) (nursery education: see PARA 1295 et seq post); and (4) the Education Act 2002 Pt 10 Ch 1 (ss 157-171) (as amended) (regulation of independent schools: see PARA 478 et seq ante): Education Act 2005 s 59(1).

3 Ibid s 59(2).

4 Ibid s 59(2)(a).

5 Ibid s 59(2)(b).

6 Ibid s 59(3).

7 As to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 see PARA 1227 ante.

8 Ibid s 59(4).

**UPDATE**

**1227-1263 Her Majesty's Inspectorate of Schools in Wales ... Combined reports under the inspection enactments**

These provisions now in force: SI 2006/1338.

**1263 Combined reports under the inspection enactments**

NOTE 2--2005 Act s 59(1) amended: Childcare Act 2006 Sch 2 para 44, Sch 3 Pt 2. As from a day to be appointed 2005 Act s 59(1) further amended: Education and Skills Act 2008 Sch 1 para 28, Sch 2.

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### **(iii) Intervention in Schools**

#### **A. POWERS OF INTERVENTION EXERCISABLE BY LOCAL EDUCATION AUTHORITIES**

##### **1264. Powers of intervention exercisable by local education authorities in relation to maintained schools.**

Where a maintained school<sup>1</sup> is subject to a formal warning<sup>2</sup> or requires significant improvement<sup>3</sup> or requires special measures<sup>4</sup>, then the local education authority<sup>5</sup> has power to intervene<sup>6</sup> and may appoint additional governors<sup>7</sup>, may suspend the school's right to a delegated budget<sup>8</sup>, and may provide for the governing body to consist of interim executive members<sup>9</sup>. However, the local education authority may not exercise its powers of intervention in relation to a school which requires special measures<sup>10</sup> if, in connection with the same inspection<sup>11</sup>, the Secretary of State<sup>12</sup> has exercised in relation to the school his power to appoint additional governors<sup>13</sup> and any additional governors appointed in the exercise of that power remain in office<sup>14</sup>, or he has exercised in relation to the school his power to direct closure of the school<sup>15</sup>.

1 In the School Standards and Framework Act 1998 Pt I Ch IV (ss 14-19) (as amended), 'maintained school' includes a maintained nursery school: s 14(1A) (added by the Education Act 2002 s 215(1), Sch 21 para 92). As to maintained nursery schools see PARA 94 et seq ante. For the meaning of 'maintained school' generally see PARA 94 ante.

2 See the School Standards and Framework Act 1998 ss 14(1)(a), 15(1); and PARA 1265 post.

3 See *ibid* s 14(1)(b) (amended by the Education Act 2005 s 61, Sch 9 para 14(1), (2)), the School Standards and Framework Act 1998 s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1266 post. The amendment made to s 14(1)(b) comes into effect as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, the reference to 'requires significant improvement' should be read, in relation to Wales, as a reference to 'has serious weaknesses'.

4 See the School Standards and Framework Act 1998 ss 14(1)(c), 15(6) (as substituted); and PARA 1267 post.

5 As to local education authorities see PARA 20 ante.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 ss 14-15 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 paras (b), (c). For the meaning of 'England' see PARA 52 note 11 ante.

6 School Standards and Framework Act 1998 s 14(1).

7 *Ibid* s 14(2)(a). As to the power of the local education authority to appoint additional governors see s 16 (as amended; prospectively amended in relation to Wales); and PARA 1268 post.

8 Ibid s 14(2)(b). As to the power of the local education authority to suspend the school's right to a delegated budget see s 17 (as amended; prospectively amended in relation to Wales); and PARA 1269 post. For the meaning of 'delegated budget' see PARA 320 ante.

9 Ibid s 14(2)(aa) (added by the Education Act 2002 s 57(1)). As to the power of the local education authority to provide for the governing body to consist of interim executive members see the School Standards and Framework Act 1998 s 16A (as added and amended in relation to England; prospectively added and amended in relation to Wales); and PARA 1270 post. The School Standards and Framework Act 1998 s 14(2)(aa) (as added) comes into effect as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 2 September 2002 (see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, the power conferred to appoint interim executive members does not apply in relation to Wales.

10 Ie a school to which the School Standards and Framework Act 1998 s 15 (as amended in relation to England; prospectively amended in relation to Wales) (see PARAS 1265-1267 post) applies by virtue of s 15(4), (6) (s 15(4), (6) as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1267 post.

11 Ie the same inspection falling within ibid s 15(4)(a), (6)(a) (s 15(4), (6) as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1267 post.

12 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

13 Ie under the School Standards and Framework Act 1998 s 18 (as amended; prospectively amended in relation to Wales): see PARA 1271 post.

14 Ibid s 14(3)(a) (s 14(3) substituted by the Education Act 2002 s 56(3), Sch 5 para 1).

15 School Standards and Framework Act 1998 s 14(3)(b) (as substituted: see note 14 supra). As to the Secretary of State's power to direct closure of schools see PARA 1273 post.

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

#### 1264 Powers of intervention exercisable by local education authorities in relation to maintained schools

NOTE 1--School Standards and Framework Act 1998 s 14(1A) repealed: Education and Inspections Act 2006 Sch 7 para 4(2). In the School Standards and Framework Act 1998 Pt I Ch IV 'maintained school' means any school in Wales that is a community, foundation or voluntary school, a community or foundation special school, or a maintained nursery school: s 14(3A) (added by Education and Inspections Act 2006 Sch 7 para 4(5)). As to such schools, see PARAS 94, 102 et seq.

In the Education and Inspections Act 2006 Pt 4 (ss 59-73), which makes provision about schools causing concern in England, 'maintained school' means a school in England which is a community, foundation or voluntary school, a community special school or foundation special school, or a maintained nursery school: ss 59(1), 73. For the meaning of 'school' see PARA 81; definition applied by virtue of s 187(2), (3).



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**1265. Intervention by the local education authority where a maintained school is subject to a formal warning.**

A local education authority<sup>1</sup> may give a warning notice<sup>2</sup> to the governing body of a maintained school<sup>3</sup> where:

2337 (1) the authority is satisfied:

6

1. (a) that the standards of performance of pupils<sup>4</sup> at the school are unacceptably low and are likely to remain so unless the authority exercises its power of appointing additional governors or its power to suspend the school's right to a delegated budget<sup>5</sup>; or
2. (b) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance<sup>6</sup>; or
3. (c) that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise)<sup>7</sup>; and

7

2338 (2) the authority has previously informed the governing body and the head teacher<sup>8</sup> of the matters on which that conclusion is based<sup>9</sup>; and

2339 (3) those matters have not been remedied to the authority's satisfaction within a reasonable period<sup>10</sup>.

If the local education authority has: (i) given the governing body a warning notice and given the head teacher of the school a copy of the notice at the same time<sup>11</sup>; and (ii) the governing body has failed to comply, or secure compliance, with the notice to the authority's satisfaction within the compliance period<sup>12</sup>; and (iii) the authority has given reasonable notice in writing to the governing body that it proposes to exercise its power of intervention<sup>13</sup>, then the local education authority may exercise its power of intervention by appointing additional governors<sup>14</sup> and suspending the school's right to a delegated budget<sup>15</sup>, and may (in relation to England) provide for the governing body to consist of interim executive members<sup>16</sup>.

1 As to local education authorities see PARA 20 ante.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 ss 14-15 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 paras (b), (c). For the meaning of 'England' see PARA 52 note 11 ante.

2 For these purposes, a 'warning notice' is a notice in writing by the local education authority setting out: (1) the matters referred to in head (2) in the text; (2) the action which it requires the governing body to take in order to remedy those matters; and (3) the period within which that action is to be taken by the governing body ('the compliance period'): School Standards and Framework Act 1998 s 15(3). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

3 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.



4 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 Ibid s 15(2)(a)(i). As to the power of the local education authority to appoint additional governors see s 16 (as amended; prospectively amended in relation to Wales); and PARA 1268 post. As to the power of the local education authority to suspend the school's right to a delegated budget see s 17 (as amended; prospectively amended in relation to Wales); and PARA 1269 post. For the meaning of 'delegated budget' see PARA 320 ante.

6 Ibid s 15(2)(a)(ii).

7 Ibid s 15(2)(a)(iii).

8 As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of ibid s 142(8).

9 Ibid s 15(2)(b).

10 Ibid s 15(2)(c).

11 Ibid s 15(1)(a).

12 Ibid s 15(1)(b).

13 Ibid s 15(1)(c). The authority must give notice in writing to the governing body that it proposes to exercise its powers under either or both of s 16 (as amended; prospectively amended in relation to Wales) (power to appoint additional governors: see PARA 1268 post) or s 17 (as amended; prospectively amended in relation to Wales) (power to suspend the school's right to a delegated budget: see PARA 1269 post) whether or not the notice is combined with a notice under s 62(3)(c) (reserve power to prevent a breakdown of discipline: see PARA 561 ante): see s 15(1)(c).

14 Ie the power to appoint additional governors under ibid s 16 (as amended; prospectively amended in relation to Wales): see PARA 1268 post.

15 As to the power of the local education authority to suspend the school's right to a delegated budget see ibid s 17 (as amended; prospectively amended in relation to Wales); and PARA 1269 post.

16 Ibid s 14(1)(a), (2) (s 14(2) as amended in relation to England; prospectively amended in relation to Wales: see PARA 1264 ante); s 15(1). As to the power of the local education authority to provide for the governing body to consist of interim executive members see s 16A (as added and amended in relation to England; prospectively added and amended in relation to Wales); and PARA 1270 post.

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### 1265 Intervention by the local education authority where a maintained school is subject to a formal warning

TEXT AND NOTES 1-7--In relation to England, School Standards and Framework Act 1998 s 15(2)(a) now Education and Inspections Act 2006 s 60(2)(a)-(c). In relation to Wales, also heads (d) that the governing body has failed to comply with a provision of an order under Education Act 2002 s 122 that applies to a teacher at the school; or (e) that the governing body has failed to secure that the head teacher of the school complies with such a provision: School Standards and Framework Act 1998 s 15(2)(a)

(iv), (v) (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 14 para 3).

NOTE 2--In relation to England, for the purposes of Education and Inspections Act 2006 s 60, a 'warning notice' is a notice in writing by the local education authority setting out (1) the matters on which the conclusion mentioned in s 60(2) (see TEXT AND NOTES 1-8) is based; (2) the action which they require the governing body to take in order to remedy those matters; (3) the initial period (see TEXT AND NOTES 11-16) applying under s 60(1)(b); and (4) the action which the local education authority is minded to take (under one or more of ss 63-66 or otherwise) if the governing body fails to take the required action: s 60(4). The warning notice must also inform the governing body of its right to make representations under s 60(7) during the initial period: s 60(5). The local education authority must, at the same time as giving the governing body the warning notice, give a copy of the notice to the Chief Inspector, the head teacher of the school, the appropriate diocesan authority (in the case of a Church of England school or a Roman Catholic Church school), and the person who appoints the foundation governors (in the case of a foundation or voluntary school): s 60(6). Before the end of the initial period, the governing body may make representations in writing to the Chief Inspector against the warning notice, and must send a copy of any such representations to the local education authority: s 60(7). The Chief Inspector must consider any representations made to him under s 60(7) and may, if he thinks fit, confirm the warning notice: s 60(8). The Chief Inspector must give notice in writing of his decision whether or not to confirm the warning notice to the local education authority, the governing body and such other persons as the Secretary of State may require: s 60(9). 'Appropriate diocesan authority', 'Church of England school' and 'Roman Catholic Church school' have the same meaning as in the School Standards and Framework Act 1998 (see PARA 42): Education and Inspections Act 2006 s 73. 'Chief Inspector' means Her Majesty's Chief Inspector of Education, Children's Services and Skills: s 73. As to the system of teachers' pay and conditions warning notices see Education and Inspections Act 2006 s 60A (added by Apprenticeships, Skills, Children and Learning Act 2009 s 203, Sch 13 para 4).

NOTE 4--For the purposes of Education and Inspections Act 2006 s 60(2)(a) (in relation to England) and the School Standards and Framework Act 1998 s 15(2)(a) (in relation to Wales) the standards of performance of pupils at a school are low if they are low by reference to any one or more of the following (1) the standards that the pupils might in all the circumstances reasonably be expected to attain; (2) where relevant, the standards previously attained by them; or (3) the standards attained by pupils at comparable schools: Education and Inspections Act 2006 s 60(3); School Standards and Framework Act 1998 s 15(3A) (s 15(3A) added by Education and Inspections Act 2006 Sch 17 para 1(3)).

NOTES 5, 13--School Standards and Framework Act 1998 s 15(1)(c), (2)(a)(i) amended: Education and Inspections Act 2006 Sch 17 para 1(2).

TEXT AND NOTES 9, 10--In relation to England, School Standards and Framework Act 1998 s 15(2)(b), (c) not replicated in the Education and Inspections Act 2006.

TEXT AND NOTES 11-16--In relation to England, a maintained school is eligible to intervention by virtue of the Education and Inspections Act 2006 s 60 if (i) given the governing body a warning notice; (ii) the period beginning with the day on which the warning notice is given and ending with the fifteenth working day following that day ('the initial period') has expired; (iii) either the governing body made no representations under s 60(7) (see TEXT AND NOTES 1-8) to the Chief Inspector against the warning notice during the initial period or the Chief Inspector has confirmed the warning notice under s 60(8) (see TEXT AND NOTES 1-8); (iv) the governing body have failed to comply, or secure compliance, with the notice to the authority's satisfaction

by the end of the compliance period; and (v) the authority have given reasonable notice in writing to the governing body that they propose to exercise their powers under any one or more of ss 63-66 (see PARAS 1267A-1270) (whether or not the notice is combined with a notice under the School Standards and Framework Act 1998 s 62(2A)(c) (see PARA 561)): Education and Inspections Act 2006 s 60(1). 'Working day' means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England: Education and Inspections Act 2006 s 60(10). 'The compliance period', in relation to a warning notice, means (A) in a case where the governing body does not make representations under s 60(7), the initial period; and (B) in a case where the Chief Inspector confirms the warning notice under s 60(8), the period beginning with the day on which he does so and ending with the fifteenth working day following that day: s 60(10).

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**1266. Intervention by the local education authority where a maintained school requires significant improvement or has serious weaknesses.**

If, following an inspection of a maintained school<sup>1</sup> in England<sup>2</sup>, the Chief Inspector for England<sup>3</sup> has given the Secretary of State<sup>4</sup> a notice<sup>5</sup> that the school requires significant improvement<sup>6</sup>, and, where any subsequent report of an inspection of the school has been made<sup>7</sup>, the notice has not been superseded by the person making the subsequent inspection making a report stating that in his opinion the school no longer requires significant improvement or by the Chief Inspector giving the Secretary of State a notice<sup>8</sup> that special measures are required to be taken in relation to the school<sup>9</sup>, then the local education authority may exercise its power of intervention by appointing additional governors<sup>10</sup> and suspending the school's right to a delegated budget<sup>11</sup>, and may provide for the governing body to consist of interim executive members<sup>12</sup>.

A school in Wales has serious weaknesses if, although giving its pupils<sup>13</sup> in general an acceptable standard of education, it has significant weaknesses in one or more areas of its activities<sup>14</sup>. If, following an inspection of a maintained school in Wales<sup>15</sup>, the Chief Inspector for Wales<sup>16</sup> has given the National Assembly for Wales<sup>17</sup> a notice<sup>18</sup> that the school has serious weaknesses<sup>19</sup>, and, where any subsequent report of an inspection of the school has been made<sup>20</sup>, the notice has not been superseded by the person making the subsequent inspection making a report stating that in his opinion the school no longer has serious weaknesses or by the Chief Inspector giving the Assembly a notice<sup>21</sup> that special measures are required to be taken in relation to the school<sup>22</sup>, then the local education authority may exercise its power of intervention by appointing additional governors and suspending the school's right to a delegated budget<sup>23</sup>.

1 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.

2 I.e. an inspection of a maintained school made under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1167 et seq ante). For the meaning of 'England' see PARA 52 note 11 ante.

3 In the School Standards and Framework Act 1998 Pt I Ch IV (ss 14-19) (as amended), 'Chief Inspector' means, in relation to a school in England, Her Majesty's Chief Inspector of Schools in England: s 14(4)(a) (s 14(4) substituted by the Education Act 2005 s 61, Sch 9 para 14(1), (3)). The substitution effected by the Education Act 2005 Sch 9 para 14(1), (3) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

4 As to the Secretary of State see PARA 52 ante.

5 I.e. a notice under the Education Act 2005 s 13(3)(a): see PARA 1178 ante.

6 I.e. in a case falling within ibid s 13(1)(b): see PARA 1178 ante. In the School Standards and Framework Act 1998 Pt I Ch IV (as amended), references to a school requiring, or not requiring, significant improvement are to be read in accordance with the Education Act 2005 s 44(2) (see PARA 1178 note 4 ante): School Standards and Framework Act 1998 s 14(4)(d) (as substituted: see note 3 supra).

7 I.e. under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1167 et seq ante).

8 le a notice under *ibid* s 13(3)(a): see PARA 1178 ante.

9 le in a case falling within *ibid* s 13(1)(a): see PARA 1178 ante. In the School Standards and Framework Act 1998 Pt I Ch IV (as amended), references to special measures being, or not being, required to be taken in relation to a school are to be read in accordance with the Education Act 2005 s 44(1) (see PARA 1178 note 3 ante): School Standards and Framework Act 1998 s 14(4)(c) (as substituted: see note 3 supra).

10 le the power to appoint additional governors under *ibid* s 16 (as amended; prospectively amended in relation to Wales): see PARA 1268 post.

11 As to the power of the local education authority to suspend the school's right to a delegated budget see *ibid* s 17 (as amended; prospectively amended in relation to Wales); and PARA 1269 post.

12 See *ibid* s 14(1)(b), (2) (as amended in relation to England; prospectively amended in relation to Wales); and PARA 1264 ante. See also s 15(4)(a)(i), (b) (s 15(4) as substituted; and further substituted by the Education Act 2005 s 61, Sch 9 para 15(1), (2)). The substitution effected by Sch 9 para 15(1), (2) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day for the purposes of the School Standards and Framework Act 1998 s 15(4)(a)(i), (b) is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As to the power of the local education authority to provide for the governing body to consist of interim executive members see the School Standards and Framework Act 1998 s 16A (as added and amended in relation to England; prospectively added and amended in relation to Wales); and PARA 1270 post.

Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 ss 14-17 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 paras (b)-(e).

13 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

14 *Ibid* s 15(5). As from a day to be appointed, s 15(5) is repealed by the Education Act 2005 ss 61, 123, Sch 9 para 15(1), (3), Sch 19 Pt 1. In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales.

15 le under the School Inspections Act 1996 Pt I (ss 1-25) (as amended; prospectively repealed). For these purposes, a report of an inspection under the Learning and Skills Act 2000 s 83 (as amended) (area inspections: see PARA 1338 post) is to be treated as a report of an inspection under the School Inspections Act 1996 Pt I (as amended; prospectively repealed): School Standards and Framework Act 1998 s 15(7) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 78).

The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c) and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (see PARA 1226 et seq ante). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales (see PARA 1187 et seq ante).

16 In the School Standards and Framework Act 1998 Pt I Ch IV (as amended), 'Chief Inspector' means the person referred to in the School Inspections Act 1996 s 4(1) (as amended) (namely, Her Majesty's Chief Inspector of Education and Training in Wales: see PARA 1188 ante): see s 46(1); definition applied by the School Standards and Framework Act 1998 s 14(4)(a). As from a day to be appointed, s 14(4) is substituted by the Education Act 2005 s 61, Sch 9 para 14(1), (3) (see note 3 supra) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. As to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

17 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

18 le a notice under the School Inspections Act 1996 s 16A(2) (as added; prospectively repealed): see PARA 1212 ante.

19 le in a case falling within *ibid* s 16A(1)(a) (as added; prospectively repealed) or s 16A(1)(b) (as added; prospectively repealed): see PARA 1212 ante.

20 le under the School Inspections Act 1996 Pt I (as amended; prospectively repealed).

21 le a notice under *ibid* s 16A(2) (as added; prospectively repealed): see PARA 1212 ante.

22 le in a case falling within *ibid* s 16A(1)(c) (as added; prospectively repealed): see PARA 1212 ante. In Pt I Ch IV (as amended; prospectively repealed), references to special measures being, or not being, required to be taken in relation to a school, have the same meaning as in the School Inspections Act 1996 (see s 13(9) (prospectively repealed); and PARA 1209 note 5 ante): School Standards and Framework Act 1998 s 14(4)(b). See note 15 supra.

23 *Ibid* s 14(1)(b), (2), s 15(4) (s 15(4) substituted by the Education Act 2002 s 55(1)). As from a day to be appointed, the School Standards and Framework Act 1998 s 15(4) (as substituted) is further substituted in relation to Wales by the Education Act 2005 Sch 9 para 15(1), (2) (see note 12 supra) so that if, following an inspection of a maintained school in Wales under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (not yet in force), the Chief Inspector for Wales has given the National Assembly for Wales a notice under s 37(2) (not yet in force) in a case falling within s 37(1)(a)(ii) (not yet in force) or s 37(1)(b)(ii) (not yet in force) (school requiring significant improvement: see PARA 1252 ante) and, where any subsequent inspection of the school has been made under Pt 1 Ch 3 (not yet in force), the notice has not been superseded by: (1) the person making the subsequent inspection making a report stating that in his opinion the school no longer requires significant improvement; or (2) the Chief Inspector giving the Assembly a notice under s 37(2) (not yet in force) in a case falling within s 37(1)(a)(i) (not yet in force) or s 37(1)(b)(i) (not yet in force) (school requiring special measures: see PARA 1252 ante), then the local education authority may exercise its power of intervention under the School Standards and Framework Act 1998 s 14(1)(b), (2) (as amended in relation to England; prospectively amended in relation to Wales) (see PARA 1264 ante): see s 15(4)(a)(ii), (b) (as substituted; prospectively further substituted by the Education Act 2005 Sch 9 para 15(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### 1266 Intervention by the local education authority where a maintained school requires significant improvement or has serious weaknesses

TEXT AND NOTES 1-12--The following applies in relation to England. A maintained school is by virtue of the Education and Inspections Act 2006 s 61 eligible for intervention if (1) following an inspection of the school under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1167 et seq), the Chief Inspector (see PARA 1265) has given notice under s 13(3)(a) (see PARA 1178) in a case falling within s 13(1)(b) (school requiring significant improvement: see PARA 1178); and (2) where any subsequent inspection of the school has been made under Pt 1 Ch 1, the notice has not been superseded by (a) the person making the subsequent inspection making a report stating that in his opinion the school no longer requires significant improvement; or (b) the Chief Inspector giving the Secretary of State a notice under s 13(3)(a) in a case falling within s 13(1)(a) (school requiring special measures): 2006 Act s 61. References to a school being 'eligible for intervention' are to be read in accordance with ss 60-62: ss 59(1), 73.

NOTES 3, 12, 14-16--Day now appointed in relation to Wales: SI 2006/1338.

NOTE 15--The reference is now to an inspection under the Education Act 2005 Pt 1 Ch 3 (ss 19-31): 1998 Act s 15(4)(a) (s 15(4) substituted, s 15(7) repealed by the Education and Inspections Act 2006 Sch 7 para 5(2), Sch 18 Pt 4).

NOTE 18--The reference is now to a notice under the Education Act 2005 s 37(2): 1998 Act s 15(4)(a).

TEXT AND NOTE 19--For 'has serious weakness' read 'requires significant improvement', which refers to a case falling within the Education Act 2005 s 37(1)(a)(i) or s 37(1)(b)(i): 1998 Act s 15(4)(a).

TEXT AND NOTE 20--Words 'report of' omitted; the reference is now to an inspection under the Education Act 2005 Pt 1 Ch 3 (ss 19-31): 1998 Act s 15(4)(b).

TEXT AND NOTE 21--For 'has serious weakness' read 'requires special measures'; the reference is now to a notice under the Education Act 2005 s 37(2): 1998 Act s 15(4)(b).

TEXT AND NOTE 22--The reference is now to a case falling within the Education Act 2005 s 37(1)(a)(ii) or s 37(1)(b)(ii): 1998 Act s 15(4)(b).

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**1267. Intervention by the local education authority where a maintained school requires special measures to be taken.**

If, following an inspection of a maintained school<sup>1</sup> in England<sup>2</sup>, the Chief Inspector for England<sup>3</sup> has given the Secretary of State<sup>4</sup> a notice<sup>5</sup> that special measures are required to be taken in relation to the school<sup>6</sup> and, where any subsequent report of an inspection of the school has been made<sup>7</sup>, the person making the report did not state that in his opinion special measures were not required to be taken in relation to the school, then the local education authority may exercise its power of intervention by appointing additional governors<sup>8</sup> and suspending the school's right to a delegated budget<sup>9</sup>, and may provide for the governing body to consist of interim executive members<sup>10</sup>.

If, following an inspection of a maintained school in Wales<sup>11</sup>, the Chief Inspector for Wales<sup>12</sup> has given the National Assembly for Wales<sup>13</sup> a notice<sup>14</sup> that special measures are required to be taken in relation to the school<sup>15</sup> and, where any subsequent report of an inspection of the school has been made<sup>16</sup>, the person making the report did not state that in his opinion special measures were not required to be taken in relation to the school, then the local education authority may exercise its power of intervention by appointing additional governors and suspending the school's right to a delegated budget<sup>17</sup>.

1 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.

2 I.e. an inspection of a maintained school made under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1167 et seq ante). For the meaning of 'England' see PARA 52 note 11 ante.

3 I.e. Her Majesty's Chief Inspector of Schools in England: see PARA 1266 note 3 ante.

4 As to the Secretary of State see PARA 52 ante.

5 I.e. a notice under the Education Act 2005 s 13(3)(a): see PARA 1178 ante.

6 I.e. in a case falling within ibid s 13(1)(a): see PARA 1178 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante.

7 I.e. under ibid Pt 1 Ch 1 (ss 1-12) (see PARA 1167 et seq ante).

8 I.e. the power to appoint additional governors under the School Standards and Framework Act 1998 s 16 (as amended; prospectively amended in relation to Wales): see PARA 1268 post.

9 As to the power of the local education authority to suspend the school's right to a delegated budget see ibid s 17 (as amended; prospectively amended in relation to Wales); and PARA 1269 post.

10 See ibid s 14(1)(c), s 14(2) (as amended in relation to England; prospectively amended in relation to Wales); and PARA 1264 ante. See also s 15(6)(a)(i), (b) (s 15(6) as substituted; and further substituted by the Education Act 2005 s 61, Sch 9 para 15(1), (4)). The substitution effected by Sch 9 para 15(1), (4) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 for the purposes of the School Standards and Framework Act 1998 s 15(6)(a)(i), (b) (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no day has been appointed in relation to Wales.

As to the power of the local education authority to provide for the governing body to consist of interim executive members see the School Standards and Framework Act 1998 s 16A (as added and amended in relation to England; prospectively added and amended in relation to Wales); and PARA 1270 post.



Any function of a local education authority in England which is conferred by or under the School Standards and Framework Act 1998 ss 14-17 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 paras (b)-(e).

11    Ie an inspection under the School Inspections Act 1996 Pt I (ss 1-25) (as amended; prospectively repealed). For these purposes, a report of an inspection under the Learning and Skills Act 2000 s 83 (as amended) (area inspections: see PARA 1338 post) is to be treated as a report of an inspection under the School Inspections Act 1996 Pt I (as amended; prospectively repealed): School Standards and Framework Act 1998 s 15(7) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 78).

The School Inspections Act 1996 is repealed by the Education Act 2005 s 60 as from a day to be appointed under ss 125(4), 126(1), (2)(c) and provision for the inspection of schools in Wales is made by Pt 1 Chs 3-7 (ss 19-63) (see PARA 1226 et seq ante). However, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, the School Inspections Act 1996 continues to apply in relation to Wales (see PARA 1187 et seq ante).

12    Ie Her Majesty's Chief Inspector of Education and Training in Wales: see PARA 1266 note 16 ante. As to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

13    As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

14    Ie a notice under the School Inspections Act 1996 s 16A(2) (as added; prospectively repealed): see PARA 1212 ante.

15    Ie in a case falling within *ibid* s 16A(1)(c) (as added; prospectively repealed): see PARA 1212 ante. As to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante.

16    Ie under *ibid* Pt I (as amended; prospectively repealed).

17    School Standards and Framework Act 1998 s 14(1)(c), (2), s 15(6) (s 15(6) substituted by the Education Act 2002 s 55(2)). As from a day to be appointed, the School Standards and Framework Act 1998 s 15(6) (as substituted) is further substituted in relation to Wales by the Education Act 2005 Sch 9 para 15(1), (4) (see note 10 supra) so that if, following an inspection of a maintained school in Wales under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (not yet in force), the Chief Inspector for Wales has given the National Assembly for Wales a notice under s 37(2) (not yet in force) in a case falling within s 37(1)(a)(i) (not yet in force) or s 37(1)(b)(i) (not yet in force) (school requiring special measures: see PARA 1252 ante) and, where any subsequent inspection of the school has been made under Pt 1 Ch 3 (not yet in force), the person making it did not state that in his opinion special measures were not required to be taken in relation to the school, then the local education authority may exercise its power of intervention under the School Standards and Framework Act 1998 s 14(1)(c), (2) (s 14(2) as amended in relation to England; prospectively amended in relation to Wales) (see PARA 1264 ante): see s 15(6)(a)(ii), (b) (as substituted; prospectively further substituted by the Education Act 2005 Sch 9 para 15(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

## **UPDATE**

### **1264-1274 Intervention in Schools**

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### **1267 Intervention by the local education authority where a maintained school requires special measures to be taken**

TEXT AND NOTES 1-10--The following applies in relation to England. A maintained school is eligible for intervention if (1) following an inspection of the school under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1167 et seq), the Chief Inspector (see PARA 1265) has given notice under s 13(3)(a) (see PARA 1178) in a case falling within s 13(1)(a) (see PARA 1178); and (2) where any subsequent inspection of the school has been made under Pt 1 Ch 1, the person making it did not state that in his opinion special measures were not required to be taken in relation to the school: Education and Inspections Act 2006 s 62. References to a school being 'eligible for intervention' are to be read in accordance with ss 60-62: ss 59(1), 73.

NOTES 10, 11, 17--1998 Act s 15(6) substituted, s 15(7) repealed: 2006 Act Sch 7 para 5(3), (4), Sch 18 Pt 4.

NOTE 11--The reference is now to an inspection under the 2005 Act Pt 1 Ch 3 (ss 19-31): 1998 Act s 15(6)(a) (s 15(6) substituted by the 2006 Act Sch 7 para 5(2)).

NOTE 14--The reference is now to a notice under the 2005 Act s 37(2): 1998 Act s 15(6)(a).

NOTE 15--The reference is now to a case falling within the Education Act 2005 s 37(1)(a)(i) or s 37(1)(b)(i): 1998 Act s 15(6)(a).

TEXT AND NOTE 16--Words 'report of' omitted; the reference is now to an inspection under the 2005 Act Pt 1 Ch 3 (ss 19-31): 1998 Act s 15(6)(b).

TEXT AND NOTE 17--For 'the person making ... to the school' read 'the notice has not been superseded by the person making the subsequent inspection making a report stating that in his opinion the school no longer requires special measures': 1998 Act s 15(6)(b).

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### **1267A. Power of local education authority to enter into arrangements: England.**

If at any time a maintained school<sup>1</sup> in England is eligible for intervention<sup>2</sup>, then the local education authority may, with a view to improving the performance of the school, give the governing body of the school a notice requiring the governing body to (1) to enter into a contract or other arrangement with a specified person, which may be the governing body of another school, for the provision to the governing body of specified services of an advisory nature<sup>3</sup>; (2) to make specified arrangements<sup>4</sup> with the governing body of such other school as may be specified<sup>5</sup>; (3) to make specified arrangements<sup>6</sup> with a further education body<sup>7</sup>; or (4) to take specified steps for the purpose of creating or joining a federation<sup>8</sup>. Before giving such a notice, the local education authority must consult the governing body of the school, in the case of a foundation or voluntary school<sup>9</sup> which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority<sup>10</sup>, and in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed<sup>11</sup>. Where the school is eligible for intervention<sup>12</sup>, the power to give such a notice is only exercisable within the period of two months following the end of the compliance period<sup>13</sup>.

<sup>1</sup> For the meaning of 'maintained school' for the purposes of the Education and Inspections Act 2006 Pt 4 (ss 59-73) see PARA 1264.

<sup>2</sup> Ie by virtue of *ibid* s 60, 61 or 62 (see PARAS 1265-1267) but not by virtue of s 60A (see PARA 1265).

<sup>3</sup> *Ibid* s 63(1)(a) (s 63(1) amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 13 para 5). A notice under the 2006 Act s 63(1)(a) may require the contract or other arrangement to contain specified terms and conditions: s 63(4).

<sup>4</sup> Ie arrangements authorised by the Education Act 2002 s 26 (collaboration between schools: see PARA 214).

<sup>5</sup> 2006 Act s 63(1)(b).

<sup>6</sup> Ie arrangements authorised by regulations under *ibid* s 166 (collaboration arrangements: maintained schools and further education bodies) (see PARA 597A).

<sup>7</sup> *Ibid* s 63(1)(c). For the meaning of 'further education body' see PARA 597A.

<sup>8</sup> *Ibid* s 63(1)(d). For the meaning of 'federation' see PARA 213.

<sup>9</sup> As to foundation or voluntary schools see PARA 102 et seq.

<sup>10</sup> 'Appropriate diocesan authority', 'Church of England school' and 'Roman Catholic Church school' have the same meaning as in the School Standards and Framework Act 1998 (see PARA 42): 2006 Act s 73.

<sup>11</sup> *Ibid* s 63(2).

<sup>12</sup> Ie by virtue of *ibid* s 60 (school subject to formal warning) (see PARA 1265).

<sup>13</sup> *Ibid* s 63(3). For the meaning of 'the compliance period' see s 60(10) and PARA 1265 TEXT AND NOTES 11-16.

## **UPDATE**

### **1264-1274 Intervention in Schools**

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

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### **1268. Power of local education authority to appoint additional governors.**

Where a maintained school<sup>1</sup> is subject to a formal warning<sup>2</sup> or requires significant improvement<sup>3</sup> or requires special measures to be taken<sup>4</sup>, and this has given rise to the local education authority's<sup>5</sup> powers of intervention<sup>6</sup>, then the local education authority may appoint such number of additional governors as it thinks fit<sup>7</sup>.

In the case of a school which is subject to a formal warning, the local education authority's power to appoint additional governors is only exercisable within the period of two months following the end of the compliance period<sup>8</sup>. In the case of a school requiring significant improvement or requiring special measures, the local education authority's power to appoint additional governors is only exercisable<sup>9</sup> if: (1) the relevant notice has been given to the local education authority<sup>10</sup>; and (2) a period of not less than ten days has elapsed since the date of the notice<sup>11</sup>.

In relation to any such appointment made by the local education authority to the governing body of a school, the instrument of government for the school has effect as if<sup>12</sup> it provided for the local education authority to appoint such number of additional governors as it thinks fit<sup>13</sup>.

In relation to a voluntary aided school<sup>14</sup> which is subject to a formal warning<sup>15</sup>, where the local education authority has exercised its power to appoint additional governors, the appropriate appointing authority<sup>16</sup> may appoint such number of additional foundation governors as is equal to the number of additional governors appointed by the authority<sup>17</sup>. Any such additional foundation governors cease to hold office at the time when the additional governors appointed by the authority cease to do so, and are not eligible for re-appointment except where, and to the extent that, those governors are re-appointed<sup>18</sup>. In relation to a voluntary aided school which requires special measures or requires significant improvement<sup>19</sup>, where the Secretary of State has not exercised his power to appoint additional governors<sup>20</sup> the appropriate appointing authority may appoint such number of additional foundation governors as it thinks fit<sup>21</sup>.

However, this power is only exercisable if: (a) the appropriate appointing authority has received a notice in writing from the Secretary of State informing it that he has received from the Chief Inspector a relevant notice<sup>22</sup>; and (b) a period of not less than ten days has elapsed since the date of the notice<sup>23</sup>.

1 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.

2 See the School Standards and Framework Act 1998 s 15(1); and PARA 1265 ante.

3 See *ibid* s 15(4) (as substituted; further substituted in relation to England; prospectively substituted in relation to Wales); and PARA 1266 ante. Until a day to be appointed, the reference to 'requiring significant improvement' should be read, in relation to Wales, as a reference to 'having serious weaknesses': see PARA 1266 ante. As to references to a school in England requiring significant improvement see PARA 1266 note 6 ante; and as to references to a school in Wales having serious weaknesses see PARA 1266 ante.

4 See *ibid* s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante; and as to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante.

5 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under *ibid* ss 14-16 (as amended) may be exercised by, or by employees of, such

person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 paras (b)-(d). For the meaning of 'England' see PARA 52 note 11 ante.

6 See the School Standards and Framework Act 1998 s 14(1), (2) (as amended; prospectively amended in relation to Wales); and PARA 1264 ante.

7 Ibid s 16(1).

8 Ibid s 16(2). For the meaning of 'compliance period' see PARA 1265 note 2 ante.

9 Ibid s 16(3) (s 16(3) substituted by the Education Act 2002 s 56(3), Sch 5 para 2(1), (2); and amended by the Education Act 2005 s 61, Sch 9 para 16(1), (2)(a)). The amendment effected by the Education Act 2005 Sch 9 para 16(1), (2)(a) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, the reference to 'requiring significant improvement' should be read, in relation to Wales, as a reference to 'having serious weaknesses'.

10 School Standards and Framework Act 1998 s 16(3)(a) (s 16(3) as substituted: see note 9 supra). In relation to England, the text refers to a notice given to the local education authority by the Chief Inspector for England under the Education Act 2005 s 13(3)(a) (see PARA 1178 ante): School Standards and Framework Act 1998 s 16(3)(a) (s 16(3) as so substituted; and s 16(3)(a) further substituted by the Education Act 2005 Sch 9 para 16(1), (2)(b)). The amendment effected by the Education Act 2005 Sch 9 para 16(1), (2)(b) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. In relation to Wales, until such a day is appointed, the text refers to a notice given to the local education authority by the National Assembly for Wales under the School Inspections Act 1996 s 16A(3) (as added; prospectively repealed) (see PARA 1212 ante): School Standards and Framework Act 1998 s 16(3)(a) (s 16(3) as so substituted). In relation to Wales, as from a day is appointed, the text refers to a notice given to the local education authority by the Chief Inspector for Wales under the Education Act 2005 s 37(2) (see PARA 1252 ante): School Standards and Framework Act 1998 s 16(3)(a) (s 16(3) as so substituted; and s 16(3)(a) prospectively further substituted by the Education Act 2005 Sch 9 para 16(1), (2)(b)). As to the Chief Inspector for England see PARA 1266 note 3 ante; and as to the Chief Inspector for Wales see PARA 1266 note 16 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

11 School Standards and Framework Act 1998 s 16(3)(b) (s 16(3) as substituted: see note 9 supra). The Secretary of State may in respect of any particular school determine that s 16(3)(b) (as substituted) has effect as if the reference to ten days were to such shorter period as he may determine: s 16(12A) (added by the Education Act 2002 Sch 5 para 2(1), (7)).

12 Ie despite anything in regulations made under the Education Act 2002 s 19 (see PARAS 203 et seq, 251 et seq ante).

13 School Standards and Framework Act 1998 s 16(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 93(1), (2)).

14 As to voluntary aided schools see PARA 102 et seq ante.

15 Ie a voluntary aided school other than one falling within the School Standards and Framework Act 1998 s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (see PARA 1266 ante) or s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (see PARA 1267 ante).

16 References in ibid s 16 to the appropriate appointing authority in relation to any voluntary aided school are references: (1) to the appropriate diocesan authority, if it is a Church of England school, Church in Wales school or Roman Catholic Church school; or (2) in any other case, to the person or persons by whom the foundation governors are appointed: s 16(11). Where, in the case of any voluntary aided school not falling within head (1) supra, there are different powers to appoint foundation governors, references in s 16 to the appropriate appointing authority are references: (a) to all those persons who have any such power acting jointly; or (b) if they are unable to agree, to such of them acting jointly, or such one of them, as the Secretary of State may, after consulting all those persons, determine: s 16(12). For the meanings of 'the appropriate diocesan authority', 'Church of England school', 'Church in Wales school' and 'Roman Catholic Church school' see PARA 42 note 15 ante. For the meaning of 'foundation governor' see PARA 104 note 6 ante.

17 Ibid s 16(6) (amended by the Education Act 2002 s 56(3), Sch 5 para 2(1), (4)). In the case of any appointment made by virtue of the School Standards and Framework Act 1998 s 16(6) (as amended) to the governing body of a school, the instrument of government for the school has effect as if (despite anything in regulations made under the Education Act 2002 s 19 (see PARAS 203 et seq, 251 et seq ante)) the instrument provided for the appropriate appointing authority to appoint such number of additional foundation governors as it is authorised to appoint under the School Standards and Framework Act 1998 s 16(6) (as amended): s 16(10) (amended by the Education Act 2002 Sch 21 para 93(1), (3)).

18 School Standards and Framework Act 1998 s 16(7).

19 Ie a voluntary aided school which falls within ibid s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (see PARA 1266 ante) or s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (see PARA 1267 ante). Until a day to be appointed, the reference to 'requires significant improvement' should be read, in relation to Wales, as a reference to 'has serious weaknesses': see PARA 1266 ante.

20 Ie the provisions of ibid s 14(3)(a) (as substituted) (see PARA 1264 ante) do not apply in connection with the same inspection falling within s 15(4)(a) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (see PARA 1266 ante) or s 15(6)(a) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales) (see PARA 1267 ante).

21 Ibid s 16(8) (amended by the Education Act 2002 s 56(3), Sch 5 para 2(1), (5)). In the case of any appointment made by virtue of the School Standards and Framework Act 1998 s 16(8) (as amended) to the governing body of a school, the instrument of government for the school has effect as if (despite anything in regulations made under the Education Act 2002 s 19 (see PARAS 203 et seq, 251 et seq ante)) the instrument provided for the appropriate appointing authority to appoint such number of additional foundation governors as it is authorised to appoint under the School Standards and Framework Act 1998 s 16(8) (as amended): s 16(10) (as amended: see note 17 supra).

22 Ibid s 16(9)(a) (s 16(9) substituted by the Education Act 2002 Sch 5 para 2(1), (6)). In relation to England, the text refers to a notice given by the Chief Inspector for England under the Education Act 2005 s 13(3)(a) (see PARA 1178 ante): School Standards and Framework Act 1998 s 16(9)(a) (as so substituted; and s 16(9)(a) amended by the Education Act 2005 Sch 9 para 16(1), (3)). The amendment effected by the Education Act 2005 Sch 9 para 16(1), (3) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. In relation to Wales, until such a day is appointed, the text refers to a notice given by the Chief Inspector for Wales under the School Inspections Act 1996 s 16A(3) (as added; prospectively repealed) (see PARA 1212 ante): School Standards and Framework Act 1998 s 16(9)(a) (as so substituted). In relation to Wales, as from a day is appointed, the text refers to a notice given by the Chief Inspector under the Education Act 2005 s 37(2) (see PARA 1252 ante): School Standards and Framework Act 1998 s 16(9)(a) (as so substituted; and s 16(9)(a) prospectively amended by the Education Act 2005 Sch 9 para 16(1), (3)). As to the Chief Inspector for England see PARA 1266 note 3 ante; and as to the Chief Inspector for Wales see PARA 1266 note 16 ante.

23 School Standards and Framework Act 1998 s 16(9)(b) (as substituted: see note 22 supra). The Secretary of State may in respect of any particular school determine that s 16(9)(b) (as substituted) is to have effect as if the reference to ten days were a reference to such shorter period as he may determine: s 16(12A) (as added: see note 11 supra).

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### 1268 Power of local education authority to appoint additional governors

TEXT AND NOTES--In relation to England, School Standards and Framework Act 1998 s 16 re-enacted with amendments in the Education and Inspections Act 2006 s 64.

TEXT AND NOTES 1-8--In relation to England, School Standards and Framework Act 1998 s 16(1), (2) now Education and Inspections Act 2006 s 64(1), (2) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 13 para 6).

TEXT AND NOTES 9-11--In relation to England, 1998 Act s 16(3), (12A) not replicated in Education and Inspections Act 2006.

NOTES 9, 10, 22--Day now appointed in relation to Wales: SI 2006/133

TEXT AND NOTES 12-18--In relation to England, 1998 Act s 16(5)-(7), (10)-(12) now Education and Inspections Act 2006 s 64(3)-(5), (7)-(9) (s 64(4) amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 13 para 6).

NOTE 15--In relation to England, the reference is to a voluntary aided school other than one falling within *ibid* s 61 or 62 (see PARAS 1266, 1267): see s 64(4)(a).

TEXT AND NOTES 19-21--If at any time (1) a voluntary aided school is eligible for intervention by virtue of the Education and Inspections Act 2006 s 61 or 62; (2) the Secretary of State has not exercised his power under s 67 (power to appoint additional governors: see PARA 1271) in connection with the same inspection falling within s 61(a) or 62(a); (3) the Secretary of State has not exercised his power under s 68 (power to direct closure of school: see PARA 1272); and (4) the appropriate appointing authority has received a notice in writing from the Secretary of State informing it that he has received a notice under the Education Act 2005 s 13(3)(a) from the Chief Inspector (see PARA 1265), then the appropriate appointing authority may appoint such number of additional foundation governors as it thinks fit: Education and Inspections Act 2006 s 64(6).

TEXT AND NOTES 22, 23--In relation to England, School Standards and Framework Act 1998 s 16(9), (12A) not replicated in Education and Inspections Act 2006.



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### **1269. Power of local education authority to suspend right to delegated budget.**

Where a maintained school<sup>1</sup> which has a delegated budget<sup>2</sup> is subject to a formal warning<sup>3</sup> or requires significant improvement<sup>4</sup> or requires special measures to be taken<sup>5</sup>, and this has given rise to the local education authority's<sup>6</sup> powers of intervention<sup>7</sup>, then the local education authority may, by giving the governing body of the school<sup>8</sup> notice in writing of the suspension, suspend the governing body's right to a delegated budget with effect from the receipt of the notice by the governing body<sup>9</sup>. In the case of a school which is subject to formal warning, the local education authority's power to suspend the right to a delegated budget is only exercisable within the period of two months following the end of the compliance period<sup>10</sup>. In the case of a school requiring significant improvement or requiring special measures, the local education authority's power to suspend the right to a delegated budget is only exercisable<sup>11</sup> if: (1) the relevant notice has been given to the local education authority<sup>12</sup>; and (2) a period of not less than ten days has elapsed since the date on which the copy was given<sup>13</sup>.

There is no right of appeal against a suspension of a school's right to a delegated budget under the provisions described above<sup>14</sup>.

1 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.

2 I.e. a delegated budget within the meaning of the School Standards and Framework Act 1998 Pt II (ss 20-83) (as amended): see PARA 320 ante.

3 See *ibid* s 15(1); and PARA 1265 ante.

4 See *ibid* s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1266 ante. Until a day to be appointed, the reference to 'requires significant improvement' should be read, in relation to Wales, as a reference to 'has serious weaknesses': see PARA 1266 ante. As to references to a school in England requiring significant improvement see PARA 1266 note 6 ante; and as to references to a school in Wales having serious weaknesses see PARA 1266 ante.

5 See *ibid* s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante; and as to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante.

6 As to local education authorities see PARA 20 ante. Any function of a local education authority in England which is conferred by or under *ibid* ss 14-15, 17 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 2 paras (b)-(c), (e). For the meaning of 'England' see PARA 52 note 11 ante.

7 See the School Standards and Framework Act 1998 s 14(1), (2) (as amended in relation to England; prospectively amended in relation to Wales); and PARA 1264 ante.

8 As to the governing body of a maintained school, in relation to England, see PARA 203 *et seq* ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 *et seq* ante.

9 School Standards and Framework Act 1998 s 17(1). A copy of the notice must be given to the head teacher of the school at the same time as the notice is given to the governing body: s 17(5). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8).

10 *Ibid* s 17(2). For the meaning of 'compliance period' see PARA 1265 note 2 ante.

11 Ibid s 17(3) (s 17(3) substituted by the Education Act 2002 s 56(3), Sch 5 para 3(1), (2); and amended by the Education Act 2005 s 61, Sch 9 para 18(a)). The amendment effected by the Education Act 2005 Sch 9 para 18(a) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the reference to 'requiring significant improvement' should be read, in relation to Wales, as a reference to 'having serious weaknesses'.

12 School Standards and Framework Act 1998 s 17(3)(a) (as substituted: see note 11 supra). In relation to England, the text refers to a notice given to the local education authority by the Chief Inspector for England under the Education Act 2005 s 13(3)(a) (see PARA 1178 ante): School Standards and Framework Act 1998 s 17(3)(a) (s 17(3) as so substituted; s 17(3)(a) further substituted by the Education Act 2005 Sch 9 para 18(b)). The amendment effected by the Education Act 2005 Sch 9 para 18(b) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. In relation to Wales, until such a day is appointed, the text refers to a notice given to the local education authority by the National Assembly for Wales under the School Inspections Act 1996 s 16A(3) (as added; prospectively repealed) (see PARA 1212 ante): School Standards and Framework Act 1998 s 17(3)(a) (s 17(3) as so substituted). In relation to Wales, once such a day is appointed, the text refers to a notice given to the local education authority by the Chief Inspector for Wales under the Education Act 2005 s 37(2) (see PARA 1252 ante): School Standards and Framework Act 1998 s 17(3)(a) (s 17(3) as so substituted; s 17(3)(a) prospectively further substituted by the Education Act 2005 Sch 9 para 18(b)). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the Chief Inspector for England see PARA 1266 note 3 ante; and as to the Chief Inspector for Wales see PARA 1266 note 16 ante.

13 School Standards and Framework Act 1998 s 17(3)(b) (as substituted: see note 11 supra). The Secretary of State may in respect of any particular school determine that s 17(3)(b) (as substituted) has effect as if the reference to ten days were a reference to such shorter period as he may determine: s 17(4) (amended by the Education Act 2002 Sch 5 para 3(1), (3)).

14 School Standards and Framework Act 1998 s 17(6). The text refers to a right of appeal against a suspension under s 51, Sch 15 para 3 (see PARA 324 ante). In all other respects, a suspension imposed under s 17 (as amended) has effect for the purposes of Pt II Ch IV (ss 45-53A) (as amended) as if made under Sch 15 para 1 (as amended) (see PARA 322 ante): see s 17(6).

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### 1269 Power of local education authority to suspend right to delegated budget

TEXT AND NOTES--In relation to England, School Standards and Framework Act 1998 s 17 re-enacted with amendments in the Education and Inspections Act 2006 s 66.

TEXT AND NOTES 1-10--In relation to England, School Standards and Framework Act 1998 s 17(1), (2), (5) now Education and Inspections Act 2006 s 66(1)-(3) (s 66(2) amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 13 para 7).

NOTES 4, 11, 12--Day now appointed in relation to Wales: SI 2006/1338.

TEXT AND NOTES 11-13--In relation to England, School Standards and Framework Act 1998 s 17(3), (4) not replicated in Education and Inspections Act 2006.

TEXT AND NOTE 14--Words 'There is no ... provisions described above' omitted: School Standards and Framework Act 1998 s 17(6) (amended by Education and Inspections Act 2006 Sch 5 para 1, Sch 18 Pt 6). School Standards and Framework Act 1998 Sch 15 para 3 repealed: Education and Inspections Act 2006 Sch 5 para 6(c), Sch 18 Pt 6. In relation to England, School Standards and Framework Act 1998 s 17(6) now Education and Inspections Act 2006 s 66(4).

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**1270. Power of local education authority to provide for governing body to consist of interim executive members.**

Where a maintained school<sup>1</sup> is subject to a formal warning<sup>2</sup> or requires significant improvement<sup>3</sup> or requires special measures to be taken<sup>4</sup>, and this has given rise to the local education authority's<sup>5</sup> powers of intervention<sup>6</sup>, then the local education authority may, with the consent of the Secretary of State<sup>7</sup>, give the governing body of the school<sup>8</sup> a notice in writing stating that, as from a date specified in the notice, the governing body is to consist of interim executive members<sup>9</sup>. In the case of a school requiring significant improvement or requiring special measures, the local education authority's power to provide for a governing body to consist of interim executive members is only exercisable<sup>10</sup> if: (1) the relevant notice has been given to the local education authority<sup>11</sup>; and (2) a period of not less than ten days has elapsed since the date of the notice<sup>12</sup>.

Before exercising the power to provide for a governing body to consist of interim executive members, the local education authority must consult: (a) the governing body of the school<sup>13</sup>; (b) in the case of a foundation or voluntary school<sup>14</sup> which is a Church of England school<sup>15</sup>, a Church in Wales school<sup>16</sup> or a Roman Catholic Church school<sup>17</sup>, the appropriate diocesan authority<sup>18</sup>; and (c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors<sup>19</sup> are appointed<sup>20</sup>.

1 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.

2 See the School Standards and Framework Act 1998 s 15(1); and PARA 1265 ante.

3 See *ibid* s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1266 ante. Until a day to be appointed, the reference to 'requires significant improvement' should be read, in relation to Wales, as a reference to 'has serious weaknesses': see PARA 1266 ante. As to references to a school in England requiring significant improvement see PARA 1266 note 6 ante; and as to references to a school in Wales having serious weaknesses see PARA 1266 ante.

4 See *ibid* s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante; and as to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante.

5 As to local education authorities see PARA 20 ante.

6 See the School Standards and Framework Act 1998 s 14(1), (2) (as amended in relation to England; prospectively amended in relation to Wales); and PARA 1264 ante.

7 As to the Secretary of State see PARA 52 ante.

8 As to the governing body of a maintained school, in relation to England, see PARA 203 *et seq* ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 *et seq* ante.

9 School Standards and Framework Act 1998 s 16A(1) (s 16A added by the Education Act 2002 s 57(2)). The reference in the text to a governing body consisting of interim executive members is a reference to a governing body constituted in accordance with the School Standards and Framework Act 1998 s 19A, Sch 1A (as added) (see PARAS 215, 266 ante).

Section 16A (as added) comes into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 2 September 2002 (see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

10 School Standards and Framework Act 1998 s 16A(2) (s 16A as added (see note 9 supra); and s 16A(2) amended by the Education Act 2005 s 61, Sch 9 para 17(a)). The amendment effected by the Education Act 2005 Sch 9 para 17(a) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, the reference to 'requiring significant improvement' should be read, in relation to Wales, as a reference to 'having serious weaknesses'.

11 School Standards and Framework Act 1998 s 16A(2)(a) (as added: see note 9 supra). In relation to England, the text refers to a notice given to the local education authority by the Chief Inspector under the Education Act 2005 s 13(3)(a) (see PARA 1178 ante): School Standards and Framework Act 1998 s 16A(2)(a) (s 16A as so added; s 16A(2)(a) substituted by the Education Act 2005 Sch 9 para 17(b)). The amendment effected by the Education Act 2005 Sch 9 para 17(b) comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. In relation to Wales, until such a day is appointed, the text refers to a notice given to the local education authority by the National Assembly for Wales under the School Inspections Act 1996 s 16A(3) (as added; prospectively repealed) (see PARA 1212 ante): School Standards and Framework Act 1998 s 16A(2)(a) (s 16A as so added). In relation to Wales, once such a day is appointed, the text refers to a notice given to the local education authority by the Chief Inspector under the Education Act 2005 s 37(2) (see PARA 1252 ante): School Standards and Framework Act 1998 s 16A(2) (s 16A as so added; s 16A(2)(a) prospectively substituted by the Education Act 2005 Sch 9 para 18(b)). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the Chief Inspector for England see PARA 1266 note 3 ante; and as to the Chief Inspector for Wales see PARA 1266 note 16 ante.

12 School Standards and Framework Act 1998 s 16A(2)(b) (as added: see note 9 supra). The Secretary of State may in respect of any particular school determine that s 16A(2)(b) (as added) has effect as if the reference to ten days were a reference to such shorter period as he may determine: s 16A(3) (as so added).

13 Ibid s 16A(4)(a) (as added: see note 9 supra).

14 As to foundation and voluntary schools see PARA 102 et seq ante.

15 For the meaning of 'Church of England school' see PARA 42 note 15 ante.

16 For the meaning of 'Church in Wales school' see PARA 42 note 15 ante.

17 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

18 School Standards and Framework Act 1998 s 16A(4)(b) (as added: see note 9 supra). For the meaning of 'the appropriate diocesan authority' see PARA 42 note 15 ante.

19 For the meaning of 'foundation governor' see PARA 104 note 6 ante.

20 School Standards and Framework Act 1998 s 16A(4)(c) (as added: see note 9 supra)

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

**1270 Power of local education authority to provide for governing body to consist of interim executive members**

TEXT AND NOTES--In relation to England, 1998 Act ss 16A, 19A, Sch 1A re-enacted with amendments in Education and Inspections Act 2006 ss 65, 70, Sch 6.

TEXT AND NOTES 1-9--In relation to England, 1998 Act ss 16A(1), 19A, Sch 1A now Education and Inspections Act 2006 ss 65(1), 70, Sch 6.

NOTE 3--Day now appointed in relation to Wales: SI 2006/1338.

NOTE 9--Day now appointed in relation to Wales: SI 2007/3611.

TEXT AND NOTES 10-12--In relation to England, 1998 Act s 16A(2), (3) not replicated in 2006 Act.

NOTES 10, 11--Day now appointed in relation to Wales: SI 2006/1338.

TEXT AND NOTES 13-20--In relation to England, 1998 Act s 16A(4) now 2006 Act s 65(2).

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## **B. POWERS OF INTERVENTION EXERCISABLE BY CENTRAL GOVERNMENT**

### **1271. Power to appoint additional governors.**

If at any time the local education authority's<sup>1</sup> powers of intervention<sup>2</sup> have arisen in the case of a maintained school<sup>3</sup> by reason of it requiring significant improvement<sup>4</sup> or requiring special measures to be taken<sup>5</sup>, the Secretary of State<sup>6</sup> may appoint such number of additional governors as he thinks fit, and he may nominate one of those governors to be the chairman of the governing body<sup>7</sup> in place of any person who has been elected as chairman of that body<sup>8</sup>. Before making any such appointment in relation to a voluntary aided school<sup>9</sup>, the Secretary of State must consult, in the case of a Church of England school<sup>10</sup>, a Church in Wales school<sup>11</sup> or a Roman Catholic Church school<sup>12</sup>, the appropriate diocesan authority<sup>13</sup>, or, in any other case, the person who appoints the foundation governors<sup>14</sup>. A governor so appointed holds office as governor for such term, and if nominated as chairman of the governing body, is chairman of that body for such period, as the Secretary of State may determine<sup>15</sup>. The Secretary of State may pay to any governor so appointed such remuneration and allowances as the Secretary of State may determine<sup>16</sup>. In relation to any appointment made by the Secretary of State<sup>17</sup> to the governing body of a school, the instrument of government for the school has effect as if<sup>18</sup> it provided for the Secretary of State to appoint such number of additional governors as he thinks fit<sup>19</sup>.

Where the Secretary of State has exercised his power to appoint additional governors in relation to a school, then in any such case the local education authority may not exercise its power<sup>20</sup> to suspend the governing body's right to a delegated budget<sup>21</sup>, and if it has already exercised its power to suspend the right to a delegated budget<sup>22</sup>, the Secretary of State must, if requested to do so by the governing body, revoke the suspension<sup>23</sup>. The revocation of a suspension must be notified to the local education authority in writing, and take effect from such date as is specified in that notification<sup>24</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie if at any time the School Standards and Framework Act 1998 s 15 (as amended in relation to England; prospectively amended in relation to Wales) applies: see PARAS 1265-1267 ante.

3 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.

4 Ie by virtue of the School Standards and Framework Act 1998 s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1266 ante. See note 8 infra.

5 Ie by virtue of *ibid* s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante; and as to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante.

6 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

8 School Standards and Framework Act 1998 s 18(1) (substituted by the Education Act 2002 s 56(1); and amended by the Education Act 2005 s 61, Sch 9 para 19). The amendment made by the Education Act 2005 Sch 9 para 19 comes into effect as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, in relation to Wales, the reference to 'requiring significant improvement' should be read as a reference to 'having serious weaknesses'. As to references to a school in England requiring significant improvement see PARA 1266 note 6 ante. As to references to a school in Wales having serious weaknesses see PARA 1266 ante.

9 As to voluntary schools, and the sub-categories of voluntary schools (ie voluntary controlled schools and voluntary aided schools), see PARA 102 et seq ante.

10 For the meaning of 'Church of England school' see PARA 42 note 15 ante.

11 For the meaning of 'Church in Wales school' see PARA 42 note 15 ante.

12 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

13 For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 ante.

14 School Standards and Framework Act 1998 s 18(2). For the meaning of 'foundation governor' see PARA 104 note 6 ante.

15 Ibid s 18(3).

16 Ibid s 18(4).

17 Ie by virtue of ibid s 18(1) (as substituted and amended; prospectively amended in relation to Wales): see the text and notes 1-8 supra.

18 Ie despite anything in regulations made under the Education Act 2002 s 19 (see PARAS 203 et seq, 251 et seq ante).

19 School Standards and Framework Act 1998 s 18(5) (amended by the Education Act 2002 s 215(1), Sch 21 para 94(1), (2)).

20 Ie under the School Standards and Framework Act 1998 s 51, Sch 15 para 1 (as amended) (see PARA 322 ante).

21 As to the meaning of 'right to a delegated budget' see ibid s 49(7); and PARA 320 ante. For the meaning of 'delegated budget' see PARA 320 ante.

22 Ie its power under ibid s 51, Sch 15 para 1 (as amended) (see PARA 322 ante) or under s 17(1) (see PARA 1269 ante).

23 Ibid s 18(6)(a). Where the Secretary of State has exercised his power under s 18 (as amended; prospectively amended in relation to Wales) in relation to a school, then in the case of a voluntary aided school, nothing in regulations made under the Education Act 2002 s 19 (see PARAS 203 et seq ante, 251 et seq ante) may be read as authorising the appointment of foundation governors for the purpose of outnumbering the other governors as augmented by those appointed by the Secretary of State under the School Standards and Framework Act 1998 s 18 (as amended; prospectively amended in relation to Wales): s 18(6)(b) (amended by the Education Act 2002 Sch 21 para 94(1), (3)).

24 School Standards and Framework Act 1998 s 18(7). For the general default and dispute resolution powers in relation to the acts and omissions of local education authorities and governing bodies see PARAS 58-59 ante.

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in



England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### **1271 Power to appoint additional governors**

TEXT AND NOTES--In relation to England, 1998 Act s 18 re-enacted with amendments in Education and Inspections Act 2006 s 67.

TEXT AND NOTES 1-8--In relation to England, 1998 Act s 18(1) now 2006 Act s 67(1). In relation to Wales, the Welsh Ministers may also appoint additional governors if the local education authority's powers of intervention have arisen in the case of a maintained school by reason of it being subject to a teachers' pay and conditions warning by virtue of 1998 Act s 15(1), in a case within 1998 Act s 15(2)(a)(iv) or (v) (see PARA 1265): School Standards and Framework Act 1998 s 18(1) (further amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 14 para 4).

TEXT AND NOTES 4, 5--The words 'by reason of it requiring significant improvement or requiring special measures to be taken' are omitted: 2006 Act s 67(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 13 para 8, Sch 16 Pt 6).

NOTE 8--Day now appointed in relation to Wales: SI 2006/1338.

TEXT AND NOTES 9-14--The following applies in relation to England. Before making any such appointment, the Secretary of State must consult the local education authority, the governing body of the school, in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed: 2006 Act s 67(2).

TEXT AND NOTES 15-19--In relation to England, 1998 Act s 18(3)-(5) now 2006 Act s 67(3)-(5).

TEXT AND NOTES 20-24--In relation to England, 1998 Act s 18(6), (7) now 2006 Act s 67(6), (7).

NOTES 20, 22--In relation to England, the power referred to is the power under the 1998 Act s 66(1) or Sch 15 para 1: 2006 Act s 67(6)(a).

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### **1272. Power to provide for governing body to consist of interim executive members.**

If at any time a local education authority's<sup>1</sup> powers of intervention<sup>2</sup> have arisen in the case of a maintained school<sup>3</sup> by reason of the school requiring significant improvement<sup>4</sup> or requiring special measures to be taken<sup>5</sup>, then the Secretary of State<sup>6</sup> may give the governing body of the school<sup>7</sup> a notice in writing stating that, as from a date specified in the notice, the governing body is to consist of interim executive members<sup>8</sup>.

Before exercising the power to provide for a governing body to consist of interim executive members, the Secretary of State must consult: (1) the local education authority<sup>9</sup>; (2) the governing body of the school<sup>10</sup>; (3) in the case of a foundation or voluntary school<sup>11</sup> which is a Church of England school<sup>12</sup>, a Church in Wales school<sup>13</sup> or a Roman Catholic Church school<sup>14</sup>, the appropriate diocesan authority<sup>15</sup>; and (4) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors<sup>16</sup> are appointed<sup>17</sup>. However, the Secretary of State is not obliged to consult the persons mentioned in head (2), (3) or (4) above if the local education authority has already consulted them<sup>18</sup> in relation to a proposed notice<sup>19</sup> in exercise of its power to provide for a governing body to consist of interim executive members<sup>20</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie if at any time the School Standards and Framework Act 1998 s 15 (as amended in relation to England; prospectively amended in relation to Wales) applies: see PARAS 1265-1267 ante.

3 As to the meaning of 'maintained school' see PARA 1264 note 1 ante.

4 Ie by virtue of the School Standards and Framework Act 1998 s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1266 ante. See note 8 infra.

5 Ie by virtue of ibid s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante; and as to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante.

6 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

8 School Standards and Framework Act 1998 s 18A(1) (s 18A added by the Education Act 2002 s 58; and the School Standards and Framework Act 1998 s 18A(1) amended by the Education Act 2005 s 61, Sch 9 para 20). The reference in the text to a governing body consisting of interim executive members is a reference to a governing body constituted in accordance with the School Standards and Framework Act 1998 s 19A, Sch 1A (as added) (see PARAS 215, 266 ante).

Section s 18A (as added) comes into force as from a day to be appointed under the Education Act 2002 s 216(4). In relation to England, the appointed day is 2 September 2002 (see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

The amendment made to the School Standards and Framework Act 1998 s 18A(1) (as added) by the Education Act 2005 Sch 9 para 20 comes into effect as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, in relation to Wales, the reference to 'requiring significant improvement' should be read as a reference to 'having serious weaknesses'. As to references to a school in England requiring significant improvement see PARA 1266 note 6 ante. As to references to a school in Wales having serious weaknesses see PARA 1266 ante.

9 School Standards and Framework Act 1998 s 18A(2)(a) (as added: see note 8 supra).

10 Ibid s 18A(2)(b) (as added: see note 8 supra).

11 As to foundation and voluntary schools see PARA 102 et seq ante.

12 For the meaning of 'Church of England school' see PARA 42 note 15 ante.

13 For the meaning of 'Church in Wales school' see PARA 42 note 15 ante.

14 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

15 School Standards and Framework Act 1998 s 18A(2)(c) (as added: see note 8 supra). For the meaning of 'the appropriate diocesan authority' see PARA 42 note 15 ante.

16 For the meaning of 'foundation governor' see PARA 104 note 6 ante.

17 School Standards and Framework Act 1998 s 18A(2)(d) (as added: see note 8 supra)

18 Ie under ibid s 16A(4) (as added in relation to England; prospectively added in relation to Wales) (see PARA 1270 ante).

19 Ie a notice under ibid s 16A(1) (as added in relation to England; prospectively added in relation to Wales) (see PARA 1270 ante).

20 Ibid s 18A(3) (as added: see note 8 supra).

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### 1272 Power to provide for governing body to consist of interim executive members

TEXT AND NOTES--In relation to England, 1998 Act ss 18A, 19A, Sch 1A re-enacted with amendments in Education and Inspections Act 2006 ss 69, 70, Sch 6. The Secretary of State has power to direct a local education authority to consider giving a performance standards and safety warning notice under 2006 Act s 60 (see PARA 1265) or a teachers' pay and conditions warning notice under 2006 Act s 60A (see PARA 1265) to the governing body of a maintained school if he thinks that there are reasonable grounds for the authority to do so: see Education and Inspections Act 2006 ss 69A, 69B (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 13 para 10). The Welsh Ministers have power to direct a local education authority to give a teacher's pay and conditions notice under the 2006 Act s 15(2)(a)(iv) or (v) (see PARA 1265) to

the governing body of a maintained school if they think that there are reasonable grounds for the authority to do so: see School Standards and Framework Act 1998 s 19ZA (added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 14 para 6).

TEXT AND NOTES 1-8--In relation to England, 1998 Act ss 18A(1), 19A, Sch 1A now 2006 Act ss 69(1), 70, Sch 6. In relation to Wales, the Welsh Ministers may also provide for the governing body to consist of interim executive members if the local education authority's powers of intervention have arisen in the case of a maintained school by reason of it being subject to a teachers' pay and conditions warning by virtue of 1998 Act s 15(1), in a case within 1998 Act s 15(2)(a)(iv) or (v) (see PARA 1265): School Standards and Framework Act 1998 s 18A(1) (further amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 14 para 5).

NOTES 4, 5--The words 'by reason of the school requiring significant improvement or requiring special measures to be taken' are omitted: 2006 Act s 69(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 13 para 9, Sch 16 Pt 6).

NOTE 8--Day now appointed in relation to Wales in respect of 2002 Act (SI 2007/3611) and 2005 Act (SI 2006/1338).

TEXT AND NOTES 9-17--In relation to England, 1998 Act s 18A(2) now 2006 Act s 69(2).

TEXT AND NOTES 18-20--In relation to England, 1998 Act s 18A(3) now 2006 Act s 69(3).

NOTES 18, 19--In relation to England, the references are to *ibid* s 65(1), (2) (see PARA 1270): s 69(3).

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### **1273. Power to direct closure of school.**

In England<sup>1</sup>, if at any time a local education authority's<sup>2</sup> powers of intervention<sup>3</sup> have arisen in the case of a maintained school<sup>4</sup> by reason of the school requiring special measures to be taken<sup>5</sup>, then the Secretary of State<sup>6</sup> may give a direction to the local education authority requiring the school to be discontinued<sup>7</sup> on a date specified in the direction<sup>8</sup>. If at any time a local education authority in Wales<sup>9</sup> has exercised its powers of intervention<sup>10</sup> in the case of a maintained school by reason of the school having serious weaknesses<sup>11</sup> or requiring special measures to be taken<sup>12</sup>, then the National Assembly for Wales<sup>13</sup> may give a direction to the local education authority requiring the school to be discontinued<sup>14</sup> on a date specified in the direction<sup>15</sup>.

Before such a direction is given, the following must be consulted:

- 2340 (1) the local education authority and the governing body of the school<sup>16</sup>;
- 2341 (2) in the case of a foundation or voluntary school<sup>17</sup> which is a Church of England school<sup>18</sup>, a Church in Wales school<sup>19</sup> or a Roman Catholic Church school<sup>20</sup>, the appropriate diocesan authority<sup>21</sup>;
- 2342 (3) in the case of any other foundation or voluntary school, the person who appoints the foundation governors<sup>22</sup>;
- 2343 (4) in the case of a school which provides education suitable to the requirements of persons over compulsory school age<sup>23</sup>, the Learning and Skills Council for England<sup>24</sup> (if the school is in England) or the National Council for Education and Training for Wales<sup>25</sup> (if the school is in Wales)<sup>26</sup>; and
- 2344 (5) such other persons as are considered appropriate<sup>27</sup>.

When such a direction is given, notice of the direction must be given in writing to the governing body of the school and its head teacher<sup>28</sup>.

1 For the meaning of 'England' see PARA 52 note 11 ante.

2 As to local education authorities see PARA 20 ante.

3 I.e. if at any time the School Standards and Framework Act 1998 s 15 (as amended in relation to England; prospectively amended in relation to Wales) applies: see PARAS 1265-1267 ante.

4 As to the meaning of 'maintained school' see PARA 1264 note 1 ante. The School Standards and Framework Act 1998 s 19 (as amended) applies, with modifications, in relation to pupil referral units as it applies in relation to maintained schools: see the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2005, SI 2005/2039, regs 1, 3, Sch 1 para 4. For the meaning of 'pupil referral unit' see PARA 457 ante.

5 I.e. by virtue of the School Standards and Framework Act 1998 s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante.

6 As to the Secretary of State see PARA 52 ante.

7 Where the local education authority is given such a direction, it must discontinue the school in question on the date specified in the direction, and nothing in the School Standards and Framework Act 1998 ss 29-33 (as

amended) (see PARAS 131, 134-136, 149 ante) applies to its discontinuance of the school under s 19 (as amended): s 19(4). For the purposes of s 19 (as amended), any reference to the discontinuance of a maintained school is a reference to the local education authority ceasing to maintain it: s 19(5). For the meaning of 'maintain' see PARA 303 note 4 ante.

8 Ibid s 19(1) (substituted by the Education Act 2005 s 45).

9 For the meaning of 'Wales' see PARA 52 note 13 ante.

10 See note 3 supra.

11 Ie by virtue of the School Standards and Framework Act 1998 s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1266 ante. As to references to a school in Wales having serious weaknesses see PARA 1266 ante.

12 Ie by virtue of ibid s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales): see PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante.

13 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

14 See note 7 supra.

15 School Standards and Framework Act 1998 s 19(1) (substituted by the Education Act 2002 s 56(2)). As from a day to be appointed, the School Standards and Framework Act 1998 s 19(1) (as substituted) is further substituted by the Education Act 2005 s 45 but, at the date at which this volume states the law, no such day has been appointed in relation to Wales.

16 School Standards and Framework Act 1998 s 19(2)(a). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

17 As to foundation and voluntary schools see PARA 102 et seq ante.

18 For the meaning of 'Church of England school' see PARA 42 note 15 ante.

19 For the meaning of 'Church in Wales school' see PARA 42 note 15 ante.

20 For the meaning of 'Roman Catholic Church school' see PARA 42 note 15 ante.

21 School Standards and Framework Act 1998 s 19(2)(b). For the meaning of 'appropriate diocesan authority' see PARA 42 note 15 ante.

22 Ibid s 19(2)(c). For the meaning of 'foundation governor' see PARA 104 note 6 ante.

23 As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 142(8).

24 As to the Learning and Skills Council for England see PARA 1072 et seq ante.

25 As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

26 School Standards and Framework Act 1998 s 19(2)(ca) (added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 79).

27 School Standards and Framework Act 1998 s 19(2)(d).

28 Ibid s 19(3). As to the meaning of 'head teacher' see PARA 93 note 13 ante; definition applied by virtue of s 142(8). For the general default and dispute resolution powers in relation to the acts and omissions of local education authorities and governing bodies see PARAS 58-59 ante.

## UPDATE

### 1264-1274 Intervention in Schools

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

### **1273 Power to direct closure of school**

TEXT AND NOTES 1-8, 16-28--In relation to England, 1998 Act s 19 re-enacted with amendments in Education and Inspections Act 2006 s 68. See also the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 23.

TEXT AND NOTES 1-8--In relation to England, 1998 Act s 19(1) now 2006 Act s 68(1).

NOTE 4--1998 s 19 applies, with modifications, in relation to pupil referral units in Wales as it applies in relation to maintained schools: see the Education (Pupil Referral Units) (Application of Enactments) (Wales) Regulations 2007, SI 2007/1069, regs 1, 3, Sch 1 para 4. SI 2005/2039 replaced: Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979 (amended by SI 2008/3093).

NOTE 5--In relation to England, the reference is to the 2006 Act s 62 (see PARA 1267): s 68(1).

NOTE 7--In relation to England, 1998 Act s 19(4), (5) now 2006 Act s 68(4), (5). Reference to School Standards and Framework Act 1998 ss 29-33 is now to the 2006 Act ss 15-17 (see PARAS 165A.3, 165A.4) or the School Standards and Framework Act 1998 s 30: 2006 Act s 68(4).

NOTE 15--Day now appointed in relation to Wales: SI 2006/1338.

TEXT AND NOTES 16-27--In relation to England, 1998 Act s 19(2) now 2006 Act s 68(2).

TEXT AND NOTES 23-26--1998 Act s 19(2)(ca) repealed: 2006 Act Sch 7 para 12(3), Sch 18 Pt 4.

TEXT AND NOTE 28--In relation to England, 1998 Act s 19(3) now 2006 Act s 68(3).

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#### **1274. Power to direct local education authority to obtain advisory services.**

If at any time a local education authority's<sup>1</sup> powers of intervention<sup>2</sup> have arisen in the case of one or more schools maintained by it<sup>3</sup> by reason of the school in question requiring significant improvement<sup>4</sup> or requiring special measures to be taken<sup>5</sup>, and if it appears to the Secretary of State<sup>6</sup> (in relation to England<sup>7</sup>) or the National Assembly for Wales<sup>8</sup> (in relation to Wales<sup>9</sup>) that the local education authority: (1) has not been effective or is unlikely to be effective in eliminating deficiencies in the conduct of that school or those schools<sup>10</sup>; (2) is unlikely to be effective in eliminating deficiencies in the conduct of other schools which may in the future require the authority to exercise its powers of intervention by reason of the school requiring significant improvement or requiring special measures to be taken<sup>11</sup>; or (3) maintains a disproportionate number of schools with such deficiencies<sup>12</sup>, the Secretary of State or the Assembly may direct the local education authority to enter into a contract or other arrangement with a person specified in the direction, or a person falling within a class so specified, for the provision to the authority or the governing body of any school maintained by it<sup>13</sup>, or both, of specified services of an advisory nature<sup>14</sup>. The direction may require the contract or other arrangement to contain specified terms and conditions<sup>15</sup>; and any direction so given is enforceable, on an application made on behalf of the Secretary of State or, as the case may be, of the Assembly, by a mandatory order<sup>16</sup>.

Where the Secretary of State or the Assembly has notified the local education authority that he or it is contemplating the giving of such a direction<sup>17</sup>, the authority must give the Secretary of State or the Assembly, and any person authorised by the Secretary of State or the Assembly for these purposes, such assistance, in connection with the proposed contract or other arrangement, as the authority is reasonably able to give<sup>18</sup>. Where such a direction is given to a local education authority, the relevant person<sup>19</sup> is entitled, for the purposes of providing the advisory services, to exercise the following powers<sup>20</sup>, namely, the right to have at all reasonable times: (a) a right of entry to the premises of the authority<sup>21</sup>; and (b) a right to inspect, and take copies of, any records or other documents<sup>22</sup> kept by the authority, and any other documents containing information relating to the authority, which he considers relevant to the provision of the advisory services<sup>23</sup>. The authority must give the relevant person all assistance in connection with the provision of the advisory services which it is reasonably able to give<sup>24</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie if at any time the School Standards and Framework Act 1998 s 15 (as amended in relation to England; prospectively amended in relation to Wales) applies: see PARAS 1265-1267 ante.

3 For these purposes, 'school' means a maintained school within the meaning of *ibid* Pt I Ch II (ss 5-9) (as amended) (see ss 20(7), 142(1); and PARA 94 ante): Education Act 2002 s 63(4).

4 Ie by virtue of the School Standards and Framework Act 1998 s 15(4) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1266 ante. See note 5 *infra*.

5 Education Act 2002 s 63(1)(a) (amended by the Education Act 2005 s 61, Sch 9 para 28). The text refers to special measures required to be taken by virtue of the School Standards and Framework Act 1998 s 15(6) (as substituted; further substituted in relation to England; prospectively further substituted in relation to Wales); and PARA 1267 ante. As to references to special measures being, or not being, required to be taken in relation to a school in England see PARA 1266 note 9 ante; and as to references to special measures being, or not being, required to be taken in relation to a school in Wales see PARA 1266 note 22 ante. The amendment made to the



Education Act 2002 s 63(1)(a) by the Education Act 2005 Sch 9 para 28 comes into effect as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day has been appointed in relation to Wales. Until such a day is appointed, in relation to Wales, the reference to 'requiring significant improvement' should be read, as a reference to 'having serious weaknesses'. As to references to a school in England requiring significant improvement see PARA 1266 note 6 ante. As to references to a school in Wales having serious weaknesses see PARA 1266 ante.

6 As to the Secretary of State see PARA 52 ante.

7 For the meaning of 'England' see PARA 52 note 11 ante.

8 As to the National Assembly for Wales see PARA 53 ante.

9 For the meaning of 'Wales' see PARA 52 note 13 ante.

10 Education Act 2002 s 63(1)(b)(i).

11 Ibid s 63(1)(b)(ii). The text refers to other schools which may in the future fall within s 63(1)(a) (as amended): see the text and notes 1-5 supra.

12 Ibid s 63(1)(b)(iii). The text refers to a disproportionate number of schools falling within s 63(1)(a) (as amended): see the text and notes 1-5 supra.

13 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

14 Education Act 2002 s 63(2).

15 Ibid s 63(3).

16 Ibid s 63(5). As to mandatory orders see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

17 Ie a direction under ibid s 63 (as amended), where that provision applies in relation to the local authority (see the text and notes 1-16 supra).

18 Ibid s 64(1).

19 For these purposes, 'the relevant person' means:

118 (1) the person specified under ibid s 63(2) (see the text and notes 13-14 supra); or

119 (2) where the direction specifies a class of persons, the person with whom the local education authority enters into the contract or other arrangement required by the direction,

and includes any person assisting that person in the provision of the advisory services: s 64(7). In s 64, 'the advisory services' means the services to be provided in pursuance of the direction under s 63 (as amended) (see the text and notes 1-16 supra): s 64(7).

20 Ibid s 64(2). The text refers to the powers conferred by s 64(3)-(6): see the text and notes 21-24 infra.

21 Ibid s 64(3)(a). Section 64(3) applies in relation to any school maintained by the authority as it applies in relation to the authority; and without prejudice to s 64(3) as it so applies: (1) the governing body of any such school must give the relevant person all assistance in connection with the provision of the advisory services which it is reasonably able to give; and (2) the governing body of any such school and the authority must secure that all such assistance is also given by persons who work at the school: s 64(6).

22 In ibid s 64, 'documents' and 'records' each include information recorded in any form: s 64(7).

23 Ibid s 64(3)(b). See note 21 supra. The Education Act 1996 s 497B(3) (as added) (right of access to computers etc: see PARA 56 ante) applies in relation to the exercise by the relevant person of the right conferred by the Education Act 2002 s 64(3) as it applies to the exercise by the specified person (within the meaning of the Education Act 1996 s 497B (as added): see PARA 56 note 15 ante) of the right conferred by s 497B(2) (as added) (see PARA 56 ante): Education Act 2002 s 64(4).

24 Ibid s 64(5). This provision is expressed to be without prejudice to s 64(3): see heads (a) and (b) in the text.

**UPDATE****1264-1274 Intervention in Schools**

The School Standards and Framework Act 1998 Ch IV (ss 14-19A), Sch 1A (amended by the Education and Inspections Act 2006 Sch 7 paras 3-13, Sch 18 Pt 4) now applies only in relation to schools in Wales, and references to the Secretary of State are now to the National Assembly for Wales. Similar provision is made in relation to schools in England by Pt 4 (ss 59-73), Sch 6: see PARAS 1264-1273. A local education authority in England must, in exercising its functions under Pt 4, have regard to any guidance given from time to time by the Secretary of State: s 72.

**1274 Power to direct local education authority to obtain advisory services**

TEXT AND NOTES--2002 Act s 63 (amended by the Education and Inspections Act 2006 Sch 7 para 21, Sch 18 Pt 4) now applies only in relation to Wales, and references to the Secretary of State are now to the National Assembly for Wales; equivalent provision is made in relation to England by the 2002 Act s 62A (added by the 2006 Act Sch 7 para 20 and amended by Apprenticeships, Skills, Children and Learning Act 2009 s 204). See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 18.

NOTE 2--In relation to England, reference to 1998 Act s 15 now to 2006 Act Pt 4 (ss 59-73) (see PARAS 1264-1273): 2002 Act s 62A(1) (as added see TEXT AND NOTES).

NOTE 3--School Standards and Framework Act 1998 s 63(4) amended: Education and Inspections Act 2006 Sch 17 para 6.

NOTES 4, 5--In relation to England, references to 1998 Act s 15(4), (6) now to 2006 Act ss 61 and 62 (see PARAS 1266, 1267): 2002 Act s 62A(1) (as added see TEXT AND NOTES).

NOTE 5--Day now appointed in relation to Wales: SI 2006/1338.

NOTE 17--In relation to England, the reference is to a direction under the 2002 Act s 62A.

NOTE 19--In relation to England, in the definition of 'the relevant person' head (1) refers to the person specified in the 2002 Act s 62A(2), and in the definition of 'the advisory services' the reference is to a direction under s 62A: s 64(7) (amended by the 2006 Act Sch 7 para 22(3)).

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### ***C. INTERVENTION RELATING TO THE RESTRUCTURING OF SIXTH FORM EDUCATION***

#### **(A) RESTRUCTURING SIXTH FORM EDUCATION IN ENGLAND**

##### ***(a) Power to Publish Proposals***

#### **1275. Proposals relating to secondary schools requiring significant improvement in relation to their sixth forms.**

A school<sup>1</sup> requires significant improvement in relation to its sixth form<sup>2</sup> if the school is failing to give its pupils over compulsory school age an acceptable standard of education<sup>3</sup>, or if, in relation to pupils over compulsory school age, the school is performing significantly less well than it might in all the circumstances reasonably be expected to perform<sup>4</sup>.

If a person who inspects such a school states in his report an opinion<sup>5</sup> that special measures are not required in relation to the school<sup>6</sup>, but is of the opinion that the school requires significant improvement in relation to its sixth form<sup>7</sup>, he must state that opinion in his report<sup>8</sup>. If in the course of an area inspection<sup>9</sup> the Chief Inspector<sup>10</sup> forms the opinion that a particular school requires significant improvement in relation to its sixth form<sup>11</sup>, the Chief Inspector must make a report about the school stating his opinion<sup>12</sup>.

The provisions relating to the publication and implementation of proposals<sup>13</sup> apply in relation to a school if an opinion that it requires significant improvement in relation to its sixth form is stated in a report<sup>14</sup>. The provisions relating to the publication and implementation of proposals also apply in relation to a school if:

- 2345 (1) a report of an inspection under the Education Act 2005<sup>15</sup> states the opinion that the school requires significant improvement in relation to its sixth form<sup>16</sup>;
- 2346 (2) the next report of a kind mentioned in head (1) above also states that opinion<sup>17</sup>; and
- 2347 (3) neither report states the opinion that special measures are required to be taken in relation to the school<sup>18</sup>.

The provisions relating to the publication and implementation of proposals cease to apply in relation to a school if a report of an inspection<sup>19</sup> concludes that special measures are required to be taken in relation to the school<sup>20</sup>, or that the school does not require significant improvement in relation to its sixth form<sup>21</sup>.

Where a report of an inspection under the Education Act 2005<sup>22</sup> states an opinion that a school requires significant improvement in relation to its sixth form<sup>23</sup>, the person making such a report must send a copy (together with a copy of the summary, if there is one): (a) to the Secretary of State<sup>24</sup>; and (b) if the school is in England, to the appropriate authority for the school<sup>25</sup>. The provisions of the Education Act 2005 which relate to:

- 2348 (i) additional copies of reports of regular inspections of maintained schools<sup>26</sup> being sent to the head teacher of the school, the local education authority or the governing body, and to the person who appoints the foundation governors or the appropriate appointing authority<sup>27</sup>;
- 2349 (ii) the making available of such reports to the public free of charge, providing them free of charge to any person who so requests, and securing that every registered parent of a registered pupil receives a copy of the summary<sup>28</sup>;
- 2350 (iii) where the local education authority receives a copy of a report about a school the governing body of which have a delegated budget, the preparation and sending of a written statement detailing any action it proposes to take<sup>29</sup>,

apply, with the necessary modifications, to a report of an inspection under Part I of the Education Act 2005 which states an opinion that a school in England requires significant improvement in relation to its sixth form<sup>30</sup>.

Where a person who inspects a school is of the opinion that a school requires significant improvement in relation to its sixth form, the provisions of the Education Act 2005 relating to the duty of the Chief Inspector to send a draft report to the governing body or proprietor, to consider their comments and to state his opinion in a report<sup>31</sup> also apply, with the necessary modifications, as they apply where he is of the opinion that special measures are required to be taken in relation to the school<sup>32</sup>.

1 The Learning and Skills Act 2000 s 113(1), Sch 7 paras 2-7 (as amended) (see the text and notes 5-32 *infra*) apply to a maintained school within the meaning of the School Standards and Framework Act 1998 s 20(7) (see PARA 94 *ante*), which: (1) provides full-time education suitable to the requirements of pupils over compulsory school age; and (2) provides full-time education suitable to the requirements of pupils of compulsory school age: Learning and Skills Act 2000 Sch 7 para 1(1). For the meaning of 'pupil' see PARA 16 note 4 *ante*; definition applied by virtue of s 113(2)(a) (substituted by the Education Act 2005 Sch 5 para 2(1), (3)). As to the meaning of 'compulsory school age' see PARA 15 *ante*; definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (as so substituted).

Any function of a local education authority in England which is conferred by or under Sch 7 Pt I paras 1-14 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (p). For the meaning of 'England' see PARA 52 note 11 *ante*. As to local education authorities see PARA 20 *ante*.

2 *Ie* for the purposes of the Learning and Skills Act 2000 Sch 7 paras 2-7 (as amended): see the text and notes 5-32 *infra*. As to references to significant improvement being required in relation to a school in England see the Education Act 2005 s 44(2) (see PARA 1178 note 4 *ante*); definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (as substituted: see note 1 *supra*).

3 *Ibid* Sch 7 para 1(2)(a) (Sch 7 para 1(2) substituted by the Education Act 2005 s 46, Sch 5 para 3(1), (3)).

4 Learning and Skills Act 2000 Sch 7 para 1(2)(b) (as substituted: see note 3 *supra*).

5 *Ie* in accordance with the Education Act 2005 s 13(4) (school no longer requiring special measures: see PARA 1178 *ante*): Learning and Skills Act 2000 Sch 7 para 2(a) (Sch 7 para 2 substituted by the Education Act 2005 Sch 5 para 3(1), (4)).

6 Learning and Skills Act 2000 Sch 7 para 2(a) (as substituted: see note 5 *supra*). As to references to special measures being required to be taken in relation to a school in England see the Education Act 2005 s 44(1) (see PARA 1178 note 3 *ante*); definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (as substituted: see note 1 *supra*).

7 *Ibid* Sch 7 para 2(b) (as substituted: see note 5 *supra*).

8 *Ibid* Sch 7 para 2 (as substituted: see note 5 *supra*).

The Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions) (see PARA 57 *ante*), and s 497 (as amended) (general default powers) (see PARA 58 *ante*) have effect in relation to powers and duties conferred or imposed by virtue of the Learning and Skills Act 2000 Sch 7 (as amended) as if: (1) those powers and duties were conferred or imposed by the Education Act 1996; and (2) the bodies specified in the

Education Act 1996 s 496(2) (as amended) (see PARA 57 ante), and s 497(2) (as amended) (see PARA 58 ante) (both as amended) were any local education authority, any school organisation committee and the governing body of any maintained school: Learning and Skills Act 2000 s 113(3). As to local education authorities see PARA 20 ante. As to the governing bodies of maintained schools in England see PARA 203 et seq ante.

9 le under ibid s 65 (as amended) (see PARA 1324 post).

10 le Her Majesty's Chief Inspector of Schools in England (see the Education Act 2005 s 12; and PARA 1168 ante); definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (as substituted: see note 1 supra).

11 Ibid Sch 7 para 3(1) (amended by the Education Act 2005 Sch 5 para 3(1), (5)(a)).

12 Learning and Skills Act 2000 Sch 7 para 3(2). The report must be treated for all purposes of Sch 7 (as amended) and the Education Act 2005 Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63) (see PARA 1168 et seq ante) as if it were the report of an inspection of a school under s 5 (see PARA 1173 ante): Learning and Skills Act 2000 Sch 7 para 3(3) (substituted by the Education Act 2005 Sch 5 para 3(1), (5)(b)).

13 le the Learning and Skills Act 2000 Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1278-1279 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1281 post).

14 Ibid Sch 7 para 4(1)(a) (amended by the Education Act 2005 Sch 5 para 3(1), (6)(a)). The text refers to an opinion stated in a report in accordance with Sch 7 para 2 (as substituted): see the text and notes 5-8 supra.

15 le the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante): Learning and Skills Act 2000 Sch 7 para 4(2)(a) (substituted by the Education Act 2005 Sch 5 para 3(1), (6)(b)).

16 Learning and Skills Act 2000 Sch 7 para 4(2)(a) (as substituted: see note 15 supra).

17 Ibid Sch 7 para 4(2)(b).

18 Ibid Sch 7 para 4(2)(d).

19 le under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante), or the Learning and Skills Act 2000 s 65 (as amended) (see PARA 1324 post): Sch 7 para 5(1) (amended by the Education Act 2005 Sch 5 para 3(1), (7)(a)). The Learning and Skills Act 2000 Sch 7 para 5(1) (as amended) cannot prevent the continued application of Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1278-1279 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1281 post) in a case where proposals have been published under Sch 7 para 16 (see PARA 1278 post), or Sch 7 para 20 (see PARA 1286 post): Sch 7 para 5(3).

20 Ibid Sch 7 para 5(1)(a).

21 Ibid Sch 7 para 5(1)(b) (amended by the Education Act 2005 Sch 5 para 3(1), (7)(a)).

22 le under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante): Learning and Skills Act 2000 Sch 7 para 6(1) (Sch 7 para 6(1) substituted by the Education Act 2005 Sch 5 para 3(1), (8)(a)).

23 Learning and Skills Act 2000 Sch 7 para 6(1)(a) (as substituted: see note 22 supra).

24 Ibid Sch 7 para 6(2)(a). As to the Secretary of State see PARA 52 ante.

25 Ibid Sch 7 para 6(2)(b) (substituted by the Education Act 2005 Sch 5 para 3(1), (8)(b)).

26 le inspections under the Education Act 2005 s 5 (see PARA 1173 ante): see the Learning and Skills Act 2000 Sch 7 para 6(3)(a)(i) (Sch 7 para 6(3) substituted by the Education Act 2005 Sch 5 para 3(1), (8)(c)).

27 le the Education Act 2005 s 14(2) (see PARA 1179 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(a)(i) (as substituted: see note 26 supra). As to schools having foundation governors see PARA 104 et seq ante.

28 le the Education Act 2005 s 14(4) (see PARA 1179 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(a)(ii) (as substituted: see note 26 supra).

28 le the Education Act 2005 s 15(2), (3) (see PARA 1180 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(a)(iii) (as substituted: see note 26 supra).

30 Ibid Sch 7 para 6(3)(a) (as substituted: see note 26 supra). In the application of the provisions mentioned in Sch 7 para 6(3) (as substituted) (see heads (i) to (iii) in the text), a reference to a report and summary must be taken as a reference to a report and, if there is one, its summary (Sch 7 para 6(4)(a)), and a reference to a

summary alone must be taken, in a case where there is no summary, as a reference to the report (Sch 7 para 6(4)(b)).

31 In the case of a school in England, the Education Act 2005 s 13(1)-(3) (see PARA 1178 ante): Learning and Skills Act 2000 Sch 7 para 7(1), (2)(a) (Sch 7 para 7 substituted by the Education Act 2005 Sch 5 para 3(1), (9)).

32 Learning and Skills Act 2000 Sch 7 para 7(1) (as substituted: see note 31 supra).

## **UPDATE**

### **1275 Proposals relating to secondary schools requiring significant improvement in relation to their sixth forms**

NOTE 8--Head (2), omit 'any school organisation committee': 2000 Act s 113(3) (amended by the Education and Inspections Act 2006 Sch 3 para 35, Sch 18 Pt 3).

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**1276. Proposals relating to institutions for 16-19 year olds requiring special measures or significant improvement in relation to their sixth forms.**

If in the course of an area inspection<sup>1</sup> of a school<sup>2</sup> in England the Chief Inspector<sup>3</sup> forms the opinion that special measures are required to be taken in relation to a particular school or that a particular school requires significant improvement<sup>4</sup> the Chief Inspector must make a report about the school stating his opinion<sup>5</sup>.

The provisions relating to the publication and implementation of proposals<sup>6</sup> apply in relation to a school in England if a report of an inspection of the school<sup>7</sup> states<sup>8</sup> an opinion that special measures are not required to be taken in relation to the school<sup>9</sup>, and states<sup>10</sup> an opinion that the school requires significant improvement<sup>11</sup>. The provisions relating to the publication and implementation of proposals also apply in relation to a school if:

- 2351 (1) a report of an inspection<sup>12</sup> states that special measures are required to be taken in relation to the school or that the school requires significant improvement<sup>13</sup>; and
- 2352 (2) the next report of a kind mentioned in head (1) above also states an opinion of a kind mentioned in head (1) above<sup>14</sup>.

The provisions relating to the publication and implementation of proposals cease to apply in relation to a school if a report of an inspection<sup>15</sup> states that special measures are required to be taken in relation to the school<sup>16</sup>, or states that the school does not require significant improvement<sup>17</sup>.

Where a report of an inspection<sup>18</sup> which states an opinion that a school requires significant improvement<sup>19</sup>, the person making such a report must send a copy (together with a copy of the summary, if there is one): (a) to the Secretary of State<sup>20</sup>; and (b) if the school is in England, to the appropriate authority for the school<sup>21</sup>. The provisions of the Education Act 2005 which relate to:

- 2353 (i) additional copies of reports of regular inspections of maintained schools<sup>22</sup> being sent to the head teacher of the school, the local education authority or the governing body, and to the person who appoints the foundation governors or the appropriate appointing authority<sup>23</sup>;
- 2354 (ii) the making available of such reports to the public free of charge, providing them free of charge to any person who so requests, and securing that every registered parent of a registered pupil receives a copy of the summary<sup>24</sup>;
- 2355 (iii) where the local education authority receives a copy of a report about a school the governing body of which have a delegated budget, the preparation and sending of a written statement detailing any action it proposes to take<sup>25</sup>,

apply, with such modifications as are necessary, to a report under the Education Act 2005 which states an opinion that a school requires significant improvement<sup>26</sup>.

1 le under the Learning and Skills Act 2000 s 65 (as amended) (see PARA 1324 post).

2 Ibid s 113(1), Sch 7 paras 9-14 (as amended) (see the text and notes 3-26 infra) apply to a maintained school within the meaning of the School Standards and Framework Act 1998 s 20(7) (see PARA 94 ante), which: (1) provides full-time education suitable to the requirements of pupils over compulsory school age; and (2) does not provide full-time education suitable to the requirements of pupils of compulsory school age: Learning and Skills Act 2000 Sch 7 para 8. For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of s 113(2)(a) (substituted by the Education Act 2005 Sch 5 para 2(1), (3)). As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (as so substituted).

Any function of a local education authority in England which is conferred by or under Sch 7 Pt I paras 1-14 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (p). For the meaning of 'England' see PARA 52 note 11 ante.

3 le Her Majesty's Chief Inspector of Schools in England (see the Education Act 2005 s 12; and PARA 1168 ante); definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (as substituted: see note 2 supra).

4 Ibid Sch 7 para 10(1) (amended by the Education Act 2005 s 46, Sch 5 para 3(1), (11)(a)). As to references to special measures required to be taken in relation to a particular school in England or a particular school requiring significant improvement see the Education Act 2005 s 44(1)-(2) (see PARA 1178 notes 3-4 ante); definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (as substituted: see note 2 supra).

5 Ibid Sch 7 para 10(2). The report must be treated for all purposes of Sch 7 (as amended) and the Education Act 2005 Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63) (see PARA 1168 et seq ante) as if it were the report of an inspection of a school under s 5 (see PARA 1173 ante): Learning and Skills Act 2000 Sch 7 para 10(3) (amended by the Education Act 2005 s 46, Sch 5 para 3(1), (11)(b)).

6 le the Learning and Skills Act 2000 Sch 7 Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1278-1279 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1281 post).

7 le made under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante).

8 le in accordance with ibid s 13(4) (see PARA 1178 ante).

9 Learning and Skills Act 2000 Sch 7 para 11(1)(a)(i) (Sch 7 para 11(1) substituted by the Education Act 2005 Sch 5 para 3(1), (12)(a)).

The Learning and Skills Act 2000 Sch 7 para 11(1) is substituted as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 for the purposes of the Learning and Skills Act 2000 Sch 7 para 11(1)(a): see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4. At the date at which this volume states the law, no such day has been appointed in relation to England for any other purpose.

10 le in accordance with the Education Act 2005 s 13(3)(b) (see PARA 1178 ante).

11 Learning and Skills Act 2000 Sch 7 para 11(1)(a)(ii) (as substituted: see note 9 supra).

12 le under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante).

13 Learning and Skills Act 2000 Sch 7 para 11(2)(a) (substituted by the Education Act 2005 Sch 5 para 3(1), (12)(b)).

14 Learning and Skills Act 2000 Sch 7 para 11(2)(b).

15 Ibid Sch 7 para 12(1). The text refers to a report of an inspection under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante) or the Learning and Skills Act s 65 (as amended) (see PARA 1324 post): Sch 7 para 12(1) (amended by the Education Act 2005 Sch 5 para 3(1), (13)(a)). The Learning and Skills Act 2000 Sch 7 para 12(1) does not prevent the continued application of Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1278-1279 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1281 post) in a case where proposals have been published under Sch 7 para 24 (see PARA 1279 post), or Sch 7 para 28 (see PARA 1287 post): Sch 7 para 12(3).

16 Ibid Sch 7 para 12(1)(a).

17 Ibid Sch 7 para 12(1)(b) (amended by the Education Act 2005 Sch 5 para 3(1), (13)(a)).



18 le under the Education Act 2005 Pt 1 Ch 1 (ss 1-12) (see PARA 1168 et seq ante).

19 Learning and Skills Act 2000 Sch 7 para 13(1)(a) (Sch 7 para 13(1) substituted by the Education Act 2005 Sch 5 para 3(1), (14)(a)).

The Learning and Skills Act 2000 Sch 7 para 13(1) is substituted as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 for the purposes of the Learning and Skills Act 2000 Sch 7 para 13(1)(a): see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4. At the date at which this volume states the law, no such day has been appointed in relation to England for any other purpose.

20 Learning and Skills Act 2000 Sch 7 para 13(2)(a). As to the Secretary of State see PARA 52 ante.

21 Ibid Sch 7 para 13(2)(b)(i) (Sch 7 para 13(2)(b) substituted by the Education Act 2005 Sch 5 para 3(1), (14)(b)).

The Learning and Skills Act 2000 Sch 7 para 13(2)(b) is substituted as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 for the purposes of the Learning and Skills Act 2000 Sch 7 para 13(2)(b)(i): see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4. At the date at which this volume states the law, no such day has been appointed in relation to England for any other purpose.

22 le inspections under the Education Act 2005 s 5 (see PARA 1173 ante): see the Learning and Skills Act 2000 Sch 7 para 13(3)(a)(i) (Sch 7 para 13(3) substituted by the Education Act 2005 Sch 5 para 3(1), (14)(c)).

23 le the Education Act 2005 s 14(2) (see PARA 1179 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(a)(i) (as substituted: see note 22 supra). As to schools having foundation governors see PARA 104 et seq ante.

24 le the Education Act 2005 s 14(4) (see PARA 1179 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(a)(ii) (as substituted: see note 22 supra).

25 le the Education Act 2005 s 15(2), (3) (see PARA 1180 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(a)(iii) (as substituted: see note 22 supra).

26 Ibid Sch 7 para 13(3) (as substituted: see note 22 supra). In the application of the provisions mentioned in Sch 7 para 13(3) (as substituted) (see heads (i) to (iii) in the text), a reference to a report and summary must be taken as a reference to a report and, if there is one, its summary (Sch 7 para 13(4)(a)), and a reference to a summary alone must be taken, in a case where there is no summary, as a reference to the report (Sch 7 para 13(4)(b)).

## UPDATE

### **1276 Proposals relating to institutions for 16-19 year olds requiring special measures or significant improvement in relation to their sixth forms**

NOTES 1, 15--References relating to inspections under the 2000 Act s 65 now refer to inspections under the Education and Inspections Act 2006 s 128 (see PARA 1320A.5): 2000 Act Sch 7 paras 10(1), 12(1) (both amended by the 2006 Act Sch 14 para 66(4), (5)).

TEXT AND NOTES 19-26--Repealed: Education and Inspections Act 2006 Sch 7 para 18(3), Sch 18 Pt 4.

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### **1277. Proposals to restructure the provision of sixth form education.**

The Learning and Skills Council for England<sup>1</sup> may make proposals:

- 2356 (1) with a view to meeting recommendations made in the report of an area inspection<sup>2</sup>;
- 2357 (2) with a view to promoting one or more of the following objectives ('the relevant objectives')<sup>3</sup>, namely: (a) an improvement in the educational or training achievements of persons who are above compulsory school age<sup>4</sup> but below the age of 19<sup>5</sup>; (b) an increase in the number of such persons who participate in education or training suitable to the requirements of such persons<sup>6</sup>; (c) an expansion of the range of educational or training opportunities suitable to the requirements of such persons<sup>7</sup>; or
- 2358 (3) if the proposals are made in addition to proposals relating to education or training other than in schools, and the combined proposals are made with a view to promoting one or more of the relevant objectives<sup>8</sup>.

Such proposals are proposals for one or more of the following, namely:

- 2359 (i) the establishment by a local education authority<sup>9</sup> of one or more new community, foundation, community special or foundation special schools<sup>10</sup> to provide secondary education<sup>11</sup> suitable to the requirements of persons who are above compulsory school age but below the age of 19 (and no other secondary education)<sup>12</sup>;
- 2360 (ii) an alteration<sup>13</sup> to one or more maintained schools<sup>14</sup> which relates to the provision of secondary education suitable to the requirements of such persons and is of a description prescribed by regulations<sup>15</sup>;
- 2361 (iii) the discontinuance of one or more maintained schools which provide secondary education suitable to the requirements of such persons (and no other secondary education)<sup>16</sup>.

Such proposals may be made either alone or in addition to proposals relating to further education corporations<sup>17</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq ante. In exercising any function conferred by or under the Learning and Skills Act 2000 s 113A (as added), the Learning and Skills Council for England must have regard to any guidance given from time to time by the Secretary of State: s 113A(7), (11) (s 113A added by the Education Act 2002 s 72(1)). As to the Secretary of State see PARA 52 ante.

For the purposes of the Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions) (see PARA 57 ante) and s 497 (as amended) (general default powers) (see PARA 58 ante), the Learning and Skills Act 2000 s 113A (as added) is treated as if it was a provision of the Education Act 1996: Learning and Skills Act 2000 s 113A(10) (as so added).

2 Ibid s 113A(1)(a) (as added: see note 1 supra). The text refers to an area inspection in relation to England under s 65 (as amended) (see PARA 1324 post).

- 3 Ibid s 113A(1)(b) (as added: see note 1 supra).
- 4 As to compulsory school age see PARA 15 ante.
- 5 Learning and Skills Act 2000 s 113A(1)(b), (3)(a) (as added: see note 1 supra).
- 6 Ibid s 113A(1)(b), (3)(b) (as added: see note 1 supra).
- 7 Ibid s 113A(1)(b), (3)(c) (as added: see note 1 supra).
- 8 Ibid s 113A(1)(c) (as added: see note 1 supra).
- 9 As to local education authorities see PARA 20 ante.
- 10 As to community and foundation schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.
- 11 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of the Learning and Skills Act 2000 s 113A(11) (as added: see note 1 supra).
- 12 Ibid s 113A(4)(a) (as added: see note 1 supra).
- Proposals under s 113A (as added) for the establishment of a new school may relate to the establishment of the school as a federated school, within the meaning given by the Education Act 2002 s 24(2) (see PARA 213 ante): s 74(1), (3). Regulations may make provision modifying any provision contained in the Learning and Skills Act 2000 s 113A (as added) in its application to proposals to establish a school as a federated school, or to the establishment of a school as a federated school: Education Act 2002 s 74(2). 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England): s 212(1). As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the meaning of 'modify' see PARA 43 note 7 ante; definition applied by virtue of s 212(2), (3). At the date at which this volume states the law, no such regulations had been made.
- As from a day to be appointed, s 74 is repealed by the Education Act 2005 s 123, Sch 19 Pt 2 and the provisions of the Education Act 2002 s 74(1), (3) are re-enacted as the Education Act 2005 s 68 (not yet in force) (proposals for establishment of federated school: see PARAS 133, 158, 178 ante). However, at the date at which this volume states the law, no such day had been appointed.
- 13 For these purposes, 'alteration' means an alteration of whatever nature, including the transfer of the school to a new site but excluding any change: (1) in the religious character of the school; or (2) whereby the school would acquire or lose a religious character: Learning and Skills Act 2000 s 113A(11) (as added: see note 1 supra). As to schools having a religious character see PARAS 953-954 ante.
- 14 For these purposes, 'maintained school' means a community, foundation or voluntary school or a community or foundation special school: ibid s 113A(11) (as added: see note 1 supra).
- 15 Ibid s 113A(2)(b) (as added: see note 1 supra). 'Regulations' means, in relation to proposals by the Learning and Skills Council for England, regulations made by the Secretary of State: s 113A(11) (as so added). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to alterations for which proposals may be made see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 3.
- 16 Learning and Skills Act 2000 s 113A(4)(c) (as added: see note 1 supra).
- 17 Ibid s 113A(8) (as added: see note 1 supra). The text refers to proposals relating to further education corporations made under the Further and Higher Education Act 1992 s 51 (as amended) (see PARA 585 ante): Learning and Skills Act 2000 s 113A(8) (as so added).

## UPDATE

### 1277 Proposals to restructure the provision of sixth form education

TEXT AND NOTES 1-8, 17--2000 Act s 113A(1), (7), (8) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(2), Sch 16 Pt 2. Proposals under the 2000 Act s 113A are to be published: s 113A(4A) (added by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 12--Proposals under the 2000 Act s 113A for the establishment of a new school may relate to the establishment of the school as a federated school: Education and Inspections Act 2006 s 12(1). For these purposes, 'federated school' has the meaning given by the Education Act 2002 s 24(2) (see PARA 213): 2006 Act s 12(2).

NOTE 15--Reference to 2000 Act s 113A(2)(b) should be to s 113A(4)(b).

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*(b) Publication of Proposals*

**1278. Proposals to alter a maintained school so that it no longer provides sixth form education.**

The provisions relating to the publication of proposals for the closure of sixth forms in England<sup>1</sup> apply to schools which are maintained by a local education authority<sup>2</sup> in England and which provide full-time education suitable to the requirements of pupils<sup>3</sup> who are over compulsory school age<sup>4</sup>, and which provide full-time education suitable to the requirements of pupils of compulsory school age<sup>5</sup>. The Learning and Skills Council for England<sup>6</sup> may publish proposals for an alteration of the school as a result of which it will no longer provide education suitable to the requirements of pupils who are over compulsory school age<sup>7</sup>. The proposals must contain such information and be published in such manner as may be prescribed<sup>8</sup>. Before publishing proposals the Council must, having regard to any guidance issued by the Secretary of State, consult such persons as it considers appropriate<sup>9</sup>. The Council must send a copy of the published proposals<sup>10</sup>, and such other information as may be prescribed<sup>11</sup>, to the school organisation committee<sup>12</sup> for the area of the local education authority which maintains the school<sup>13</sup>. In the case of a community or foundation special school<sup>14</sup>, the Council must also send a copy of the published proposals<sup>15</sup> to such other persons as may be prescribed<sup>16</sup>.

The provisions relating to the publication of proposals for the closure of sixth forms in England<sup>17</sup> have effect in relation to a school which: (1) is a community, voluntary or foundation school<sup>18</sup>; and (2) is situated in an area other than that of the local education authority which maintains it<sup>19</sup>, with such modifications as may be prescribed by regulations<sup>20</sup> made, in relation to schools in England, by the Secretary of State<sup>21</sup>.

<sup>1</sup> See the Learning and Skills Act 2000 s 113(1), Sch 7 paras 16-17 (as amended): see the text and notes 6-16 *infra*. For the meaning of 'England' see PARA 52 note 11 *ante*.

<sup>2</sup> As to local education authorities see PARA 20 *ante*.

<sup>3</sup> For the meaning of 'pupil' see PARA 16 note 4 *ante*; definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(a) (substituted by the Education Act 2005 Sch 5 para 2(1), (3)).

<sup>4</sup> As to compulsory school age see PARA 15 *ante*.

<sup>5</sup> Learning and Skills Act 2000 Sch 7 para 15.

<sup>6</sup> As to the Learning and Skills Council for England see PARA 1072 *et seq ante*.

<sup>7</sup> Learning and Skills Act 2000 Sch 7 para 16(1).

<sup>8</sup> *Ibid* Sch 7 para 16(2). 'Prescribed' means prescribed by regulations made by the Secretary of State: Sch 7 para 18. As to the Secretary of State see PARA 52 *ante*. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 *ante*. As to the information to be contained in published proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 13, Sch 2. As to the manner of publication of proposals see reg 14. As to the position where the school changes category after the proposals have been so published see reg 28.

9 Learning and Skills Act 2000 Sch 7 para 16(3).

10 Ibid Sch 7 para 17(1)(a).

11 Ibid Sch 7 para 17(1)(b).

12 As to school organisation committees see PARA 118 et seq ante.

13 Learning and Skills Act 2000 Sch 7 para 17(1). As to the information to be sent to the school organisation committee for the purposes of Sch 7 para 17(1)(b) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 15, Sch 3. As to the provision to the Secretary of State of proposals received by the committee see reg 23(1). As to the areas of local education authorities see PARA 20 ante.

14 As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.

15 Ie the copy of the published proposals mentioned in the Learning and Skills Act 2000 Sch 7 para 17(1)(a): see the text and note 10 supra.

16 Ibid Sch 7 para 17(2) (amended by the Education Act 2002 s 215(1), Sch 21 para 126(1), (2)). As to the other persons to whom the copy and information must be sent for the purposes of the Learning and Skills Act 2000 Sch 7 para 17(2) (as amended) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 16.

17 Ie the Learning and Skills Act 2000 Sch 7 Pt II paras 15-18: see the text and notes 1-16 supra.

18 Ibid Sch 7 para 31(1)(a), (2). As to voluntary schools see PARA 102 et seq ante.

19 Ibid Sch 7 para 31(1)(b), (2).

20 As to the modifications which have been made to ibid Sch 7 para 17 (as amended) (see the text and notes 10-16 supra), in relation to a community, voluntary or foundation school which is situated in an area other than that of the local education authority which maintains it, see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 27, Sch 5 paras 1-2.

21 Learning and Skills Act 2000 Sch 7 para 31(2)(a).

## UPDATE

### **1278 Proposals to alter a maintained school so that it no longer provides sixth form education**

TEXT AND NOTES 11-13--Replaced. Now the Council is obliged to send a copy of the published proposals to the local education authority which maintains the school: 2000 Act Sch 7 para 17 (substituted by the Education and Inspections Act 2006 Sch 3 para 38).

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**1279. Proposals to discontinue a maintained school which is an institution for 16-19 year olds.**

The Learning and Skills Council for England<sup>1</sup> may publish proposals to discontinue a school<sup>2</sup> which: (1) is maintained by a local education authority<sup>3</sup> in England<sup>4</sup>; (2) provides full-time education suitable to the requirements of pupils<sup>5</sup> over compulsory school age<sup>6</sup>; and (3) does not provide full-time education suitable to the requirements of pupils of compulsory school age<sup>7</sup>. The proposals must contain such information and be published in such manner as may be prescribed<sup>8</sup>. Before publishing proposals the Council must, having regard to any guidance issued by the Secretary of State, consult such persons as it considers appropriate<sup>9</sup>. The Council must send a copy of the published proposals<sup>10</sup>, and such other information as may be prescribed<sup>11</sup>, to the school organisation committee<sup>12</sup> for the area of the local education authority who maintains the school<sup>13</sup>. In the case of a community or foundation special school<sup>14</sup>, the Council must also send a copy of the published proposals<sup>15</sup> to such other persons as may be prescribed<sup>16</sup>.

The provisions relating to the publication of proposals to discontinue a maintained school in England which is an institution for 16-19 year olds<sup>17</sup> have effect in relation to a school which: (1) is a community, voluntary or foundation school<sup>18</sup>; and (2) is situated in an area other than that of the local education authority which maintains it<sup>19</sup>, with such modifications as may be prescribed by regulations<sup>20</sup> made, in relation to schools in England, by the Secretary of State<sup>21</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq ante.

2 Learning and Skills Act 2000 s 113(1), Sch 7 para 24(1).

3 As to local education authorities see PARA 20 ante.

4 Learning and Skills Act 2000 Sch 7 paras 23(a), 24(1). For the meaning of 'England' see PARA 52 note 11 ante.

5 For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of ibid s 113(2)(a) (substituted by the Education Act 2005 Sch 5 para 2(1), (3)).

6 Learning and Skills Act 2000 Sch 7 paras 23(b), 24(1). As to compulsory school age see PARA 15 ante.

7 Ibid Sch 7 paras 23(c), 24(1).

8 Ibid Sch 7 para 24(2). 'Prescribed' means prescribed by regulations made by the Secretary of State: Sch 7 para 26. As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the information to be contained in published proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 13, Sch 2. As to the manner of publication of proposals see reg 14. As to the position where the school changes category after the proposals have been so published see reg 28.

9 Learning and Skills Act 2000 Sch 7 para 24(3).

10 Ibid Sch 7 para 25(1)(a).

11 Ibid Sch 7 para 25(1)(b).

12 As to school organisation committees see PARA 118 et seq ante.

13 Learning and Skills Act 2000 Sch 7 para 25(1). As to the information to be sent to the school organisation committee for the purposes of Sch 7 para 25(1)(b) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 15, Sch 3. As to the provision to the Secretary of State of proposals received by the committee see reg 23(1). As to the areas of local education authorities see PARA 20 ante.

14 As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.

15 Ie a copy of the published proposals mentioned in the Learning and Skills Act 2000 Sch 7 para 25(1)(a): see the text to note 10 supra.

16 Ibid Sch 7 para 25(2) (amended by the Education Act 2002 s 215(1), Sch 21 para 126(1), (2)). As to the other persons to whom the copy and information must be sent for the purposes of the Learning and Skills Act 2000 Sch 7 para 25(2) (as amended) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 16.

17 Ie the Learning and Skills Act 2000 Sch 7 Pt II paras 23-26: see the text and notes 1-16 supra.

18 Ibid Sch 7 para 31(1)(a), (2). As to voluntary schools see PARA 102 et seq ante.

19 Ibid Sch 7 para 31(1)(b), (2).

20 As to the modifications which have been made to ibid Sch 7 para 25 (as amended) (see the text and notes 10-16 supra), in relation to England, in relation to a community, voluntary or foundation school which is situated in an area other than that of the local education authority which maintains it, see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 27, Sch 5 paras 1-2.

21 Learning and Skills Act 2000 Sch 7 para 31(2)(a).

## **UPDATE**

### **1279 Proposals to discontinue a maintained school which is an institution for 16-19 year olds**

TEXT AND NOTES 10-13--Replaced. The Council is now obliged to send a copy of the published proposals to the local education authority which maintains the school: 2000 Act Sch 7 para 25 (substituted by the Education and Inspections Act 2006 Sch 3 para 39).



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### **1280. Proposals to establish, alter or discontinue schools which provide sixth form education.**

Proposals made by the Learning and Skills Council for England<sup>1</sup> to restructure the provision of sixth form education in England<sup>2</sup> must be published and submitted to the Secretary of State<sup>3</sup>.

Regulations<sup>4</sup> may make provision about such proposals and may in particular make provision about: (1) the information to be included in, or provided in relation to, the proposals<sup>5</sup>; (2) the publication of the proposals<sup>6</sup>; and (3) consultation on the proposals before publication<sup>6</sup>.

1 As to the Learning and Skills Council for England see PARA 1072 et seq ante. In exercising any function conferred by or under the Learning and Skills Act 2000 s 113A (as added), the Learning and Skills Council for England must have regard to any guidance given from time to time by the Secretary of State: s 113A(7), (11) (s 113A added by the Education Act 2002 s 72(1)). As to the Secretary of State see PARA 52 ante.

2 The proposals made under the Learning and Skills Act 2000 s 113A(1), (3)-(11) (as added) (see PARA 1277 ante).

3 Ibid s 113A(5), (11) (as added: see note 1 supra).

4 'Regulations' means, in relation to proposals by the Learning and Skills Council for England, regulations made by the Secretary of State: ibid s 113A(11) (as added: see note 1 supra). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.

5 Ibid s 113A(9)(a) (as added: see note 1 supra). As to the information to be included in, or provided in relation to, the proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 5(1), Sch 1.

6 Learning and Skills Act 2000 s 113A(9)(b) (as added: see note 1 supra). As to the publication of proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 5.

7 Learning and Skills Act 2000 s 113A(9)(c) (as added: see note 1 supra). As to the publication of a preliminary notice containing consultative proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 4.

### **UPDATE**

### **1280 Proposals to establish, alter or discontinue schools which provide sixth form education**

TEXT AND NOTES 1-3--2000 Act s 113A(5), (7) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(2), Sch 16 Pt 2.

NOTE 4--Definition of 'regulations' in 2000 Act s 113A(11) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(3), Sch 16 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(iii) Intervention in Schools/C. INTERVENTION RELATING TO THE RESTRUCTURING OF SIXTH FORM EDUCATION/(A) Restructuring Sixth Form Education in England/(c) Implementation of Proposals/1281. Implementation of proposals relating to schools requiring special measures or significant improvement.

### *(c) Implementation of Proposals*

#### **1281. Implementation of proposals relating to schools requiring special measures or significant improvement.**

Where proposals in respect of schools maintained by a local education authority<sup>1</sup> in England<sup>2</sup> are published<sup>3</sup> the provisions relating to the implementation of such proposals in England<sup>4</sup> apply<sup>5</sup>. Regulations<sup>6</sup> may require: (1) the Learning and Skills Council for England<sup>7</sup>; (2) a school organisation committee<sup>8</sup>; and (3) an adjudicator<sup>9</sup>, to provide prescribed<sup>10</sup> information to prescribed persons at prescribed times<sup>11</sup>. Any person may send objections to, or comments on, the proposals to the school organisation committee within such period as may be prescribed<sup>12</sup>. The school organisation committee must consider the proposals and either reject them<sup>13</sup>, or approve them without modification<sup>14</sup>, or approve them subject to modifications<sup>15</sup>, or, if the committee thinks it appropriate to do so, and subject to regulations, refer them to the adjudicator<sup>16</sup>. In considering proposals a school organisation committee must have regard to: (a) any guidance issued by the Secretary of State; and (b) any objections or comments made<sup>17</sup> and not withdrawn<sup>18</sup>. An approval<sup>19</sup> may be made subject to the occurrence by a specified time of a specified event which is of a prescribed kind<sup>20</sup>.

A committee must refer proposals to the adjudicator if: (i) the committee votes on a decision in relation to the proposals<sup>21</sup>; (ii) the decision is required to be unanimous by regulations under the School Standards and Framework Act 1998<sup>22</sup>; and (iii) the result of the vote is not unanimous<sup>23</sup>. A committee must also refer proposals to the adjudicator if by the end of the prescribed period the committee has not determined what action to take in relation to the proposals, and the Learning and Skills Council for England requests that the proposals be referred to the adjudicator<sup>24</sup>. Where proposals are referred to the adjudicator he must consider them afresh<sup>25</sup>. The Learning and Skills Council for England may withdraw proposals by notice in writing to the school organisation committee at any time before a determination has been made by the committee or the adjudicator<sup>26</sup>.

Where proposals are approved<sup>27</sup> they must be implemented<sup>28</sup>. However, the school organisation committee:

- 2362 (A) may modify the proposals, after consulting such persons as may be prescribed<sup>29</sup>;
- 2363 (B) where the proposals were approved subject to the occurrence of a specified event by a specified time, may, before the arrival of the specified time, substitute a later time<sup>30</sup>; and
- 2364 (C) may determine that the proposals are not to be implemented if implementation would be unreasonably difficult or if it would be inappropriate because of changes in circumstances since the proposals were approved<sup>31</sup>.

If a school organisation committee has not, by the end of the prescribed period, determined whether to take any action under heads (A) to (C) above, the committee must, if the Learning and Skills Council for England requests, refer the question to the adjudicator<sup>32</sup>. A committee

may, where it thinks it appropriate to do so and subject to regulations, refer such a question to the adjudicator<sup>33</sup>, and must also refer to the adjudicator such a question if the committee votes on the question, the decision is required to be unanimous by regulations under the School Standards and Framework Act 1998<sup>34</sup>, and the result of the vote is not unanimous<sup>35</sup>. Where a question is referred to the adjudicator he must consider the matter afresh<sup>36</sup>.

The duty to implement proposals to alter a school in the case of a community or community special school<sup>37</sup>, is a duty of the local education authority<sup>38</sup>, and in the case of a voluntary, foundation or foundation special school<sup>39</sup>, is a duty of the governing body<sup>40</sup>. The duty to implement proposals to discontinue a school<sup>41</sup> in the case of a community or community special school, is a duty of the local education authority<sup>42</sup>, and in the case of a voluntary, foundation or foundation special school, is a shared duty of the governing body and the local education authority<sup>43</sup>.

The provisions relating to the implementation of proposals for the closure of schools in England<sup>44</sup> have effect in relation to a school which is a community, voluntary or foundation school<sup>45</sup>, and is situated in an area other than that of the local education authority which maintains it<sup>46</sup>, with such modifications as may be prescribed by regulations<sup>47</sup> made by the Secretary of State<sup>48</sup>.

1 As to local education authorities see PARA 20 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 Ie under the Learning and Skills Act 2000 s 113(1), Sch 7 Pt II paras 15-18, 23-26, 31 (as amended): see PARAS 1278-1279 ante.

4 Ie ibid Sch 7 paras 33-38 (as amended): see the text and notes 6-43 infra.

5 Ibid Sch 7 para 32(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 126(1), (3)).

6 In the Learning and Skills Act 2000 Sch 7 paras 33-38 (as amended), 'regulations' means regulations made by the Secretary of State: Sch 7 para 32(2). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.

7 Ibid Sch 7 paras 32(2), 33(a). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

8 Ibid Sch 7 para 33(b). For these purposes, 'the school organisation committee' means, in relation to a school, the school organisation committee for the area of the local education authority which maintains the school: Sch 7 para 32(2). As to local education authorities and their areas see PARA 20 ante.

9 Ibid Sch 7 para 33(c). For these purposes, 'adjudicator' means a person appointed under the School Standards and Framework Act 1998 s 25 (prospectively amended) (see PARA 124 ante); and s 25 (prospectively amended) and Sch 5 (as amended) (see PARAS 124-129 ante) have effect in relation to references to 'the adjudicator': Learning and Skills Act 2000 Sch 7 para 32(2).

10 'Prescribed' means prescribed by or determined in accordance with regulations: see ibid Sch 7 para 32(2). See note 6 supra.

11 Ibid Sch 7 para 33.

12 Ibid Sch 7 para 34 (amended by the Education Act 2002 s 75, Sch 10 paras 11-12). As to the period within which such objections must be sent see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 17.

13 Learning and Skills Act 2000 Sch 7 para 35(1)(a). As to notification requirements placed on the school organisation committee following a decision taken under the Learning and Skills Act 2000 Sch 7 para 35(1) (as amended) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(2), (5)-(6).

14 Learning and Skills Act 2000 Sch 7 para 35(1)(b) (amended by the Education Act 2002 s 215(2), Sch 22 Pt 3). See note 13 supra.

15 Learning and Skills Act 2000 Sch 7 para 35(1)(c). Before approving proposals subject to modifications, a school organisation committee must consult such persons as may be prescribed: Sch 7 para 35(3). As to the approval of proposals subject to modifications after consultation see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 18. See also note 13 *supra*.

16 Learning and Skills Act 2000 Sch 7 para 35(1)(d) (amended by the Education Act 2002 Sch 10 paras 11, 13(1), (2)). The school organisation committee may only refer any proposals to the adjudicator under the Learning and Skills Act 2000 Sch 7 para 35(1)(d) (as amended) if it has voted on the proposals or question, but at least two groups of members did not vote because they had declared an interest in the proposals or question: School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 21. See also note 13 *supra*.

17 *Ie* objections or comments made in accordance with the Learning and Skills Act 2000 Sch 7 para 34 (as amended): see the text to note 12 *supra*.

18 *Ibid* Sch 7 para 35(2) (amended by the Children Act 2004 s 64, Sch 5 Pt 1; and the Education Act 2002 s 75, Sch 10 paras 11, 13(1), (3)).

19 *Ie* an approval under the Learning and Skills Act 2000 Sch 7 para 35(1)(b) or (c) (as amended) (see the text to notes 14-15 *supra*).

20 *Ibid* Sch 7 para 35(4). If the event so specified does not occur by the specified time, the proposals must fall to be considered afresh under Sch 7 para 35(1) (as amended) (see the text to notes 13-16 *supra*): Sch 7 para 35(4) (amended by the Education Act 2002 Sch 10 paras 11, 13(1), (4)). As to conditional approvals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 19.

21 Learning and Skills Act 2000 Sch 7 para 35(5)(a). As to notification requirements placed on the school organisation committee following a decision taken under Sch 7 para 35(5) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(3).

22 Learning and Skills Act 2000 Sch 7 para 35(5)(b). The text refers to regulations under the School Standards and Framework Act 1998 Sch 4 para 5 (as amended; prospectively amended) (school organisation committees: see *PARA 122 ante*). See also note 21 *supra*.

23 Learning and Skills Act 2000 Sch 7 para 35(5)(c). As to the voting of the committee on proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 24. Where by virtue of the Learning and Skills Act 2000 Sch 7 para 35(5), the committee is required to refer any proposals or question to the adjudicator it must do so within two weeks of the date on which the committee voted but failed to reach a unanimous decision: School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 25(1). See also note 21 *supra*.

24 Learning and Skills Act 2000 Sch 7 paras 32(2), 35(6). Regulations prescribing the period mentioned in Sch 7 para 35(6) may make provision by reference to the opinion of the committee: Sch 7 para 32(3). As to the period after the expiry of which proposals must be referred to the adjudicator, under Sch 7 para 35(6), if requested, see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, regs 20, 25(2). As to notification requirements placed on the school organisation committee following a decision taken under the Learning and Skills Act 2000 Sch 7 para 35(6) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(3).

25 Learning and Skills Act 2000 Sch 7 para 35(7)(a). For this purpose, Sch 7 para 35(1)(a)-(c) (see the text to notes 13-15 *supra*) and Sch 7 para 35(2)-(4) (as amended) (see the text to notes 15, 17-20 *supra*) apply to the adjudicator as they apply to the committee: Sch 7 para 35(7)(b) (amended by the Education Act 2002 Sch 10 paras 11, 13(1), (5)). As to notification requirements placed on the adjudicator following a decision taken under the Learning and Skills Act 2000 Sch 7 para 35(7) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(4), (6).

26 Learning and Skills Act 2000 Sch 7 paras 32(2), 35(8).

27 *Ie* under *ibid* Sch 7 para 35 (as amended): see the text and notes 13-26 *supra*.

28 *Ibid* Sch 7 para 36(1).

29 *Ibid* Sch 7 para 36(2)(a). A school organisation committee may only act under head (A) or head (B) in the text in response to a request by the Learning and Skills Council for England: Sch 7 paras 32(2), 36(3). As to the modification of approved proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 22. As to notification requirements placed on the school organisation committee following a decision taken under the Learning and Skills Act 2000 Sch 7 para 36(2) see

the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(2),(5)-(6).

30 Learning and Skills Act 2000 Sch 7 para 36(2)(b). See note 29 *supra*.

31 *Ibid* Sch 7 para 36(2)(c). A determination may only be made under head (c) in the text in response to a proposal of the Learning and Skills Council for England which is published and dealt with in accordance with regulations (which may, in particular, apply any provision of Sch 7 (as amended) with or without modification); and where a determination is made under head (c) in the text in relation to proposals they must be treated as rejected: Sch 7 para 36(4). As to the provisions relating to proposals under Sch 7 para 36(4) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 26, Sch 4. See also note 29 *supra*.

32 Learning and Skills Act 2000 Sch 7 paras 32(2), 37(1). Regulations prescribing the period mentioned in Sch 7 para 37(1) may make provision by reference to the opinion of the committee: Sch 7 para 32(3). As to the period after the expiry of which proposals must be referred to the adjudicator under Sch 7 para 37(1), if requested, see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, regs 20, 25(2). As to notification requirements placed on the school organisation committee following a decision taken under the Learning and Skills Act 2000 Sch 7 para 37(1) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(3).

33 Learning and Skills Act 2000 Sch 7 para 37(2A) (added by the Education Act 2002 Sch 10 paras 11, 14). The school organisation committee may only refer any proposals to the adjudicator under the Learning and Skills Act 2000 Sch 7 para 37(2A) (as added) if it has voted on the proposals or question, but at least two groups of members did not vote because they had declared an interest in the proposals or question: School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 21.

34 *Ie* under the School Standards and Framework Act 1998 Sch 4 para 5 (as amended; prospectively amended) (school organisation committees: see PARA 122 *ante*).

35 Learning and Skills Act 2000 Sch 7 para 37(2). Where, by virtue of Sch 7 para 37(2), the committee is required to refer any proposals or question to the adjudicator it must do so within two weeks of the date on which the committee voted but failed to reach a unanimous decision: School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 25(1). As to notification requirements placed on the school organisation committee following a decision taken under the Learning and Skills Act 2000 Sch 7 para 37(2) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(3).

36 Learning and Skills Act 2000 Sch 7 para 37(3). Schedule 7 para 36 (see the text and notes 27-31 *supra*) applies to the adjudicator as it applies to the committee: Sch 7 para 37(3). As to notification requirements placed on the adjudicator following a decision taken under Sch 7 para 37(3) see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 23(4), (6).

37 As to community and community special schools see PARA 102 *et seq ante*. As to special schools see PARA 1027 *ante*.

38 Learning and Skills Act 2000 Sch 7 para 38(1)(a).

39 As to voluntary, foundation or foundation special schools see PARA 102 *et seq ante*.

40 Learning and Skills Act 2000 Sch 7 para 38(1)(b). As to the governing body of a maintained school, in relation to England, see PARA 203 *et seq ante*; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 *et seq ante*.

41 For the purpose of *ibid* Sch 7 para 38(2)(a) or (b) (see the text to notes 42-43 *infra*), a local education authority's duty to discontinue a school is a duty to cease maintaining it: Sch 7 para 38(3).

42 *Ibid* Sch 7 para 38(2)(a).

43 *Ibid* Sch 7 para 38(2)(b).

44 *Ie* *ibid* Sch 7 Pt III paras 32-38 (as amended): see the text and notes 1-43 *supra*.

45 *Ibid* Sch 7 para 45(1)(a), (2). As to voluntary schools see PARA 102 *et seq ante*.

46 *Ibid* Sch 7 para 45(1)(b), (2).

47 As to the modifications which have been made to *ibid* Sch 7 para 35 (as amended) (see the text and notes 13-26 *supra*), in relation to England, in relation to a community, voluntary or foundation school which is situated in an area other than that of the local education authority which maintains it, see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 27, Sch 5 paras 1, 3.

48 Learning and Skills Act 2000 Sch 7 para 45(2)(a).

## **UPDATE**

### **1281 Implementation of proposals relating to schools requiring special measures or significant improvement**

TEXT AND NOTES--References to a school organisation committee now refer to a local education authority: 2000 Act Sch 7 paras 32-37 (amended by the Education and Inspections Act 2006 Sch 3 paras 40-45, Sch 18 Pt 2).

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### **1282. Implementation of proposals to restructure the provision of sixth form education.**

Proposals made by the Learning and Skills Council for England<sup>1</sup> to restructure the provision of sixth form education in England<sup>2</sup> which have been published and submitted to the Secretary of State<sup>3</sup> must be either approved by him (with or without modification or subject to the occurrence of any event)<sup>4</sup>, or rejected by him<sup>5</sup>.

Regulations<sup>6</sup> may make provision about such proposals and may in particular make provision about: (1) consultation on the proposals after publication<sup>7</sup>; (2) the making of objections to or comments on the proposals<sup>8</sup>; (3) the withdrawal or modification of the proposals<sup>9</sup>; (4) the approval of the proposals by the Secretary of State<sup>10</sup>.

Where such proposals have been so approved by the Secretary of State, they must be implemented in the form in which they were so approved<sup>11</sup>. However, at the request of any persons prescribed in regulations<sup>12</sup>, the Secretary of State: (a) may modify the proposals, after consulting such persons as may be prescribed<sup>13</sup>; and (b) where any approval was given subject to the occurrence of a specified event, may specify a later date by which the event in question must occur<sup>14</sup>. If the Secretary of State is satisfied, after consulting such persons as may be prescribed in regulations<sup>15</sup>, that implementation of the proposals would be unreasonably difficult<sup>16</sup> or that circumstances have so altered since approval was given that implementation of the proposals would be inappropriate<sup>17</sup>, he may determine that the proposals need not be implemented in the form in which they were so approved<sup>18</sup>.

To the extent that the proposals are proposals to establish a school, they must be implemented by whichever local education authority<sup>19</sup> is being proposed to establish the school<sup>20</sup>.

To the extent that the proposals are proposals to make a prescribed alteration<sup>21</sup> to a school, then:

- 2365 (i) where the proposals relate to a community school<sup>22</sup>, they must be implemented by the local education authority which maintains the school<sup>23</sup>;
- 2366 (ii) where the proposals relate to a voluntary aided school, they must be implemented, so far as relating to the provision of any relevant premises<sup>24</sup>, by the local education authority which maintains the school<sup>25</sup>, and otherwise by the governing body of the school<sup>26</sup>; and
- 2367 (iii) where the proposals relate to any other school, they must be implemented by the local education authority which maintains the school and the governing body of the school, respectively, to such extent (if any) as the proposals provide for each of them to do so<sup>27</sup>.

To the extent that the proposals are proposals to discontinue a school they must be implemented, in the case of proposals relating to a community or community special school<sup>28</sup>, by the local education authority which maintains the school, and, in any other case, by the local education authority which maintains the school and the governing body of the school<sup>29</sup>.

- 1 As to the Learning and Skills Council for England see PARA 1072 et seq ante.
- 2 le proposals made under *ibid* s 113A(1), (3)-(11) (as added) (see PARA 1277 ante).
- 3 le under *ibid* s 113A(5) (as added) (see PARA 1280 ante). As to the Secretary of State see PARA 52 ante.
- 4 *Ibid* s 113A(5)(a), (11) (s 113A added by the Education Act 2002 s 72(1)).
- 5 Learning and Skills Act 2000 s 113A(5)(b) (as added: see note 4 supra).
- 6 'Regulations' means, in relation to proposals by the Learning and Skills Council for England, regulations made by the Secretary of State: *ibid* s 113A(11) (as added: see note 4 supra). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.
- 7 *Ibid* s 113A(9)(c) (as added: see note 4 supra). As to consultation after publication of the proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 4(6)-(7) (applied by reg 5(4)).
- 8 Learning and Skills Act 2000 s 113A(9)(d) (as added: see note 4 supra). As to objections to and comments on the proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 6.
- 9 Learning and Skills Act 2000 s 113A(9)(e) (as added: see note 4 supra). As to the withdrawal of proposals see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 8.
- 10 Learning and Skills Act 2000 s 113A(9)(f), (11) (as added: see note 4 supra). As to the approval of proposals by the Secretary of State see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, regs 7, 9.
- 11 Learning and Skills Act 2000 s 113A(6) (as added: see note 4 supra); Sch 7A para 1(1), (2) (Sch 7A added by the Education Act 2002 s 72(2)).
- 12 The Learning and Skills Council for England has been prescribed: see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, regs 2(1), 10(1).
- 13 Learning and Skills Act 2000 Sch 7A para 1(3)(a) (as added: see note 11 supra). As to the persons so prescribed see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 10(2).
- 14 Learning and Skills Act 2000 Sch 7A para 1(3)(b) (as added: see note 11 supra).
- 15 As to the persons so prescribed see the School Organisation Proposals by the Learning and Skills Council for England Regulations 2003, SI 2003/507, reg 10(2).
- 16 Learning and Skills Act 2000 Sch 7A para 1(4)(a) (as added: see note 11 supra).
- 17 *Ibid* Sch 7A para 1(4)(b) (as added: see note 11 supra).
- 18 *Ibid* Sch 7A para 1(4) (as added: see note 11 supra).
- 19 As to local education authorities see PARA 20 ante.
- 20 Learning and Skills Act 2000 Sch 7A para 2 (as added: see note 11 supra). Where a local education authority is required under Sch 7A (as added) to provide a site for a foundation or voluntary controlled school or foundation special school (or a proposed such school), the School Standards and Framework Act 1998 Sch 6 para 16 (see PARA 145 ante) applies as it applies in the circumstances mentioned in Sch 6 para 16(1): Learning and Skills Act 2000 Sch 7A para 5 (as so added). As to foundation or voluntary schools or foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.
- 21 For the meaning of 'alteration' see PARA 1277 note 13 ante.
- 22 As to community schools see PARA 102 et seq ante.
- 23 Learning and Skills Act 2000 Sch 7A para 3(1), (2) (as added: see note 11 supra).
- 24 For this purpose, 'relevant premises' means, in relation to a local education authority in England, playing fields: Learning and Skills Act 2000 Sch 7A para 3(4) (as added: see note 11 supra).



25 Ibid Sch 7A para 3(1), (3)(a) (as added: see note 11 supra).

26 Ibid Sch 7A para 3(1), (3)(b) (as added: see note 11 supra). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. The School Standards and Framework Act 1998 Sch 6 para 17 (grants in respect of certain expenditure relating to voluntary aided schools: see PARA 146 ante) applies in relation to the obligation under the Learning and Skills Act 2000 Sch 7A para 3(1), (3)(b) (as added) as it applies in relation to the obligations referred to in the School Standards and Framework Act 1998 Sch 6 para 17(1)(a): Learning and Skills Act 2000 Sch 7A para 6 (as so added). The School Standards and Framework Act 1998 Sch 6 para 18 (assistance from local education authority in respect of voluntary aided schools: see PARA 147 ante) applies in relation to obligations imposed on the governing body of a voluntary aided school under the Learning and Skills Act 2000 Sch 7A (as added) as it applies in relation to the obligations referred to in the School Standards and Framework Act 1998 Sch 6 para 18; and Sch 6 para 20 (duty on local education authority to transfer interest in premises provided under Sch 6 para 18: see PARA 147 ante) applies accordingly: Learning and Skills Act 2000 Sch 7A para 7 (as so added).

27 Ibid Sch 7A para 3(1), (5) (as added: see note 11 supra).

28 As to community special schools see PARA 102 et seq ante.

29 Learning and Skills Act 2000 Sch 7A para 4 (as added: see note 11 supra).

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## (B) RESTRUCTURING SIXTH FORM EDUCATION IN WALES

### *(a) Power to Publish Proposals*

#### **UPDATE**

#### **1282 Implementation of proposals to restructure the provision of sixth form education**

TEXT AND NOTES 1-5, 10--2000 Act s 113A(5), (9)(f) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(2), Sch 16 Pt 2.

NOTE 6--Definition of 'regulations' in 2000 Act s 113A(11) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(3), Sch 16 Pt 2.

TEXT AND NOTES 12-26--2000 Act Sch 7A paras 1, 5-7 amended, definition of 'relevant premises' in Sch 7A para 3(4) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 53(3), Sch 16 Pt 2.

#### **1283. Proposals relating to secondary schools with inadequate sixth forms.**

A school<sup>1</sup> has an inadequate sixth form<sup>2</sup> if the school is failing or likely to fail to give pupils over compulsory school age an acceptable standard of education, or the school has significant weaknesses in one or more areas of its activities<sup>3</sup> for pupils over compulsory school age<sup>4</sup>.

If a person who inspects such a school states in his report an opinion<sup>5</sup> that special measures are not required in relation to the school<sup>6</sup>, but is of the opinion that the school has an inadequate sixth form, he must state that opinion in his report<sup>7</sup>. If in the course of an area inspection<sup>8</sup> the Chief Inspector<sup>9</sup> forms the opinion that a particular school has an inadequate sixth form<sup>10</sup>, the Chief Inspector must make a report about the school stating his opinion<sup>11</sup>.

The provisions relating to the publication and implementation of proposals<sup>12</sup> apply in relation to a school if an opinion that it has an inadequate sixth form is stated in a report<sup>13</sup>, and, where the person making the report is not a member of the inspectorate<sup>14</sup>, the report also states that the Chief Inspector agrees with his opinion<sup>15</sup>. The provisions relating to the publication and implementation of proposals also apply in relation to a school if:

- 2368 (1) a report of an inspection under Part I of the School Inspections Act 1996<sup>16</sup> states the opinion that the school has an inadequate sixth form<sup>17</sup>;
- 2369 (2) the next report of a kind mentioned in head (1) above also states that opinion<sup>18</sup>;
- 2370 (3) each report either results from an inspection by a member of the inspectorate or states that the Chief Inspector agrees with the opinion mentioned in head (1) or head (2) above<sup>19</sup>; and
- 2371 (4) neither report states the opinion that special measures are required to be taken in relation to the school<sup>20</sup>.

The provisions relating to the publication and implementation of proposals cease to apply in relation to a school if a report of an inspection<sup>21</sup> concludes that special measures are required to be taken in relation to the school<sup>22</sup>, or that the school does not have an inadequate sixth form<sup>23</sup>.

Where a report of an inspection under Part I of the School Inspections Act 1996 states an opinion that a school has an inadequate sixth form, and is made by a member of the inspectorate or states that the Chief Inspector agrees with that opinion<sup>24</sup>, the person making such a report must send a copy (together with a copy of the summary, if there is one): (a) in the case of a school in Wales, to the National Assembly for Wales<sup>25</sup>; and (b) if the person making the report is a member of the inspectorate, to the appropriate authority for the school<sup>26</sup>. The provisions of the School Inspections Act 1996 which relate to:

- 2372 (i) additional copies of reports and summaries of inspections by registered inspectors<sup>27</sup> being sent to the Chief Inspector, the head teacher of the school, the local education authority or the governing body, and to the person who appoints the foundation governors or the appropriate appointing authority<sup>28</sup>;
- 2373 (ii) the making available of such reports to the public free of charge, providing them free of charge to any person who so requests, and securing that every registered parent of a registered pupil receives a copy of the summary<sup>29</sup>;
- 2374 (iii) the preparation of an action plan by the appropriate authority for a school following an inspection<sup>30</sup>; and
- 2375 (iv) where the local education authority receives a copy of a report about a school the governing body of which have a delegated budget, the preparation and sending of a written statement detailing any action it proposes to take<sup>31</sup>,

apply, with the necessary modifications, to a report of an inspection under Part I of the School Inspections Act 1996 which states an opinion that a school has an inadequate sixth form<sup>32</sup>.

The provisions of the School Inspections Act 1996 relating to inspections by registered inspectors<sup>33</sup> also apply, with the necessary modifications, where the inspector is of the opinion that a school has an inadequate sixth form as it applies where he is of the opinion that special measures are required to be taken in relation to a school<sup>34</sup>.

1 The Learning and Skills Act 2000 s 113(1), Sch 7 paras 2-7 (as amended) (see the text and notes 5-34 *infra*) apply to a maintained school within the meaning of the School Standards and Framework Act 1998 s 20(7) (see PARA 94 *ante*), which: (1) provides full-time education suitable to the requirements of pupils over compulsory school age; and (2) provides full-time education suitable to the requirements of pupils of compulsory school age: Learning and Skills Act 2000 Sch 7 para 1(1). For the meaning of 'pupil' see PARA 16 note 4 *ante* (definition applied by virtue of s 113(2); School Inspections Act 1996 s 46(4)). As to the meaning of 'compulsory school age' see PARA 15 *ante* (definition applied by virtue of the Learning and Skills Act 2000 s 113(2); School Inspections Act 1996 s 46(4)).

2 *Ie* for the purposes of the Learning and Skills Act 2000 Sch 7 paras 2-7 (as amended): see the text and notes 5-34 *infra*.

3 As to the meaning under the School Standards and Framework Act 1998 of schools in Wales having significant weaknesses see s 15(5) (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 1266 *ante*.

4 Learning and Skills Act 2000 Sch 7 para 1(2). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 1(2) is substituted so that a school in Wales requires significant improvement in relation to its sixth form if the school is failing to give its pupils over compulsory school age an acceptable standard of education, or if, in relation to pupils over compulsory school age, the school is performing significantly less well than it might in all the circumstances reasonably be expected to perform: see Sch 7 para 1(2) (prospectively substituted by the Education Act 2005 s 46, Sch 5 para 3(1), (3)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

5 le in accordance with the School Inspections Act 1996 s 13(8) (prospectively repealed) (see PARA 1209 ante), s 14(2) (prospectively repealed) (see PARA 1210 ante) or s 14(4) (prospectively repealed) (see PARA 1210 ante). As to the meaning of special measures required to be taken in relation to a school see s 13(9) (see PARA 1209 note 5 ante); definition applied by virtue of the Learning and Skills Act 2000 s 113(2).

6 As to the meaning of special measures required to be taken in relation to a school in Wales see the School Inspections Act 1996 s 13(9) (prospectively repealed) (see PARA 1209 note 5 ante); definition applied by virtue of the Learning and Skills Act 2000 s 113(2).

7 Ibid Sch 7 para 2. The Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions) (see PARA 57 ante), and s 497 (as amended) (general default powers) (see PARA 58 ante) have effect in relation to powers and duties conferred or imposed by virtue of the Learning and Skills Act 2000 Sch 7 (as amended) (see PARA 1284 et seq post) as if: (1) those powers and duties were conferred or imposed by the Education Act 1996; and (2) the bodies specified in the Education Act 1996 s 496(2) (as amended) (see PARA 57 ante), and s 497(2) (as amended) (see PARA 58 ante) (both as amended) were any local education authority, any school organisation committee and the governing body of any maintained school: Learning and Skills Act 2000 s 113(3). As to local education authorities see PARA 20 ante; as to school organisation committees see PARA 118 et seq ante; and as to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 2 is substituted so that if in relation to Wales a person who inspects a school states in his report an opinion, in accordance with the Education Act 2005 s 34(7) (see PARA 1249 ante) or s 35(2), (5) (see PARA 1250 ante) that special measures are not required in relation to the school, but is of the opinion that the school requires significant improvement in relation to its sixth form, he must state that opinion in his report: see the Learning and Skills Act 2000 Sch 7 para 2 (prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (4)). At the date at which this volume states the law, no such day had been appointed in relation to Wales. As to references to special measures being required to be taken in relation to a school see the Education Act 2005 s 44(1) (see PARA 1249 note 6 ante); definition applied by virtue of the Learning and Skills Act 2000 s 113(2)(b) (prospectively substituted by the Education Act 2005 Sch 5 para 2(1), (3)).

8 le under the Learning and Skills Act 2000 s 83 (as amended) (see PARA 1338 post).

9 le in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2), Her Majesty's Chief Inspector of Education and Training in Wales (see s 46(1); and PARA 1188 ante); definition applied by virtue of the Learning and Skills Act 2000 s 113(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

10 Learning and Skills Act 2000 Sch 7 para 3(1). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the condition mentioned in the text becomes if, in the course of an area inspection, the Chief Inspector forms the opinion that a particular school requires significant improvement in relation to its sixth form: see the Learning and Skills Act 2000 Sch 7 para 3(1) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (5)(a)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

11 Learning and Skills Act 2000 Sch 7 para 3(2). The report must be treated for all purposes of Sch 7 (as amended) (see PARA 1284 et seq post) and the School Inspections Act 1996 (see PARA 1187 et seq ante) as if it were the report of an inspection of a school under s 10 (as amended; prospectively repealed) (see PARA 1200 ante): Learning and Skills Act 2000 Sch 7 para 3(3).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the report mentioned in the text must be treated for all purposes of the Learning and Skills Act 2000 Sch 7 (as amended) and the Education Act 2005 Pt 1 Chs 3-7 (ss 19-63) (see PARA 1226 et seq ante) as if it were the report of an inspection of a school under s 28 (not yet in force) (see PARA 1239 ante): Learning and Skills Act 2000 Sch 7 para 3(3) (prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (5)(b)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

12 le the Learning and Skills Act 2000 Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1286-1287 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1289 post).

13 Ibid Sch 7 para 4(1)(a). The text refers to an opinion stated in a report in accordance with Sch 7 para 2 (prospectively substituted): see the text and notes 5-7 supra.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the provisions mentioned in the text apply in relation to a school if an opinion that it requires significant improvement is stated in a report in accordance with the Learning and Skills Act 2000 Sch 7 para 2 (prospectively substituted): Sch 7 para 4(1)(a) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (6)(a)). At the date at which this volume states the law, no such day has been appointed in relation to Wales.

14 For the meaning of 'member of the inspectorate' see PARA 1202 note 6 ante; definition applied by virtue of the Learning and Skills Act 2000 s 113(2). As to the inspectorate see PARA 1188 et seq ante.

15 Ibid Sch 7 para 4(1)(b). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 4(1)(b) is amended so that it refers only to a circumstance where the report relates to a school in Wales: see Sch 7 para 4(1)(b) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (6)(a)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

16 Ie the School Inspections Act 1996 Pt I (ss 1-25) (as amended): see PARA 1187 et seq ante.

17 Learning and Skills Act 2000 Sch 7 para 4(2)(a). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 4(2)(a) is substituted so that the provisions mentioned in the text also apply in relation to a school in Wales if a report of an inspection under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1226 et seq ante) states the opinion that the school requires significant improvement in relation to its sixth form: see the Learning and Skills Act 2000 Sch 7 para 4(2)(a) (prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (6)(b)). However, at the date at which this volume states the law, no such day has been appointed in relation to Wales.

18 Learning and Skills Act 2000 Sch 7 para 4(2)(b).

19 Ibid Sch 7 para 4(2)(c). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 4(2)(c) is amended by the Education Act 2005 Sch 5 para 3(1), (6)(b) so that it refers only to a circumstance where the report relates to a school in Wales. At the date at which this volume states the law, no such day has been appointed in relation to Wales.

20 Learning and Skills Act 2000 Sch 7 para 4(2)(d).

21 Ie under the School Inspections Act 1996 Pt I (as amended) (see PARA 1187 et seq ante), or the Learning and Skills Act 2000 s 83 (as amended) (area inspections: see PARA 1338 post): Sch 7 para 5(1). Where the person making a report is not a member of the inspectorate, Sch 7 para 5(1) does not apply unless the report states that the Chief Inspector agrees with the conclusion mentioned in Sch 7 para 5(1): Sch 7 para 5(2). Schedule 7 para 5(1) cannot prevent the continued application of Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1286-1287 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1289 post) in a case where proposals have been published under Sch 7 para 16 (see PARA 1278 ante), or Sch 7 para 20 (see PARA 1286 post): Sch 7 para 5(3).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 5(1) is amended so that the reference in the text to a report is to a report of an inspection under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante) or the Learning and Skills Act 2000 s 83 (as amended) (see PARA 1338 post) (see Sch 7 para 5(1) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (7)(a))) and the Learning and Skills Act 2000 Sch 7 para 5(2) is amended so that it applies only in the case of a school in Wales (see Sch 7 para 5(2) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (7)(b))). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

22 Learning and Skills Act 2000 Sch 7 para 5(1)(a).

23 Ibid Sch 7 para 5(1)(b). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 5(1)(b) is amended so that the reference to a school having an inadequate sixth-form is to be read as a school requiring significant improvement in relation to its sixth form: see Sch 7 para 5(1)(b) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (7)(a)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

24 Learning and Skills Act 2000 Sch 7 para 6(1). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 6(1) is substituted so that Sch 7 para 6 applies in the case of a school in Wales where a report of an inspection under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante): (1) states an opinion that a school requires significant improvement in relation to its sixth form; and (2) is made by a member of the inspectorate or states that the Chief Inspector agrees with the opinion mentioned in head (1) supra: Learning and Skills Act 2000 Sch 7 para 6(1) (prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (8)(a)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

25 Learning and Skills Act 2000 Sch 7 para 6(2)(a). As to the National Assembly for Wales see PARA 53 ante.

26 Ibid Sch 7 para 6(2)(b). As from a day to be appointed, the documents mentioned in the text must be sent to the appropriate authority for the school if the school is in Wales and the person making the report is a member of the inspectorate: see the Learning and Skills Act 2000 Sch 7 para 6(2)(b) (prospectively substituted

by the Education Act 2005 Sch 5 para 3(1), (8)(b)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

27    Ie inspections under the School Inspections Act 1996 s 10 (as amended; prospectively repealed) (see PARA 1200 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(a). As from a day to be appointed, the Learning and Skills Act 2000 Sch 7 para 6(3) is substituted so that the reference in Sch 7 para 6(3)(a) becomes a reference to inspections under the Education Act 2005 s 28 (not yet in force) (see PARA 1239 ante): see the Learning and Skills Act 2000 Sch 7 para 6(3)(b)(i) (Sch 7 para 6(3) prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (8)(c)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

28    Ie the School Inspections Act 1996 s 16(3) (as amended) (see PARA 1213 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(a). As to schools having foundation governors see PARA 104 et seq ante. As from a day to be appointed, the Learning and Skills Act 2000 Sch 7 para 6(3) is substituted so that the reference in Sch 7 para 6(3)(a) becomes a reference to the Education Act 2005 s 38(2) (see PARA 1253 ante): see the Learning and Skills Act 2000 Sch 7 para 6(3)(b)(i) (prospectively substituted: see note 27 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

29    Ie the School Inspections Act 1996 s 16(4) (as amended) (see PARA 1213 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(b). As from a day to be appointed, the Learning and Skills Act 2000 Sch 7 para 6(3) is substituted so that the reference in Sch 7 para 6(3)(b) becomes a reference to the Education Act 2005 s 38(4) (see PARA 1253 ante): see the Learning and Skills Act 2000 Sch 7 para 6(3)(b)(ii) (prospectively substituted: see note 27 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

30    Ie the School Inspections Act 1996 s 17 (as amended) (see PARA 1214 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(c). As from a day to be appointed, Sch 7 para 6(3) is substituted so that the reference in Sch 7 para 6(3)(c) becomes a reference to the Education Act 2005 s 39 (see PARA 1254 ante): see the Learning and Skills Act 2000 Sch 7 para 6(3)(b)(iii) (prospectively substituted: see note 27 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

31    Ie the School Inspections Act s 18(2) (as amended), s 18(3) (see PARA 1215 ante): Learning and Skills Act 2000 Sch 7 para 6(3)(d). As from a day to be appointed, Sch 7 para 6(3) is substituted so that the reference in Sch 7 para 6(3)(d) becomes a reference to the Education Act 2005 s 40(2), (3) (see PARA 1255 ante): see the Learning and Skills Act 2000 Sch 7 para 6(3)(b)(iv) (prospectively substituted: see note 27 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

32    Ibid Sch 7 para 6(3). As from a day to be appointed, Sch 7 para 6(3) is substituted so that the reference to a report under the School Inspections Act 1996 Pt I (as amended) becomes a reference to a report under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante): see the Learning and Skills Act 2000 Sch 7 para 6(3) (prospectively substituted: see note 27 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales. In the application of the provisions mentioned in Sch 7 para 6(3) (prospectively substituted) (see heads (i) to (iv) in the text), a reference to a report and summary must be taken as a reference to a report and, if there is one, its summary (Sch 7 para 6(4)(a)), and a reference to a summary alone must be taken, in a case where there is no summary, as a reference to the report (Sch 7 para 6(4)(b)).

33    Ie the School Inspections Act 1996 s 13(2)-(7) (see PARA 1209 ante). For the meaning of 'registered inspector' under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1194 note 5 ante; definition applied by virtue of the Learning and Skills Act 1996 s 113(2).

34    Ibid Sch 7 para 7. As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 7 is substituted so that where a person who inspects a school in Wales is of the opinion that a school requires significant improvement in relation to its sixth form, the Education Act 2005 s 34(1)-(6) (registered inspectors: see PARA 1249 ante) or, as the case requires, s 35(1) (members of the inspectorate: see PARA 1250 ante) also apply, with the necessary modifications, as they apply where he is of the opinion that special measures are required to be taken in relation to the school: see the Learning and Skills Act 2000 Sch 7 para 7(1), (2)(b) (Sch 7 para 7 prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (9)). At the date at which this volume states the law, no such day has been appointed in relation to Wales.

## UPDATE

### 1283 Proposals relating to secondary schools with inadequate sixth forms

NOTES--Day now appointed in relation to Wales: SI 2006/1338.

NOTE 7--Head (2). Reference to any school organisation committee omitted: 2000 Act s 113(3) (amended by the Education and Inspections Act 2006 Sch 3 para 35, Sch 18 Pt 3).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(2) SCHOOLS/(iii) Intervention in Schools/C. INTERVENTION RELATING TO THE RESTRUCTURING OF SIXTH FORM EDUCATION/(B) Restructuring Sixth Form Education in Wales/(a) Power to Publish Proposals/1284. Proposals relating to institutions for 16-19 year olds requiring special measures or having significant weaknesses.

**1284. Proposals relating to institutions for 16-19 year olds requiring special measures or having significant weaknesses.**

If a person who inspects a school<sup>1</sup> in Wales states in his report an opinion<sup>2</sup> that special measures are not required in relation to the school, but is of the opinion that the school has significant weaknesses in one or more areas of its activities, he must state that opinion in his report<sup>3</sup>. If in the course of an area inspection<sup>4</sup> the Chief Inspector<sup>5</sup> forms the opinion that special measures are required to be taken in relation to a particular school or that a particular school has significant weaknesses in one or more areas of its activities<sup>6</sup> the Chief Inspector must make a report about the school stating his opinion<sup>7</sup>.

The provisions relating to the publication and implementation of proposals<sup>8</sup> apply in relation to a school if an opinion that it has significant weaknesses in one or more areas of its activities is stated in a report<sup>9</sup>, and where the person making the report is not a member of the inspectorate<sup>10</sup>, the report also states that the Chief Inspector agrees with his opinion<sup>11</sup>. The provisions relating to the publication and implementation of proposals also apply in relation to a school if:

- 2376 (1) a report of an inspection under Part I of the School Inspections Act 1996<sup>12</sup> states that special measures are required to be taken in relation to the school or that the school has significant weaknesses in one or more areas of its activities<sup>13</sup>;
- 2377 (2) the next report of a kind mentioned in head (1) above also states an opinion of a kind mentioned in head (1) above<sup>14</sup>; and
- 2378 (3) each report either results from an inspection by a member of the inspectorate or states that the Chief Inspector agrees with the opinion mentioned in head (1) or head (2) above<sup>15</sup>.

The provisions relating to the publication and implementation of proposals cease to apply in relation to a school if a report of an inspection<sup>16</sup> states that special measures are required to be taken in relation to the school<sup>17</sup>, or states that the school does not have significant weaknesses in one or more areas of its activities<sup>18</sup>.

Where a report of an inspection under Part I of the School Inspections Act 1996 which states an opinion that a school has significant weaknesses in one or more areas of its activities, and is made by a member of the inspectorate or states that the Chief Inspector agrees with that opinion<sup>19</sup>, the person making such a report must send a copy (together with a copy of the summary, if there is one): (a) to the National Assembly for Wales<sup>20</sup>, in the case of a school in Wales<sup>21</sup>; and (b) if the person making the report is a member of the inspectorate, to the appropriate authority for the school<sup>22</sup>. The provisions of the School Inspections Act 1996 which relate to:

- 2379 (i) additional copies of reports and summaries of inspections by registered inspectors<sup>23</sup> being sent to the Chief Inspector, the head teacher of the school, the local education authority or the governing body, and to the person who appoints the foundation governors or the appropriate appointing authority<sup>24</sup>;



- 2380 (ii) the making available of such reports to the public free of charge, providing them free of charge to any person who so requests, and securing that every registered parent of a registered pupil receives a copy of the summary<sup>25</sup>;
- 2381 (iii) the preparation of an action plan by the appropriate authority for a school following an inspection<sup>26</sup>; and
- 2382 (iv) where the local education authority receives a copy of a report about a school the governing body of which have a delegated budget, the preparation and sending of a written statement detailing any action it proposes to take<sup>27</sup>,

apply, with such modifications as are necessary, to a report under Part I of the School Inspections Act 1996 which states an opinion that a school has significant weaknesses in one or more areas of its activities<sup>28</sup>.

The provisions of the School Inspections Act 1996 relating to inspections by registered inspectors<sup>29</sup> also apply, with the necessary modifications, where the inspector is of the opinion that a school has significant weaknesses in one or more areas of its activities as it applies where he is of the opinion that special measures are required to be taken in relation to a school<sup>30</sup>.

1 The Learning and Skills Act 2000 s 113(1), Sch 7 paras 9-14 (as amended) (see the text and notes 2-30 *infra*) apply to a maintained school within the meaning of the School Standards and Framework Act 1998 s 20(7) (see PARA 94 *ante*), which: (1) provides full-time education suitable to the requirements of pupils over compulsory school age; and (2) does not provide full-time education suitable to the requirements of pupils of compulsory school age: Learning and Skills Act 2000 Sch 7 para 8. For the meaning of 'pupil' see PARA 16 note 4 *ante* (definition applied by virtue of s 113(2); School Inspections Act 1996 s 46(4)). As to the meaning of 'compulsory school age' see PARA 15 *ante* (definition applied by virtue of the Learning and Skills Act 2000 s 113(2); School Inspections Act 1996 s 46(4)).

2 *Ie* in accordance with the School Inspections Act 1996 s 13(8) (prospectively repealed) (see PARA 1209 *ante*), s 14(2) (prospectively repealed) (see PARA 1210 *ante*) or s 14(4) (prospectively repealed) (see PARA 1210 *ante*).

3 Learning and Skills Act 2000 Sch 7 para 9. As to the meaning of special measures required to be taken in relation to a school in Wales see the School Inspections Act 1996 s 13(9) (see PARA 1209 note 5 *ante*); definition applied by virtue of the Learning and Skills Act 2000 s 113(2). As to the meaning under the School Standards and Framework Act 1998 of schools in Wales having significant weaknesses see s 15(5) (repealed in relation to England; prospectively repealed in relation to Wales); and PARA 1266 *ante*.

The Learning and Skills Act 2000 Sch 7 para 9 is repealed by the Education Act 2005 ss 46, 123, Sch 5 para 3(1), (10), Sch 19 Pt 1 as from a day to be appointed under ss 125(4), 126(1), (2)(c). However, at the date at which this volume states the law, no such day has been appointed in relation to Wales.

4 *Ie* under the Learning and Skills Act 2000 s 83 (as amended) (see PARA 1338 *post*).

5 *Ie* in relation to any school in Wales or registration under the School Inspections Act 1996 s 7(2), Her Majesty's Chief Inspector of Education and Training in Wales (see s 46(1); and PARA 1188 *ante*); definition applied by virtue of the Learning and Skills Act 2000 s 113(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 *ante*.

6 Learning and Skills Act 2000 Sch 7 para 10(1). The Learning and Skills Act 2000 Sch 7 para 10(1) is amended by the Education Act 2005 Sch 5 para 3(1), (11)(a) As from a day to be appointed under ss 125(4), 126(1), (2)(c) so that the reference to a school having significant weaknesses in one or more areas of its activities is to be read as a reference to a school requiring significant improvement. However, at the date at which this volume states the law, no such day has been appointed in relation to Wales.

7 Learning and Skills Act 2000 Sch 7 para 10(2). The report must be treated for all purposes of Sch 7 (as amended) and the School Inspections Act 1996 (see PARA 1187 *et seq ante*) as if it were the report of an inspection of a school under s 10 (as amended; prospectively repealed) (see PARA 1200 *ante*): Learning and Skills Act 2000 Sch 7 para 10(3).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the report mentioned in the text must be treated for all purposes of the Learning and Skills Act 2000 Sch 7 (as amended) and the Education Act 2005 Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in

relation to Wales) (school inspections in relation to Wales: see PARA 1226 et seq ante) as if it were the report of an inspection of a school under s 28 (not yet in force) (see PARA 1239 ante): Learning and Skills Act 2000 Sch 7 para 10(3) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (11)(b)). At the date at which this volume states the law, no such day has been appointed in relation to Wales.

8 le the Learning and Skills Act 2000 Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1286-1287 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1289 post).

9 le in accordance with ibid Sch 7 para 9 (prospectively repealed): see the text and notes 1-3 supra.

10 For the meaning of 'member of the inspectorate' see PARA 1202 note 6 ante; definition applied by virtue of ibid s 113(2). As to the inspectorate see PARA 1188 et seq ante.

11 Ibid Sch 7 para 11(1). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1286-1287 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1289 post) apply in relation to a school in Wales if: (1) a report of an inspection of the school made under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante) states in accordance with s 34(7) (see PARA 1249 ante) or s 35(5) (see PARA 1250 ante) an opinion that special measures are not required to be taken in relation to the school; (2) the report also states in accordance with s 34(6) (see PARA 1249 ante) or s 35(4) (see PARA 1250 ante) an opinion that the school requires significant improvement; and (3) where the person making the report is not a member of the inspectorate, the report also states that the Chief Inspector agrees with his opinion: Learning and Skills Act 2000 Sch 7 para 11(1)(b) (Sch 7 para 11(1) prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (12)(a)). At the date at which this volume states the law, no such day has been appointed in relation to Wales.

12 le the School Inspections Act 1996 Pt I (ss 1-25) (as amended): see PARA 1187 et seq ante.

13 Learning and Skills Act 2000 Sch 7 para 11(2)(a). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1286-1287 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1289 post) apply as mentioned in the text if a report of an inspection of a school in Wales under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante) states that special measures are required to be taken in relation to the school or that the school requires significant improvement: Learning and Skills Act 2000 Sch 7 para 11(2)(a) (prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (12)(b)). At the date at which this volume states the law, no such day has been appointed in relation to Wales.

14 Learning and Skills Act 2000 Sch 7 para 11(2)(b).

15 Ibid Sch 7 para 11(2)(c). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 11(2)(c) is amended by the Education Act 2005 Sch 5 para 3(1), (12)(b) so that it applies only in the case of a school in Wales. At the date at which this volume states the law, no such day has been appointed in relation to Wales.

16 Learning and Skills Act 2000 Sch 7 para 12(1). The text refers to a report of an inspection under the School Inspections Act 1996 Pt I (as amended) (see PARA 1187 et seq ante) or the Learning and Skills Act s 83 (as amended) (see PARA 1338 post): Sch 7 para 12(1). Where the person making a report is not a member of the inspectorate, Sch 7 para 12(1) does not apply unless the report states that the Chief Inspector agrees with the conclusion mentioned in Sch 7 para 12(1): Sch 7 para 12(2). Sch 7 para 12(1) cannot prevent the continued application of Sch 7 Pt II paras 15-31 (as amended) (see PARAS 1286-1287 post), Sch 7 Pt III paras 32-45 (as amended) (see PARA 1289 post) in a case where proposals have been published under Sch 7 para 24 (see PARA 1279 ante), or Sch 7 para 28 (see PARA 1287 post): Sch 7 para 12(3).

As from a day to be appointed, Sch 7 para 12(1) is amended so that the reference to the School Inspections Act 1996 Pt I (as amended) is replaced by a reference to the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante) in relation to Wales and the Learning and Skills Act 2000 Sch 7 para 12(2) is amended so that it applies only in the case of a school in Wales: Sch 7 para 12(1), (2) (prospectively amended by the Education Act 2005 Sch 5 para 3(1), (13)(a), (b)). At the date at which this volume states the law, no such day had been appointed.

17 Learning and Skills Act 2000 Sch 7 para 12(1)(a).

18 Ibid Sch 7 para 12(1)(b). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 12(1)(b) is amended by the Education Act 2005 Sch 5 para 3(1), (13)(a) so that the reference to a school not having significant weaknesses in one or more areas of its activities is to be read as a reference to a school not requiring significant improvement. At the date at which this volume states the law, no such day has been appointed in relation to Wales.

19 Learning and Skills Act 2000 Sch 7 para 13(1). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 13(1) is substituted so that Sch 7

para 13 applies in the case of a school in Wales where a report of an inspection under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante): (1) states an opinion that a school requires significant improvement; and (2) is made by a member of the inspectorate or states that the Chief Inspector agrees with the opinion mentioned in head (1) supra: Learning and Skills Act 2000 Sch 7 para 13(1) (prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (14)(a)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

20 As to the National Assembly for Wales see PARA 53 ante.

21 Learning and Skills Act 2000 Sch 7 para 13(2)(a).

22 Ibid Sch 7 para 13(2)(b). As from a day to be appointed, the documents mentioned in the text must be sent to the appropriate authority for a school in Wales if the person making the report is a member of the inspectorate: see the Learning and Skills Act 2000 Sch 7 para 13(2)(b) (prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (14)(b)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

23 Ie inspections under the School Inspections Act 1996 s 10 (as amended; prospectively repealed) (see PARA 1200 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(a). As from a day to be appointed, Sch 7 para 13(3) is substituted so that the reference in Sch 7 para 13(3)(a) becomes a reference to inspections under the Education Act 2005 s 28 (not yet in force) (see PARA 1239 ante): see the Learning and Skills Act 2000 Sch 7 para 13(3)(b)(i) (Sch 7 para 13(3) prospectively substituted by the Education Act 2005 Sch 5 para 3(1), (14)(c)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

24 Ie the School Inspections Act 1996 s 16(3) (as amended) (see PARA 1213 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(a). As to schools having foundation governors see PARA 104 et seq ante. As from a day to be appointed, Sch 7 para 13(3) is substituted so that the reference in Sch 7 para 13(3)(a) becomes a reference to the Education Act 2005 s 38(2) (see PARA 1253 ante): see the Learning and Skills Act 2000 Sch 7 para 13(3)(b)(i) (prospectively substituted: see note 23 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

25 Ie the School Inspections Act 1996 s 16(4) (as amended) (see PARA 1213 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(b). As from a day to be appointed, Sch 7 para 13(3) is substituted so that the reference in Sch 7 para 13(3)(b) becomes a reference to the Education Act 2005 s 38(4) (see PARA 1253 ante): see the Learning and Skills Act 2000 Sch 7 para 13(3)(b)(ii) (prospectively substituted: see note 23 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

26 Ie the School Inspections Act 1996 s 17 (as amended) (see PARA 1214 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(c). As from a day to be appointed, Sch 7 para 13(3) is substituted so that the reference in Sch 7 para 13(3)(c) becomes a reference to the Education Act 2005 s 39 (see PARA 1254 ante): see the Learning and Skills Act 2000 Sch 7 para 13(3)(b)(iii) (prospectively substituted: see note 23 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

27 Ie the School Inspections Act 1996 s 18(2) (as amended), s 18(3) (see PARA 1215 ante): Learning and Skills Act 2000 Sch 7 para 13(3)(d). As from a day to be appointed, the Learning and Skills Act 2000 Sch 7 para 13(3) is substituted so that the reference in Sch 7 para 13(3)(d) becomes a reference to the Education Act 2005 s 40(2), (3) (see PARA 1255 ante): see the Learning and Skills Act 2000 Sch 7 para 13(3)(b)(iv) (prospectively substituted: see note 23 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

28 Learning and Skills Act 2000 Sch 7 para 13(3). As from a day to be appointed, Sch 7 para 13(3) is substituted so that the reference to a report under Part I of the School Inspections Act 1996 becomes a reference to a report under the Education Act 2005 Pt 1 Ch 3 (ss 19-31) (see PARA 1227 et seq ante): see the Learning and Skills Act 2000 Sch 7 para 13(3) (prospectively substituted: see note 23 supra). At the date at which this volume states the law, no such day had been appointed in relation to Wales. In the application of the provisions mentioned in Sch 7 para 13(3) (prospectively substituted) (see heads (i) to (iv) in the text), a reference to a report and summary must be taken as a reference to a report and, if there is one, its summary (Sch 7 para 13(4)(a)), and a reference to a summary alone must be taken, in a case where there is no summary, as a reference to the report (Sch 7 para 13(4)(b)).

29 Ie the School Inspections Act 1996 s 13(2)-(7) (see PARA 1209 ante). For the meaning of 'registered inspector' under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1194 note 5 ante; definition applied by virtue of the Learning and Skills Act 1996 s 113(2).

30 Ibid Sch 7 para 14. As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the Learning and Skills Act 2000 Sch 7 para 14 is repealed. However, at the date at which this volume states the law, no such day has been appointed in relation to Wales.

**UPDATE**

**1284 Proposals relating to institutions for 16-19 year olds requiring special measures or having significant weaknesses**

TEXT AND NOTES 19-28--Repealed: Education and Inspections Act 2006 Sch 7 para 18(3), Sch 18 Pt 4.

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### **1285. Proposals to restructure the provision of sixth form education.**

The National Council for Education and Training for Wales<sup>1</sup> may make proposals:

- 2383 (1) with a view to meeting recommendations made in the report of an area inspection<sup>2</sup>;
- 2384 (2) with a view to promoting one or more of the following objectives ('the relevant objectives')<sup>3</sup>, namely: (a) an improvement in the educational or training achievements of persons who are above compulsory school age<sup>4</sup> but below the age of 19<sup>5</sup>; (b) an increase in the number of such persons who participate in education or training suitable to the requirements of such persons<sup>6</sup>; (c) an expansion of the range of educational or training opportunities suitable to the requirements of such persons<sup>7</sup>; or
- 2385 (3) if the proposals are made in addition to proposals relating to education or training other than in schools, and the combined proposals are made with a view to promoting one or more of the relevant objectives<sup>8</sup>.

Such proposals are proposals for one or more of the following, namely:

- 2386 (i) the establishment by a local education authority<sup>9</sup> of one or more new community, foundation, community special or foundation special schools<sup>10</sup> to provide secondary education<sup>11</sup> suitable to the requirements of persons who are above compulsory school age but below the age of 19 (and no other secondary education)<sup>12</sup>;
- 2387 (ii) an alteration<sup>13</sup> to one or more maintained schools<sup>14</sup> which relates to the provision of secondary education suitable to the requirements of such persons and is of a description prescribed by regulations<sup>15</sup>;
- 2388 (iii) the discontinuance of one or more maintained schools which provide secondary education suitable to the requirements of such persons (and no other secondary education)<sup>16</sup>.

Such proposals may be made either alone or in addition to proposals relating to further education corporations<sup>17</sup>.

<sup>1</sup> As to the National Council for Education and Training for Wales see PARA 1113 et seq ante. In exercising any function conferred by or under the Learning and Skills Act 2000 s 113A (as added), the National Council for Education and Training for Wales must have regard to any guidance given from time to time by the National Assembly for Wales: Learning and Skills Act 2000 s 113A(7), (11) (s 113A added by the Education Act 2002 s 72(1)). As to the National Assembly for Wales see PARA 53 ante.

For the purposes of the Education Act 1996 s 496 (as amended) (power to prevent unreasonable exercise of functions: see PARA 57 ante) and s 497 (as amended) (general default powers: see PARA 58 ante), the Learning and Skills Act 2000 s 113A (as added) is treated as if it was a provision of the Education Act 1996: Learning and Skills Act 2000 s 113A(10) (as so added).

<sup>2</sup> Ibid s 113A(2)(a) (as added: see note 1 supra). The text refers to an area inspection in relation to Wales under s 83 (as amended) (see PARA 1338 post).

- 3 Ibid s 113A(2)(b) (as added: see note 1 supra).
- 4 As to compulsory school age see PARA 15 ante.
- 5 Learning and Skills Act 2000 s 113A(2)(b), (3)(a) (as added: see note 1 supra).
- 6 Ibid s 113A(2)(b), (3)(b) (as added: see note 1 supra).
- 7 Ibid s 113A(2)(b), (3)(c) (as added: see note 1 supra).
- 8 Ibid s 113A(2)(c) (as added: see note 1 supra).
- 9 As to local education authorities see PARA 20 ante.
- 10 As to community and foundation schools and community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.
- 11 For the meaning of 'secondary education' see PARA 17 ante; definition applied by virtue of the Learning and Skills Act 2000 s 113A(11) (as added: see note 1 supra).
- 12 Ibid s 113A(4)(a) (as added: see note 1 supra). As to proposals under s 113A (as added) for which may relate to the establishment of the school as a federated school (see PARA 213 ante): see the Education Act 2002 s 74 (not yet in force in relation to Wales; prospectively repealed).
- 13 For these purposes, 'alteration' means an alteration of whatever nature, including the transfer of the school to a new site but excluding any change: (1) in the religious character of the school; or (2) whereby the school would acquire or lose a religious character: Learning and Skills Act 2000 s 113A(11) (as added: see note 1 supra). As to schools having a religious character see PARAS 953-954 ante.
- 14 For these purposes, 'maintained school' means a community, foundation or voluntary school or a community or foundation special school: ibid s 113A(11) (as added: see note 1 supra).
- 15 Ibid s 113A(2)(b) (as added: see note 1 supra). 'Regulations' means, in relation to proposals by the National Council for Education and Training for Wales, regulations made by the National Assembly for Wales: s 113A(11) (as so added). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to alterations for which proposals may be made see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 3.
- 16 Learning and Skills Act 2000 s 113A(4)(c) (as added: see note 1 supra).
- 17 Ibid s 113A(8) (as added: see note 1 supra). The text refers to proposals relating to further education corporations made under the Further and Higher Education Act 1992 s 51 (as amended) (see PARA 585 ante): Learning and Skills Act 2000 s 113A(8) (as so added).

## UPDATE

### 1285 Proposals to restructure the provision of sixth form education

TEXT AND NOTES--Proposals under the 2000 Act s 113A are to be published: s 113A(4A) (added by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

TEXT AND NOTES 1, 15--References to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act s 113A(2), (11) (amended by SI 2005/3238).

TEXT AND NOTES 1, 17--2000 Act s 113A(7), (8) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(2), Sch 16 Pt 2.

TEXT AND NOTE 9--Head (i), after 'local education authority' read 'in Wales': 2000 Act s 113A(4)(a) (amended by the Education and Inspections Act 2006 Sch 3 para 36).

NOTE 15--Reference to 2000 Act s 113A(2)(b) should be to s 113A(4)(b). SI 2004/1576 renamed the School Organisation Proposals by the National Assembly for Wales Regulations 2004, SI 2004/1576: SI 2005/3238.

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*(b) Publication of Proposals*

**1286. Proposals to alter a maintained school so that it no longer provides sixth form education.**

The provisions relating to the publication of proposals for the closure of sixth forms in Wales<sup>1</sup> apply to schools which are maintained by a local education authority<sup>2</sup> in Wales and which provide full-time education suitable to the requirements of pupils<sup>3</sup> who are over compulsory school age<sup>4</sup>, and which provide full-time education suitable to the requirements of pupils of compulsory school age<sup>5</sup>. The National Council for Education and Training for Wales<sup>6</sup> may publish proposals for an alteration of such a school as a result of which it will no longer provide education suitable to the requirements of pupils who are over compulsory school age<sup>7</sup>. The proposals must contain such information and be published in such manner as may be prescribed<sup>8</sup>. Before publishing proposals the Council must, having regard to any guidance issued by the National Assembly for Wales, consult such persons as it considers appropriate<sup>9</sup>. The Council must send a copy of the published proposals<sup>10</sup>, and such other information as may be prescribed<sup>11</sup>, to the National Assembly for Wales<sup>12</sup>. In the case of a community or foundation special school<sup>13</sup>, the Council must also send a copy of the published proposals<sup>14</sup> to such other persons as may be prescribed<sup>15</sup>.

The provisions relating to the publication of proposals for the closure of sixth forms in Wales<sup>16</sup> have effect in relation to a school which: (1) is a community, voluntary or foundation school<sup>17</sup>; and (2) is situated in an area other than that of the local education authority which maintains it<sup>18</sup>, with such modifications as may be prescribed by regulations<sup>19</sup> made, in relation to schools in Wales, by the National Assembly for Wales<sup>20</sup>.

1     le the Learning and Skills Act 2000 s 113(1), Sch 7 paras 20-21 (as amended): see the text and notes 6-15 infra. For the meaning of 'Wales' see PARA 52 note 13 ante.

2     As to local education authorities see PARA 20 ante.

3     For the meaning of 'pupil' see PARA 16 note 4 ante; definition applied by virtue of the Learning and Skills Act 2000 s 113(2), School Inspections Act 1996 s 46(4).

4     As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of ibid s 113(2), School Inspections Act 1996 s 46(4).

5     Learning and Skills Act 2000 Sch 7 para 19.

6     As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

7     Learning and Skills Act 2000 Sch 7 para 20(1).

8     Ibid Sch 7 para 20(2). 'Prescribed' means prescribed by regulations made by the National Assembly for Wales: Sch 7 para 22. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the information to be contained in published proposals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 11, Sch 2. As to the manner of publication of



proposals see reg 12. As to the position where the school changes category after the proposals have been so published see reg 19.

9 Learning and Skills Act 2000 Sch 7 para 20(3).

10 Ibid Sch 7 para 21(1)(a).

11 Ibid Sch 7 para 21(1)(b).

12 Ibid Sch 7 para 21(1). As to the information to be sent to the National Assembly for Wales for the purposes of Sch 7 para 21(1)(b) see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 13, Sch 3.

13 As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.

14 Ie a copy of the published proposals mentioned in the Learning and Skills Act 2000 Sch 7 para 21(1)(a): see the text to note 10 infra.

15 Ibid Sch 7 para 21(2) (amended by the Education Act 2002 s 215(1), Sch 21 para 126(1), (2)). As to the other persons to whom the copy and information must be sent for the purposes of Sch 7 para 21(2) (as amended) see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 14.

16 Ie the Learning and Skills Act 2000 Sch 7 Pt II (paras 19-22): see the text and notes 1-15 supra.

17 Ibid Sch 7 para 31(1)(a), (2). As to voluntary schools see PARA 102 et seq ante.

18 Ibid Sch 7 para 31(1)(b), (2).

19 At the date at which this volume states the law, no such regulations had been made in relation to Wales under ibid Sch 7 para 31(2)(b).

20 Ibid Sch 7 para 31(2)(b).

## UPDATE

### **1286 Proposals to alter a maintained school so that it no longer provides sixth form education**

TEXT AND NOTE 6--Reference to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act Sch 7 para 20(1) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTES 8, 12, 15--SI 2004/1576 renamed the School Organisation Proposals by the National Assembly for Wales Regulations 2004, SI 2004/1576: SI 2005/3238. SI 2004/1576 reg 13, Sch 3 revoked, reg 14, Sch 2 amended: SI 2005/3238.

TEXT AND NOTE 9--For 'Council must ... Assembly for Wales' read 'National Assembly for Wales must': 2000 Act Sch 7 para 20(3) (amended by SI 2005/3238).

TEXT AND NOTES 10-15--Now, in the case of a community or foundation special school, the National Assembly for Wales must send a copy of the published proposals to such persons as may be prescribed: 2000 Act Sch 7 para 21(1) repealed, Sch 7 para 21(2) substituted: SI 2005/3238.

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**1287. Publication of proposals to discontinue a maintained school which is an institution for 16-19 year olds.**

The National Council for Education and Training for Wales<sup>1</sup> may publish proposals to discontinue a school<sup>2</sup> which: (1) is maintained by a local education authority<sup>3</sup> in Wales<sup>4</sup>; (2) provides full-time education suitable to the requirements of pupils<sup>5</sup> over compulsory school age<sup>6</sup>; and (3) does not provide full-time education suitable to the requirements of pupils of compulsory school age<sup>7</sup>. The proposals must contain such information and be published in such manner as may be prescribed<sup>8</sup>. Before publishing proposals the Council must, having regard to any guidance issued by the National Assembly for Wales, consult such persons as it considers appropriate<sup>9</sup>. The Council must send a copy of the published proposals<sup>10</sup>, and such other information as may be prescribed<sup>11</sup>, to the National Assembly for Wales<sup>12</sup>. In the case of a community or foundation special school<sup>13</sup>, the Council must also send a copy of the published proposals<sup>14</sup> to such other persons as may be prescribed<sup>15</sup>.

The provisions relating to the publication of proposals to discontinue a school in Wales<sup>16</sup> have effect in relation to a school which: (1) is a community, voluntary or foundation school<sup>17</sup>; and (2) is situated in an area other than that of the local education authority which maintains it<sup>18</sup>, with such modifications as may be prescribed by regulations<sup>19</sup> made, in relation to schools in Wales, by the National Assembly for Wales<sup>20</sup>.

1 As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

2 Learning and Skills Act 2000 s 113(1), Sch 7 para 28(1).

3 As to local education authorities see PARA 20 ante.

4 Learning and Skills Act 2000 Sch 7 paras 27(a), 28(1). For the meaning of 'Wales' see PARA 52 note 13 ante.

5 For the meaning of 'pupil' see PARA 16 note 4 ante (definition applied by virtue of *ibid* s 113(2); School Inspections Act 1996 s 46(4)).

6 Learning and Skills Act 2000 Sch 7 paras 27(b), 28(1). As to the meaning of 'compulsory school age' see PARA 15 ante (definition applied by virtue of s 113(2); School Inspections Act 1996 s 46(4)).

7 Learning and Skills Act 2000 Sch 7 paras 27(c), 28(1).

8 *Ibid* Sch 7 para 28(2). 'Prescribed' means prescribed by regulations made by the National Assembly for Wales: Sch 7 para 30. As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the information to be contained in published proposals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 11, Sch 2. As to the manner of publication of proposals see reg 12. As to the position where the school changes category after the proposals have been so published see reg 19.

9 Learning and Skills Act 2000 Sch 7 para 28(3).

10 *Ibid* Sch 7 para 29(1)(a).

11 *Ibid* Sch 7 para 29(1)(b).

12 Ibid Sch 7 para 29(1). As to the information to be sent to the National Assembly for Wales for the purposes of Sch 7 para 29(1)(b) see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 13, Sch 3.

13 As to community and foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.

14 Ie a copy of the published proposals mentioned in the Learning and Skills Act 2000 Sch 7 para 29(1)(a): see the text to note 10 supra.

15 Ibid Sch 7 para 29(2) (amended by the Education Act 2002 s 215(1), Sch 21 para 126(1), (2)). As to the other persons to whom the copy and information must be sent for the purposes of Sch 7 para 29(2) (as amended) see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 14.

16 Ie the Learning and Skills Act 2000 Sch 7 Pt II paras 27-30: see the text and notes 1-15 supra.

17 Ibid Sch 7 para 31(1)(a), (2). As to voluntary schools see PARA 102 et seq ante.

18 Ibid Sch 7 para 31(1)(b), (2).

19 At the date at which this volume states the law, no such regulations had been made in relation to Wales under ibid Sch 7 para 31(2)(b).

20 Ibid Sch 7 para 31(2)(b).

## UPDATE

### **1287 Publication of proposals to discontinue a maintained school which is an institution for 16-19 year olds**

TEXT AND NOTE 1--Reference to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act Sch 7 para 28(1) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTES 8, 12, 15--SI 2004/1576 renamed the School Organisation Proposals by the National Assembly for Wales Regulations 2004, SI 2004/1576: SI 2005/3238. SI 2004/1576 reg 13, Sch 3 revoked, reg 14, Sch 2 amended: SI 2005/3238.

TEXT AND NOTE 9--For 'Council must ... Assembly for Wales' read 'National Assembly for Wales must': 2000 Act Sch 7 para 28(3) (amended by SI 2005/3238).

TEXT AND NOTES 10-15--Now, in the case of a community or foundation special school, the National Assembly for Wales must send a copy of the published proposals to such persons as may be prescribed: 2000 Act Sch 7 para 29(1) repealed, Sch 7 para 29(2) substituted: SI 2005/3238.

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### **1288. Proposals to establish, alter or discontinue schools which provide sixth form education.**

Proposals made by the National Council for Education and Training for Wales<sup>1</sup> to restructure the provision of sixth form education in Wales<sup>2</sup> must be published and submitted to the National Assembly for Wales<sup>3</sup>.

Regulations<sup>4</sup> may make provision about such proposals and may in particular make provision about: (1) the information to be included in, or provided in relation to, the proposals<sup>5</sup>; (2) the publication of the proposals<sup>6</sup>; and (3) consultation on the proposals before publication<sup>7</sup>.

1 As to the National Council for Education and Training for Wales see PARA 1113 et seq ante. In exercising any function conferred by or under the Learning and Skills Act 2000 s 113A (as added), the National Council for Education and Training for Wales must have regard to any guidance given from time to time by the National Assembly for Wales: Learning and Skills Act 2000 s 113A(7), (11) (s 113A added by the Education Act 2002 s 72(1)). As to the National Assembly for Wales see PARA 53 ante.

2 I.e. proposals made under *ibid* s 113A(2)-(11) (as added) (see PARA 1285 ante).

3 Learning and Skills Act 2000 s 113A(5), (11) (as added: see note 1 supra).

4 'Regulations' means, in relation to proposals by the National Council for Education and Training for Wales, regulations made by the National Assembly for Wales: *ibid* s 113A(11) (as added: see note 1 supra). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.

5 *Ibid* s 113A(9)(a) (as added: see note 1 supra). As to the information to be included in, or provided in relation to, the proposals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 5(1), Sch 1.

6 Learning and Skills Act 2000 s 113A(9)(b) (as added: see note 1 supra). As to the publication of proposals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 5.

7 Learning and Skills Act 2000 s 113A(9)(c) (as added: see note 1 supra). As to consultation see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 4.

### **UPDATE**

### **1288 Proposals to establish, alter or discontinue schools which provide sixth form education**

TEXT AND NOTES 1, 4--References to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act s 113A(2), (7), (11) (amended by SI 2005/3238).

TEXT AND NOTES 1-3--In respect of such proposals, the National Assembly for Wales must, in accordance with regulations made under the 2000 Act s 113A(9), determine whether to confirm them, with or without modification or subject to the occurrence of any event, or withdraw them: s 113A(5A) (added by the National Council for Education and

Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238). 2000 Act s 113A(5), (7) repealed:  
Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(2), Sch 16 Pt 2.

NOTES 5-7--SI 2004/1576 renamed the School Organisation Proposals by the National Assembly for Wales Regulations 2004, SI 2004/1576: SI 2005/3238. SI 2004/1576 regs 4, 5, Sch 1 amended: SI 2005/3238.

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*(c) Implementation of Proposals*

**1289. Implementation of proposals relating to schools having inadequate sixth forms, requiring special measures or having significant weaknesses.**

Where proposals in respect of schools maintained by a local education authority<sup>1</sup> in Wales<sup>2</sup> are published<sup>3</sup>, the provisions relating to the implementation of such proposals in Wales<sup>4</sup> apply<sup>5</sup>. Regulations<sup>6</sup> may require the National Council for Education and Training for Wales<sup>7</sup>, and the National Assembly for Wales to provide prescribed<sup>8</sup> information to prescribed persons at prescribed times<sup>9</sup>. Any person may send objections to the proposals to the National Assembly for Wales within such period as may be prescribed<sup>10</sup>. The National Assembly for Wales must consider the proposals and either reject them<sup>11</sup>, or approve them without modification<sup>12</sup>, or approve them subject to modifications<sup>13</sup>. In considering proposals the National Assembly for Wales must have regard to the school organisation plan for the school's area<sup>14</sup>, and any objections made<sup>15</sup> and not withdrawn<sup>16</sup>. Before approving proposals subject to modifications the National Assembly for Wales must consult such persons as it considers appropriate<sup>17</sup>. An approval<sup>18</sup> may be subject to the occurrence by a specified time of a specified event which is of a prescribed kind<sup>19</sup>.

The National Council for Education and Training for Wales may withdraw proposals by notice in writing to the National Assembly for Wales at any time before a determination has been made<sup>20</sup>. Where proposals are approved<sup>21</sup> they must be implemented<sup>22</sup>. However, the National Assembly for Wales:

- 2389 (1) may modify the proposals, after consulting such persons as it considers appropriate<sup>23</sup>;
- 2390 (2) where the proposals were approved subject to the occurrence of a specified event by a specified time, may, before the arrival of the specified time, substitute a later time<sup>24</sup>;
- 2391 (3) may determine that the proposals are not to be implemented if implementation would be unreasonably difficult or if it would be inappropriate because of changes in circumstances since the proposals were approved<sup>25</sup>.

The duty to implement proposals to alter a school in the case of a community or community special school<sup>26</sup>, is a duty of the local education authority<sup>27</sup>, and in the case of a voluntary, foundation or foundation special school<sup>28</sup>, is a duty of the governing body<sup>29</sup>. The duty to implement proposals to discontinue a school<sup>30</sup> in the case of a community or community special school, is the duty of the local education authority<sup>31</sup>, and in the case of a voluntary, foundation or foundation special school, is a shared duty of the governing body and the local education authority<sup>32</sup>.

The provisions relating to the implementation of proposals for the closure of schools in Wales<sup>33</sup> have effect in relation to a school which: (a) is a community, voluntary or foundation school<sup>34</sup>; and (b) is situated in an area other than that of the local education authority which maintains

it<sup>35</sup>, with such modifications as may be prescribed, in relation to schools in Wales, by regulations<sup>36</sup> made by the National Assembly for Wales<sup>37</sup>.

- 1 As to local education authorities see PARA 20 ante.
- 2 For the meaning of 'Wales' see PARA 52 note 13 ante.
- 3 Ie under the Learning and Skills Act 2000 s 113(1), Sch 7 Pt II (paras 19-22, 27-31) (as amended): see PARAS 1286-1287 ante.
- 4 Ie ibid Sch 7 paras 40-44 (as amended): see the text and notes 6-32 infra.
- 5 Ibid Sch 7 para 39(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 126(1), (3)).
- 6 In the Learning and Skills Act 2000 Sch 7 paras 40-44 (as amended), 'regulations' means regulations made by the National Assembly for Wales: Sch 7 para 39(2). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.
- 7 As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.
- 8 'Prescribed' means prescribed by or determined in accordance with regulations: see the Learning and Skills Act 2000 Sch 7 para 39(2).
- 9 Ibid Sch 7 paras 39(2), 40.
- 10 Ibid Sch 7 para 41. Objections are to be sent to the National Assembly within one month after the date of publication of the proposals: School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 15.
- 11 Learning and Skills Act 2000 Sch 7 para 42(1)(a). The National Assembly must notify prescribed persons of any decision taken under Sch 7 para 42(1): see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 17.
- 12 Learning and Skills Act 2000 Sch 7 para 42(1)(b). See note 11 supra.
- 13 Ibid Sch 7 para 42(1)(c). See note 11 supra.
- 14 Ibid Sch 7 para 42(2)(a). As from a day to be appointed, Sch 7 para 42(2)(a) is repealed by the Children Act 2004 s 64, Sch 5 Pt 1. However, at the date at which this volume states the law, no such day had been appointed.
- 15 Ie made in accordance with the Learning and Skills Act 2000 Sch 7 para 41: see the text to note 10 supra.
- 16 Ibid Sch 7 para 42(2)(b).
- 17 Ibid Sch 7 para 42(3).
- 18 Ie under ibid Sch 7 para 42(1)(b) or (c): see the text and notes 12-13 supra.
- 19 Ibid Sch 7 para 42(4). If the specified event does not occur by the specified time, the proposals must fall to be considered afresh under Sch 7 para 42(1) (see the text to notes 11-13 supra): Sch 7 para 42(4) (amended by the Education Act 2002 Sch 10 paras 11, 15). As to conditional approvals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2002, SI 2004/1576, reg 16.
- 20 Learning and Skills Act 2000 Sch 7 paras 39(2), 42(5).
- 21 Ie under ibid Sch 7 para 42 (as amended): see the text and notes 11-20 supra.
- 22 Ibid Sch 7 para 43(1).
- 23 Ibid Sch 7 para 43(2)(a). The National Assembly for Wales may act under Sch 7 para 43(2)(a) or Sch 7 para 43(2)(b) (see head (2) in the text) only in response to a request by the National Council for Education and Training for Wales: Sch 7 paras 39(2), 43(3). The National Assembly must notify prescribed persons of any decision taken under Sch 7 para 43(2): see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 17.
- 24 Learning and Skills Act 2000 Sch 7 para 43(2)(b). See note 23 supra.

25 Ibid Sch 7 para 43(2)(c). See note 23 supra. A determination may be made under Sch 7 para 43(2)(c) only in response to a proposal of the National Council for Education and Training for Wales which is published and dealt with in accordance with regulations (which may, in particular, apply any provision of Sch 7 (as amended) with or without modification); and where a determination is made under Sch 7 para 43(2)(c) in relation to proposals they must be treated as rejected: Sch 7 paras 39(2), 43(4). As to the provisions relating to proposals under Sch 7 para 43(4) see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2002, SI 2004/1576, reg 18, Sch 4.

26 As to community and community special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.

27 Learning and Skills Act 2000 Sch 7 para 44(1)(a). As to local education authorities see PARA 20 ante.

28 As to voluntary, foundation or foundation special schools see PARA 102 et seq ante.

29 Learning and Skills Act 2000 Sch 7 para 44(1)(b). As to the governing bodies of maintained schools in Wales see PARA 251 et seq ante.

30 For the purposes of ibid Sch 7 para 44(2)(a), (b) (see the text to notes 31-32 infra), a local education authority's duty to discontinue a school is a duty to cease maintaining it: Sch 7 para 44(3).

31 Ibid Sch 7 para 44(2)(a).

32 Ibid Sch 7 para 44(2)(b).

33 Ie ibid Sch 7 Pt III paras 39-44 (as amended): see the text to notes 1-32 infra.

34 Ibid Sch 7 para 45(1)(a), (2). As to voluntary schools see PARA 102 et seq ante.

35 Ibid Sch 7 para 45(1)(b), (2).

36 At the date at which this volume states the law, no such regulations had been made in relation to Wales under ibid Sch 7 para 45(2)(b).

37 Ibid Sch 7 para 45(2)(b).

## UPDATE

### **1289 Implementation of proposals relating to schools having inadequate sixth forms, requiring special measures or having significant weaknesses**

NOTES--SI 2004/1576 renamed the School Organisation Proposals by the National Assembly for Wales Regulations 2004, SI 2004/1576: SI 2005/3238. SI 2004/1576 regs 16, 17, Sch 4 amended: SI 2005/3238.

TEXT AND NOTE 7--Reference to National Council for Education and Training for Wales omitted: 2000 Act Sch 7 paras 39(2), 40 (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

TEXT AND NOTES 11-16--Now, after the expiry of such a period, the National Assembly must determine whether to withdraw the proposals, confirm them without modification or confirm them subject to modifications, and in making such a determination the Assembly must have regard to any objections made in accordance with the 2000 Act Sch 7 para 41 and not withdrawn: Sch 7 para 42(1), (2) (substituted by SI 2005/3238).

TEXT AND NOTE 17--For 'approving' read 'confirming': 2000 Act Sch 7 para 42(3) (amended by SI 2005/3238).

TEXT AND NOTES 18, 19--For 'an approval' read 'a confirmation'; and for 'the proposals must fall to be considered afresh' read 'the National Assembly must reconsider its determination': 2000 Act Sch 7 para 42(4) (amended by SI 2005/3238).



TEXT AND NOTE 20--Now, the National Assembly may withdraw its proposals at any time before a determination has been made: 2000 Act Sch 7 para 42(5) (substituted by SI 2005/3238).

TEXT AND NOTES 21-25--For 'approved' (in each place) read 'confirmed': 2000 Act Sch 7 para 43(1), (2)(b), (c) (amended by SI 2005/3238).

NOTE 23--2000 Act Sch 7 para 43(3) repealed: SI 2005/3238.

NOTE 25--Reference to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act Sch 7 paras 39(2), 43(4) (amended by SI 2005/3238).

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### **1290. Implementation of proposals to restructure the provision of sixth form education.**

Proposals made by the National Council for Education and Training for Wales<sup>1</sup> to restructure the provision of sixth form education in Wales<sup>2</sup> which have been published and submitted to the National Assembly for Wales<sup>3</sup> must be either approved by the Assembly (with or without modification or subject to the occurrence of any event)<sup>4</sup>, or rejected by it<sup>5</sup>.

Regulations<sup>6</sup> may make provision about such proposals and may in particular make provision about: (1) consultation on the proposals after publication<sup>7</sup>; (2) the making of objections to or comments on the proposals<sup>8</sup>; (3) the withdrawal or modification of the proposals<sup>9</sup>; (4) the approval of the proposals by the National Assembly for Wales<sup>10</sup>.

Where such proposals have been so approved by the Assembly, they must be implemented in the form in which they were so approved<sup>11</sup>. However, at the request of any persons prescribed in regulations<sup>12</sup>, the Assembly: (a) may modify the proposals, after consulting such persons as may be prescribed<sup>13</sup>; and (b) where any approval was given subject to the occurrence of a specified event, may specify a later date by which the event in question must occur<sup>14</sup>. If the Assembly is satisfied, after consulting such persons as may be prescribed in regulations<sup>15</sup>, that implementation of the proposals would be unreasonably difficult<sup>16</sup> or that circumstances have so altered since approval was given that implementation of the proposals would be inappropriate<sup>17</sup>, it may determine that the proposals need not be implemented in the form in which they were so approved<sup>18</sup>.

To the extent that the proposals are proposals to establish a school, they must be implemented by whichever local education authority<sup>19</sup> is being proposed to establish the school<sup>20</sup>.

To the extent that the proposals are proposals to make a prescribed alteration<sup>21</sup> to a school, then:

- 2392 (i) where the proposals relate to a community school<sup>22</sup>, they must be implemented by the local education authority which maintains the school<sup>23</sup>;
- 2393 (ii) where the proposals relate to a voluntary aided school, they must be implemented, so far as relating to the provision of any relevant premises<sup>24</sup>, by the local education authority which maintains the school<sup>25</sup>, and otherwise by the governing body of the school<sup>26</sup>; and
- 2394 (iii) where the proposals relate to any other school, they must be implemented by the local education authority which maintains the school and the governing body of the school, respectively, to such extent (if any) as the proposals provide for each of them to do so<sup>27</sup>.

To the extent that the proposals are proposals to discontinue a school they must be implemented, in the case of proposals relating to a community or community special school<sup>28</sup>, by the local education authority which maintains the school, and, in any other case, by the local education authority which maintains the school and the governing body of the school<sup>29</sup>.

- 1 As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.
- 2 le proposals made under the Learning and Skills Act 2000 s 113A(2)-(11) (as added) (see PARA 1285 ante).
- 3 le under ibid s 113A(5) (as added) (see PARA 1288 ante). As to the National Assembly for Wales see PARA 53 ante.
- 4 Ibid s 113A(5)(a), (11) (s 113A added by the Education Act 2002 s 72(1)).
- 5 Learning and Skills Act 2000 s 113A(5)(b) (as added: see note 4 supra).
- 6 'Regulations' means, in relation to proposals by the National Council for Education and Training for Wales, regulations made by the National Assembly for Wales: Learning and Skills Act 2000 s 113A(11) (as added: see note 4 supra). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.
- 7 Ibid s 113A(9)(c) (as added: see note 4 supra). As to consultation after publication of the proposals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 5(4)-(6).
- 8 Learning and Skills Act 2000 s 113A(9)(d) (as added: see note 4 supra). As to making objections to the proposals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 6.
- 9 Learning and Skills Act 2000 s 113A(9)(e) (as added: see note 4 supra). As to the withdrawal of proposals see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, reg 8.
- 10 Learning and Skills Act 2000 s 113A(9)(f), (11) (as added: see note 4 supra). As to the approval of proposals by the National Assembly for Wales see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2004, SI 2004/1576, regs 7, 9.
- 11 Learning and Skills Act 2000 s 113A(6) (as added: see note 4 supra); Sch 7A para 1(1), (2) (Sch 7A added by the Education Act 2002 s 72(2)).
- 12 The National Council for Education and Training for Wales has been prescribed: see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2002, SI 2004/1576, regs 2(1), 10(1).
- 13 Learning and Skills Act 2000 Sch 7A para 1(3)(a) (as added: see note 11 supra). As to the persons so prescribed see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2002, SI 2004/1576, reg 10(2).
- 14 Learning and Skills Act 2000 Sch 7A para 1(3)(b) (as added: see note 11 supra).
- 15 As to the persons so prescribed see the School Organisation Proposals by the National Council for Education and Training for Wales Regulations 2002, SI 2004/1576, reg 10(2).
- 16 Learning and Skills Act 2000 Sch 7A para 1(4)(a) (as added: see note 11 supra).
- 17 Ibid Sch 7A para 1(4)(b) (as added: see note 11 supra).
- 18 Ibid Sch 7A para 1(4) (as added: see note 11 supra).
- 19 As to local education authorities see PARA 20 ante.
- 20 Learning and Skills Act 2000 Sch 7A para 2 (as added: see note 11 supra). Where a local education authority is required under Sch 7A (as added) to provide a site for a foundation or voluntary controlled school or foundation special school (or a proposed such school), the School Standards and Framework Act 1998 Sch 6 para 16 (see PARA 145 ante) applies as it applies in the circumstances mentioned in Sch 6 para 16(1): Learning and Skills Act 2000 Sch 7A para 5 (as so added). As to foundation or voluntary schools or foundation special schools see PARA 102 et seq ante. As to special schools see PARA 1027 ante.
- 21 For the meaning of 'alteration' see PARA 1285 note 13 ante.
- 22 As to community schools see PARA 102 et seq ante.
- 23 Learning and Skills Act 2000 Sch 7A para 3(1), (2) (as added: see note 11 supra).

24 For this purpose, 'relevant premises' means, in relation to a local education authority in Wales, playing fields or buildings which are to form part of the school premises but are not to be school buildings (within the meaning of the Education Act 1996: see PARA 1353 note 18 post): Learning and Skills Act 2000 Sch 7A para 3(4) (as added: see note 11 supra).

25 Ibid Sch 7A para 3(1), (3)(a) (as added: see note 11 supra).

26 Ibid Sch 7A para 3(1), (3)(b) (as added: see note 11 supra). As to the governing bodies of schools in Wales see PARA 251 et seq ante. The School Standards and Framework Act 1998 Sch 6 para 17 (grants in respect of certain expenditure relating to voluntary aided schools: see PARA 146 ante) applies in relation to the obligation under the Learning and Skills Act 2000 Sch 7A para 3(1), (3)(b) (as added) as it applies in relation to the obligations referred to in the School Standards and Framework Act 1998 Sch 6 para 17(1)(a): Learning and Skills Act 2000 Sch 7A para 6 (as added: see note 11 supra). The School Standards and Framework Act 1998 Sch 6 para 18 (assistance from local education authority in respect of voluntary aided schools: see PARA 147 ante) applies in relation to obligations imposed on the governing body of a voluntary aided school under the Learning and Skills Act 2000 Sch 7A (as added) as it applies in relation to the obligations referred to in the School Standards and Framework Act 1998 Sch 6 para 18; and Sch 6 para 20 (duty on local education authority to transfer interest in premises provided under Sch 6 para 18: see PARA 147 ante) applies accordingly: Learning and Skills Act 2000 Sch 7A para 7 (as added: see note 11 supra).

27 Ibid Sch 7A para 3(1), (5) (as added: see note 11 supra).

28 As to community and community special schools see PARA 102 et seq ante.

29 Learning and Skills Act 2000 Sch 7A para 4 (as added: see note 11 supra).

## UPDATE

### **1290 Implementation of proposals to restructure the provision of sixth form education**

TEXT AND NOTES 1, 6--References to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act s 113A(2), (11) (amended by SI 2005/3238).

TEXT AND NOTES 1-5--2000 Act s 113A(5) repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 49(2), Sch 16 Pt 2. The National Assembly for Wales must determine, in accordance with regulations made under the 2000 Act s 113A(9), whether to confirm such proposals, with or without modification or subject to the occurrence of any event, or withdraw them: s 113A(5A) (added by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTES 7-15--SI 2004/1576 renamed the School Organisation Proposals by the National Assembly for Wales Regulations 2004, SI 2004/1576: SI 2005/3238. SI 2004/1576 regs 5(4)-(6), 6, 9, 10(2) amended, regs 7, 8, 10(1) revoked, reg 8A added: SI 2005/3238.

TEXT AND NOTE 10--For 'approval' read 'confirmation': 2000 Act s 113A(9)(f) now s 113A(9)(g) (s 113A(9) amended by SI 2005/3238).

TEXT AND NOTE 11--For 'approved' (in both places) read 'confirmed': 2000 Act Sch 7A para 1(1), (2) (amended by SI 2005/3238).

TEXT AND NOTES 14, 17--For 'approval' (in both places) read 'confirmation': 2000 Act Sch 7A para 1(3)(b), (4)(b) (amended by SI 2005/3238).

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### **(3) NURSERY EDUCATION**

#### **(i) Inspection of Nursery Education in England**

##### **1291. General functions of the Chief Inspector.**

The Chief Inspector<sup>1</sup> has the general duty of keeping the Secretary of State<sup>2</sup> informed about the quality and standards of relevant nursery education<sup>3</sup>, how far relevant nursery education meets the needs of the range of children for whom it is provided<sup>4</sup>, the quality of leadership and management in connection with the provision of relevant nursery education<sup>5</sup>, the contribution of relevant nursery education to the well-being of the children for whom it is provided<sup>6</sup>, and the spiritual, moral, social and cultural development of children<sup>7</sup> for whom relevant nursery education is provided<sup>8</sup>. When asked to do so by the Secretary of State, the Chief Inspector must give advice to the Secretary of State on such matters relating to relevant nursery education as may be specified in the Secretary of State's request<sup>9</sup>. The Chief Inspector may at any time give advice to the Secretary of State on any matter connected with relevant nursery education generally<sup>10</sup> or relevant nursery education, or nursery education under consideration for funding<sup>11</sup>, provided at particular premises<sup>12</sup>.

1 For these purposes, 'Chief Inspector' (without more) means, as respects nursery education provided in England, Her Majesty's Chief Inspector of Schools in England: School Standards and Framework Act 1998 s 122(1), Sch 26 para 2(1)(a), (c)(i) (Sch 26 para 2(1) substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8 10(1), (2)). As to Her Majesty's Inspectorate of Schools in England see PARA 1168 et seq ante. For the meaning of 'nursery education' see PARA 85 ante.

2 As to the Secretary of State see PARA 52 ante.

3 School Standards and Framework Act 1998 Sch 26 para 3(a). In Sch 26 (as amended), 'relevant nursery education' means: (1) nursery education which is provided by a local education authority (Sch 26 para 1(1)(a)); or (2) nursery education which is provided by any other person who is (or is to be) in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of s 120(2)(a) (as amended; repealed in relation to England) (see PARA 88 ante) (Sch 26 para 1(1)(b)). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), 'relevant nursery education' means: (a) nursery education provided in a maintained school or a maintained nursery school (School Standards and Framework Act 1998 Sch 26 para 1(1)(za) (prospectively added by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 9(1), (2)(a))); (b) nursery education not falling within head (a) above which is provided by a local education authority (School Standards and Framework Act 1998 Sch 26 para 1(1)(a) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (2)(b))); or (c) nursery education which is provided by any other person under arrangements made with that person by a local education authority in pursuance of the duty imposed on the authority by the School Standards and Framework Act 1998 s 118 (duty of local education authority as respects availability of nursery education: see PARA 86 ante) and in consideration of financial assistance provided by the authority under the arrangements (Sch 26 para 1(1)(b) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (2)(c))). However, at the date at which this volume states the law, no such day had been appointed in relation to England. As to local education authorities see PARA 20 ante. For the meaning of 'maintained school' see PARA 94 ante.

4 School Standards and Framework Act 1998 Sch 26 para 3(aa) (Sch 26 para 3(aa)-(ac) added by the Education Act 2005 Sch 7 Pt 2 paras 8, 11).

5 School Standards and Framework Act 1998 Sch 26 para 3(ab) (as added: see note 4 supra).

6 Ibid Sch 26 para 3(ac) (as added: see note 4 supra). For these purposes, 'well-being', in relation to children for whom nursery education is provided in England, is a reference to their well-being having regard to the

matters mentioned in the Children Act 2004 s 10(2) (co-operation to improve well-being: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 187); School Standards and Framework Act 1998 Sch 26 para 2(5)(a) (added by the Education Act 2005 Sch 7 Pt 2 paras 8, 10(1), (6)).

7 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

8 Ibid Sch 26 para 3(b).

9 Ibid Sch 26 para 4.

10 Ibid Sch 26 para 5(a).

11 In ibid Sch 26 (as amended), 'nursery education under consideration for funding' means nursery education provided by a person to whom a local education authority is considering giving financial assistance and whose provision of nursery education would fall to be taken into account by the authority in formulating proposals for the purposes of the early years development and childcare plan for its area (see ibid s 120(2)(a) (as amended; repealed in relation to England); and PARA 88 ante): Sch 26 para 1(2).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), 'nursery education under consideration for funding' means nursery education provided by a person with whom a local education authority is considering making arrangements in pursuance of its duty regarding the availability of nursery education (see the School Standards and Framework Act 1998 s 118; and PARA 86 ante) for the provision of nursery education in consideration of financial assistance provided by the authority under the arrangements: Sch 26 para 1(2) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (3)). However, at the date at which this volume states the law, no such day had been appointed in relation to England.

Where:

120 (1) any education is for the time being provided at any premises for children who have not attained the age prescribed by regulations made by the Secretary of State for the purposes of the School Standards and Framework Act 1998 s 118(1)(b) (nursery education for children of a prescribed age: see PARA 86 ante) (s 142(1), Sch 26 para 1(3)(a)); and

121 (2) that education is provided by a person:

1. (a) who proposes to provide nursery education at those premises (Sch 26 para 1(3)(b)(i)); and  
1
2. (b) to whom a local education authority is considering giving financial assistance in the event of his providing that nursery education (Sch 26 para 1(3)(b)(ii)); and  
2
3. (c) whose provision of that nursery education would fall to be taken into account by the authority in formulating proposals for the purposes of s 120(2)(a) (as amended; repealed in relation to England) (see PARA 88 ante) (Sch 26 para 1(3)(b)(iii)),  
3

Sch 26 (as amended) applies in relation to the education for the time being provided for the children mentioned in head (2)(a) supra as it applies in relation to nursery education under consideration for funding (Sch 26 para 1(3)).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 1(3) is substituted so that education is to be treated for the purposes of Sch 26 (as amended) as nursery education under consideration for funding even though it is provided for children who have not attained the prescribed age where: (i) any education is for the time being provided at any premises for children who have not attained the age prescribed for the purposes of s 118(1)(b) (see PARA 86 ante) ('the prescribed age'); and (ii) that education is provided by a person who proposes to provide nursery education at those premises for children who have attained the prescribed age, and with whom a local education authority is considering making arrangements of the kind mentioned in Sch 26 para 1(2) (prospectively amended): Sch 26 para 1(3) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (4)). However, at the date at which this volume states the law, no such day had been appointed in relation to England.

12 School Standards and Framework Act 1998 Sch 26 para 5(b). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 142(8).

## UPDATE

### **1291 General functions of the Chief Inspector**

TEXT AND NOTES--1998 Act s 122(1) amended, Sch 26 further amended, 2005 Act Sch 7 para 10(6) repealed: Childcare Act 2006 Sch 2 paras 33, 36, Sch 3 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(i) Inspection of Nursery Education in England/1292. Inspections.

## **1292. Inspections.**

The Chief Inspector<sup>1</sup>:

- 2395 (1) must at such intervals as may be prescribed<sup>2</sup> inspect relevant nursery education<sup>3</sup> provided in England<sup>4</sup>;
- 2396 (2) must inspect relevant nursery education, or nursery education under consideration for funding<sup>5</sup>, provided in England, at any time when the Secretary of State requires the Chief Inspector to secure its inspection<sup>6</sup>; and
- 2397 (3) may inspect relevant nursery education, or nursery education under consideration for funding, provided in England, at any other time when the Chief Inspector considers that it would be appropriate for it to be inspected<sup>7</sup>.

Regulations may make provision requiring the responsible person<sup>8</sup> to notify prescribed persons of the fact that relevant nursery education or nursery education under consideration for funding provided by the responsible person is to be inspected<sup>9</sup>.

A person conducting such an inspection must report on:

- 2398 (a) the quality and standards of the nursery education provided<sup>10</sup>;
- 2399 (b) how far that nursery education meets the needs of the range of children<sup>11</sup> for whom the education is provided<sup>12</sup>;
- 2400 (c) the quality of leadership and management in connection with the provision of the nursery education<sup>13</sup>;
- 2401 (d) the contribution made by that nursery education to the well-being of those children<sup>14</sup>; and
- 2402 (e) so far as it is reasonably practicable to do so, the spiritual, moral, social and cultural development of the children for whom the nursery education is provided<sup>15</sup>.

1 For the meaning of 'Chief Inspector' see PARA 1291 note 1 ante.

2 I.e. prescribed by regulations made by the Secretary of State: School Standards and Framework Act 1998 s 142(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the prescribed intervals for inspection see the Nursery Education (Inspection) (England) Regulations 2005, SI 2005/2299, reg 3.

3 For the meaning of 'relevant nursery education' see PARA 1291 note 3 ante.

4 School Standards and Framework Act 1998 s 122(1), Sch 26 para 6A(1)(a) (Sch 26 para 6A added by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 12). The School Standards and Framework Act 1998 Sch 26 para 6A(1)(a) (as added) does not apply to nursery education provided at a school to which the Education Act 2005 s 5 (inspections of certain schools: see PARA 1173 ante) applies: School Standards and Framework Act 1998 Sch 26 para 6A(2) (as so added).

5 For the meaning of 'nursery education under consideration for funding' see PARA 1291 note 11 ante.

6 School Standards and Framework Act 1998 Sch 26 para 6A(1)(b) (as added: see note 4 supra). A requirement such as is mentioned in Sch 26 para 6A(1)(b) (as added) may be imposed in relation to nursery education provided at particular premises or a class of premises: Sch 26 para 6A(3) (as so added).



If the Chief Inspector elects in the case of an inspection within Sch 26 para 6A(1)(b) (as added) (see head (2) in the text) or Sch 26 para 6A(1)(c) (as added) (see head (3) in the text) that the inspection is to be treated as if it were an inspection within Sch 26 para 6A(1)(a) (as added), the inspection must be so treated: Sch 26 para 16 (amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 22).

7 School Standards and Framework Act 1998 Sch 26 para 6A(1)(c) (as added: see note 4 supra).

8 For these purposes, 'the responsible person', in relation to any relevant nursery education or nursery education under consideration for funding, means such person as may be prescribed: *ibid* Sch 26 para 6A(5) (as added: see note 4 supra). As to the persons so prescribed see the Nursery Education (Inspection) (England) Regulations 2005, SI 2005/2299, reg 2(2).

9 School Standards and Framework Act 1998 Sch 26 para 6A(4) (as added: see note 4 supra). As to the persons so prescribed see the Nursery Education (Inspection) (England) Regulations 2005, SI 2005/2299, reg 4.

10 School Standards and Framework Act 1998 Sch 26 para 7(a) (Sch 26 para 7 substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 12).

11 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

12 *Ibid* Sch 26 para 7(b) (as substituted: see note 10 supra).

13 *Ibid* Sch 26 para 7(c) (as substituted: see note 10 supra).

14 *Ibid* Sch 26 para 7(d) (as substituted: see note 10 supra). For the meaning of 'well-being', in relation to children for whom nursery education is provided in England, see PARA 1291 note 6 ante.

15 *Ibid* Sch 26 para 7(e) (as substituted: see note 10 supra).

## **UPDATE**

### **1292 Inspections**

TEXT AND NOTES 4-9--1998 Act s 122(1), Sch 26 para 16 amended, Sch 26 para 6A repealed: Childcare Act 2006 Sch 2 paras 33, 36, Sch 3 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(i) Inspection of Nursery Education in England/1293. Rights of entry, etc in relation to inspections.

### **1293. Rights of entry, etc in relation to inspections.**

The Chief Inspector<sup>1</sup> when conducting an inspection<sup>2</sup> has, at all reasonable times, a right of entry to the premises<sup>3</sup> at which the relevant nursery education<sup>4</sup> concerned is provided<sup>5</sup>. He also has a right to inspect, and take copies of any records<sup>6</sup> kept by the person providing that education, and of any other documents<sup>7</sup> containing information relating to the provision of that education, which he requires for the purposes of conducting or (as the case may be) monitoring the inspection<sup>8</sup>.

A person authorised to inspect records or other documents<sup>9</sup>:

- 2403 (1) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question<sup>10</sup>; and
- 2404 (2) may require: (a) the person by whom or on whose behalf the computer is or has been so used; or (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material<sup>11</sup>,

to afford him such assistance as he may reasonably require (including, in particular, making information available for inspection or copying in a legible form)<sup>12</sup>.

It is an offence intentionally to obstruct the Chief Inspector in the exercise of his functions<sup>13</sup> in relation to an inspection<sup>14</sup>.

1 For the meaning of 'Chief Inspector' see PARA 1291 note 1 ante.

2 Ie under the School Standards and Framework Act 1998 s 122(1), Sch 26 para 6A (as added) (see PARA 1292 ante).

3 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of ibid s 142(8).

4 For the meaning of 'relevant nursery education' see PARA 1291 note 3 ante.

5 School Standards and Framework Act 1998 Sch 26 para 18(1)(a), (2)(a) (Sch 26 para 18(1) substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 24(1), (2)).

6 'Records' includes information recorded in any form: School Standards and Framework Act 1998 Sch 26 para 18(6).

7 'Documents' includes information recorded in any form: ibid Sch 26 para 18(6).

8 Ibid Sch 26 para 18(2)(b).

9 Education Act 2005 s 58; applied by the School Standards and Framework Act 1998 Sch 26 para 18(3) (Sch 26 para 18(3), (4) substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 24(1), (3)).

10 Education Act 2005 s 58(a); applied by the School Standards and Framework Act 1998 Sch 26 para 18(3) (as substituted: see note 9 supra).

11 Education Act 2005 s 58(b); applied by the School Standards and Framework Act 1998 Sch 26 para 18(3) (as substituted: see note 9 supra).

12 Education Act 2005 s 58; applied by the School Standards and Framework Act 1998 Sch 26 para 18(3) (as substituted: see note 9 supra).

13 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 142(8).

14 *Ibid* Sch 26 para 18(4)(a) (as substituted: see note 9 supra). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Sch 26 para 18(5). As to the standard scale see PARA 481 note 4 ante.

## **UPDATE**

### **1293 Rights of entry, etc in relation to inspections**

TEXT AND NOTES 5, 14--1998 Act Sch 26 para 18(1)(a), (4)(a) repealed: Childcare Act 2006 Sch 2 para 36, Sch 3 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(i) Inspection of Nursery Education in England/1294. Reports of inspections.

## **1294. Reports of inspections.**

After an inspection<sup>1</sup>, the Chief Inspector<sup>2</sup> must make a report in writing<sup>3</sup>, and ensure that a copy of the report is sent without delay to the responsible person<sup>4</sup>, and to such other authorities and persons as may be prescribed<sup>5</sup>. Regulations may make provision requiring the responsible person to make a copy of any report so sent to him available for inspection by prescribed persons<sup>6</sup>, requiring the responsible person to provide a copy of the report to prescribed persons<sup>7</sup>, and authorising the responsible person in prescribed cases to charge a fee for providing a copy of the report<sup>8</sup>.

The Chief Inspector may arrange for any such report to be published by electronic means<sup>9</sup>.

For the purposes of the law of defamation, any report published by the Chief Inspector is privileged unless the publication is shown to be made with malice<sup>10</sup>.

<sup>1</sup> See under the School Standards and Framework Act 1998 s 122(1), Sch 26 para 6A (as added) (see PARA 1292 ante).

<sup>2</sup> For the meaning of 'Chief Inspector' see PARA 1291 note 1 ante.

<sup>3</sup> School Standards and Framework Act 1998 Sch 26 para 13A(1)(a) (Sch 26 para 13A added by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 20).

<sup>4</sup> School Standards and Framework Act 1998 Sch 26 para 13A(1)(b)(i) (as added: see note 3 supra). For the meaning of 'responsible person' see PARA 1292 note 8 ante; definition applied by Sch 26 para 13A(3) (as so added).

<sup>5</sup> Ibid Sch 26 para 13A(1)(b)(ii) (as added: see note 3 supra). 'Prescribed' means prescribed by regulations made by the Secretary of State: s 142(1). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 ante. As to the persons so prescribed see the Nursery Education (Inspection) (England) Regulations 2005, SI 2005/2299, reg 5(1).

<sup>6</sup> School Standards and Framework Act 1998 Sch 26 para 13A(2)(a) (as added: see note 3 supra).

<sup>7</sup> Ibid Sch 26 para 13A(2)(b) (as added: see note 3 supra). As to the persons so prescribed see the Nursery Education (Inspection) (England) Regulations 2005, SI 2005/2299, reg 5(2).

<sup>8</sup> School Standards and Framework Act 1998 Sch 26 para 13A(2)(c) (as added: see note 3 supra).

<sup>9</sup> Education Act 2005 s 11(2); applied by the School Standards and Framework Act 1998 Sch 26 para 13A(4) (as added: see note 3 supra). The Education Act 2005 s 11(2) (as applied) is expressed to be without prejudice to the generality of s 3(c) (arrangements for publication of reports under s 3: see PARA 1172 ante) or s 11(1) (see PARA 1177 ante): s 11(2) (as so applied).

<sup>10</sup> Ibid s 11(3); applied by the School Standards and Framework Act 1998 Sch 26 para 13A(4) (as added: see note 3 supra). This provision does not limit any privilege subsisting apart from the Education Act 2005 s 11(3) (as applied): s 11(4) (as so applied). As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

## **UPDATE**

### **1294 Reports of inspections**

TEXT AND NOTES--1998 Act Sch 26 para 13A repealed: Childcare Act 2006 Sch 2 para 36, Sch 3 Pt 2.

TEXT AND NOTES 9, 10--2005 Act s 11(2)-(4); 1998 Act Sch 26 para 13A(4) repealed: Education and Inspections Act 2006 Sch 14 paras 35(3), 102, Sch 18 Pt 5.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1295. General functions of the Chief Inspector.

## **(ii) Inspection of Nursery Education in Wales**

### **1295. General functions of the Chief Inspector.**

The Chief Inspector<sup>1</sup> has the general duty of keeping the National Assembly for Wales<sup>2</sup> informed about the quality and standards of relevant nursery education<sup>3</sup>, and the spiritual, moral, social and cultural development of children<sup>4</sup> for whom relevant nursery education is provided<sup>5</sup>. When asked to do so by the Assembly, the Chief Inspector must give advice to the Assembly on such matters relating to relevant nursery education as may be specified in the Assembly's request<sup>6</sup>. The Chief Inspector may at any time give advice to the Assembly on any matter connected with relevant nursery education generally<sup>7</sup> or relevant nursery education, or nursery education under consideration for funding<sup>8</sup>, provided at particular premises<sup>9</sup>.

<sup>1</sup> le as respects nursery education provided in Wales, Her Majesty's Chief Inspector of Education and Training in Wales (or 'Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru'): School Standards and Framework Act 1998 s 122(1), Sch 26 para 2(1)(b) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(a)).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), in the School Standards and Framework Act 1998 Sch 26 (as amended), 'Chief Inspector' (without more) means, as respects nursery education provided in Wales, Her Majesty's Chief Inspector of Education and Training in Wales: see Sch 26 para 2(1)(b), (c)(ii) (Sch 26 para 2(1) prospectively substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8 10(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'nursery education' see PARA 85 ante.

As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

<sup>2</sup> As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>3</sup> In the School Standards and Framework Act 1998 Sch 26 (as amended), 'relevant nursery education' means: (1) nursery education which is provided by a local education authority (Sch 26 para 1(1)(a)); (2) nursery education which is provided by any other person who is (or is to be) in receipt of financial assistance given by such an authority and whose provision of nursery education is taken into account by the authority in formulating proposals for the purposes of s 120(2)(a) (as amended; prospectively repealed in relation to Wales) (see PARA 88 ante) (Sch 26 para 1(1)(b)); or (3) nursery education in respect of which grants are (or are to be) made under arrangements under the Nursery Education and Grant-maintained Schools Act 1996 s 1 (as amended; prospectively repealed) (see PARA 91 ante) (School Standards and Framework Act 1998 Sch 26 para 1(1)(c)). Schedule 26 para 1(1)(c) is repealed as from a day to be appointed under the Education Act 2002 s 216(4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), 'relevant nursery education' means: (a) nursery education provided in a maintained school or a maintained nursery school (School Standards and Framework Act 1998 Sch 26 para 1(1)(za) (prospectively added by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (2)(a))); (b) nursery education not falling within head (a) supra which is provided by a local education authority (School Standards and Framework Act 1998 Sch 26 para 1(1)(a) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (2)(b))); or (c) nursery education which is provided by any other person under arrangements made with that person by a local education authority in pursuance of the duty imposed on the authority by the School Standards and Framework Act 1998 s 118 (duty of local education authority as respects availability of nursery education: see PARA 86 ante) and in consideration of financial assistance provided by the authority under the arrangements (Sch 26 para 1(1)(b) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (2)(c))). However, at the date at which this

volume states the law, no such day had been appointed in relation to Wales. As to local education authorities see PARA 20 ante. For the meaning of 'maintained school' see PARA 94 ante.

4 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 Ibid Sch 26 para 3. As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 3 is amended so that the Chief Inspector's general duty under Sch 26 para 3 also includes keeping the National Assembly for Wales informed about how far relevant nursery education meets the needs of the range of children for whom it is provided, the quality of leadership and management in connection with the provision of relevant nursery education, and the contribution of relevant nursery education to the well-being of the children for whom it is provided: Sch 26 para 3(aa)-(ac) (prospectively added by the Education Act 2005 Sch 7 Pt 2 paras 8, 11). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

6 School Standards and Framework Act 1998 Sch 26 para 4.

7 Ibid Sch 26 para 5(a).

8 In ibid Sch 26 (as amended), 'nursery education under consideration for funding' means nursery education provided by a person to whom a local education authority is considering giving financial assistance and whose provision of nursery education would fall to be taken into account by the authority in formulating proposals for the purposes of the early years development and childcare plan for its area (see ibid s 120(2)(a) (as amended; prospectively repealed in relation to Wales); and PARA 88 ante): Sch 26 para 1(2).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), 'nursery education under consideration for funding' means nursery education provided by a person with whom a local education authority is considering making arrangements in pursuance of its duty regarding the availability of nursery education (see the School Standards and Framework Act 1998 s 118; and PARA 86 ante) for the provision of nursery education in consideration of financial assistance provided by the authority under the arrangements: Sch 26 para 1(2) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (3)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

Where:

122 (1) any education is for the time being provided at any premises for children who have not attained the age prescribed by regulations made for the purposes of the School Standards and Framework Act 1998 s 118(1)(b) (nursery education for children of a prescribed age: see PARA 86 ante) (s 142(1), Sch 26 para 1(3)(a)); and

123 (2) that education is provided by a person:

4. (a) who proposes to provide nursery education at those premises (Sch 26 para 1(3)(b)(i)); and  
4

5. (b) to whom a local education authority is considering giving financial assistance in the event of his providing that nursery education (Sch 26 para 1(3)(b)(ii)); and  
5

6. (c) whose provision of that nursery education would fall to be taken into account by the authority in formulating proposals for the purposes of s 120(2)(a) (as amended; prospectively repealed in relation to Wales) (see PARA 88 ante) (Sch 26 para 1(3)(b)(iii)),  
6

Sch 26 (as amended) applies in relation to the education for the time being provided for the children mentioned in head (2)(a) supra as it applies in relation to nursery education under consideration for funding (Sch 26 para 1(3)).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 1(3) is substituted so that education is to be treated for the purposes of Sch 26 (as amended) as nursery education under consideration for funding even though it is provided for children who have not attained the prescribed age where: (i) any education is for the time being provided at any premises for children who have not attained the age prescribed for the purposes of s 118(1)(b) (see PARA 86 ante) ('the prescribed age'); and (ii) that education is provided by a person who proposes to provide nursery education at those premises for children who have attained the prescribed age, and with whom a local education authority is considering making arrangements of the kind mentioned in Sch 26 para 1(2) (prospectively amended): Sch 26 para 1(3) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 9(1), (4)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

9 School Standards and Framework Act 1998 Sch 26 para 5(b). As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of s 142(8).

## **UPDATE**

### **1295 General functions of the Chief Inspector**

TEXT AND NOTES--1998 Act s 122(1) amended, Sch 26 further amended: Childcare Act 2006 Sch 2 paras 33, 36, Sch 3 Pt 2.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1296. Inspections.

## **1296. Inspections.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>. The Chief Inspector<sup>2</sup>:

- 2405 (1) must secure that relevant nursery education<sup>3</sup> provided at any premises<sup>4</sup> is inspected by a member of the inspectorate<sup>5</sup> or a registered nursery education inspector<sup>6</sup> at such intervals as may be prescribed<sup>7</sup>;
- 2406 (2) must also secure that relevant nursery education, or nursery education under consideration for funding<sup>8</sup>, provided at any premises is inspected by a member of the inspectorate or a registered nursery education inspector at any time when the National Assembly for Wales<sup>9</sup> requires the Chief Inspector to secure its inspection<sup>10</sup>;
- 2407 (3) may secure that relevant nursery education, or nursery education under consideration for funding, provided at any premises is inspected by a member of the inspectorate or a registered nursery education inspector at any other time when the Chief Inspector considers that it would be appropriate for it to be inspected<sup>11</sup>.

The Chief Inspector may comply with the above requirements either by organising inspections or by making arrangements with others for them to organise inspections<sup>12</sup>. A person conducting such an inspection must report on the quality and standards of the nursery education provided and, so far as it is reasonably practicable to do so, on the spiritual, moral, social and cultural development of the children<sup>13</sup> for whom the education is provided<sup>14</sup>.

As from a day to be appointed, the following provisions have effect<sup>15</sup>. The Chief Inspector<sup>16</sup>:

- 2408 (a) must secure that relevant nursery education provided in Wales at any premises is inspected by a member of the Welsh inspectorate<sup>17</sup> or a registered Welsh nursery education inspector<sup>18</sup> at such intervals as may be prescribed<sup>19</sup>;
- 2409 (b) must also secure that relevant nursery education, or nursery education under consideration for funding, provided in Wales is inspected by a member of the Welsh inspectorate or a registered Welsh nursery education inspector at any time when the Assembly requires the Chief Inspector to secure its inspection<sup>20</sup>;
- 2410 (c) may secure that relevant nursery education, or nursery education under consideration for funding, provided in Wales is inspected by a member of the Welsh inspectorate or a registered Welsh nursery education inspector at any other time when the Chief Inspector considers that it would be appropriate for it to be inspected<sup>21</sup>.

The Chief Inspector may comply with the requirements of heads (a) to (c) above either by organising inspections or by making arrangements with others for them to organise inspections<sup>22</sup>. A person conducting such an inspection must report on:

- 2411 (i) the quality and standards of the nursery education provided<sup>23</sup>;
- 2412 (ii) how far that nursery education meets the needs of the range of children for whom the education is provided<sup>24</sup>;

- 2413 (iii) the quality of leadership and management in connection with the provision of the nursery education<sup>25</sup>;
- 2414 (iv) the contribution made by that nursery education to the well-being of those children<sup>26</sup>; and
- 2415 (v) so far as it is reasonably practicable to do so, the spiritual, moral, social and cultural development of the children for whom the nursery education is provided<sup>27</sup>.

1 The School Standards and Framework Act 1998 s 122(1), Sch 26 para 6 (as amended) and Sch 26 para 7 are substituted as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c): see the School Standards and Framework Act 1998 Sch 26 para 6B (as added), Sch 26 para 7 (as substituted); and notes 15-27 *infra*. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 For the meaning of 'Chief Inspector' see PARA 1295 note 1 *ante*.

3 For the meaning of 'relevant nursery education' see PARA 1295 note 3 *ante*.

4 As to the meaning of 'premises' see PARA 1352 note 3 *post*; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 For these purposes, 'members of the inspectorate' means the Chief Inspector (*ibid* Sch 26 para 2(3)(a)), Her Majesty's Inspectors (Sch 26 para 2(3)(b)), and additional inspectors with whom the Chief Inspector has made arrangements to give him assistance under the School Inspections Act 1996 s 4(6), Sch 1 para 2 (prospectively repealed) (see PARA 1189 *ante*) (School Standards and Framework Act 1998 Sch 26 para 2(3)(c)); and for these purposes, 'Her Majesty's Inspectors' means, as respects nursery education provided in Wales, Her Majesty's Inspectors of Education and Training in Wales (Sch 26 para 2(4)(b) (amended by virtue of the Learning and Skills Act 2000 s 73(2), (3)(b))). For the meaning of 'nursery education' see PARA 85 *ante*.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 2(3) is substituted and Sch 26 para 2(4) (as amended) is repealed (to be replaced by a single definition of 'members of the Welsh inspectorate': see note 17 *infra*). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

6 References to registered nursery education inspectors are references to persons registered under *ibid* Sch 26 para 8 (as amended) (see PARA 1298 *post*): Sch 26 para 2(2).

7 *Ibid* Sch 26 para 6(1)(a) (amended by the Education Act 2002 s 155, Sch 14 para 1). 'Prescribed' means prescribed by regulations made by the National Assembly for Wales: School Standards and Framework Act 1998 s 142(1). As to the prescribed intervals see the Education (Inspection of Nursery Education) (Wales) Regulations 1999, SI 1999/1441, reg 4 (amended by SI 2004/1743). In prescribing the intervals mentioned in the School Standards and Framework Act 1998 Sch 26 para 6(1)(a) (as amended), provision may be made as to the period within which the first inspection of education provided at any premises is to take place under the School Standards and Framework Act 1998 Sch 26 (as amended): see Sch 26 para 6(5). Schedule 26 para 6(1)(a) (as amended) does not apply to nursery education provided at a school to which the School Inspections Act 1996 s 10 (as amended; prospectively repealed) (inspections of certain schools by inspectors registered under the School Inspections Act 1996: see PARA 1200 *ante*) applies: School Standards and Framework Act 1998 Sch 26 para 6(2). See note 1 *supra*.

8 For the meaning of 'nursery education under consideration for funding' see PARA 1295 note 8 *ante*.

9 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

10 School Standards and Framework Act 1998 Sch 26 para 6(1)(b) (amended by the Education Act 2002 Sch 14 para 1). A requirement such as is mentioned in the School Standards and Framework Act 1998 Sch 26 para 6(1)(b) (as amended) may be imposed in relation to particular premises or a class of premises: Sch 26 para 6(6). See note 1 *supra*.

If the Chief Inspector elects in the case of an inspection within Sch 26 para 6(1)(b) (as amended; prospectively substituted) or Sch 26 para 6(1)(c) (as amended; prospectively substituted) (see head (3) in the text) that the inspection is to be treated as if it were an inspection within Sch 26 para 6(1)(a), the inspection must be so treated: Sch 26 para 16.

11 *Ibid* Sch 26 para 6(1)(c) (amended by the Education Act 2002 Sch 14 para 1). See note 1 *supra*.

12 School Standards and Framework Act 1998 Sch 26 para 6(3). See note 1 supra.

13 For the meaning of 'child' see PARA 16 note 2 ante; definition applied by virtue of *ibid* s 142(8).

14 *Ibid* Sch 26 para 7. See note 1 supra.

15 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 6B (as added), Sch 26 para 7 (as substituted) are to come into force. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, see the School Standards and Framework Act 1998 Sch 26 paras 6-7 (as amended); and the text and notes 1-14 supra.

16 See PARA 1295 note 1 ante.

17 As from a day to be appointed, in the School Standards and Framework Act 1998 Sch 26 (as amended), 'members of the Welsh inspectorate' means: (1) the Chief Inspector; (2) Her Majesty's Inspectors of Education and Training in Wales; and (3) additional inspectors with whom the Chief Inspector has made arrangements to give him assistance under the Education Act 2005 s 19(8), Sch 2 para 2 (not yet in force) (see PARA 1228 ante): School Standards and Framework Act 1998 Sch 26 para 2(3) (prospectively substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 10(1), (4)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

18 As from a day to be appointed, in the School Standards and Framework Act 1998 Sch 26 (as amended), references to registered nursery education inspectors are references to persons registered Welsh under Sch 26 para 8 (as amended; prospectively amended): Sch 26 para 2(2) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8 10(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

19 School Standards and Framework Act 1998 Sch 26 para 6B(1)(a) (Sch 26 para 6B added by the Education Act 2005 Sch 7 Pt 2 paras 8, 12). At the date at which this volume states the law, no regulations had been made under the School Standards and Framework Act 1998 Sch 26 para 6B (prospectively added); but see note 7 supra. Schedule 26 para 6B(1)(a) (prospectively added) does not apply to nursery education provided at a school to which the Education Act 2005 s 28 (not yet in force) (duty to arrange regular inspections of certain schools: see PARA 1239 ante) applies: School Standards and Framework Act 1998 Sch 26 para 6B(2) (as so added). See note 15 supra.

20 *Ibid* Sch 26 para 6B(1)(b) (as added: see note 19 supra). A requirement such as is mentioned in Sch 26 para 6B(1)(b) (prospectively added) may relate to nursery education provided at particular premises or a class of premises: Sch 26 para 6B(4) (as so added). See note 15 supra.

If the Chief Inspector elects in the case of an inspection within Sch 26 para 6B(1)(b) (prospectively added) or Sch 26 para 6B(1)(c) (prospectively added) (see head (c) in the text) that the inspection is to be treated as if it were an inspection within Sch 26 para 6B(1)(a) (prospectively added), the inspection must be so treated: Sch 26 para 16 (amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 22). The amendment made by Sch 7 Pt 2 paras 8, 22 is to come into force as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

21 School Standards and Framework Act 1998 Sch 26 para 6B(1)(c) (as added: see note 19 supra). See note 15 supra.

22 *Ibid* Sch 26 para 6B(3) (as added: see note 19 supra). See note 15 supra.

23 *Ibid* Sch 26 para 7(a) (Sch 26 para 7 substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 12). See note 15 supra.

24 School Standards and Framework Act 1998 Sch 26 para 7(b) (as substituted: see note 23 supra). See note 15 supra.

25 *Ibid* Sch 26 para 7(c) (as substituted: see note 23 supra). See note 15 supra.

26 *Ibid* Sch 26 para 7(d) (as substituted: see note 23 supra). See note 15 supra.

In the School Standards and Framework Act 1998 Sch 26 (as amended), 'well-being', in relation to children for whom nursery education is provided in Wales, is a reference to their well-being having regard to the matters mentioned in the Children Act 2004 s 25(2) (co-operation to improve well-being: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 192): School Standards and Framework Act 1998 Sch 26 para 2(5)(b) (prospectively added by the Education Act 2005 Sch 7 Pt 2 paras 8, 10(1), (6)). This provision is to come into force as from a day to be appointed but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

27 School Standards and Framework Act 1998 Sch 26 para 7(e) (as substituted: see note 23 supra). See note 15 supra.

## **UPDATE**

### **1295-1302 Inspection of Nursery Education in Wales**

These provisions now in force: SI 2006/1338.

### **1296 Inspections**

TEXT AND NOTES--1998 Act s 122(1) amended, Sch 26 further amended, 2005 Act Sch 7 para 10(6) repealed: Childcare Act 2006 Sch 2 paras 33, 36, Sch 3 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1297. Inspections conducted by members of the inspectorate.

### **1297. Inspections conducted by members of the inspectorate.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>. Where an inspection<sup>2</sup> is being conducted by a registered nursery education inspector<sup>3</sup>, the Chief Inspector<sup>4</sup> may arrange for the inspection to be monitored by one or more members of the inspectorate<sup>5</sup>.

As from a day to be appointed, the following provisions have effect<sup>6</sup>. Where an inspection in Wales<sup>7</sup> is being conducted by a registered Welsh nursery education inspector<sup>8</sup>, the Chief Inspector<sup>9</sup> may arrange for the inspection to be monitored by one or more members of the Welsh inspectorate<sup>10</sup>.

1 The School Standards and Framework Act 1998 s 122(1), Sch 26 para 17 is substituted by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 23 as from a day to be appointed under ss 125(4), 126(1), (2)(c): see the text and notes 6-10 infra. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 Ie under the School Standards and Framework Act 1998 Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

3 References to registered nursery education inspectors are to persons registered under ibid Sch 26 para 8 (as amended) (see PARA 1298 post): Sch 26 para 2(2).

4 For the meaning of 'Chief Inspector' see PARA 1295 note 1 ante.

5 School Standards and Framework Act 1998 Sch 26 para 17. For the meaning of 'members of the inspectorate' see PARA 1296 note 5 ante.

6 Ibid Sch 26 para 17 is substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 23 as from a day to be appointed under ss 125(4), 126(1), (2)(c). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

7 Ie under the School Standards and Framework Act 1998 Sch 26 para 6B (prospectively added) (see PARA 1296 ante).

8 In ibid Sch 26 (as amended), references to registered nursery education inspectors are to persons registered Welsh under Sch 26 para 8 (as amended; prospectively amended): Sch 26 para 2(2) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8 10(1), (2)). This provision is to come into force as from a day to be appointed but, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

9 See PARA 1295 note 1 ante.

10 School Standards and Framework Act 1998 Sch 26 para 17 (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 23). See note 6 supra. For the meaning of 'members of the Welsh inspectorate' see PARA 1296 note 17 ante.

## **UPDATE**

### **1295-1302 Inspection of Nursery Education in Wales**

These provisions now in force: SI 2006/1338.

### **1297 Inspections conducted by members of the inspectorate**

NOTE 1--1998 Act s 122(1) amended: Childcare Act 2006 Sch 2 para 33.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1298. Registration of nursery education inspectors.

### **1298. Registration of nursery education inspectors.**

The School Standards and Framework Act 1998 requires the Chief Inspector<sup>1</sup> to establish and maintain a register of nursery education inspectors for Wales<sup>2</sup>.

The Chief Inspector must give guidance to registered nursery education inspectors<sup>3</sup> and such other persons as he considers appropriate in connection with inspections<sup>4</sup> and the making of reports of such inspections<sup>5</sup>, and must keep under review the system of inspections<sup>6</sup> and, in particular, the standard of such inspections and of the reports made of them<sup>7</sup>. The Chief Inspector must not register a person unless, having regard to any conditions that he proposes to impose<sup>8</sup>, it appears to him that the person<sup>9</sup> is a fit and proper person for discharging the functions<sup>10</sup> of a registered nursery education inspector<sup>11</sup>, and will be capable of conducting inspections<sup>12</sup> competently and effectively; and no person may be so registered if he falls within a category of persons prescribed<sup>13</sup> for these purposes<sup>14</sup>. Subject to that, the Chief Inspector must register such persons as he considers appropriate<sup>15</sup>. The factors which the Chief Inspector may take into account for these purposes include the extent to which there is a need for registered inspectors in any part of Wales<sup>16</sup>. The Chief Inspector may require payment of a fee before so registering a person<sup>17</sup>; and registration may be subject to such conditions as the Chief Inspector considers it appropriate to impose<sup>18</sup>. Any conditions so imposed may be conditions applying generally in relation to all cases, or to particular classes of case, or such conditions together with specific conditions applying in the particular case<sup>19</sup>. Where a person is registered subject to conditions so imposed, he must be taken to be authorised to act as a registered nursery education inspector only so far as those conditions permit<sup>20</sup>.

The period for which any registration is to have effect must be determined by the Chief Inspector and must be entered in the register<sup>21</sup>.

If the Chief Inspector is satisfied that any of the conditions mentioned in heads (1) to (4) below is satisfied with respect to a nursery education inspector registered in his register, he may remove the name of that inspector from that register<sup>22</sup>. The conditions are that:

- 2416 (1) he is no longer a fit and proper person for discharging the functions<sup>23</sup> of a registered nursery education inspector<sup>24</sup>;
- 2417 (2) he is no longer capable of conducting inspections<sup>25</sup> competently and effectively<sup>26</sup>;
- 2418 (3) there has been a significant failure on his part to comply with any condition<sup>27</sup> subject to which his registration has effect<sup>28</sup>;
- 2419 (4) he has, without reasonable explanation, produced a report of an inspection<sup>29</sup> which is, in whole or in part, seriously misleading<sup>30</sup>.

The Chief Inspector may vary any condition subject to which the registration of an inspector has effect, or vary the registration of an inspector by imposing a condition subject to which it will have effect, if he is satisfied that he is authorised<sup>31</sup> to remove the name of the inspector from his register<sup>32</sup>, or that it would otherwise be in the public interest for him to do so<sup>33</sup>.

Any person who is aggrieved<sup>34</sup> by:

- 2420 (a) the refusal of the Chief Inspector to renew his registration<sup>35</sup>;

- 2421 (b) the imposition or variation of any condition subject to which he is registered<sup>36</sup>; or  
 2422 (c) the removal of his name from the register<sup>37</sup>,

may appeal against the Chief Inspector's decision<sup>38</sup>. No decision against which an appeal may be so made has effect until any appeal against it which is duly made is disposed of, or the period within which an appeal may be made expires without an appeal being made<sup>39</sup>.

On determining any such appeal, the tribunal may confirm, reverse or vary the decision appealed against<sup>40</sup>, or remit the case to the Chief Inspector with directions as to the action to be taken by him<sup>41</sup>.

1 For the meaning of 'Chief Inspector' see PARA 1295 note 1 ante.

2 School Standards and Framework Act 1998 s 122(1), Sch 26 para 8(1) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(a)). For the meaning of 'nursery education' see PARA 85 ante.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 paras 8-10 (as amended) are further amended so that they apply exclusively to Wales, to inspections in Wales under Sch 26 para 6B (prospectively added) (see PARA 1296 ante) and to registered Welsh nursery inspectors. At the date at which this volume states the law, no such day had been appointed in relation to Wales.

3 References to registered nursery education inspectors are references to persons registered under *ibid* Sch 26 para 8 (as amended): Sch 26 para 2(2).

As from a day to be appointed, in Sch 26 (as amended), references to registered nursery education inspectors are references to persons registered Welsh under Sch 26 para 8 (as amended; prospectively amended): Sch 26 para 2(2) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8 10(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

4 *Ie* under the School Standards and Framework Act 1998 Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

5 *Ibid* Sch 26 para 8(2)(a). See note 2 *supra*.

6 *Ie* under *ibid* Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

7 *Ibid* Sch 26 para 8(2)(b). See note 2 *supra*.

8 *Ie* under *ibid* Sch 26 para 8(5B) (as added) (see the text to note 18 *infra*). References in Sch 26 (as amended) to a condition imposed under Sch 26 para 8(5B) (as added) include a condition imposed under Sch 26 para 9(3) (as amended) (see the text to notes 31-33 *infra*): Sch 26 para 9(4) (amended by the Education Act 2002 s 155, Sch 14 para 3). See note 2 *supra*.

9 School Standards and Framework Act 1998 Sch 26 para 8(3) (amended by the Education Act 2002 Sch 14 para 2(1), (2)). See note 2 *supra*.

10 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

11 *Ibid* Sch 26 para 8(3)(a) (amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 14(1), (5)). See note 2 *supra*.

12 *Ie* under the School Standards and Framework Act 1998 Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

13 *Ie* prescribed by regulations: *ibid* s 142(1). As to the making of regulations generally under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. At the date at which this volume states the law, no such regulations had been made.

14 *Ibid* Sch 26 para 8(3)(b). See note 2 *supra*.

15 *Ibid* Sch 26 para 8(4) (Sch 26 para 8(4), (5) substituted, and Sch 26 para 8(5A), (5B) added, by the Education Act 2002 Sch 14 para 2(1), (3)). See note 2 *supra*.



16 School Standards and Framework Act 1998 Sch 26 para 8(5) (as substituted: see note 15 supra). See note 2 supra.

17 Ibid Sch 26 para 8(5A) (as added: see note 15 supra). See note 2 supra. Any fees received by the Chief Inspector under Sch 26 (as amended) must be paid into the Consolidated Fund: see s 139(2)(b) (amended by virtue of the Learning and Skills Act 2000 s 73(3)(a)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

18 School Standards and Framework Act 1998 Sch 26 para 8(5B) (as added: see note 15 supra). References in Sch 26 (as amended) to a condition imposed under Sch 26 para 8(5B) (as added) include a condition imposed under Sch 26 para 9(3) (see the text and notes 31-33 infra): Sch 26 para 9(4) (amended by the Education Act 2002 Sch 14 para 3). See note 2 supra.

19 School Standards and Framework Act 1998 Sch 26 para 8(6) (amended by the Education Act 2002 Sch 14 para 2(1), (4)). See note 2 supra.

20 School Standards and Framework Act 1998 Sch 26 para 8(7) (amended by the Education Act 2002 Sch 14 para 2(1), (4)). See note 2 supra.

21 School Standards and Framework Act 1998 Sch 26 para 8(8). See note 2 supra.

22 Ibid Sch 26 para 9(1). See note 2 supra.

23 Ie under ibid Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

24 Ibid Sch 26 para 9(2)(a). See note 2 supra.

25 Ie under ibid Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

26 Ibid Sch 26 para 9(2)(b). See note 2 supra.

27 Ie imposed under ibid Sch 26 para 8(5B) (as added): see the text and note 18 supra.

28 Ibid Sch 26 para 9(2)(c) (amended by the Education Act 2002 Sch 14 para 3). See note 2 supra.

29 Ie under the School Standards and Framework Act 1998 Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

30 Ibid Sch 26 para 9(2)(d). See note 2 supra.

31 Ie by ibid Sch 26 para 9(1): see the text and note 22 supra.

32 Ibid Sch 26 para 9(3)(a). See note 2 supra.

33 Ibid Sch 26 para 9(3)(b). See note 2 supra.

34 As to persons aggrieved see **JUDICIAL REVIEW** vol 61 (2010) PARA 656.

35 School Standards and Framework Act 1998 Sch 26 para 10(1)(a). The text refers to a renewal of registration under Sch 26 para 8 (as amended): see the text and notes 1-21 supra. See note 2 supra.

36 Ibid Sch 26 para 10(1)(b). As to the conditions that may be imposed under Sch 26 para 8 (as amended) see the text to note 18 supra. See note 2 supra.

37 Ibid Sch 26 para 10(1)(c). As to the removal of names from the register under Sch 26 para 9 (as amended) see the text and notes 22-33 supra. See note 2 supra.

38 Ibid Sch 26 para 10(1). An appeal under Sch 26 para 10(1) against a decision of the Chief Inspector must be made to a tribunal with the same constitution as a tribunal to hear an appeal under the School Inspections Act 1996 s 9 (as amended; prospectively repealed) (see PARA 1196 ante); and s 9(5), Sch 2 paras 2, 3 (prospectively repealed) (procedure; staff) (see PARAS 1197-1198 ante) apply to tribunals to hear appeals under the School Standards and Framework Act 1998 Sch 26 para 10(1) as they apply to tribunals to hear appeals under the School Inspections Act 1996 s 9 (as amended; prospectively repealed): School Standards and Framework Act 1998 Sch 26 para 10(2) (amended by the Education Act 2002 Sch 14 para 5(1), (3)). The Education (Registered Inspectors of Schools Appeal Tribunal and Registered Nursery Education Inspectors Appeal Tribunal) (Procedure) Regulations 1999, SI 1999/265 (amended by SI 2001/1149), have been made under the School Standards and Framework Act 1998 Sch 26 para 10(2) (as amended). See note 2 supra.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), an appeal under the School Standards and Framework Act 1998 Sch 26 para 10(1) must be made to a tribunal with the same constitution as a tribunal to hear an appeal under the Education Act 2005 s 27 (not yet in force) (see PARA 1235 ante); and s 27(6), Sch 3 para 2 (not yet in force) (procedure: see PARA 1237 ante) and Sch 3 para 3 (not yet in force) (staff: see PARA 1236 ante) apply to tribunals to hear appeals under the School Standards and Framework Act 1998 Sch 26 para 10(1) as they apply to tribunals to hear appeals under the Education Act 2005 s 27 (not yet in force): School Standards and Framework Act 1998 Sch 26 para 10(2) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 16(1), (4)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

39 School Standards and Framework Act 1998 Sch 26 para 10(3)(a), (b). This provision does not apply where the Chief Inspector is satisfied that the circumstances of the case justify the decision in question taking effect immediately or earlier than would otherwise be the case (Sch 26 para 10(4)(a)), and notifies the person concerned to that effect (Sch 26 para 10(4)(b)). See note 2 supra.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the reference to the Chief Inspector in the School Standards and Framework Act 1998 Sch 26 para 10(4) is amended so as to refer to the Chief Inspector for Wales: see Sch 26 para 10(4) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 16(1), (5)). At the date at which this volume states the law, no such day had been appointed.

40 School Standards and Framework Act 1998 Sch 26 para 10(5)(a). See note 2 supra.

41 Ibid Sch 26 para 10(5)(b). See note 2 supra.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the reference in the text to the Chief Inspector is amended so as to refer to the Chief Inspector for Wales: see the School Standards and Framework Act 1998 Sch 26 para 10(5)(b) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8, 16(1), (5)). At the date at which this volume states the law, no such day had been appointed.

## **UPDATE**

### **1295-1302 Inspection of Nursery Education in Wales**

These provisions now in force: SI 2006/1338.

### **1298 Registration of nursery education inspectors**

NOTE 2--1998 Act s 122(1) amended: Childcare Act 2006 Sch 2 para 33.

NOTE 17--1998 Act s 139(2)(b) amended: Education and Inspections Act 2006 Sch 14 para 34, Sch 18 Pt 5.

NOTE 38--SI 1999/265 further amended: SI 2008/2683.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1299. Training for registered nursery education inspectors.

### **1299. Training for registered nursery education inspectors.**

A registered nursery education inspector<sup>1</sup> must not conduct an inspection<sup>2</sup> unless he has, in the opinion of the Chief Inspector<sup>3</sup>, satisfactorily completed a course of training provided by the Chief Inspector or complying with arrangements approved by him<sup>4</sup>. However, this requirement does not apply in such circumstances as may be specified, either generally or in relation to a particular case or class of case, by the Chief Inspector<sup>5</sup>. Where the Chief Inspector provides such training he may charge such fees as are reasonable for the purpose of recovering the whole, or part, of the cost of providing it<sup>6</sup>.

1 References to registered nursery education inspectors are references to persons registered under the School Standards and Framework Act 1998 Sch 26 para 8 (as amended) (see PARA 1298 ante): Sch 26 para 2(2).

As from a day to be appointed, in Sch 26 (as amended), references to registered nursery education inspectors are references to persons registered Welsh under Sch 26 para 8 (as amended; prospectively amended): Sch 26 para 2(2) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8 10(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 le under the School Standards and Framework Act 1998 Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

3 For the meaning of 'Chief Inspector' see PARA 1295 note 1 ante.

4 School Standards and Framework Act 1998 Sch 26 para 11(1). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 11 is amended so that it applies exclusively to the Chief Inspector for Wales and to registered Welsh nursery inspectors. At the date at which this volume states the law, no such day had been appointed in relation to Wales.

5 Ibid Sch 26 para 11(2).

6 Ibid Sch 26 para 11(3). Any fees received by the Chief Inspector under Sch 26 (as amended) must be paid into the Consolidated Fund: see s 139(2)(b) (amended by virtue of the Learning and Skills Act 2000 s 73(3)(a)). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

## **UPDATE**

### **1295-1302 Inspection of Nursery Education in Wales**

These provisions now in force: SI 2006/1338.

### **1299 Training for registered nursery education inspectors**

NOTE 6--1998 Act s 139(2)(b) amended: Education and Inspections Act 2006 Sch 14 para 34, Sch 18 Pt 5.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1300. Impartiality in conducting inspections.

### **1300. Impartiality in conducting inspections.**

A person must not undertake an inspection<sup>1</sup> of nursery education<sup>2</sup> provided by a person at any premises<sup>3</sup>, or accompany a person undertaking such an inspection, if he has, or has at any time had, any connection with the person by whom the education is provided (or, where it is provided by a body, any member of the body)<sup>4</sup>, or any person employed<sup>5</sup> by that person (whether or not at the premises), of a kind which might reasonably be taken to raise doubts about his ability to act impartially<sup>6</sup>.

1    Ile under the School Standards and Framework Act 1998 s 122(1), Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante): Sch 26 para 12.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 12 is amended so that it applies to an inspection under Sch 26 para 6B (prospectively added) (see PARA 1296 ante). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2    For the meaning of 'nursery education' see PARA 85 ante.

3    As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4    Ibid Sch 26 para 12(a).

5    For the meaning of 'employed' see PARA 355 note 14 ante.

6    School Standards and Framework Act 1998 Sch 26 para 12(b).

### **UPDATE**

### **1295-1302 Inspection of Nursery Education in Wales**

These provisions now in force: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1301. Rights of entry etc in relation to inspections.

### **1301. Rights of entry etc in relation to inspections.**

A registered nursery education inspector<sup>1</sup> or member of the inspectorate<sup>2</sup> conducting an inspection<sup>3</sup>, or a member of the inspectorate monitoring<sup>4</sup> such an inspection<sup>5</sup> has, at all reasonable times, a right of entry to the premises<sup>6</sup> at which the relevant nursery education<sup>7</sup> concerned is provided<sup>8</sup>. He also has a right to inspect, and take copies of any records<sup>9</sup> kept by the person providing that education, and of any other documents<sup>10</sup> containing information relating to the provision of that education, which he requires for the purposes of conducting or (as the case may be) monitoring the inspection<sup>11</sup>.

Any person authorised to inspect records or other documents<sup>12</sup>:

2423 (1) is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question<sup>13</sup>; and

2424 (2) may require: (a) the person by whom or on whose behalf the computer is or has been so used; or (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material<sup>14</sup>,

to afford him such assistance as he may reasonably require (including, in particular, making information available for inspection or copying in a legible form)<sup>15</sup>.

It is an offence wilfully to obstruct a member of the inspectorate or a registered nursery education inspector in the exercise of his functions<sup>16</sup> in relation to an inspection<sup>17</sup>.

1 References to registered nursery education inspectors are references to persons registered under the School Standards and Framework Act 1998 Sch 26 para 8 (as amended) (see PARA 1298 ante): Sch 26 para 2(2).

As from a day to be appointed, in Sch 26 (as amended), references to registered nursery education inspectors are references to persons registered Welsh under Sch 26 para 8 (as amended; prospectively amended): Sch 26 para 2(2) (prospectively amended by the Education Act 2005 Sch 7 Pt 2 paras 8 10(1), (2)). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 For the meaning of 'members of the inspectorate' see PARA 1296 note 5 ante.

3 Ie under the School Standards and Framework Act 1998 Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 ante).

4 Ie under ibid Sch 26 para 17 (prospectively substituted) (see PARA 1297 ante).

5 Ibid Sch 26 para 18(1). As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2) (c), the School Standards and Framework Act 1998 Sch 26 para 18(1) is substituted so that it applies to a registered Welsh nursery education inspector or a member of the Welsh inspectorate conducting an inspection under Sch 26 para 6B (prospectively added) (see PARA 1296 ante) or a member of the Welsh inspectorate monitoring under Sch 26 para 17 (prospectively substituted) (see PARA 1297 ante) an inspection under Sch 26 para 6B (prospectively added): Sch 26 para 18(1)(b), (c) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 24(1), (2)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales. For the meaning of 'members of the Welsh inspectorate' see PARA 1296 note 17 ante.

6 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

7 For the meaning of 'relevant nursery education' see PARA 1295 note 3 ante.

8 School Standards and Framework Act 1998 Sch 26 para 18(2)(a).

9 'Records' includes information recorded in any form: *ibid* Sch 26 para 18(6).

10 'Documents' includes information recorded in any form: *ibid* Sch 26 para 18(6).

11 *Ibid* Sch 26 para 18(2)(b).

12 School Inspections Act 1996 s 42(1) (amended by the Education Act 1997 s 42, Sch 6 para 8(a)); applied by the School Standards and Framework Act 1998 Sch 26 para 18(3).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 18(3) is substituted so that the Education Act 2005 s 58 (inspection of computer records: in relation to Wales: see PARA 1231 ante) applies for the purposes of the School Standards and Framework Act 1998 Sch 26 para 18(3) (as substituted) as it applies for the purposes of the Education Act 2005 Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in relation to Wales) (see PARA 1227 et seq ante): School Standards and Framework Act 1998 Sch 26 para 18(3) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 24(1), (3)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

13 School Inspections Act 1996 s 42(a) (as amended: see note 12 supra); applied by the School Standards and Framework Act 1998 Sch 26 para 18(3). See note 12 supra.

14 School Inspections Act 1996 s 42(b); applied by the School Standards and Framework Act 1998 Sch 26 para 18(3). See note 12 supra.

15 School Inspections Act 1996 s 42(1) (amended by the Education Act 1997 Sch 6 para 8(b)); applied by the School Standards and Framework Act 1998 Sch 26 para 18(3). See note 12 supra.

16 As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by virtue of *ibid* s 142(8).

17 *Ibid* Sch 26 para 18(4). Any person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: Sch 26 para 18(5). As to the standard scale see PARA 481 note 4 ante. See note 12 supra.

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 18(4) is substituted so that it is an offence intentionally to obstruct a member of the Welsh inspectorate or a registered Welsh nursery education inspector in the exercise of his functions in relation to an inspection under Sch 26 para 6B (prospectively added) (see PARA 1296 ante): School Standards and Framework Act 1998 Sch 26 para 18(4) (prospectively substituted by the Education Act 2005 Sch 7 Pt 2 paras 8, 24(1), (3)). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

## UPDATE

### 1295-1302 Inspection of Nursery Education in Wales

These provisions now in force: SI 2006/1338.

### 1301 Rights of entry etc in relation to inspections

TEXT AND NOTES 5, 17--1998 Act Sch 26 para 18(1), (4) amended: Childcare Act 2006 Sch 2 para 36, Sch 3 Pt 2.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(3) NURSERY EDUCATION/(ii) Inspection of Nursery Education in Wales/1302. Reports of inspections.

### **1302. Reports of inspections.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>. Where a person has conducted an inspection<sup>2</sup> he must make his report in writing to the Chief Inspector<sup>3</sup> within such period as may be prescribed<sup>4</sup>, subject to any extension not exceeding three months which the Chief Inspector may consider necessary<sup>5</sup>. Once the report of an inspection has been made to the Chief Inspector he must without delay send a copy of it to such authorities and persons as may be prescribed<sup>6</sup>. The Chief Inspector may arrange for the report to be published by electronic means<sup>7</sup>. For the purposes of the law of defamation, any such report published by the Chief Inspector is privileged unless the publication is shown to be made with malice<sup>8</sup>.

As from a day to be appointed, the following provisions have effect<sup>9</sup>. Where a person has conducted an inspection<sup>10</sup> he must make his report in writing to the Chief Inspector<sup>11</sup> within such period as may be prescribed<sup>12</sup>, subject to any extension not exceeding three months which the Chief Inspector may consider necessary<sup>13</sup>. Once the report of an inspection has been made to the Chief Inspector, he must without delay send a copy of it to such authorities and persons as may be prescribed<sup>14</sup>. Regulations may require any prescribed person to whom a copy of the report is sent to make a copy of the report available for inspection by prescribed persons<sup>15</sup>. The Chief Inspector may arrange for the report to be published by electronic means<sup>16</sup>. For the purposes of the law of defamation, any such report published by the Chief Inspector is privileged unless the publication is shown to be made with malice<sup>17</sup>.

1 The School Standards and Framework Act 1998 s 122(1), Sch 26 para 13 is repealed and replaced by Sch 26 para 13B (prospectively added) (see the text and notes 9-17 *infra*) as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c). However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

2 *Ie* under the School Standards and Framework Act 1998 Sch 26 para 6 (as amended; prospectively substituted) (see PARA 1296 *ante*).

3 For the meaning of 'Chief Inspector' see PARA 1295 note 1 *ante*.

4 *Ie* prescribed by regulations: School Standards and Framework Act 1998 s 142(1). As to the prescribed periods see the Education (Inspection of Nursery Education) (Wales) Regulations 1999, SI 1999/1441, reg 3. As to the making of regulations under the School Standards and Framework Act 1998 generally see PARA 82 note 15 *ante*.

5 School Standards and Framework Act 1998 Sch 26 para 13(1). See note 1 *supra*.

6 *Ibid* Sch 26 para 13(2). As to the prescribed persons see the Education (Inspection of Nursery Education) (Wales) Regulations 1999, SI 1999/1441, reg 3 (amended by SI 2005/2913).

7 School Inspections Act 1996 s 42A(2) (s 42A added by the School Standards and Framework Act 1998 s 134(1)); applied by the School Standards and Framework Act 1998 Sch 26 para 13(3). See note 1 *supra*.

8 School Inspections Act 1996 s 42A(3) (as added: see note 7 *supra*); applied by the School Standards and Framework Act 1998 Sch 26 para 13(3). See note 1 *supra*. As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 *et seq*, 149.

9 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(c), the School Standards and Framework Act 1998 Sch 26 para 13B (as added) is to come into force. However, at the date at which this volume states the law, no such day had been appointed in relation to Wales.

10 *Ie* under *ibid* Sch 26 para 6B (prospectively added) (see PARA 1296 *ante*).

11 See PARA 1295 note 1 ante.

12 At the date at which this volume states the law, no regulations had been made under the School Standards and Framework Act 1998 Sch 26 para 13B (prospectively added); but see note 4 supra.

13 Ibid Sch 26 para 13B(1) (Sch 26 para 13B added by the Education Act 2005 s 53, Sch 7 Pt 2 paras 8, 20). See note 9 supra.

14 School Standards and Framework Act 1998 Sch 26 para 13B(2) (as added: see note 13 supra). See notes 6, 9 supra.

15 Ibid Sch 26 para 13B(3) (as added: see note 13 supra). See note 9 supra.

16 Education Act 2005 s 29(2); applied by the School Standards and Framework Act 1998 Sch 26 para 13B(4) (as added: see note 13 supra). See note 9 supra.

17 Education Act 2005 s 29(3); applied by the School Standards and Framework Act 1998 Sch 26 para 13B(4) (as added: see note 13 supra). This provision does not limit any privilege subsisting apart from the Education Act 2005 s 29(3) (as applied): s 29(4); applied by the School Standards and Framework Act 1998 Sch 26 para 13B(4) (as so added). See note 9 supra.

## **UPDATE**

### **1295-1302 Inspection of Nursery Education in Wales**

These provisions now in force: SI 2006/1338.

### **1302 Reports of inspections**

NOTE 1--Day now appointed: SI 2006/1338.

1998 Act s 122(1) amended: Childcare Act 2006 Sch 2 para 33.



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## **(4) ADULT LEARNING AND FURTHER EDUCATION**

### **(i) Local Education Authority Review and Inspection**

#### **1303. Inspection etc of local authority institutions other than schools.**

In relation to any local education authority institution<sup>1</sup> maintained or assisted<sup>2</sup> by the local education authority, the authority must keep under review the quality of education provided, the educational standards achieved and whether the financial resources made available are managed efficiently<sup>3</sup>, and may cause an inspection to be made by persons authorised by it<sup>4</sup>. A local education authority must not authorise any person to inspect any institution unless it is satisfied that he is suitably qualified to do so<sup>5</sup>. A person who wilfully obstructs any person so authorised to inspect an institution<sup>6</sup> in the exercise of his functions is guilty of an offence and liable on summary conviction to a fine<sup>7</sup>.

1 For these purposes, 'local education authority institution' means an educational institution, other than a school, maintained or assisted by a local education authority: Further and Higher Education Act 1992 s 55(7)(c). As to local education authorities see PARA 20 ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 115(3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 para 46(b)).

2 As to the meaning of 'assist' see PARA 45 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (as amended: see note 1 supra).

3 Ibid s 55(4)(a). Any function of a local education authority in England which is conferred by or under the Further and Higher Education Act 1992 s 55 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (I). For the meaning of 'England' see PARA 52 note 11 ante.

4 Further and Higher Education Act 1992 s 55(4)(b). See note 3 supra.

5 Ibid s 55(5). See note 3 supra.

6 ie under or by virtue of ibid s 55 (as amended).

7 Ibid s 55(6). The fine must not exceed level 4 on the standard scale: s 55(6). As to the standard scale see PARA 481 note 4 ante.

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## **(ii) Inspections in England**

### **A. THE ADULT LEARNING INSPECTORATE**

#### **(A) IN GENERAL**

##### **1304. Establishment of the Adult Learning Inspectorate.**

The Adult Learning Inspectorate was set up as a body corporate under the Learning and Skills Act 2000<sup>1</sup>, with a remit to inspect adult learning in England<sup>2</sup>. The inspectorate consists of nine members appointed by the Secretary of State<sup>3</sup>, one of whom the Secretary of State must appoint as chairman and another of whom he must appoint as the inspectorate's chief officer<sup>4</sup>. The chief officer is known as the Chief Inspector of Adult Learning<sup>5</sup>. In appointing any member, the Secretary of State must have regard to the desirability of appointing a person who has experience relevant to the inspectorate's functions<sup>6</sup>.

The inspectorate is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown<sup>7</sup>, and the inspectorate's property is not to be regarded as property of the Crown or as property held by or on its behalf<sup>8</sup>.

The Secretary of State may make grants to the inspectorate of such amounts and subject to such conditions as he thinks fit<sup>9</sup>. The conditions may:

- 2425 (1) set the inspectorate's budget for any of its financial years<sup>10</sup>;
- 2426 (2) require it to use the grants for specified purposes<sup>11</sup>;
- 2427 (3) enable the Secretary of State to require the repayment, in whole or in part, of sums paid by him if any condition imposed is not complied with<sup>12</sup>;
- 2428 (4) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the conditions remains unpaid<sup>13</sup>.

1 Learning and Skills Act 2000 s 52(1).

2 As to the remit of the Adult Learning Inspectorate see PARA 1313 post. The remit of the Adult Learning Inspectorate does not extend to Wales. As to inspection of adult learning in Wales see PARA 1331 et seq post.

3 Learning and Skills Act 2000 s 52(2). As to the Secretary of State see PARA 52 ante.

4 Ibid s 52(3).

5 Ibid s 52(4).

6 Ibid s 52(5).

7 Ibid s 52(8), Sch 6 para 16(1).

8 Ibid Sch 6 para 16(2). As to Crown property see CROWN PROPERTY.

9 Ibid s 52(6).

10 Ibid s 52(7)(a). The first financial year of the inspectorate is the period starting with the date on which it was established and ending with the second 31 March following that date; and, after that, each successive period of 12 months: Sch 6 para 15. The inspectorate began work on 1 April 2001.

11 Ibid s 52(7)(b).

12 Ibid s 52(7)(c).

13 Ibid s 52(7)(d).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

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### **1305. Tenure of members.**

A person is to hold and vacate office as a member or as chairman or chief officer of the Adult Learning Inspectorate<sup>1</sup> in accordance with the terms of his appointment<sup>2</sup>. If a person is to be appointed<sup>3</sup> as chairman or chief officer and is not already a member of the inspectorate, the Secretary of State<sup>4</sup> must appoint him as a member for the same term as his appointment as chairman or chief officer<sup>5</sup>. If a person is to be so appointed and is already a member of the inspectorate but his term of appointment as such would end before his term of appointment as chairman or chief officer ends, the Secretary of State must extend his term of appointment as a member so that it ends when his appointment as chairman or chief officer ends<sup>6</sup>. On ceasing to be a member, chairman or chief officer a person is eligible for re-appointment<sup>7</sup>. A person may at any time by notice in writing to the Secretary of State resign his office as a member or chairman or chief officer<sup>8</sup>.

If the Secretary of State is satisfied that a member has been absent from meetings of the inspectorate for a period longer than six consecutive months without the inspectorate's permission<sup>9</sup>, or is unable or unfit to carry out the functions of a member<sup>10</sup>, the Secretary of State may by notice in writing to the member remove him from his office, which then becomes vacant<sup>11</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 1(1). As to the appointment of members of the inspectorate see PARA 1304 ante.

3 He appointed under *ibid* s 52(3): see PARA 1304 ante.

4 As to the Secretary of State see PARA 52 ante.

5 Learning and Skills Act 2000 Sch 6 para 1(2).

6 *Ibid* Sch 6 para 1(3).

7 *Ibid* Sch 6 para 1(4).

8 *Ibid* Sch 6 para 1(5).

9 *Ibid* Sch 6 para 2(1)(a).

10 *Ibid* Sch 6 para 2(1)(b).

11 *Ibid* Sch 6 para 2(2).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

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### **1306. Salaries, pensions etc.**

The Adult Learning Inspectorate<sup>1</sup> must pay in respect of its members such salaries and fees and such travelling, subsistence and other allowances as the Secretary of State<sup>2</sup> may determine<sup>3</sup>. Such a payment may be made to the member concerned or, if the member consents, to another person<sup>4</sup>. As regards any member in whose case the Secretary of State may so determine, the inspectorate must pay or make provision for the payment of such sums by way of pension, allowances and gratuities to or in respect of him as the Secretary of State may determine<sup>5</sup>. If a person ceases to be a member and it appears to the Secretary of State that there are special circumstances making it right that he should receive compensation, the Secretary of State may direct the inspectorate to make to that person a payment of such amount as the Secretary of State may determine<sup>6</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Learning and Skills Act 2000 s 52(8), Sch 6 para 3(1).

4 Ibid Sch 6 para 3(2).

5 Ibid Sch 6 para 3(3).

6 Ibid Sch 6 para 3(4).

### **UPDATE**

#### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

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### **1307. Staff.**

The Adult Learning Inspectorate<sup>1</sup> may appoint such employees, including inspectors, as it thinks fit<sup>2</sup>. A person employed as an inspector is known as an Inspector of Adult Learning<sup>3</sup>. In appointing inspectors, the inspectorate must have regard to the need to appoint persons who have the appropriate experience and expertise<sup>4</sup>. The inspectorate must pay to its employees such remuneration and allowances as it may determine<sup>5</sup> and its employees are to be appointed on such other terms as the inspectorate may determine<sup>6</sup>. Such a determination<sup>7</sup> requires the Secretary of State's<sup>8</sup> approval<sup>9</sup>.

Employment with the inspectorate is included among the kinds of employment to which a scheme relating to the pensions, allowances or gratuities which are to be paid, or may be paid, by the Minister for the Civil Service<sup>10</sup> under the Superannuation Act 1972<sup>11</sup> can apply<sup>12</sup>. The inspectorate must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase<sup>13</sup> in the sums payable under the Superannuation Act 1972 out of money provided by Parliament<sup>14</sup>. If an employee of the inspectorate is, by reference to that employment, a participant in such a scheme<sup>15</sup> and is also a member of the inspectorate, the Secretary of State may determine that his service as such a member is to be treated for the purposes of the scheme as service as an employee of the inspectorate, whether or not any benefits are payable<sup>16</sup> to or in respect of him<sup>17</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 4(1).

3 Ibid Sch 6 para 4(2).

4 Ibid Sch 6 para 4(3).

5 Ibid Sch 6 para 5(1).

6 Ibid Sch 6 para 5(2).

7 Ie a determination under ibid Sch 6 para 5.

8 As to the Secretary of State see PARA 52 ante.

9 Learning and Skills Act 2000 Sch 6 para 5(3).

10 As to the Minister for the Civil Service see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 427, 549-550.

11 Ie a scheme under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

12 Learning and Skills Act 2000 Sch 6 para 6(1).

13 Ie attributable to ibid Sch 6 para 6(1): see the text to notes 10-12 supra.

14 Ibid Sch 6 para 6(2).

15 Ie a scheme under the Superannuation Act 1972 s 1 (as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567.

16     le whether or not any benefits are payable to or in respect of him as a result of the Learning and Skills Act 2000 Sch 6 para 3: see PARA 1306 ante.

17     Ibid Sch 6 para 6(3).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.



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### **1308. Committees and delegation of functions.**

The Adult Learning Inspectorate<sup>1</sup> may establish such committees as it considers appropriate<sup>2</sup>. The members of any such committee are to be appointed by the inspectorate and may include persons who are not members of the inspectorate<sup>3</sup>.

The inspectorate may authorise the chairman, the chief officer<sup>4</sup> or one of its committees to exercise such of its functions as it may determine<sup>5</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 7(1).

3 Ibid Sch 6 para 7(2).

4 As to the appointment of the chairman and the chief officer see PARA 1304 ante.

5 Learning and Skills Act 2000 Sch 6 para 9.

### **UPDATE**

#### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(A) In general/1309. Members' interests.

### **1309. Members' interests.**

A member of the Adult Learning Inspectorate<sup>1</sup> who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the inspectorate or a committee of the inspectorate must disclose the nature of his interest to the meeting<sup>2</sup>. If such a disclosure is made it must be recorded in the minutes of the meeting<sup>3</sup>, and the member must not take any part in any deliberation or decision of the inspectorate or any committee of the inspectorate with respect to that matter<sup>4</sup>. If a member is not present at a meeting at which a matter in which he is interested is brought up for consideration, the requirement to disclose the nature of his interest<sup>5</sup> only applies to him if he was aware that the matter would be brought up for consideration at the meeting<sup>6</sup>. A member need not attend in person at a meeting in order to make a disclosure which he is so required to make if he takes reasonable steps to secure that the disclosure is made by a notice which is read and considered at the meeting<sup>7</sup>.

The Secretary of State<sup>8</sup> may remove such a disability<sup>9</sup> subject to such conditions as he considers appropriate<sup>10</sup>. This power includes power to remove, either indefinitely or for any period, a disability which would otherwise attach to any member, or members of any description, by reason of such interests, and in respect of such matters, as may be specified or described by the Secretary of State<sup>11</sup>.

Nothing in the provisions described above precludes any member from taking part in the consideration or discussion of, or in voting on, any question whether an application should be made to the Secretary of State in relation to the exercise of his power<sup>12</sup> to remove a disability<sup>13</sup>.

1 As to the establishment of the Adult Learning Inspectorate, and as to the appointment of members of the inspectorate, see PARA 1304 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 10(1). For the purposes of Sch 6 para 10(1), a general notification given at a meeting by a member to the effect that he has an interest in a specified company, firm or other organisation, and is to be regarded as interested in any matter involving that company, firm or other organisation, is to be regarded as a sufficient disclosure of his interest in relation to any such matter: Sch 6 para 10(4).

The following cases concerned whether a person had an interest in a matter considered at a meeting: see *Noble v Inner London Education Authority* (1983) 82 LGR 291, CA (decided under previous legislation); *Bostock v Kay* (1989) 87 LGR 583, 153 JP 549, 153 LG Rev 728, CA; *R v Governors of Small Heath School, ex p Birmingham City Council* [1990] COD 23, CA; *R v Governors of Bacon's School, ex p Inner London Education Authority* [1990] COD 414, (1990) Times, 12 April, DC; *R v Kirklees Metropolitan Borough Council, ex p Beaumont* [2001] LGR 187, [2001] ELR 204, (2000) Times, 22 November; *R (on the application of A) v Hertfordshire County Council* [2001] ELR 239.

3 Learning and Skills Act 2000 Sch 6 para 10(2)(a).

4 Ibid Sch 6 para 10(2)(b).

5 Ie the requirement under ibid Sch 6 para 10(1): see the text and notes 1-2 supra.

6 Ibid Sch 6 para 10(3).

7 Ibid Sch 6 para 10(5).

8 As to the Secretary of State see PARA 52 ante.

- 9     le a disability under the Learning and Skills Act 2000 Sch 6 para 10.
- 10    Ibid Sch 6 para 10(6).
- 11    Ibid Sch 6 para 10(7).
- 12    le the power conferred by ibid Sch 6 para 10(6): see the text to notes 8-10 supra.
- 13    Ibid Sch 6 para 10(8).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(A) In general/1310. Proceedings.

### **1310. Proceedings.**

A representative of the Secretary of State<sup>1</sup> is entitled to attend and take part in any deliberations, but not in decisions, at meetings of the Adult Learning Inspectorate<sup>2</sup>. The inspectorate must provide the Secretary of State with such copies, made in such form, as he may require of any documents distributed to members of the inspectorate<sup>3</sup>.

The validity of any proceedings of the inspectorate is not affected by a vacancy among the members or by any defect in the appointment of a member<sup>4</sup>.

The inspectorate may regulate its own procedure<sup>5</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 11(1). As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

3 Ibid Sch 6 para 11(2).

4 Ibid Sch 6 para 11(3).

5 Ibid Sch 6 para 11(4). This is expressed to be subject to Sch 6 paras 1-10 (see PARAS 1305-1309 ante).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(A) In general/1311. Seal and proof of instruments.

### **1311. Seal and proof of instruments.**

The application of the seal of the Adult Learning Inspectorate<sup>1</sup> is authenticated by the signature of the chairman or of some other person authorised, generally or specially, by the inspectorate to act for that purpose<sup>2</sup>, and of one other member<sup>3</sup>. If a document purports to be an instrument made or issued by or on behalf of the inspectorate and to be duly executed under the inspectorate's seal<sup>4</sup>, or to be signed or executed by a person authorised by the inspectorate to act in that behalf<sup>5</sup>, it must be received in evidence and treated, without further proof, as being so made or issued unless the contrary is shown<sup>6</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 12(a).

3 Ibid Sch 6 para 12(b).

4 Ibid Sch 6 para 13(1)(a).

5 Ibid Sch 6 para 13(1)(b).

6 Ibid Sch 6 para 13(2). As to the rules of civil evidence see CIVIL PROCEDURE vol 11 (2009) PARA 749 et seq.

### **UPDATE**

#### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(A) In general/1312. Accounts.

### **1312. Accounts.**

The Adult Learning Inspectorate<sup>1</sup> must:

- 2429 (1) keep proper accounts and proper records in relation to them<sup>2</sup>;
- 2430 (2) prepare a statement of accounts in respect of each financial year of the inspectorate<sup>3</sup>; and
- 2431 (3) send copies of the statement to the Secretary of State<sup>4</sup> and to the Comptroller and Auditor General<sup>5</sup> before the end of August next following the financial year to which the statement relates<sup>6</sup>.

The statement of accounts must comply with any directions given by the Secretary of State as to the information to be contained in it<sup>7</sup>, the manner in which the information is to be presented<sup>8</sup>, and the methods and principles according to which the statement is to be prepared<sup>9</sup>. The statement of accounts must contain such additional information as the Secretary of State may require to be provided for the information of Parliament<sup>10</sup>.

The Comptroller and Auditor General must examine, certify and report on each statement so received by him<sup>11</sup>, and he must lay copies of each statement and of his report before each House of Parliament<sup>12</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 14(1)(a).

3 Ibid Sch 6 para 14(1)(b).

4 As to the Secretary of State see PARA 52 ante.

5 As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

6 Learning and Skills Act 2000 Sch 6 para 14(1)(c).

7 Ibid Sch 6 para 14(2)(a).

8 Ibid Sch 6 para 14(2)(b).

9 Ibid Sch 6 para 14(2)(c).

10 Ibid Sch 6 para 14(3).

11 Ibid Sch 6 para 14(4)(a).

12 Ibid Sch 6 para 14(4)(b).

### **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(B) Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning/1313. Remit of the inspectorate.

## (B) FUNCTIONS OF THE ADULT LEARNING INSPECTORATE AND THE CHIEF INSPECTOR OF ADULT LEARNING

### **1313. Remit of the inspectorate.**

The remit of the Adult Learning Inspectorate<sup>1</sup> is:

- 2432 (1) further education<sup>2</sup> for persons aged 19 or over which is wholly or partly funded by the Learning and Skills Council for England<sup>3</sup>;
- 2433 (2) training for persons aged 16 or over so far as it takes place wholly or partly at the premises of an employer and is wholly or partly funded by the Council<sup>4</sup>;
- 2434 (3) further education funded by a local education authority<sup>5</sup> in England for persons aged 19 or over<sup>6</sup>;
- 2435 (4) training for persons aged 16 or over which is funded<sup>7</sup> by the Secretary of State<sup>8</sup>;
- 2436 (5) such other education or training as may be prescribed by regulations made by the Secretary of State<sup>9</sup>.

Regulations made under head (5) above may include within the inspectorate's remit the training of or for teachers, lecturers, trainers or other persons engaged in the provision of education or training which otherwise falls within the inspectorate's remit<sup>10</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 For the meaning of 'further education' see PARA 18 ante; definition applied by the Learning and Skills Act 2000 s 53(3).

3 Ibid s 53(1)(a). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

4 Ibid s 53(1)(b).

5 As to local education authorities see PARA 20 ante.

6 Learning and Skills Act 2000 s 53(1)(c).

7 I.e. arrangements under the Employment and Training Act 1973 s 2 (as substituted and amended): see EMPLOYMENT vol 40 (2009) PARA 563.

8 Learning and Skills Act 2000 s 53(1)(d). As to the Secretary of State see PARA 52 ante.

9 Ibid s 53(1)(e). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the prescribed education and training see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 10; and the Education (Grants etc) (Dance and Drama) (England) Regulations 2001, SI 2001/2857, reg 14.

10 Learning and Skills Act 2000 s 53(2). See note 9 supra.

### **UPDATE**



### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

### **1313 Remit of the inspectorate**

NOTE 9--SI 2001/2857 reg 14 substituted: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(B) Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning/1314. Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning.

### **1314. Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning.**

The Adult Learning Inspectorate<sup>1</sup> must keep the Secretary of State<sup>2</sup> informed about:

- 2437 (1) the quality of the education and training within its remit<sup>3</sup>;
- 2438 (2) the standards achieved by those receiving that education and training<sup>4</sup>;  
and
- 2439 (3) whether the financial resources made available to those providing that education and training are managed efficiently and used in a way which provides value for money<sup>5</sup>.

When asked to do so by the Secretary of State, the inspectorate must give the Secretary of State advice on such matters relating to education or training within its remit as he may specify<sup>6</sup>.

When asked to do so by the Secretary of State, the Chief Inspector of Adult Learning<sup>7</sup> must conduct inspections of such education or training, or such class of education or training, within the inspectorate's remit, at such intervals, as the Secretary of State may specify<sup>8</sup>. Where such an inspection<sup>9</sup> has been completed, the Chief Inspector must make a written report on it if asked to do so by the Secretary of State<sup>10</sup>. The report must state whether the Chief Inspector considers the education or training inspected to be of a quality adequate to meet the reasonable needs of those receiving it<sup>11</sup>, and may deal with such other matters as he considers relevant<sup>12</sup>. The Chief Inspector must send copies of the report to:

- 2440 (a) the Secretary of State<sup>13</sup>;
- 2441 (b) the Learning and Skills Council for England<sup>14</sup>;
- 2442 (c) any local education authority<sup>15</sup> providing funds for the education or training inspected<sup>16</sup>; and
- 2443 (d) the provider of the inspected education or training<sup>17</sup>.

Copies may also be sent to such other persons as the Chief Inspector considers appropriate<sup>18</sup>. The Chief Inspector must arrange for the report to be published in such manner as he considers appropriate<sup>19</sup>.

The inspectorate is to have such other functions in connection with education and training within its remit as the Secretary of State may specify<sup>20</sup>, and the Chief Inspector is also to have such other functions in connection with education and training within the inspectorate's remit as the Secretary of State may specify<sup>21</sup>. Such functions<sup>22</sup> may include functions with respect to training of or for teachers, lecturers, trainers or other persons engaged in the provision of education or training which falls within the inspectorate's remit<sup>23</sup>.

In exercising their functions, the inspectorate and the Chief Inspector must have regard to such aspects of government policy as the Secretary of State may specify<sup>24</sup>.

- 1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.
- 2 As to the Secretary of State see PARA 52 ante.
- 3 Learning and Skills Act 2000 s 54(1)(a). As to the remit of the inspectorate see PARA 1313 ante.
- 4 Ibid s 54(1)(b).
- 5 Ibid s 54(1)(c).
- 6 Ibid s 54(2).
- 7 As to the appointment of the Chief Inspector of Adult Learning see PARA 1304 ante.
- 8 Learning and Skills Act 2000 s 54(3).
- 9 Ie under ibid s 54(3): see the text to note 7-8 supra.
- 10 Ibid s 55(1). For the purposes of the law of defamation a report published under a provision of, or made as a result of, Pt III (ss 52-72) (as amended) is privileged unless its publication is shown to have been made with malice: s 72(1). This does not limit any privilege subsisting apart from s 72(1): s 72(2). As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.
- 11 Ibid s 55(2)(a).
- 12 Ibid s 55(2)(b).
- 13 Ibid s 55(3)(a).
- 14 Ibid s 55(3)(b). As to the Learning and Skills Council for England see PARA 1072 et seq ante.
- 15 As to local education authorities see PARA 20 ante.
- 16 Learning and Skills Act 2000 s 55(3)(c).
- 17 Ibid s 55(3)(d).
- 18 Ibid s 55(4).
- 19 Ibid s 55(5).
- 20 Ibid s 54(4).
- 21 Ibid s 54(5).
- 22 Ie the functions specified under ibid s 54(4), (5): see the text to notes 20-21 supra.
- 23 Ibid s 54(6).
- 24 Ibid s 54(7).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(B) Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning/1315. General powers of the Adult Learning Inspectorate.

### **1315. General powers of the Adult Learning Inspectorate.**

The Adult Learning Inspectorate<sup>1</sup> may give advice to the Secretary of State<sup>2</sup> on any matter relating to education or training within its remit<sup>3</sup>. It may inspect, and report on, any education or training within its remit<sup>4</sup>. The inspectorate must send copies of a report of such an inspection<sup>5</sup> to:

- 2444 (1) the Secretary of State<sup>6</sup>;
- 2445 (2) the Learning and Skills Council for England<sup>7</sup>;
- 2446 (3) any local education authority<sup>8</sup> providing funds for the education or training inspected<sup>9</sup>; and
- 2447 (4) the provider of the inspected education or training<sup>10</sup>.

Copies may also be sent to such other persons as the inspectorate considers appropriate<sup>11</sup>. The inspectorate must arrange for the report to be published in such manner as it considers appropriate<sup>12</sup>.

The inspectorate may, if asked to do so by the provider of the education or training, inspect any education or training<sup>13</sup> which is not within its remit<sup>14</sup>, but which would be if it were funded in one of the ways<sup>15</sup> education and training within the inspectorate's remit is funded<sup>16</sup>. The inspectorate may arrange for a report of an inspection carried out as a result of such a request to be published<sup>17</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Learning and Skills Act 2000 s 56(1). As to the remit of the inspectorate see PARA 1313 ante.

4 Ibid s 56(2). As to the privilege attaching to such reports see PARA 1314 note 10 ante.

5 I.e. an inspection carried out otherwise than as a result of a request under ibid s 56(3): see the text and notes 13-16 infra.

6 Ibid s 56(5)(a).

7 Ibid s 56(5)(b). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

8 As to local education authorities see PARA 20 ante.

9 Learning and Skills Act 2000 s 56(5)(c).

10 Ibid s 56(5)(d).

11 Ibid s 56(6).

12 Ibid s 56(7).

13 Ibid s 56(3). The inspectorate may charge for the cost of an inspection conducted under s 56(3): s 56(4).

14 Ibid s 56(3)(a).

15     le one of the ways mentioned in *ibid* s 53: see PARA 1313 ante.

16     *Ibid* s 56(3)(b).

17     *Ibid* s 56(8).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(B) Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning/1316. Annual report of the Adult Learning Inspectorate.

### **1316. Annual report of the Adult Learning Inspectorate.**

The Adult Learning Inspectorate<sup>1</sup> must make an annual report to the Secretary of State<sup>2</sup>, who must lay a copy of it before each House of Parliament<sup>3</sup>. The annual report must be in such form and contain such information as the Secretary of State specifies in directions given to the inspectorate<sup>4</sup>. The inspectorate may also make such other reports to the Secretary of State, with respect to matters relating to education or training within its remit<sup>5</sup>, as it considers appropriate<sup>6</sup>. The inspectorate may publish any such reports in such manner as it considers appropriate<sup>7</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 Learning and Skills Act 2000 s 59(1). As to the privilege attaching to such reports see PARA 1314 note 10 ante. As to the Secretary of State see PARA 52 ante.

3 Ibid s 59(2).

4 Ibid s 59(3).

5 As to education and training within the remit of the inspectorate see PARA 1313 ante.

6 Learning and Skills Act 2000 s 59(4).

7 Ibid s 59(5).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(B) Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning/1317. Inspector's right of entry and offences.

### **1317. Inspector's right of entry and offences.**

An inspector<sup>1</sup> taking part in the inspection has, at all reasonable times:

2448 (1) a right of entry to premises on which the education or training being inspected is provided<sup>2</sup>;

2449 (2) a right of entry to premises of the person providing that education or training used in connection with that provision<sup>3</sup>;

2450 (3) a right to inspect, and take copies of, any records kept by that person, and any other documents containing information relating to the education or training, which the inspector requires for the purposes of the inspection<sup>4</sup>.

In respect of education or training provided by an employer in the workplace, the right of entry conferred by heads (1) to (3) above may be exercised only if the employer has been given reasonable notice in writing<sup>5</sup>. The right to inspect records conferred by head (3) above includes the right to have access to, and to inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question<sup>6</sup>. That right also includes the right to require the person by whom or on whose behalf the computer is or has been so used<sup>7</sup>, or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material<sup>8</sup>, to afford the inspectorate or any inspector such assistance as it or he may reasonably require<sup>9</sup>.

It is an offence wilfully to obstruct any person exercising functions in relation to an inspection<sup>10</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>11</sup>.

1 'Inspector', in relation to an inspection, means an employee of the Adult Learning Inspectorate taking part in the inspection or any person appointed by the inspectorate to assist with the inspection and includes the Chief Inspector of Adult Learning where the inspection is being conducted by him: Learning and Skills Act 2000 s 57(8). As to the establishment of the Adult Learning Inspectorate, and as to the appointment of the Chief Inspector of Adult Learning, see PARA 1304 ante. Section 57 applies to an inspection conducted under Pt III Ch I (ss 52-59) (see PARA 1304 et seq ante) other than one conducted as a result of a request under s 56(3) (see PARA 1315 ante): s 57(1).

2 Ibid s 57(2)(a).

3 Ibid s 57(2)(b).

4 Ibid s 57(2)(c).

5 Ibid s 57(3).

6 Ibid s 57(4).

7 Ibid s 57(5)(a).

8 Ibid s 57(5)(b).

9 Ibid s 57(5).

10 Ibid s 57(6).

11 Ibid s 57(7). The fine must not exceed level 4 on the standard scale: s 57(7). As to the standard scale see PARA 481 note 4 ante.

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(B) Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning/1318. Action plans.

### **1318. Action plans.**

If the Adult Learning Inspectorate<sup>1</sup> or the Chief Inspector of Adult Learning<sup>2</sup> publishes a report of an inspection conducted otherwise than as a result of a request<sup>3</sup> by a proprietor of an institution which is not within the remit of the inspectorate<sup>4</sup>, the provider of the education or training which is the subject of the report must make a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take it<sup>5</sup>. The person making the statement must publish it within such period, and in such manner, as may be prescribed by regulations made by the Secretary of State<sup>6</sup>, and send copies of it to such persons as may be so prescribed<sup>7</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 As to the appointment of the Chief Inspector of Adult Learning see PARA 1304 ante.

3 I.e. a request under the Learning and Skills Act 2000 s 56(3); see PARA 1315 ante.

4 Ibid s 58(1).

5 Ibid s 58(2). The requirements of s 58(2) may be waived by the inspectorate or the Chief Inspector: s 58(4).

6 Ibid s 58(3)(a). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the prescribed manner of publication and the persons to whom copies must be sent see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 8.

7 Learning and Skills Act 2000 s 58(3)(b). See note 6 supra.

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/A. THE ADULT LEARNING INSPECTORATE/(B) Functions of the Adult Learning Inspectorate and the Chief Inspector of Adult Learning/1319. Supplementary powers.

### **1319. Supplementary powers.**

The Adult Learning Inspectorate<sup>1</sup> may do anything which appears to it to be necessary or expedient for the purpose of or in connection with the exercise of its functions<sup>2</sup>. In particular, it may:

- 2451 (1) acquire and dispose of land and other property<sup>3</sup>;
- 2452 (2) enter into contracts<sup>4</sup>;
- 2453 (3) invest sums not immediately needed for the purpose of exercising its other functions<sup>5</sup>; and
- 2454 (4) accept gifts of money, land and other property<sup>6</sup>.

However, the inspectorate has no power to borrow money<sup>7</sup>, to lend money without the consent of the Secretary of State<sup>8</sup>, or to hold shares in a company, or otherwise become a member of a company, without the Secretary of State's consent<sup>9</sup>.

1 As to the establishment of the Adult Learning Inspectorate see PARA 1304 ante.

2 Learning and Skills Act 2000 s 52(8), Sch 6 para 8(1). As to the functions of the inspectorate see PARA 1313 et seq ante.

3 Ibid Sch 6 para 8(2)(a).

4 Ibid Sch 6 para 8(2)(b).

5 Ibid Sch 6 para 8(2)(c).

6 Ibid Sch 6 para 8(2)(d).

7 Ibid Sch 6 para 8(3)(a).

8 Ibid Sch 6 para 8(3)(b). As to the Secretary of State see PARA 52 ante.

9 Ibid Sch 6 para 8(3)(c).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1320. The extended remit of Her Majesty's Chief Inspector of Schools in England.

## ***B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND***

### **1320. The extended remit of Her Majesty's Chief Inspector of Schools in England.**

The following kinds of education and training are brought within the remit of Her Majesty's Chief Inspector of Schools in England<sup>1</sup>:

- 2455 (1) secondary education<sup>2</sup> provided in institutions which are in England and within the further education<sup>3</sup> sector<sup>4</sup>;
- 2456 (2) further education provided in the further education sector which is suitable to the requirements of those aged 16 or over but under 19 and funded wholly or partly by the Learning and Skills Council for England<sup>5</sup>;
- 2457 (3) further education provided by local education authorities<sup>6</sup> in England for persons aged under 19<sup>7</sup>;
- 2458 (4) such other education or training, which may, in particular, include training of or for teachers or lecturers, as may be prescribed by regulations made by the Secretary of State<sup>8</sup>.

1 The brought within the remit of Her Majesty's Chief Inspector of Schools in England by the Learning and Skills Act 2000 Pt III Ch II (ss 60-68) (as amended) (see PARA 1321 et seq post). As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

2 For the meaning of 'secondary education' see PARA 17 ante; definition applied by ibid s 60(2).

3 For the meaning of 'further education' see PARA 18 ante; definition applied by ibid s 60(2).

4 Ibid s 60(1)(a).

5 Ibid s 60(1)(b). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

6 As to local education authorities see PARA 20 ante.

7 Learning and Skills Act 2000 s 60(1)(c).

8 Ibid s 60(1)(d). As to the Secretary of State see PARA 52 ante. As to the prescribed education and training see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 11; and the Education (Grants etc) (Dance and Drama) (England) Regulations 2001, SI 2001/2857, reg 14.

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

**1320 The extended remit of Her Majesty's Chief Inspector of Schools in England**

NOTE 8--SI 2001/2857 reg 14 substituted: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1320A. Inspection of further education and training by Her Majesty's Chief Inspector of Education, Children's Services and Skills.

## **1320A. Inspection of further education and training by Her Majesty's Chief Inspector of Education, Children's Services and Skills.**

### **1. Framework for inspections of further education and training**

The Chief Inspector<sup>1</sup> must devise a framework or frameworks for inspections of further education<sup>2</sup> and training which is to consist of: (1) a common set of principles applicable to all further education and training inspections<sup>3</sup>; or (2) two or more common sets of principles each of which is applicable to a particular description of such inspections<sup>4</sup>. The Chief Inspector may at any time revise a framework<sup>5</sup>, and must publish a framework and any revised framework in such manner as he considers appropriate<sup>6</sup>.

1 As to the Chief Inspector see PARA 1167A.1.

2 For the meaning of 'further education' see PARA 18; definition applied by Education and Inspections Act 2006 s 123(4)(a).

3 Ibid s 133(1)(a), (2). The reference is to all inspections conducted under Pt 8 Ch 3 (ss 123-134).

4 Ibid s 133(1)(b), (2). If the Chief Inspector devises two or more frameworks under s 133(1)(b), he must ensure that, taken together, they cover all inspections conducted under Pt 8 Ch 3: s 133(3).

5 Ibid s 133(5).

6 Ibid s 133(4), (6).

### **2. Chief Inspector's duty to inspect education and training**

The kinds of education and training which the Chief Inspector<sup>1</sup> has a duty to inspect<sup>2</sup> are: (1) secondary education<sup>3</sup> provided in institutions which are in England and are within the further education sector<sup>4</sup>; (2) further education for persons aged 16 or over but under 19 which is provided in such institutions and wholly or partly funded by the Learning and Skills Council for England ('the Council')<sup>5</sup>; (3) further education for persons aged 19 or over which is wholly or partly funded by the Council<sup>6</sup>; (4) further education for persons aged under 19 which is provided by local education authorities in England<sup>7</sup>; (5) further education for persons aged 19 or over which is funded by such authorities<sup>8</sup>; (6) training for persons aged 16 or over which is funded by the Secretary of State<sup>9</sup>; (7) training for persons aged 16 or over if it is training the whole or part of which takes place at the premises of an employer and which is wholly or partly funded by the Council<sup>10</sup>; (8) such other education or training as may be prescribed by regulations made by the Secretary of State<sup>11</sup>. The Secretary of State may make regulations providing that the provision of certain information, advice or guidance<sup>12</sup>, or the provision of any description of such information, advice or guidance, is to be treated as training to which the Chief Inspector has a duty to inspect<sup>13</sup>.

1 As to the Chief Inspector see PARA 1167A.1.

2 Education and Inspections Act 2006 s 123(1). The reference is to the scope of the Chief Inspector's duty under Pt 8 Ch 3 (ss 123-134).

- 3 For the meaning of 'secondary education' see PARA 17; definition applied by *ibid* s 123(4)(a).
- 4 *Ibid* s 123(1)(a). The reference to institutions which are within the further education sector is to be read in accordance with the Further and Higher Education Act 1992 s 91(3) (see PARA 579); 2006 Act s 123(4)(b). For the meaning of 'further education' see PARA 18; definition applied by s 123(4)(a).
- 5 *Ibid* s 123(1)(b). As to the Learning and Skills Council for England see PARA 1072 *et seq*.
- 6 *Ibid* s 123(1)(c).
- 7 *Ibid* s 123(1)(d).
- 8 *Ibid* s 123(1)(e).
- 9 *Ibid* s 123(1)(f). Section 123(1)(f) applies to funding under the Employment and Training Act 1973 s 2.
- 10 2006 Act s 123(1)(g).
- 11 *Ibid* s 123(1)(h). The training which may be prescribed by regulations under s 123(1)(h) includes training of or for teachers, lecturers, trainers or other persons engaged in the provision of education or training falling within s 123(1)(a)-(g): s 123(2).  
The following education and training is prescribed for the purposes of s 123(1)(h): (1) training funded wholly or partly by the Council or by the Higher Education Funding Council for England of or for teachers, lecturers, trainers or other persons who will themselves provide education or training falling within s 123(1)(a)-(g); (2) education or training (not falling within s 123(1)(g)) provided other than in institutions within the further education sector which is suitable to the requirements of persons aged 16 or over but under 19 and funded wholly or partly by the Council: Education and Inspections Act 2006 (Prescribed Education and Training etc) Regulations 2007, SI 2007/464, reg 3.
- 12 2006 Act s 123(3)(a). Any such information, advice or guidance must fall within the Learning and Skills Act 2000 s 5(1)(i) (see PARA 1092).
- 13 2006 Act s 123(3)(b). See SI 2007/464 reg 5.

### **3. Inspection of education and training**

The Chief Inspector<sup>1</sup> must conduct inspections of (1) such applicable education or training as may be specified by the Secretary of State<sup>2</sup>; (2) such applicable class of education or training as may be so specified<sup>3</sup>; and (3) all institutions within the further education sector<sup>4</sup>. Such inspections are to be conducted at such intervals as may be specified by the Secretary of State<sup>5</sup>. On completing such an inspection, the Chief Inspector must make a written report on it<sup>6</sup>, which must state whether he considers the education or training inspected is of a quality adequate to meet the reasonable needs of those receiving it<sup>7</sup>, and may deal with such other matters as he considers relevant<sup>8</sup>. The Chief Inspector must send copies of the report to the Secretary of State, the Learning and Skills Council for England ('the Council')<sup>9</sup> and the provider of the education or training inspected<sup>10</sup> and, in the case of an inspection under head (1) or (2) above, any local education authority providing funds for the education or training inspected<sup>11</sup>. Copies may also be sent to such other persons as the Chief Inspector considers appropriate<sup>12</sup>. The Chief Inspector must arrange for the report to be published in such manner as he considers appropriate<sup>13</sup>.

The Chief Inspector may inspect any applicable education or training<sup>14</sup>. Further, he may inspect other education or training<sup>15</sup> which is further education (whether for persons aged 16 or over but under 19, or for persons aged 19 or over) or training for persons aged 16 or over, if he is requested to conduct the inspection by the provider of the education or training<sup>16</sup>. On completing such an inspection, the Chief Inspector may make a written report on it<sup>17</sup> and may arrange for the report to be published in such manner as he considers appropriate<sup>18</sup>. If the Chief Inspector makes such a report, he must send copies of the report to the Secretary of State, the Council, any local education authority providing funds for the education or training inspected

and the provider of the education or training inspected<sup>19</sup>. Copies may also be sent to such other persons as the Chief Inspector considers appropriate<sup>20</sup>.

For the purposes of the law of defamation, a report made by the Chief Inspector which is published under any enactment, or is not so published but is made in pursuance of his functions under any enactment, is privileged unless its publication is shown to have been made with malice<sup>21</sup>.

1 As to the Chief Inspector see PARA 1167A.1.

2 Education and Inspections Act 2006 s 124(1)(a). The reference is to the education or training to which Pt 8 Ch 3 (ss 123-134) applies; see PARA 1320A.2.

3 Ibid s 124(1)(b).

4 Ibid s 125(1). As to the meaning of institutions which are within the further education sector see PARA 1320A.2. For the meaning of 'further education' see PARA 18; definition applied by s 123(4)(a).

5 Ibid ss 124(2), 125(2). As to powers of entry, inspection of documents and offences in connection with such inspections see PARA 1320A.7.

6 Ibid ss 124(3), 125(3).

7 Ibid ss 124(4)(a), 125(4)(a).

8 Ibid ss 124(4)(b), 125(4)(b).

9 As to the Learning and Skills Council for England see PARA 1072 et seq.

10 2006 Act ss 124(5)(a), (b), (d), 125(5)(a)-(c).

11 Ibid s 124(5)(c).

12 Ibid ss 124(6), 125(6).

13 Ibid ss 124(7), 125(7).

14 Ibid s 126(1). In a case where the Chief Inspector so inspects such education or training, he is not required to do so by virtue of any provision of Pt 8 Ch 3: s 126(1).

15 Ibid s 126(2). The reference is to the education or training to which Pt 8 Ch 3 does not apply.

16 Ibid s 126(2)(a), (b). In the case of such an inspection conducted s 126(2) the Chief Inspector may charge the provider of the education or training concerned for the cost of the inspection (s 126(6)), and for the purposes of s 126(2) it is immaterial whether the education or training concerned is provided in the United Kingdom or elsewhere (s 126(7)).

17 Ibid s 126(3)(a).

18 Ibid s 126(3)(b).

19 Ibid s 126(4).

20 Ibid s 126(5).

21 Ibid s 151(1). See further s 151(2)-(4); and PARA 1177. As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

#### **4. Action plans**

Where the Chief Inspector<sup>1</sup> publishes a report of an inspection<sup>2</sup>, the provider of the education or training which is the subject of the report must prepare a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take

it<sup>3</sup>. The person making the statement must publish it within such period, and in such manner, as may be prescribed by regulations made by the Secretary of State<sup>4</sup>, and send copies of it to such persons as may be so prescribed<sup>5</sup>.

1 As to the Chief Inspector see PARA 1167A.1.

2 Education and Inspections Act 2006 s 127(1). The reference is to an inspection conducted under s 124, 125 or 126(1) (see PARA 1320A.3).

3 Ibid s 127(2). The requirements of s 127(2) may be waived by the Chief Inspector: s 127(4).

4 Ibid s 127(3)(a). As to the timescales for and prescribed manner of publication see the Education and Inspections Act 2006 (Prescribed Education and Training etc) Regulations 2007, SI 2007/464, regs 6, 7(1), (2).

5 2006 Act s 127(3)(b). As to the persons to whom copies must be sent see SI 2007/464 reg 7(3).

## 5. Area inspections and reports

If requested to do so by the Secretary of State, the Chief Inspector<sup>1</sup> must inspect: (1) the quality and availability of a specified description of education or training, in a specified area in England, for persons who are aged 15<sup>2</sup> or over but under 19<sup>3</sup>; (2) the standards achieved by those receiving that education or training<sup>4</sup>; and (3) whether the financial resources made available to those providing that education and training are managed efficiently and used in a way which provides value for money<sup>5</sup>.

The Chief Inspector may conduct such an inspection without being requested to do so<sup>6</sup>. If financial resources have been applied by the Learning and Skills Council for England ('the Council')<sup>7</sup> or a local education authority in respect of education or training which is being inspected<sup>8</sup>, the inspection may extend to considering whether the application of those resources in that way constituted an efficient and effective use of the resources for the purpose of meeting the needs of persons within head (1) above as regards education or training of the kind in question<sup>9</sup>, and whether it was appropriate to secure value for money<sup>10</sup>.

The education or training that may be made the subject of an area inspection<sup>11</sup> is any applicable education or training<sup>12</sup> or any other education or training within the scope of the Chief Inspector's functions<sup>13</sup>.

A provider of education or training which is the subject of an area inspection must provide the Chief Inspector with any information reasonably requested by him in connection with the inspection<sup>14</sup>. Any local education authority whose area<sup>15</sup> is wholly or partly within the area which is the subject of an area inspection must provide the Chief Inspector with any information reasonably requested by him in connection with the inspection<sup>16</sup>.

On completing an area inspection, the Chief Inspector must make a written report on it<sup>17</sup>, and must send copies of the report to the Secretary of State, the Council, each local education authority whose area is wholly or partly within the area subject to the inspection<sup>18</sup>. Copies may also be sent to such other persons as the Chief Inspector considers appropriate<sup>19</sup>. The Chief Inspector must arrange for the report to be published in such manner as he considers appropriate<sup>20</sup>.

1 As to the Chief Inspector see PARA 1167A.1.

2 For these purposes, 'persons who are aged 15' includes persons for whom education is being provided at a school who will attain that age in the current school year: Education and Inspections Act 2006 s 128(8). For the meaning of 'school' and 'school year' see PARAS 81 and 15 respectively; definition applied by s 128(8).

3 Ibid s 128(1)(a).

4 Ibid s 128(1)(b).



5 Ibid s 128(1)(c). As to powers of entry, inspection of documents and offences in connection with such inspections see PARA 1320A.7.

6 Ibid s 128(2).

7 As to the Learning and Skills Council for England see PARA 1072 et seq.

8 2006 Act s 128(3). The reference is to education or training being inspected under s 128.

9 Ibid s 128(4)(a).

10 Ibid s 128(4)(b).

11 2006 Act s 128(5). The reference is an area inspection conducted under s 128.

12 Ibid s 128(5)(a). The reference is to the education or training to which the 2006 Act Pt 8 Ch 3 (ss 123-134) applies; see PARA 1320A.2.

13 Ibid s 128(5)(b). As to the Chief Inspector's functions see PARA 1164B.2.

14 Ibid s 128(6).

15 As to local education authorities and their areas see PARA 20.

16 2006 Act s 128(7).

17 Ibid s 129(1).

18 Ibid s 129(2).

19 Ibid s 129(3).

20 Ibid s 129(4). For the purposes of the law of defamation, the publication of such a report is privileged unless its publication is shown to have been made with malice: see s 151 and PARA 1177.

## 6. Action plans following area inspections

Where the Chief Inspector<sup>1</sup> publishes a report of an area inspection<sup>2</sup>, the Secretary of State may direct the Learning and Skills Council for England ('the Council')<sup>3</sup> to prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>4</sup>. The Secretary of State may direct a local education authority whose area<sup>5</sup> is wholly or partly within the area covered by the report to prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>6</sup>. In preparing the statement the Council or the local education authority must consult such persons as the Secretary of State may direct<sup>7</sup>. The Council or the local education authority must publish the statement within such period, and in such manner, as may be prescribed by regulations made by the Secretary of State<sup>8</sup>, and send copies of it to such persons as may be so prescribed<sup>9</sup>.

1 As to the Chief Inspector see PARA 1167A.1.

2 Education and Inspections Act 2006 s 130(1). The reference is to an area inspection conducted under s 128: see PARA 1320A.4.

3 As to the Learning and Skills Council for England see PARA 1072 et seq.

4 2006 Act s 130(2). As to proposals for restructuring the provision of sixth form education which may be made by the Council with a view to meeting recommendations made in the report of an area inspection under s 128 see PARA 1277 et seq.

5 As to local education authorities and their areas see PARA 20.

6 2006 Act s 130(3).

7 Ibid s 130(4).

8 Ibid s 130(5)(a). As to the timescales for and prescribed manner of publication of a statement prepared under s 130(2) or (3) see the Education and Inspections Act 2006 (Prescribed Education and Training etc) Regulations 2007, SI 2007/464, regs 8, 9(1), (2).

9 2006 Act s 130(5)(b). As to the persons to whom copies must be sent see SI 2007/464 reg 9(3).

## **7. Power of entry and inspection of documents**

When conducting such an inspection<sup>1</sup>, the Chief Inspector<sup>2</sup> may, at any reasonable time, enter any premises on which the education or training inspected is provided<sup>3</sup> and any premises of the provider of that education or training which are used in connection with its provision<sup>4</sup>. In respect of education or training provided by an employer in the workplace, that power of entry may be exercised only if the employer has been given reasonable notice in writing<sup>5</sup>.

If the Chief Inspector considers it necessary or expedient for the purposes of the inspection, he may inspect, take copies of, or take away any documents<sup>6</sup> relating to the education or training inspected which are on any premises in relation to which he exercises his power of entry<sup>7</sup>. This power to inspect includes the power to require any person holding or accountable for any documents kept on the premises to produce them<sup>8</sup> and, in relation to any such documents kept by means of a computer, power to require them to be produced in a form in which they are legible and can be taken away<sup>9</sup>. In connection with inspecting any such documents the Chief Inspector may obtain access to, and inspect and check the operation of, any computer and associated apparatus or material which he considers is or has been in use in connection with the documents<sup>10</sup>, and may require certain persons<sup>11</sup> to afford him such reasonable assistance as he may require for that purpose<sup>12</sup>.

Any person who without reasonable excuse obstructs the exercise of any power of entry and inspection<sup>13</sup>, or fails to comply with any requirement<sup>14</sup> is guilty of an offence and liable on summary conviction to a fine<sup>15</sup>.

1 The Education and Inspections Act 2006 s 131 applies to any inspection conducted by the Chief Inspector under Pt 8 Ch 3 (ss 123-134), other than one conducted under s 126(2): s 131(1).

2 As to the Chief Inspector see PARA 1167A.1.

3 2006 Act s 131(2)(a).

4 Ibid s 131(2)(b).

5 Ibid s 131(3).

6 'Document' means anything in which information of any description is recorded, including personal records as defined the Police and Criminal Evidence Act 1984 s 12 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 875): 2006 Act s 159(1).

7 Ibid s 132(2). Section 132 applies to any inspection conducted by the Chief Inspector under Pt 8 Ch 3 (ss 123-134), other than one conducted under s 126(2): s 132(1). The powers conferred by s 132 may be exercised by the Chief Inspector at reasonable times only; and a person may not be required to do anything in pursuance of any provision of s 132 otherwise than at a reasonable time: s 132(6).

8 Ibid s 132(3)(a).

9 Ibid s 132(3)(b).

10 Ibid s 132(4)(a).

11 The persons referred to are those by whom or on whose behalf the computer is or has been used and those having charge of, or otherwise concerned with the operation of, the computer, apparatus or material: *ibid* s 132(5).

12 *Ibid* s 132(4)(b).

13 *Ibid* s 132(7)(a). The reference is to any power under s 131 or 132.

14 *Ibid* s 132(7)(b). The reference is to any requirement imposed under s 132.

15 *Ibid* s 132(7). The fine must not exceed level 4 on the standard scale: s 132(7). As to the standard scale see *PARA* 481.

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and *PARA* 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1321. Additional functions.

### **1321. Additional functions.**

Her Majesty's Chief Inspector of Schools in England<sup>1</sup> must keep the Secretary of State<sup>2</sup> informed about:

- 2459 (1) the quality of the education and training brought<sup>3</sup> within the Chief Inspector's remit<sup>4</sup>;
- 2460 (2) the standards achieved by those receiving that education and training<sup>5</sup>; and
- 2461 (3) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money<sup>6</sup>.

When asked to do so by the Secretary of State, the Chief Inspector must:

- 2462 (a) give him advice on such matters relating to education or training brought within the Chief Inspector's remit<sup>7</sup> as the Secretary of State may specify<sup>8</sup>;
- 2463 (b) inspect such education or training, or such class of education or training, within that remit as the Secretary of State may specify<sup>9</sup>;
- 2464 (c) report on the result of such an inspection<sup>10</sup>.

The Chief Inspector has such other functions in connection with education and training brought within the Chief Inspector's remit<sup>11</sup>, including functions with respect to the training of or for teachers or lecturers, as the Secretary of State may specify<sup>12</sup>.

In addition to his duties described above, the Chief Inspector has power to give advice to the Secretary of State on any matter relating to education or training of a kind brought within his remit<sup>13</sup>; and he may inspect any education or training of that kind<sup>14</sup>, report to the Secretary of State on any such inspection<sup>15</sup>, and arrange for any such report to be published in such manner as he considers appropriate<sup>16</sup>.

1 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Ie by the Learning and Skills Act 2000 Pt III Ch II (ss 60-68) (as amended).

4 Ibid s 61(1)(a). As to the extended remit of the Chief Inspector see PARA 1320 ante.

5 Ibid s 61(1)(b).

6 Ibid s 61(1)(c).

7 See note 3 supra.

8 Learning and Skills Act 2000 s 61(2)(a).

9 Ibid s 61(2)(b). As to rights of entry and offences in connection with inspections see PARA 1327 post.

10 Ibid s 61(2)(c). As to the privilege attaching to such reports see PARA 1314 note 10 ante.

- 11 See note 3 *supra*.
- 12 Learning and Skills Act 2000 s 61(3).
- 13 *Ibid* s 68(1). See note 3 *supra*. As to the preparation, publication and distribution of an action plan in response to the report of such an inspection see s 64; and PARA 1323 *post*.
- 14 *Ibid* s 68(2)(a).
- 15 *Ibid* s 68(2)(b).
- 16 *Ibid* s 68(2)(c).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1322. Inspection of further education institutions.

### **1322. Inspection of further education institutions.**

Her Majesty's Chief Inspector of Schools in England<sup>1</sup> must inspect all institutions within the further education sector other than those providing education or training falling wholly within the remit of the Adult Learning Inspectorate<sup>2</sup>. Inspections are to be conducted at such intervals as may be specified by the Secretary of State<sup>3</sup>.

When the Chief Inspector has completed such an inspection he must make a written report<sup>4</sup>. The report must state whether he considers the education or training inspected to be adequate to meet the reasonable needs of those receiving it<sup>5</sup>, and may deal with such other matters as the Chief Inspector considers relevant<sup>6</sup>. Copies of the report must be sent to the Secretary of State<sup>7</sup>, the Learning and Skills Council for England<sup>8</sup>, and the provider of the education or training inspected<sup>9</sup>. Copies may also be sent to such other persons as the Chief Inspector considers appropriate<sup>10</sup>. The Chief Inspector must arrange for the report to be published in such manner as he considers appropriate<sup>11</sup>.

1 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

2 Learning and Skills Act 2000 s 62(1). As to the Adult Learning Inspectorate see PARA 1304 et seq ante.

3 Ibid s 62(2). As to the Secretary of State see PARA 52 ante.

4 Ibid s 62(3). As to the privilege attaching to such reports see PARA 1314 note 10 ante.

5 Ibid s 62(4)(a).

6 Ibid s 62(4)(b).

7 Ibid s 62(5)(a).

8 Ibid s 62(5)(b). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

9 Ibid s 62(5)(c).

10 Ibid s 62(6).

11 Ibid s 62(7).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1323. Action plans.

### **1323. Action plans.**

If Her Majesty's Chief Inspector of Schools in England<sup>1</sup> publishes a report of an inspection<sup>2</sup>, the provider of the education or training which is the subject of the report must prepare a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take it<sup>3</sup>. The person making the statement must publish it within such period, and in such manner, as may be prescribed by regulations made by the Secretary of State<sup>4</sup>, and send copies of it to such persons as may be so prescribed<sup>5</sup>.

1 As to Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

2 Learning and Skills Act 2000 s 64(1). The text refers to an inspection conducted under s 61(2)(b) (see PARA 1321 ante), s 62 (see PARA 1322 ante) or s 68(2) (see PARA 1321 ante).

3 Ibid s 64(2). The requirements of s 64(2) may be waived by the Chief Inspector: s 64(4).

4 Ibid s 64(3)(a). As to the Secretary of State see PARA 52 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the prescribed manner of publication see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 8(1)-(4).

5 Learning and Skills Act 2000 s 64(3)(b). As to the persons to whom copies must be sent see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 8(5).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1324. Area inspections.

### **1324. Area inspections.**

If asked to do so by the Secretary of State<sup>1</sup>, Her Majesty's Chief Inspector of Schools in England<sup>2</sup> must inspect:

- 2465 (1) the quality and availability of a specified description of education or training, in a specified area in England, for persons who are aged 15<sup>3</sup> or over but under 19<sup>4</sup>;
- 2466 (2) the standards achieved by those receiving that education or training<sup>5</sup>; and
- 2467 (3) whether the financial resources made available to those providing that education and training are managed efficiently and used in a way which provides value for money<sup>6</sup>.

The Chief Inspector of Schools may, without being asked to, conduct such an inspection<sup>7</sup>. If financial resources have been applied by the Learning and Skills Council for England<sup>8</sup> or a local education authority in respect of education or training which is being inspected<sup>9</sup>, the inspection may extend to considering the manner in which those resources have been applied and whether they have been applied in a way which provides value for money<sup>10</sup>.

The education or training that may be made the subject of an area inspection<sup>11</sup> is any education or training within the remit of the Chief Inspector of Schools<sup>12</sup> or the Adult Learning Inspectorate<sup>13</sup>. If, in connection with an area inspection, the Chief Inspector of Schools asks the Chief Inspector of Adult Learning<sup>14</sup> for advice on a matter relating to education or training within the inspectorate's remit, the latter must give such advice as he considers likely to be appropriate for the purposes of the inspection<sup>15</sup>. If the Chief Inspector of Schools asks the Chief Inspector of Adult Learning to undertake a specified part of an area inspection, the latter must do so<sup>16</sup>.

A provider of education or training which is the subject of an area inspection must provide the Chief Inspector of Schools with any information reasonably asked for by him in connection with the inspection<sup>17</sup> and must also provide the Chief Inspector of Adult Learning with any information reasonably asked for by him in connection with the inspection<sup>18</sup>. Any local education authority whose area, or part of whose area<sup>19</sup>, is within the area which is the subject of an area inspection must provide the Chief Inspector of Schools with such information as he may reasonably request in connection with the inspection<sup>20</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

3 For these purposes, 'persons who are aged 15' includes persons for whom education is being provided at a school who will attain that age in the current school year: Learning and Skills Act 2000 s 65(10) (added by the Education Act 2002 s 178(1), (3)(b)). For the meaning of 'school' see PARA 81 ante; definition applied by the Learning and Skills Act 2000 s 65(10) (as so added). For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by s 65(10) (as so added).

4 Ibid s 65(1)(a) (amended by the Education Act 2002 s 178(1), (3)(a)).

5 Learning and Skills Act 2000 s 65(1)(b).



- 6 Ibid s 65(1)(c). As to rights of entry and offences in connection with such inspections see PARA 1327 post.
- 7 Ibid s 65(2).
- 8 As to the Learning and Skills Council for England see PARA 1072 et seq ante.
- 9 le under the Learning and Skills Act 2000 s 65 (as amended).
- 10 Ibid s 65(3).
- 11 'Area inspection' means an inspection under ibid s 65 (as amended): s 65(9).
- 12 Ibid s 65(4)(a). The text refers to any education or training within the remit of the Chief Inspector of Schools whether as a result of Pt III Ch II (ss 60-68) (as amended) or of any other enactment: see s 65(4)(a).
- 13 Ibid s 65(4)(b). As to the Adult Learning Inspectorate see PARA 1304 et seq ante.
- 14 As to the appointment of the Chief Inspector of Adult Learning see PARA 1304 ante.
- 15 Learning and Skills Act 2000 s 65(5).
- 16 Ibid s 65(6).
- 17 Ibid s 65(7)(a).
- 18 Ibid s 65(7)(b).
- 19 As to local education authorities and their areas see PARA 20 ante.
- 20 Learning and Skills Act 2000 s 65(8). Any function of a local education authority in England which is conferred by or under the Learning and Skills Act 2000 s 65(8) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (n). For the meaning of 'England' see PARA 52 note 11 ante.

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1325. Reports of area inspections.

### **1325. Reports of area inspections.**

On completing an area inspection<sup>1</sup>, Her Majesty's Chief Inspector of Schools in England<sup>2</sup> must make a written report<sup>3</sup>. In preparing the report he must ensure that the views of the Chief Inspector of Adult Learning<sup>4</sup> in relation to the subject matter of the inspection, so far as the Chief Inspector of Schools is aware of them<sup>5</sup>, and they relate to matters within the inspectorate's remit<sup>6</sup>, are properly recorded in the report<sup>7</sup>. The Chief Inspector of Schools must send a copy of the report to:

- 2468 (1) the Secretary of State<sup>8</sup>;
- 2469 (2) the Learning and Skills Council for England<sup>9</sup>;
- 2470 (3) the Adult Learning Inspectorate<sup>10</sup>;
- 2471 (4) each local education authority whose area, or part of whose area<sup>11</sup>, falls within the area which is the subject of the inspection<sup>12</sup>; and
- 2472 (5) such other persons as he considers appropriate<sup>13</sup>.

The Chief Inspector of Schools must arrange for the report to be published in such manner as he considers appropriate<sup>14</sup>.

- 1 For the meaning of 'area inspection' see PARA 1324 note 11 ante.
- 2 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.
- 3 Learning and Skills Act 2000 s 66(1). As to the privilege attaching to such reports see PARA 1314 note 10 ante.
- 4 As to the appointment of the Chief Inspector of Adult Learning see PARA 1304 ante.
- 5 Learning and Skills Act 2000 s 66(2)(a).
- 6 Ibid s 66(2)(b). As to the extended remit of the Chief Inspector of Schools see PARA 1320 ante.
- 7 Ibid s 66(2).
- 8 Ibid s 66(3)(a). As to the Secretary of State see PARA 52 ante.
- 9 Ibid s 66(3)(b). As to the Learning and Skills Council for England see PARA 1072 ante.
- 10 Ibid s 66(3)(c). As to the Adult Learning Inspectorate see PARA 1304 et seq ante.
- 11 As to local education authorities and their areas see PARA 20 ante.
- 12 Learning and Skills Act 2000 s 66(3)(d).
- 13 Ibid s 66(3)(e).
- 14 Ibid s 66(4).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1326. Action plans following area inspections.

### **1326. Action plans following area inspections.**

If Her Majesty's Chief Inspector of Schools in England<sup>1</sup> publishes a report of an area inspection<sup>2</sup>, the Secretary of State<sup>3</sup> may direct the Learning and Skills Council for England<sup>4</sup> to prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>5</sup>. The Secretary of State may direct a local education authority whose area<sup>6</sup> is wholly or partly in the area covered by the report to prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>7</sup>. In preparing the statement the Learning and Skills Council or the local education authority must consult such persons as the Secretary of State may direct<sup>8</sup>. The person making the statement must publish it within such period, and in such manner, as may be prescribed by regulations made by the Secretary of State<sup>9</sup>, and send copies of it to such persons as may be so prescribed<sup>10</sup>.

1 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

2 Learning and Skills Act 2000 s 67(1). The text refers to an area inspection conducted under s 65 (as amended): see PARA 1324 ante.

3 As to the Secretary of State see PARA 52 ante.

4 As to the Learning and Skills Council for England see PARA 1072 et seq ante.

5 Learning and Skills Act 2000 s 67(2). As to proposals for restructuring the provision of sixth form education which may be made by the Learning and Skills Council for England with a view to meeting recommendations made in the report of an area inspection under s 65 (as amended) (among other reasons) see PARA 1277 et seq ante.

6 As to local education authorities and their areas see PARA 20 ante.

7 Learning and Skills Act 2000 s 67(3). Any function of a local education authority in England which is conferred by or under s 67(3) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is, except that the local education authority must not authorise another person to adopt the plan (with or without modification): Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (o). For the meaning of 'England' see PARA 52 note 11 ante.

8 Learning and Skills Act 2000 s 67(4).

9 Ibid s 67(5)(a). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the prescribed manner of publication see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 9(1)-(4).

10 Learning and Skills Act 2000 s 67(5)(b). As to the persons to whom copies must be sent see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 9(5).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/B. HER MAJESTY'S CHIEF INSPECTOR OF SCHOOLS IN ENGLAND/1327. Right of entry.

### **1327. Right of entry.**

When conducting an inspection<sup>1</sup>, Her Majesty's Chief Inspector of Schools in England<sup>2</sup> has at all reasonable times:

2473 (1) a right of entry to premises on which the education or training being inspected is provided<sup>3</sup>;

2474 (2) a right of entry to premises of the provider of that education or training used in connection with that provision<sup>4</sup>;

2475 (3) a right to inspect, and take copies of, any records kept by that person, and any other documents containing information relating to the education or training, which the Chief Inspector requires for the purposes of the inspection<sup>5</sup>.

The right to inspect conferred by head (3) above includes the right to have access to, and to inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question<sup>6</sup>. That right also includes the right to require the person by whom or on whose behalf the computer is or has been so used<sup>7</sup>, or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material<sup>8</sup>, to afford the Chief Inspector such assistance as he may reasonably require<sup>9</sup>.

It is an offence wilfully to obstruct the Chief Inspector in the exercise of his functions in relation to an inspection<sup>10</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>11</sup>.

1 The Learning and Skills Act 2000 s 63 applies to an inspection conducted under s 61(2)(b) (see PARA 1321 ante), s 62 (see PARA 1322 ante), s 65 (as amended) (see PARA 1324 ante) or s 68(2) (see PARA 1321 ante): s 63(1).

2 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

3 Learning and Skills Act 2000 s 63(2)(a).

4 Ibid s 63(2)(b).

5 Ibid s 63(2)(c).

6 Ibid s 63(3).

7 Ibid s 63(4)(a).

8 Ibid s 63(4)(b).

9 Ibid s 63(4).

10 Ibid s 63(5).

11 Ibid s 63(6). The fine must not exceed level 4 on the standard scale: s 63(6). As to the standard scale see PARA 481 note 4 ante.

### **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/C. JOINT INSPECTIONS AND COMMON INSPECTION FRAMEWORK/(A) Joint Inspections/1328. Joint inspections.

### ***C. JOINT INSPECTIONS AND COMMON INSPECTION FRAMEWORK***

#### **(A) JOINT INSPECTIONS**

##### **1328. Joint inspections.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> make provision for inspections to be carried out under Part III of the Learning and Skills Act 2000<sup>3</sup> as joint inspections under the direction of Her Majesty's Chief Inspector of Schools in England<sup>4</sup> in cases in which a person provides: (1) education or training of a kind that is within the remit of the Adult Learning Inspectorate<sup>5</sup>; and (2) education or training of a kind brought within the remit of the Chief Inspector of Schools<sup>6</sup>. The regulations may, in particular, make provision:

- 2476 (a) as to the circumstances in which a joint inspection must be conducted<sup>7</sup>;
- 2477 (b) as to the circumstances in which a joint inspection may be conducted<sup>8</sup>;
- 2478 (c) for establishing the circumstances of a particular case<sup>9</sup>;
- 2479 (d) requiring a joint inspection to be conducted according to a plan prepared by the Chief Inspector of Schools in accordance with the regulations<sup>10</sup>;
- 2480 (e) for provisions of Part III of the Learning and Skills Act 2000 to apply in relation to a joint inspection with such modifications as may be prescribed<sup>11</sup>;
- 2481 (f) for the preparation and publication of a single report by the Chief Inspector of Schools of the results of a joint inspection<sup>12</sup>;
- 2482 (g) for the making by such persons as may be prescribed of written statements of proposed action, in the light of the report, and of the period within which any such action may be taken<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.

3 Ie the Learning and Skills Act 2000 Pt III (ss 52-72) (as amended).

4 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

5 Learning and Skills Act 2000 s 71(1)(a). As to the Adult Learning Inspectorate see PARA 1304 et seq ante.

6 Ibid s 71(1)(b). The text refers to education or training of a kind brought within the Chief Inspector's remit by Pt III Ch II (ss 60-68) (as amended): see PARA 1320 et seq ante.

7 Ibid s 71(2)(a). As to the circumstances in which a joint inspection must be conducted see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 4.

8 Learning and Skills Act 2000 s 71(2)(b). As to establishing whether a joint inspection may be conducted see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 3.

9 Learning and Skills Act 2000 s 71(2)(c).

10 Ibid s 71(2)(d). As to the planning of a joint inspection see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 5.

11 Learning and Skills Act 2000 s 71(2)(e).



12 Ibid s 71(2)(f). As to reports following a joint inspection see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, reg 6. As to the privilege attaching to such reports see PARA 1314 note 10 ante.

13 Learning and Skills Act 2000 s 71(2)(g). The person making a statement required by provision made as a result of s 71(2)(g) must publish it within such period, and in such manner, as may be prescribed, and send copies of it to such persons as may be prescribed: s 71(3). As to the preparation of action plans following a joint inspection and the publication of such statements see the Post-16 Education and Training Inspection Regulations 2001, SI 2001/799, regs 7-8.

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/C. JOINT INSPECTIONS AND COMMON INSPECTION FRAMEWORK/(B) Common Inspection Framework/1329. The framework.

## (B) COMMON INSPECTION FRAMEWORK

### **1329. The framework.**

The Adult Learning Inspectorate<sup>1</sup> and Her Majesty's Chief Inspector of Schools in England<sup>2</sup> are required to devise a common set of principles applicable to all inspections conducted under Part III of the Learning and Skills Act 2000<sup>3</sup>. When they have settled those principles<sup>4</sup> they must set them out in a document known as the Common Inspection Framework ('the framework')<sup>5</sup>. They must then publish the framework in such a way as they consider appropriate<sup>6</sup>. The inspectorate and the Chief Inspector, acting together, may at any time revise the framework<sup>7</sup>.

1 As to the Adult Learning Inspectorate see PARA 1304 et seq ante.

2 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

3 Learning and Skills Act 2000 s 69(1). The text refers to Pt III (ss 52-72) (as amended): see PARA 1304 et seq ante.

4 In accordance with the provisions of *ibid* s 70: see PARA 1330 post.

5 *Ibid* s 69(2). The first framework had to be settled and come into effect by such date as the Secretary of State might direct: s 69(4). As to the Secretary of State see PARA 52 ante.

6 *Ibid* s 69(3).

7 *Ibid* s 69(5).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(ii) Inspections in England/C. JOINT INSPECTIONS AND COMMON INSPECTION FRAMEWORK/(B) Common Inspection Framework/1330. Preparation of the framework.

### **1330. Preparation of the framework.**

The Adult Learning Inspectorate<sup>1</sup> and Her Majesty's Chief Inspector of Schools in England<sup>2</sup> must prepare a draft of the proposed Common Inspection Framework and publish it in such a way as they think best calculated to draw it to the attention of the public<sup>3</sup>. They must consult the Secretary of State<sup>4</sup>, the Learning and Skills Council for England<sup>5</sup>, and such other persons as they consider appropriate<sup>6</sup>, about the draft framework, allowing at least three months for those consulted to respond<sup>7</sup>.

In settling the terms of the framework the Adult Learning Inspectorate and the Chief Inspector of Schools must have regard to the results of their consultations on the draft<sup>8</sup>. If at any time while preparing the draft framework or settling the terms of the framework, the Adult Learning Inspectorate and the Chief Inspector of Schools are unable to agree on any matter, they may refer their disagreement to the Secretary of State<sup>9</sup>, and must have regard to any advice that he gives them<sup>10</sup>. If they are still unable to agree on the matter they must tell the Secretary of State and comply with any direction that he gives them as to how to resolve their disagreement<sup>11</sup>.

If the Adult Learning Inspectorate and the Chief Inspector of Schools propose to revise the framework they must prepare a draft of the proposed revision and publish it, together with an explanation of the effect that it would have, in such a way as they think best calculated to draw it to the attention of the public<sup>12</sup>.

1 As to the Adult Learning Inspectorate see PARA 1304 et seq ante.

2 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

3 Learning and Skills Act 2000 s 70(1).

4 Ibid s 70(2)(a). As to the Secretary of State see PARA 52 ante.

5 Ibid s 70(2)(b). As to the Learning and Skills Council for England see PARA 1072 et seq ante.

6 Ibid s 70(2)(c).

7 Ibid s 70(2).

8 Ibid s 70(3).

9 Ibid s 70(4)(a).

10 Ibid s 70(4)(b).

11 Ibid s 70(5).

12 Ibid s 70(6). The provisions of s 70(2)-(5) (see the text and notes 4-11 supra) apply equally to a revision of the framework: s 70(7).

## **UPDATE**

### **1304-1330 Inspections in England**

The Adult Learning Inspectorate had been abolished and Her Majesty's Chief Inspector of Education, Children's Services and Skills has taken over its inspection remit: see the Education and Inspections Act 2006 Pt 8 Ch 3 (ss 123-134); and PARA 1320A.

Learning and Skills Act ss 52-72, Sch 6 repealed: 2006 Act Sch 14 paras 56, 65, Sch 18 Pt 5. SI 2001/799 revoked: SI 2007/464.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(4) ADULT LEARNING AND FURTHER EDUCATION/(iii) Inspections in Wales/1331. The extended remit of Her Majesty's Chief Inspector of Education and Training in Wales.

### **(iii) Inspections in Wales**

#### **1331. The extended remit of Her Majesty's Chief Inspector of Education and Training in Wales.**

The following kinds of education and training are brought within the remit of the Chief Inspector for Wales<sup>1</sup> by Part IV of the Learning and Skills Act 2000<sup>2</sup>:

- 2483 (1) education or training for persons aged 16 or over where the provider of the education or training is given financial support by the National Council for Education and Training for Wales<sup>3</sup> or by a local education authority<sup>4</sup> in Wales, either generally or for a specific purpose<sup>5</sup>;
- 2484 (2) education or training for persons aged 16 or over where the Council, or a local education authority in Wales, is contemplating giving the provider of the education financial support, either generally or for a specific purpose<sup>6</sup>;
- 2485 (3) education or training provided for persons of compulsory school age<sup>7</sup> in an institution in Wales which is within the further education sector<sup>8</sup>;
- 2486 (4) further education provided<sup>9</sup> by a school<sup>10</sup>;
- 2487 (5) such other education or training in Wales as may be prescribed by regulations<sup>11</sup> made by the National Assembly for Wales<sup>12</sup>.

1    Ie Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2    Ie the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively amended) (see PARA 1332 et seq post). As to the inspection of adult learning in England see PARA 1304 et seq ante.

3    Ie the National Council for Education and Training for Wales (or 'Cyngor Cenedlaethol Cymru dros Addysg a Hyfforddiant'): *ibid* s 74(1). See PARA 1113 et seq ante.

4    As to local education authorities see PARA 20 ante.

5    Learning and Skills Act 2000 s 75(1)(a). Neither head (1) nor head (2) in the text applies to education of a kind that may be inspected under the School Inspections Act 1996 (prospectively repealed) (see PARA 1187 et seq ante) or, if the financial support mentioned in that head is given for a specific purpose, to education or training at which that support is not directed: Learning and Skills Act 2000 s 75(2).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(b), the Learning and Skills Act 2000 s 75(2) is amended so as to refer to the Education Act 2005 Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in relation to Wales) (see PARA 1227 et seq ante) instead of the School Inspections Act 1996: see the Learning and Skills Act 2000 s 75(2) (prospectively amended by the Education Act 2005 s 61, Sch 9 para 24). At the date at which this volume states the law, no such day had been appointed.

6    Learning and Skills Act 2000 s 75(1)(b). See note 5 *supra*.

7    As to compulsory school age see PARA 15 ante.

8    Learning and Skills Act 2000 s 75(1)(c).

9 le under the School Standards and Framework Act 1998 s 80: see PARA 607 ante.

10 Learning and Skills Act 2000 s 75(1)(d).

11 As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.

12 Ibid s 75(1)(e). At the date at which this volume states the law, no such regulations had been made under s 75. As to the National Assembly for Wales see PARA 53 ante.

## **UPDATE**

### **1331 The extended remit of Her Majesty's Chief Inspector of Education and Training in Wales**

NOTE 1--Repeal now in force in relation to Wales: SI 2006/1338.

TEXT AND NOTES 3-6--References to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act s 75(1)(a), (b) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 3--Definition repealed: 2000 Act s 74(1) (amended by SI 2005/3238).

NOTES 11, 12--As to regulations made under the 2000 Act s 75, see the Youth and Community Work Education and Training (Inspection) (Wales) Regulations 2006, SI 2006/2804.

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### **1332. Additional functions.**

The Chief Inspector for Wales<sup>1</sup> must keep the National Assembly for Wales<sup>2</sup> informed about:

- 2488 (1) the quality of the education and training which is brought within the remit of the Chief Inspector for Wales by Part IV of the Learning and Skills Act 2000<sup>3</sup>;
- 2489 (2) the standards achieved by those receiving that education and training<sup>4</sup>; and
- 2490 (3) whether the financial resources made available to those providing it are managed efficiently and used so as to provide value for money<sup>5</sup>.

When asked to do so by the Assembly, the Chief Inspector for Wales must:

- 2491 (a) give the Assembly advice on such matters, relating to education and training brought within the remit of the Chief Inspector for Wales by Part IV of the Learning and Skills Act 2000, as the Assembly may specify<sup>6</sup>;
- 2492 (b) inspect such education or training, or such class of education or training, within that remit as the Assembly may specify<sup>7</sup>;
- 2493 (c) report on the result of such an inspection<sup>8</sup>.

The Chief Inspector for Wales has such other functions in connection with education and training brought within the remit of the Chief Inspector for Wales by Part IV of the Learning and Skills Act 2000 as the Assembly may specify<sup>9</sup>. Such functions may include functions with respect to training of or for teachers, lecturers, trainers or other persons engaged in the provision of education or training which is so brought within the remit of the Chief Inspector for Wales<sup>10</sup>. In exercising functions under Part IV of the Learning and Skills Act 2000, the Chief Inspector for Wales must have regard to advice given by the Assembly<sup>11</sup>, and such aspects of the Assembly's policy as the Assembly may specify<sup>12</sup>.

1 The Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 Learning and Skills Act 2000 s 76(1)(a). The text refers to Pt IV (ss 73-88) (as amended; prospectively amended).

4 Ibid s 76(1)(b).

5 Ibid s 76(1)(c).

6 Ibid s 76(2)(a).

7 Ibid s 76(2)(b).

8 Ibid s 76(2)(c). For the purposes of the law of defamation, any report under Pt IV (as amended; prospectively amended) is privileged unless its publication is shown to have been made with malice: s 88(1). This does not limit any privilege subsisting apart from s 88(1): s 88(2). As to defamation generally see LIBEL AND

SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

9 Ibid s 76(3).

10 Ibid s 76(4).

11 Ibid s 76(5)(a).

12 Ibid s 76(5)(b).



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### **1333. Inspections.**

The Chief Inspector for Wales<sup>1</sup> must inspect education and training brought within his remit by Part IV of the Learning and Skills Act 2000<sup>2</sup>. Inspections are to be conducted at such intervals as may be prescribed<sup>3</sup>.

The Chief Inspector for Wales must report in writing on the quality of the education or training inspected<sup>4</sup>, the standards achieved by those receiving that education or training<sup>5</sup>, and whether the financial resources made available to the provider of the education or training are managed efficiently and used in a way which provides value for money<sup>6</sup>. The report must be made within such period as may be prescribed<sup>7</sup>. The Chief Inspector for Wales must without delay send a copy of the report to the National Assembly for Wales<sup>8</sup>, the National Council for Education and Training for Wales<sup>9</sup>, any local education authority<sup>10</sup> providing funds for the education or training inspected<sup>11</sup>, and the provider of the inspected education or training<sup>12</sup>. Copies may also be sent to such other persons as the Chief Inspector for Wales considers appropriate<sup>13</sup>, and he must arrange for the report to be published in such manner as he considers appropriate<sup>14</sup>.

1 The Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2 Learning and Skills Act 2000 s 77(1). The text refers to Pt IV (ss 73-88) (as amended; prospectively amended).

3 Ibid s 77(2). 'Prescribed' means prescribed in regulations made by the National Assembly for Wales: s 77(9). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the prescribed intervals see the Inspection of Education and Training (Wales) Regulations 2001, SI 2001/2501, reg 2 (substituted by SI 2004/783).

4 Learning and Skills Act 2000 s 77(3)(a). As to the privilege attaching to such reports see PARA 1332 note 8 ante.

5 Ibid s 77(3)(b).

6 Ibid s 77(3)(c).

7 Ibid s 77(4). As to the timing for inspection reports see the Inspection of Education and Training (Wales) Regulations 2001, SI 2001/2501, reg 3 (amended by SI 2004/783).

8 Learning and Skills Act 2000 s 77(5)(a).

9 Ibid ss 74(1), 77(5)(b). As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

10 As to local education authorities see PARA 20 ante.

11 Learning and Skills Act 2000 s 77(5)(c).

12 Ibid s 77(5)(d).

13 Ibid s 77(6). A copy may be supplied under s 77(6) free of charge or on payment of such fee, not exceeding the cost of supplying the copy, as the Chief Inspector for Wales may determine: s 77(7).

14 Ibid s 77(8).

## **UPDATE**

### **1333 Inspections**

TEXT AND NOTE 9--Reference to National Council for Education and Training for Wales omitted; 2000 Act s 74(1) amended, s 77(5)(b) repealed: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238.

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### **1334. General powers.**

The Chief Inspector for Wales<sup>1</sup> may give advice to the National Assembly for Wales<sup>2</sup> on any matter relating to education or training brought within the remit of the Chief Inspector for Wales by Part IV of the Learning and Skills Act 2000<sup>3</sup>, and he may inspect, and report on, any education or training of that kind<sup>4</sup>. The Chief Inspector for Wales may, if the provider of the education or training asks him to do so, inspect any education or training<sup>5</sup> which is not of that kind<sup>6</sup>, but which would be if it were funded in one of the ways<sup>7</sup> education and training within the remit of the Chief Inspector for Wales is funded<sup>8</sup>. He may arrange for a report of an inspection carried out as a result of such a request<sup>9</sup> to be published<sup>10</sup>.

1   I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2   As to the National Assembly for Wales see PARA 53 ante.

3   Learning and Skills Act 2000 s 78(1). The text refers to Pt IV (ss 73-88) (as amended; prospectively amended).

4   Ibid s 78(2). The provisions of s 77(5)-(8) (supply of copies of reports of inspections: see PARA 1333 ante) apply to a report under s 78(2) as they apply to a report under s 77: s 78(5). As to the privilege attaching to such reports see PARA 1332 note 8 ante.

5   Ibid s 78(3). The Chief Inspector for Wales may charge for the cost of an inspection conducted under s 78(3): s 78(4).

6   Ibid s 78(3)(a). See note 5 supra.

7   I.e. in one of the ways mentioned in ibid s 75: see PARA 1331 ante.

8   Ibid s 78(3)(b). See note 5 supra.

9   I.e. under ibid s 78(3): see the text and notes 5-8 supra.

10   Ibid s 78(6).

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### **1335. Action plans.**

If the Chief Inspector for Wales<sup>1</sup> publishes a report of an inspection<sup>2</sup>, the provider of the education or training which is the subject of the report must prepare a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take it<sup>3</sup>. The person making the statement must publish it within such period, and in such manner, as may be prescribed by regulations made by the National Assembly for Wales<sup>4</sup>, and send copies of it to such persons as may be so prescribed<sup>5</sup>.

1     In Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2     Learning and Skills Act 2000 s 80(1). As to the privilege attaching to such reports see PARA 1332 note 8 ante. Section 80 does not apply to a report of an inspection conducted as a result of a request under s 78(3) (see PARA 1334 ante), or under s 83 (as amended) (area inspections: see PARA 1338 post): s 80(2).

3     Ibid s 80(3).

4     Ibid s 80(4)(a). As to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the manner of publication see the Inspection of Education and Training (Wales) Regulations 2001, SI 2001/2501, reg 4(1), (2) (reg 4(1) amended by SI 2004/783).

5     Learning and Skills Act 2000 s 80(4)(b). As to the persons to whom copies must be sent see the Inspection of Education and Training (Wales) Regulations 2001, SI 2001/2501, reg 4(3), (4).

### **UPDATE**

### **1335 Action plans**

NOTE 5--SI 2001/2501 reg 4(3) amended: SI 2005/3238.

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### **1336. Inspection of careers services.**

Until a day to be appointed, the following provisions have effect<sup>1</sup>. The Chief Inspector for Wales<sup>2</sup> must, if requested to do so by the National Assembly for Wales<sup>3</sup>, arrange for any person providing, or arranging for the provision of, relevant services<sup>4</sup> to be inspected<sup>5</sup>. Such a request for an inspection may relate to one or more such persons, and must specify both the person or persons concerned, and the relevant services to which the inspection is to relate<sup>6</sup>. Before making any such request the Assembly must consult the Chief Inspector for Wales as to the matters to be specified in the request<sup>7</sup>. An inspection is to consist of a review of the way in which the person is discharging his responsibilities<sup>8</sup>, having regard to any guidance given by the Assembly with respect to the provision of relevant services<sup>9</sup>. If requested to do so by the Assembly, the Chief Inspector for Wales must arrange for a person who provides a relevant service<sup>10</sup>, and who also provides education, training or an advisory service in pursuance of arrangements<sup>11</sup> made by the Assembly<sup>12</sup> or with the assistance of a grant or loan<sup>13</sup>, to be inspected<sup>14</sup>. A request may relate to more than one person and must specify the person or persons concerned, and the education, training or advisory service to which the inspection is to relate<sup>15</sup>. Before making a request, the National Assembly for Wales must consult the Chief Inspector for Wales as to the matters to be specified in the request<sup>16</sup>. An inspection is to consist of a review of the way in which the person is providing the education, training or advisory service specified in the request<sup>17</sup>. Any inspection under the provisions described above must be conducted by one or more of any of Her Majesty's Inspectors of Education and Training in Wales<sup>18</sup>, or any additional authorised inspector<sup>19</sup>, but such an inspector or inspectors may be assisted by such other persons, whether or not members of the staff of the Chief Inspector for Wales, as the Chief Inspector for Wales thinks fit<sup>20</sup>. In conducting an inspection, the inspector or inspectors must act in accordance with any instruction or guidelines given from time to time by the Assembly<sup>21</sup>. Where an inspection has been completed, the inspector or inspectors must make a written report on the inspection and send the report to the National Assembly for Wales<sup>22</sup>. The Assembly may arrange for any report of an inspection to be published in such manner as it considers appropriate<sup>23</sup>.

As from a day to be appointed, the following provisions have effect<sup>24</sup>. The Chief Inspector<sup>25</sup> has the general duty of keeping the Assembly informed about the quality of the relevant services<sup>26</sup> provided in Wales in pursuance of arrangements made or directions given by the Assembly under certain provisions of the Employment and Training Act 1973<sup>27</sup>. Any person who provides, or arranges for the provision of, relevant services in accordance with such arrangements or directions (a 'service provider')<sup>28</sup> must be inspected by the Chief Inspector at prescribed intervals<sup>29</sup>. When asked to do so by the Assembly, the Chief Inspector must: (1) give advice to the Assembly on such matters relating to the provision of relevant services in Wales in pursuance of such arrangements or directions as may be specified in the Assembly's request<sup>30</sup>; or (2) inspect any service provider<sup>31</sup>. The Chief Inspector may at any time: (a) give advice to the Assembly relating to the provision of relevant services in Wales in pursuance of such arrangements or directions<sup>32</sup>; or (b) inspect any service provider<sup>33</sup>. Such an inspection of any service provider is to consist of a review of the way in which the person is discharging his responsibilities<sup>34</sup>, having regard to any guidance given by the Assembly with respect to the provision of relevant services<sup>35</sup>. If a person ('a relevant provider') who provides a relevant service<sup>36</sup> also provides education, training or an advisory service in Wales in pursuance of arrangements<sup>37</sup> made by the Assembly<sup>38</sup> or with the assistance of a grant or loan<sup>39</sup>, the Chief

Inspector has the general duty of keeping the Assembly informed about the quality of any such education, training or advisory services provided by relevant providers in Wales<sup>40</sup>. The Chief Inspector must inspect any relevant provider at prescribed intervals<sup>41</sup>. When asked to do so by the Assembly, the Chief Inspector must: (i) give advice to the Assembly on such matters relating to the provision of any such education, training or advisory services by relevant providers<sup>42</sup>; or (ii) inspect any relevant provider<sup>43</sup>. The Chief Inspector may at any time: (A) give advice to the Assembly relating to the provision of such education, training or advisory services by relevant providers<sup>44</sup>; or (B) inspect any service provider<sup>45</sup>. An inspection of any relevant provider is to consist of a review of the way in which the person is providing the education, training or advisory services in pursuance of arrangements made by the Assembly or with the assistance of a grant or loan<sup>46</sup>. Any inspection under the provisions described above<sup>47</sup> must be conducted by one or more of any of Her Majesty's Inspectors of Education and Training in Wales<sup>48</sup>, or any additional authorised<sup>49</sup> inspector<sup>50</sup>. However, such an inspector or inspectors may be assisted by such other persons, whether or not members of the Chief Inspector's staff, as the Chief Inspector thinks fit<sup>51</sup>. In conducting such an inspection, the inspector or inspectors must act in accordance with any instruction or guidelines given from time to time by the Assembly<sup>52</sup>. The inspector conducting the inspection, and any person assisting him<sup>53</sup>, has at all reasonable times a right of entry to any premises where the relevant services or, as the case requires, the education, training or advisory services<sup>54</sup> are provided<sup>55</sup>; and he also has a right to inspect, and take copies of, any records or other documents kept by the person being inspected, which he requires for the purposes of the inspection<sup>56</sup>. It is an offence intentionally to obstruct the inspector conducting the inspection, or any person assisting him<sup>57</sup>, in the exercise of his functions in relation to the inspection<sup>58</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>59</sup>. Where such an inspection has been completed, the Chief Inspector must prepare a written report on the inspection within a prescribed period<sup>60</sup>, and send a copy of the report to the person inspected, the Assembly, any prescribed person, and any other person whom he considers appropriate<sup>61</sup>. The Chief Inspector must publish the report in the prescribed manner or, if none is prescribed, in such manner as he considers appropriate<sup>62</sup>. Regulations may require the person inspected to prepare a written statement in response to the report of the inspection<sup>63</sup>.

1 As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(b), the Teaching and Higher Education Act 1998 ss 35-35A (s 35 as amended; s 35A as added) are repealed by the Education Act 2005 s 123, Sch 19 Pt 1 and replaced by ss 55-57 (see the text and notes 24-63 *infra*). However, at the date at which this volume states the law, no such day had been appointed.

2 *Re* Her Majesty's Chief Inspector of Education and Training in Wales: see the Teaching and Higher Education Act 1998 s 35(7) (definition amended by virtue of the Learning and Skills Act 2000 s 73(3)(a)); and the Teaching and Higher Education Act 1998 s 35A(7) (s 35A added by the Learning and Skills Act 2000 s 81). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see *PARA* 1188 *ante*; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see *PARA* 1227 *ante*.

3 As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see *PARA* 53 *ante*.

4 *Re* relevant services provided in Wales in pursuance of arrangements made or directions given under the Employment and Training Act 1973 s 10 (as substituted) (see *EMPLOYMENT* vol 40 (2009) *PARA* 569); Teaching and Higher Education Act 1998 s 35(1). 'Relevant services' has the same meaning as in the Employment and Training Act 1973 ss 8, 9 (both as substituted) (provision of careers services: see *EMPLOYMENT* vol 40 (2009) *PARAS* 567-568); Teaching and Higher Education Act 1998 s 35(7). For the meaning of 'Wales' see *PARA* 52 note 13 *ante*. See note 1 *supra*.

5 *Ibid* s 35(2). See note 1 *supra*.

6 *Ibid* s 35(4). See note 1 *supra*.

7 *Ibid* s 35(5). See note 1 *supra*.

- 8     le his responsibilities under or by virtue of the arrangements or directions in question (see note 4 supra): see *ibid* s 35(3). See note 1 supra.
- 9     *Ibid* s 35(3). See note 1 supra.
- 10    le a relevant service to which *ibid* s 35(1) applies: see note 4 supra.
- 11    le made under the Employment and Training Act 1973 s 2 (as substituted and amended): see *EMPLOYMENT* vol 40 (2009) PARA 563.
- 12    Teaching and Higher Education Act 1998 s 35A(1)(a) (as added: see note 2 supra). See note 1 supra.
- 13    *Ibid* s 35A(1)(b) (as added: see note 2 supra). The text refers to a grant or loan made under the Industrial Development Act 1982 s 12(1) (power to promote careers in industry: see *TRADE AND INDUSTRY* vol 97 (2010) PARA 948). See note 1 supra.
- 14    See the Teaching and Higher Education Act 1998 s 35A(2) (as added: see note 2 supra). See note 1 supra.
- 15    *Ibid* s 35A(3) (as added: see note 2 supra). See note 1 supra.
- 16    *Ibid* s 35A(5) (as added: see note 2 supra). See note 1 supra.
- 17    *Ibid* s 35A(4) (as added: see note 2 supra). See note 1 supra.
- 18    *Ibid* s 35(6)(a) (s 35(6) substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 77); Teaching and Higher Education Act 1998 s 35A(6) (as added: see note 2 supra). See note 1 supra. As to the appointment of Her Majesty's Inspectors of Education and Training in Wales see PARA 1188 ante.
- 19    *Ibid* s 35(6)(b) (as substituted: see note 18 supra); s 35A(6) (as added: see note 2 supra). See note 1 supra.
- 20    *Ibid* s 35(6) (as substituted: see note 18 supra); s 35A(6) (as added: see note 2 supra). See note 1 supra.
- 21    *Ibid* s 35(6A) (s 35(6A), (6B), (6C) added by the Learning and Skills Act 2000 Sch 9 paras 1, 77); Teaching and Higher Education Act 1998 s 35A(6) (as added: see note 2 supra). See note 1 supra.
- 22    *Ibid* s 35(6B) (as added: see note 21 supra); s 35A(6) (as added: see note 2 supra). See note 1 supra. As to the privilege attaching to such reports see PARA 1332 note 8 ante.
- 23    *Ibid* s 35(6C) (as added: see note 21 supra); s 35A(6) (as added: see note 2 supra). The provisions of the School Inspections Act 1996 s 42A(2)-(4) (as added; prospectively repealed) (publication of inspection reports: see PARA 1220 ante) apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in s 42A(2) (as added; prospectively repealed): Teaching and Higher Education Act 1998 s 35(6C) (as so added); s 35A(6) (as so added). See note 1 supra.
- 24    As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(b), the Education Act 2005 ss 55-57 (see the text and notes 25-63 *infra*) are to come into force, and the Teaching and Higher Education Act 1998 ss 35, 35A (s 35 as amended; s 35A as added) (see the text and notes 1-23 *supra*) are to be repealed by the Education Act 2005 s 123, Sch 19 Pt 1. However, at the date at which this volume states the law, no such day had been appointed.
- 25    le Her Majesty's Chief Inspector of Education and Training in Wales: *ibid* s 55(8). See note 2 supra.
- 26    'Relevant services' has the same meaning as in the Employment and Training Act 1973 ss 8, 9 (both as substituted) (provision of careers services: see *EMPLOYMENT* vol 40 (2009) PARAS 567-568); Education Act 2005 s 55(8). See note 24 supra.
- 27    *Ibid* s 55(1), (2). The text refers to relevant services provided in Wales in pursuance of arrangements made or directions given by the National Assembly for Wales under the Employment and Training Act 1973 s 10 (as substituted) (see *EMPLOYMENT* vol 40 (2009) PARA 569); Education Act 2005 s 55(1). See note 24 supra.
- 28    *Ibid* s 55(3). See note 24 supra.
- 29    *Ibid* s 55(4). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the National Assembly for Wales: s 55(8). As to the making of regulations under the Education Act 2005 generally see PARA 62 note 1 ante; and as to the making of regulations under Pt 1 (ss 1-63) see PARA 1231 note

49 ante. At the date at which this volume states the law, no regulations had been made under s 55 (not yet in force). See note 24 supra.

30 Ibid s 55(5)(a). See note 24 supra.

31 Ibid s 55(5)(b). See note 24 supra.

32 Ibid s 55(6)(a). See note 24 supra.

33 Ibid s 55(6)(b). See note 24 supra.

34 Ie his responsibilities under or by virtue of the arrangements or directions in question (see the text and notes 25-27 supra): see ibid s 55(7). See note 24 supra.

35 Ibid s 55(7). See note 24 supra.

36 Ie a relevant service to which ibid s 55 (not yet in force) applies: see the text and notes 25-35 supra.

37 Ie made under the Employment and Training Act 1973 s 2 (as substituted and amended): see EMPLOYMENT vol 40 (2009) PARA 563.

38 Education Act 2005 s 56(1)(a). See note 24 supra.

39 Ibid s 56(1)(b). The text refers to a grant or loan made under the Industrial Development Act 1982 s 12(1) (power to promote careers in industry: see TRADE AND INDUSTRY vol 97 (2010) PARA 948). See note 24 supra.

40 Education Act 2005 s 56(2). See note 24 supra.

41 Ibid s 56(3). At the date at which this volume states the law, no regulations had been made under s 56 (not yet in force). See note 24 supra.

42 Ibid s 56(4)(a). See note 24 supra.

43 Ibid s 56(4)(b). See note 24 supra.

44 Ibid s 56(5)(a). See note 24 supra.

45 Ibid s 56(5)(b). See note 24 supra.

46 Ibid s 56(6). The text refers to the education, training or advisory services falling within s 56(1)(a) (not yet in force) (see the text and notes 36-38 supra) or s 56(1)(b) (not yet in force) (see the text and note 39 supra). See note 24 supra.

47 Ie under ibid s 55 (not yet in force) or s 56 (not yet in force): see the text and notes 25-46 supra.

48 Ibid s 57(1), (2)(a). See note 24 supra. As to the appointment of Her Majesty's Inspectors of Education and Training in Wales under the Education Act 2005 see PARA 1227 ante.

49 Ie authorised under ibid s 19(8), Sch 2 para 2 (not yet in force) (see PARA 1228 ante).

50 Ibid s 57(1), (2)(b). See note 24 supra.

51 Ibid s 57(1), (2). See note 24 supra.

52 Ibid s 57(1), (3). See note 24 supra.

53 Ie assisting him by virtue of ibid s 57(1), (2) (not yet in force): see the text and note 51 supra.

54 Ie the education, training or advisory services falling within ibid s 56(1) (not yet in force): see the text and notes 36-39 supra.

55 Ibid s 57(1), (4)(a). See note 24 supra.

56 Ibid s 57(1), (4)(b). See note 24 supra.

57 Ie assisting him by virtue of ibid s 57(1), (2) (not yet in force): see the text and note 51 supra.

58 Ibid s 57(1), (5). See note 24 supra.



59 Ibid s 57(1), (6). The fine must not exceed level 4 on the standard scale: s 57(6). As to the standard scale see PARA 481 note 4 ante. See note 24 supra.

60 Ibid s 57(1), (7)(a). At the date at which this volume states the law, no regulations had been made under s 57 (not yet in force). See note 24 supra.

61 Ibid s 57(1), (7)(b). See note 24 supra.

62 Ibid s 57(1), (7)(c). For the purposes of the law of defamation, any report published by the Chief Inspector under s 57 (not yet in force) is privileged unless the publication is shown to be made with malice: s 29(3); applied by s 57(1), (8). This provision does not limit any privilege subsisting apart from s 29(3) (not yet in force): s 29(4); applied by s 57(1), (8). See note 24 supra. As to defamation generally see LIBEL AND SLANDER; and as to privilege and malice in the law of defamation see LIBEL AND SLANDER vol 28 (Reissue) PARAS 94 et seq, 149.

63 Ibid s 57(1), (9). Such regulations may: (1) prescribe the matters to be dealt with in the statement; (2) prescribe the period within which it must be prepared; and (3) require the person who prepared it to send copies of the statement to prescribed persons and to publish it in the prescribed manner: s 57(1), (10). See note 24 supra.

## **UPDATE**

### **1336 Inspection of careers services**

TEXT AND NOTES 21-23--Repeal of these provisions in force 1 April 2007: SI 2006/1338.

TEXT AND NOTES 24-63--These provisions in force 1 April 2007: SI 2006/1338.

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### **1337. Inspections of education and training provided under the Employment and Training Act 1973.**

The Chief Inspector for Wales<sup>1</sup> may, at the request of the Secretary of State<sup>2</sup> or the Adult Learning Inspectorate<sup>3</sup>, inspect any education or training provided in Wales by the Secretary of State in accordance with certain arrangements under the Employment and Training Act 1973<sup>4</sup>. A report of such an inspection must be given at his request to the Secretary of State<sup>5</sup>. The Secretary of State may arrange for the report to be published in such manner as he considers appropriate<sup>6</sup>. A report of an inspection conducted at the request of the Adult Learning Inspectorate must be given to the inspectorate<sup>7</sup>, which may arrange for the report to be published in such manner as it considers appropriate<sup>8</sup>. The Chief Inspector for Wales must send a copy of any report<sup>9</sup> to the National Assembly for Wales<sup>10</sup>.

1 The Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2 As to the Secretary of State see PARA 52 ante.

3 As to the Adult Learning Inspectorate see PARA 1304 et seq ante.

4 Learning and Skills Act 2000 s 82(1). The text refers to arrangements made under the Employment and Training Act 1973 s 2 (as substituted and amended): see EMPLOYMENT vol 40 (2009) PARA 563.

5 Learning and Skills Act 2000 s 82(2). As to the privilege attaching to such reports see PARA 1332 note 8 ante.

6 Ibid s 82(3).

7 Ibid s 82(4).

8 Ibid s 82(5).

9 The any report under ibid s 82(2) or s 82(4): see the text and notes 5, 7 supra.

10 Ibid s 82(6). As to the National Assembly for Wales see PARA 53 ante.

### **UPDATE**

### **1337 Inspections of education and training provided under the Employment and Training Act 1973**

TEXT AND NOTES 3, 7, 8--Now, references to the Adult Learning Inspectorate are references to Her Majesty's Chief Inspector of Education, Children's Services and Skills: 2000 Act s 82(1), (4), (5), (7) (s 82(1), (4), (5) amended, s 82(7) added by the Education and Inspections Act 2006 Sch 14 para 57). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills see PARA 1167A.1.

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### **1338. Area inspections.**

If asked to do so by the National Assembly for Wales<sup>1</sup>, the Chief Inspector for Wales<sup>2</sup> must inspect:

- 2494 (1) the quality and availability of a specified description of education or training, in a specified area in Wales, for persons who are aged 15<sup>3</sup> or over<sup>4</sup>;
- 2495 (2) the standards achieved by those receiving that education or training<sup>5</sup>; and
- 2496 (3) whether the financial resources made available to those providing that education and training are managed efficiently and used in a way which provides value for money<sup>6</sup>.

The Chief Inspector for Wales may, without being asked to, conduct such an inspection<sup>7</sup>. If financial resources have been applied by the National Council for Education and Training for Wales<sup>8</sup> or a local education authority<sup>9</sup> in respect of education or training which is being so inspected, the inspection may extend to considering the manner in which those resources have been applied and whether they have been applied in a way which provides value for money<sup>10</sup>. The education or training that may be made the subject of an area inspection<sup>11</sup> is any education or training within the remit of the Chief Inspector for Wales, whether as a result of Part IV of the Learning and Skills Act 2000<sup>12</sup> or any other enactment<sup>13</sup>.

A provider of education or training which is the subject of an area inspection must provide such information as the Chief Inspector for Wales may reasonably require in connection with the inspection<sup>14</sup>. The National Council for Education and Training for Wales and any local education authority within the area which is the subject of an area inspection must provide such information as the Chief Inspector for Wales may reasonably require in connection with the inspection<sup>15</sup>. The National Assembly for Wales may by regulations<sup>16</sup> make further provision with respect to the obligation to provide such information<sup>17</sup>.

On completing an area inspection, the Chief Inspector for Wales must make a written report<sup>18</sup>. If he publishes such a report<sup>19</sup>, the Assembly may direct the National Council for Education and Training for Wales to prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>20</sup>. The Assembly may also direct a local education authority whose area is wholly or partly in the area covered by the report to prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>21</sup>. In preparing the statement the National Council for Education and Training for Wales or the local education authority must consult such persons as the Assembly may direct<sup>22</sup>. The person making the statement must publish it within such period, and in such manner, as may be prescribed by regulations made by the Assembly<sup>23</sup>, and send copies of it to such persons as may be so prescribed<sup>24</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

3 For these purposes, 'persons who are aged 15' includes persons for whom education is being provided at a school who will attain that age in the current school year: Learning and Skills Act 2000 s 83(11) (added by the Education Act 2002 s 178(1), (4)(b)). For the meaning of 'school' see PARA 81 ante; definition applied by the Learning and Skills Act 2000 s 83(11) (as so added). For the meaning of 'school year' see PARA 15 note 9 ante; definition applied by s 83(11) (as so added).

4 Ibid s 83(1)(a) (amended by the Education Act 2002 s 178(1), (4)(a)).

5 Learning and Skills Act 2000 s 83(1)(b).

6 Ibid s 83(1)(c).

7 Ibid s 83(2).

8 As to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

9 As to local education authorities see PARA 20 ante.

10 Learning and Skills Act 2000 ss 74(1), 83(3).

11 For these purposes, 'area inspection' means an inspection under ibid s 83 (as amended): see s 83(10).

12 Ie ibid Pt IV (ss 73-88) (as amended; prospectively amended).

13 Ibid s 83(4).

14 Ibid s 83(5).

15 Ibid ss 74(1), 83(6).

16 At the date at which this volume states the law, no regulations had been made under ibid s 83(7). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante.

17 Ibid s 83(7).

18 Ibid s 83(8). The report must be made within such period as may be prescribed: ss 77(4), 83(9). The Chief Inspector for Wales must without delay send a copy of the report to the National Assembly for Wales, the National Council for Education and Training for Wales, and any local education authority providing funds for the education or training inspected: ss 77(5)(a)-(c), 83(9). Copies may also be sent to such other persons as the Chief Inspector for Wales considers appropriate: ss 77(6), 83(9). A copy may be supplied under s 77(6) free of charge or on payment of such fee, not exceeding the cost of supplying the copy, as the Chief Inspector for Wales may determine: ss 77(7), 83(9). The Chief Inspector for Wales must arrange for the report to be published in such manner as he considers appropriate: ss 77(8), 83(9). As to the privilege attaching to such reports see PARA 1332 note 8 ante. 'Prescribed' means prescribed in regulations made by the National Assembly for Wales: ss 77(9), 83(9). As to the timing for inspection reports see the Inspection of Education and Training (Wales) Regulations 2001, SI 2001/2501, reg 3 (amended by SI 2004/783).

19 Learning and Skills Act 2000 s 84(1).

20 Ibid s 84(2). As to proposals for restructuring the provision of sixth form education which may be made by the National Council for Education and Training for Wales with a view to meeting recommendations made in the report of an area inspection under s 83 (as amended) (among other reasons) see PARA 1283 et seq ante.

21 Ibid s 84(3).

22 Ibid s 84(4).

23 Ibid s 84(5)(a). As to the manner of publication see the Inspection of Education and Training (Wales) Regulations 2001, SI 2001/2501, reg 4(1), (2) (reg 4(1) amended by SI 2004/783).

24 Learning and Skills Act 2000 s 84(5)(b). As to the persons to whom copies must be sent see the Inspection of Education and Training (Wales) Regulations 2001, SI 2001/2501, reg 4(3), (4).

## UPDATE

### 1338 Area inspections

NOTE 2--Repeal now in force in relation to Wales: SI 2006/1338.

TEXT AND NOTES 8, 10, 15--References to National Council for Education and Training for Wales now to National Assembly for Wales: 2000 Act s 83(3), (6) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 18--Reference to National Council for Education and Training for Wales omitted; 2000 Act s 77(5)(b) repealed: SI 2005/3238.

TEXT AND NOTES 19, 20--2000 Act s 84(2) repealed: SI 2005/3238.

TEXT AND NOTE 22--Reference to National Council for Education and Training for Wales omitted: 2000 Act s 84(4) (amended by SI 2005/3238).

NOTE 24--SI 2001/2501 reg 4(3) amended: SI 2005/3238.

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### **1339. Surveys and comparative studies.**

The National Assembly for Wales<sup>1</sup> may direct the Chief Inspector for Wales<sup>2</sup> to carry out:

- 2497 (1) a survey of Wales, or of a specified area within Wales, in respect of specified matters relating to policy concerned with education or training for persons aged 16 or over<sup>3</sup>; or
- 2498 (2) a comparative study of the provision made outside Wales in respect of specified matters relating to such education or training<sup>4</sup>.

The Chief Inspector for Wales may, without being directed to, carry out a survey or study of that kind<sup>5</sup>.

1 As to the National Assembly for Wales see PARA 53 ante.

2 I.e. Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

3 Learning and Skills Act 2000 s 85(1)(a).

4 Ibid s 85(1)(b).

5 Ibid s 85(2).

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### **1340. Annual reports.**

The annual report<sup>1</sup> of the Chief Inspector for Wales<sup>2</sup> must include an account of the exercise of his functions under Part IV of the Learning and Skills Act 2000<sup>3</sup>. The power to make other reports<sup>4</sup> includes a power to make reports with respect to matters relating to education or training which is brought within the remit of the Chief Inspector for Wales by Part IV of the Learning and Skills Act 2000<sup>5</sup>.

1 The annual report required by the School Inspections Act 1996 s 5(7)(a) (as amended; prospectively repealed) (see PARA 1192 ante); Learning and Skills Act 2000 s 86(1).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(b), the Learning and Skills Act 2000 s 86(1) is amended so as to refer to the Education Act 2005 s 21(1)(a) (not yet in force) (see PARA 1231 ante) instead of the School Inspections Act 1996: see the Learning and Skills Act 2000 s 86(1) (prospectively amended by the Education Act 2005 s 61, Sch 9 para 25). At the date at which this volume states the law, no such day had been appointed.

2 The Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

3 Learning and Skills Act 2000 s 86(1). See note 1 supra. The text refers to Pt IV (ss 73-88) (as amended; prospectively amended).

4 The power to make other reports which is conferred by the provisions mentioned in note 1 supra.

5 Learning and Skills Act 2000 s 86(2).

### **UPDATE**

#### **1340 Annual reports**

NOTE 1--Day now appointed: SI 2006/1338.

NOTE 2--Repeal now in force in relation to Wales: SI 2006/1338.

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### **1341. Annual plan.**

The Chief Inspector for Wales<sup>1</sup> must<sup>2</sup> prepare a plan for each financial year<sup>3</sup>. The plan must be submitted to the National Assembly for Wales<sup>4</sup> by such time before the beginning of the financial year to which it relates as the Assembly may direct<sup>5</sup>.

The plan must contain estimates of:

2499 (1) the expenditure necessary, in the financial year to which the plan relates, in order to secure that the functions of the Chief Inspector for Wales are discharged effectively<sup>6</sup>; and

2500 (2) the income which the Chief Inspector for Wales will receive in that financial year and which may be applied towards meeting his expenses<sup>7</sup>.

The plan must also contain proposals for the management of any funds which may be provided by the Assembly for that financial year<sup>8</sup>.

The Chief Inspector for Wales may, after the plan has been approved<sup>9</sup>, publish it in such manner and at such time as appears to him to be appropriate<sup>10</sup>.

1    le Her Majesty's Chief Inspector of Education and Training in Wales: see the Learning and Skills Act 2000 ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2    le for the purposes of the consultation required under the Government of Wales Act 1998 s 104(4) (as amended) (funding of Her Majesty's Chief Inspector of Education and Training for Wales: see CONSTITUTIONAL LAW AND HUMAN RIGHTS): see the Learning and Skills Act 2000 s 87(1), (6).

3    Ibid s 87(1).

4    As to the National Assembly for Wales see PARA 53 ante.

5    Learning and Skills Act 2000 s 87(2).

6    Ibid s 87(3)(a).

7    Ibid s 87(3)(b).

8    Ibid s 87(4).

9    le under the Government of Wales Act 1998 s 104(4A) (as added): see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

10   Learning and Skills Act 2000 s 87(5), (6).



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### **1342. Right of entry.**

When conducting an inspection under Part IV of the Learning and Skills Act 2000<sup>1</sup>, the Chief Inspector for Wales<sup>2</sup> has, at all reasonable times:

- 2501 (1) a right of entry to premises on which the education or training being inspected is provided<sup>3</sup>;
- 2502 (2) a right of entry to premises of the provider of that education or training which are used in connection with that provision<sup>4</sup>;
- 2503 (3) a right to inspect, and take copies of, any records kept by that person, and any other documents containing information relating to the education or training, which the inspector requires for the purposes of the inspection<sup>5</sup>.

In respect of education or training provided by an employer in the workplace, the right of entry conferred by heads (1) to (3) above may be exercised only if the employer has been given reasonable notice in writing<sup>6</sup>. The right to inspect records conferred by head (3) above includes the right to have access to, and to inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question<sup>7</sup>. That right also includes the right to such assistance from the person by whom or on whose behalf the computer is or has been so used<sup>8</sup>, or any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material<sup>9</sup>, as the Chief Inspector for Wales may reasonably require<sup>10</sup>.

It is an offence wilfully to obstruct the Chief Inspector for Wales in the exercise of his functions in relation to an inspection under Part IV of the Learning and Skills Act 2000<sup>11</sup>. A person guilty of such an offence is liable on summary conviction to a fine<sup>12</sup>.

1    le the Learning and Skills Act 2000 Pt IV (ss 73-88) (as amended; prospectively amended) (see PARA 1331 et seq ante).

2    le Her Majesty's Chief Inspector of Education and Training in Wales: see *ibid* ss 73(1), 74(2). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

3    Learning and Skills Act 2000 s 79(1)(a).

4    *Ibid* s 79(1)(b).

5    *Ibid* s 79(1)(c).

6    *Ibid* s 79(2).

7    *Ibid* s 79(3).

8    *Ibid* s 79(4)(a).

9    *Ibid* s 79(4)(b).

10   *Ibid* s 79(4).

11 Ibid s 79(5).

12 Ibid s 79(6). The fine must not exceed level 4 on the standard scale: s 79(6). As to the standard scale see PARA 481 note 4 ante.

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#### **(iv) Intervention for Mismanagement or Breach of Duty**

##### **1343. Intervention.**

If one or more of the conditions listed in heads (1) to (4) below is satisfied regarding an institution within the further education sector<sup>1</sup>, namely that:

- 2504 (1) the Secretary of State or, in relation to Wales, the National Assembly for Wales<sup>2</sup> is satisfied that the institution's affairs have been or are being mismanaged by its governing body<sup>3</sup>;
- 2505 (2) the Secretary of State or the Assembly is satisfied that the institution's governing body has failed to discharge any duty imposed on it by or for the purposes of any Act<sup>4</sup>;
- 2506 (3) the Secretary of State or the Assembly is satisfied that the institution's governing body has acted or is proposing to act unreasonably with respect to the exercise of any power conferred or the performance of any duty imposed by or under any Act<sup>5</sup>;
- 2507 (4) a report regarding the institution and made by<sup>6</sup>: (a) Her Majesty's Chief Inspector of Schools in England<sup>7</sup>; (b) Her Majesty's Chief Inspector of Education and Training in Wales<sup>8</sup>; (c) the Adult Learning Inspectorate<sup>9</sup>; or (d) the Chief Inspector of Adult Learning<sup>10</sup>, indicates that the institution has serious weaknesses, or is failing or likely to fail to give an acceptable standard of education<sup>11</sup>,

then the Secretary of State or the Assembly may by order<sup>12</sup> declare which of the conditions is, or are, satisfied<sup>13</sup>, and do one or more of the following<sup>14</sup>:

- 2508 (i) remove all or any of the members of the institution's governing body<sup>15</sup>;
- 2509 (ii) appoint new members of that body if there are vacancies, however arising<sup>16</sup>; and
- 2510 (iii) give to that body such directions as seem expedient as to the exercise of its powers and performance of its duties<sup>17</sup>.

Such directions may be given to a body despite any enactment making the exercise of a power or performance of a duty contingent on the body's opinion<sup>18</sup>. A governing body must comply with any such directions given to it<sup>19</sup>. An appointment of a member of a governing body made under these provisions has effect as if made in accordance with the instrument of government and articles of government of the institution concerned<sup>20</sup>.

1 Further and Higher Education Act 1992 s 57(1) (s 57 substituted by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 34). For the purposes of the Further and Higher Education Act 1992 s 57 (as substituted) it is immaterial whether or not a complaint is made by any person: s 57(1) (as so substituted). As to references to institutions within the further education sector see PARA 579 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

- 3 Further and Higher Education Act 1992 s 57(2)(a) (as substituted: see note 1 supra). For the meaning of 'governing body' in relation to an educational institution see PARA 584 note 5 ante.
- 4 Ibid s 57(2)(b) (as substituted: see note 1 supra).
- 5 Ibid s 57(2)(c) (as substituted: see note 1 supra).
- 6 Ibid s 57(2)(d) (as substituted: see note 1 supra).
- 7 Ibid s 57(2)(d), (3)(a) (as substituted: see note 1 supra). As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.
- 8 Ibid s 57(2)(d), (3)(b) (as substituted: see note 1 supra). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.
- 9 Further and Higher Education Act 1992 s 57(2)(d), (3)(c) (as substituted: see note 1 supra). As to the Adult Learning Inspectorate see PARA 1304 et seq ante.
- 10 Ibid s 57(2)(d), (3)(d) (as substituted: see note 1 supra). As to the appointment of the Chief Inspector of Adult Learning see PARA 1304 ante.
- 11 Ibid s 57(2)(d) (as substituted: see note 1 supra).
- 12 Orders under ibid s 57 (as substituted) are not made by statutory instrument; but the Interpretation Act 1978 s 14 (implied power to amend) applies to orders made under the Further and Higher Education Act 1992 s 57 (as substituted) as it applies to orders made by statutory instrument: see s 89(2).
- 13 Ibid s 57(4)(a) (as substituted: see note 1 supra).
- 14 Ibid s 57(4)(b) (as substituted: see note 1 supra).
- 15 Ibid s 57(5)(a) (as substituted: see note 1 supra).
- 16 Ibid s 57(5)(b) (as substituted: see note 1 supra).
- 17 See ibid s 57(5)(c) (as substituted: see note 1 supra).
- 18 Ibid s 57(6) (as substituted: see note 1 supra).
- 19 Ibid s 57(7) (as substituted: see note 1 supra).
- 20 Ibid s 57(8) (as substituted: see note 1 supra).

## UPDATE

### 1343 Intervention

TEXT AND NOTES--The Secretary of State's and the National Assembly for Wales's powers of intervention in relation to institutions in the further education sector have been transferred to the Chief Executive of Skills Funding and the Welsh Ministers: see Further and Higher Education Act 1992 ss 56A-56J, 57, 57A (ss 56A-56C, 57A added by Further Education and Training Act 2007 ss 17, 18, s 56AA added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 8, s 56D added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 11, ss 56E-56J added by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 8; s 56A amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 7, Sch 8 para 6, s 56B amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 9, Sch 16 Pt 2, s 56C amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 6 para 10, Sch 8 para 7, Sch 16 Pt 2, s 57 amended by Further Education and Training Act 2007 Sch 1 para 9, Sch 2, Learner Travel (Wales) Measure 2008 Sch 1 para 3).

TEXT AND NOTES 8-11--Now head (b) Her Majesty's Chief Inspector of Education, Children's Services and Skills; omits heads (c) and (d): 1992 Act s 57(3) (amended by Education and Inspections Act 2006 Sch 14 para 18, Sch 18 Pt 5). As to Her Majesty's Chief Inspector of Education, Children's Services and Skills, see PARA 1167A.

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## **(v) Inspection of Accounts**

### **1344. Inspection of accounts.**

The accounts of any further education corporation<sup>1</sup>, and any designated institution<sup>2</sup>, must be open to the inspection of the Comptroller and Auditor General<sup>3</sup>. In the case of any such corporation or institution this power, and the powers<sup>4</sup> relating to examinations into the economy, efficiency and effectiveness of certain bodies and access to documents and information conferred<sup>5</sup> on the Comptroller and Auditor General, are exercisable only in, or in relation to accounts or other documents which relate to, any financial year in which expenditure is incurred by the corporation, or by the governing body of the institution in question, in respect of which grants, loans or other payments are made to them under Part I of the Further and Higher Education Act 1992<sup>6</sup>.

1 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

2 For the meaning of 'designated institution' see PARA 579 note 4 ante.

3 Further and Higher Education Act 1992 s 53(1). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

4 Ie under the National Audit Act 1983 ss 6, 8 (s 6 as amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 717.

5 Ie by virtue of ibid s 6(3)(c): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 717.

6 Further and Higher Education Act 1992 s 53(2). The text refers to the Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended): see PARA 579 et seq ante.

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## **(5) HIGHER EDUCATION**

### **1345. The Quality Assurance Agency.**

The Quality Assurance Agency for Higher Education is an independent body, funded by subscriptions and through contracts with the main higher education funding bodies, and was established to provide an integrated quality assurance service for the higher education sector<sup>1</sup>. The Agency's principal role is to review the quality and standards of higher education by auditing the way in which each higher education institution<sup>2</sup> manages the overall quality and standards of its educational provision and by reviewing academic standards and the quality of teaching and learning<sup>3</sup>. The Agency publishes the results of its audits and reviews and also publishes a code of practice setting out guidelines on good practice relating to the management of academic quality and standards<sup>4</sup>.

<sup>1</sup> See *The Quality Assurance Agency for Higher Education: an introduction*, published by the Quality Assurance Agency for Higher Education.

<sup>2</sup> As to the institutions within the higher education sector see PARA 646 ante.

<sup>3</sup> See *The Quality Assurance Agency for Higher Education: an introduction*, published by the Quality Assurance Agency for Higher Education.

<sup>4</sup> See the *Code of practice for the assurance of academic quality and standards in higher education* (revised 2006), published by the Quality Assurance Agency for Higher Education.

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## **(6) TEACHER TRAINING INSTITUTIONS**

### **1346. Inspection of teacher training by Her Majesty's Chief Inspector of Schools in England.**

The Chief Inspector<sup>1</sup> may inspect and report on: (1) any initial training of teachers<sup>2</sup>, or of specialist teaching assistants, for schools<sup>3</sup>; or (2) any in-service training<sup>4</sup> of such teachers or assistants<sup>5</sup>, which is provided by a training provider<sup>6</sup>. When asked to do so by the Secretary of State, the Chief Inspector must: (a) give advice to the Secretary of State on such matters connected with training falling within head (1) or head (2) above as may be specified in the Secretary of State's request<sup>7</sup>; and (b) inspect and report on such one or more relevant training providers<sup>8</sup> in England as may be so specified<sup>9</sup>. The Chief Inspector may at any time give advice to the Secretary of State, the Training and Development Agency for Schools<sup>10</sup> or the General Teaching Council for England<sup>11</sup>, on any matter connected with training falling within head (1) or head (2) above<sup>12</sup>. The Chief Inspector may make such reports of inspections carried out by him as he considers appropriate, and arrange for any such report to be published in such manner as he considers appropriate<sup>13</sup>.

When inspecting a training provider, the Chief Inspector has at all reasonable times a right of entry to the premises<sup>14</sup> of the training provider, and a right to inspect, and take copies of, any records<sup>15</sup> kept by the training provider, and any other documents<sup>16</sup> containing information relating to the training provider, which he considers relevant to the exercise of his functions<sup>17</sup>. A training provider to which an inspection relates must give the Chief Inspector all assistance in connection with the exercise of his functions which it is reasonably able to give, and must secure that all such assistance is also given by persons who work for the training provider<sup>18</sup>. The Chief Inspector may not carry out any inspection<sup>19</sup> unless: (i) at least eight weeks previously, he has given notice<sup>20</sup> of his intention to carry out the inspection to the training provider concerned, or where the training is provided by a partnership or association of training providers, to one of those training providers<sup>21</sup>; or (ii) with the agreement of that training provider or (as the case may be) one of those training providers, he has given it shorter notice of that intention<sup>22</sup>.

1 He Her Majesty's Chief Inspector of Schools in England: Education Act 1994 s 18B(1) (s 18B added by the Education Act 2005 s 98, Sch 14 para 13). As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

Any reference in the Education Act 1994 s 18B (as added) to the Chief Inspector must be read, in relation to any inspection which he is authorised or required to carry out under s 18B (as added) as including a reference to any person authorised to act on his behalf under the Education Act 2005 s 1(6), Sch 1 para 5(1) or (2) (see PARA 1171 ante): Education Act 1994 s 18B(10) (as so added). Nothing in s 18B (as added) is to be taken as prejudicing the generality of the Education Act 2005 ss 2-4 (see PARA 1172 ante) or Sch 1 para 5(1) or (2) (see PARA 1171 ante): Education Act 1994 s 18B(11) (as so added).

2 As to the training of teachers see PARA 784 et seq ante.

3 Education Act 1994 s 18B(1)(a) (as added: see note 1 supra). For the meaning of 'school' see PARA 81 ante; definition applied by s 19(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 128; and the Education Act 2005 Sch 14 para 14(b)).



4 'In-service training' includes any training provided to a teacher serving an induction period (within the meaning of the Teaching and Higher Education Act 1998 s 19 (as amended) (see PARA 774 ante)): Education Act 1994 s 18B(12)(d) (as added: see note 1 supra).

5 Ibid s 18B(1)(b) (as added: see note 1 supra).

6 Ibid s 18B(1) (as added: see note 1 supra). For the meaning of 'training provider' see PARA 795 note 5 supra; definition applied by s 18B(12)(b) (as so added).

Nothing in s 18B (as added) confers any right or imposes any duty, whether as regards the carrying out of any inspection or otherwise, in relation to any course which consists of instruction given wholly or mainly for purposes other than training falling within head (1) or head (2) in the text: s 18B(9) (as so added).

7 Ibid s 18B(2)(a) (as added: see note 1 supra).

8 'Relevant training provider' means any training provider who provides training falling within head (1) or head (2) in the text: ibid s 18B(12)(c) (as added: see note 1 supra).

9 Ibid s 18B(2)(b) (as added: see note 1 supra).

10 As to the Training and Development Agency for Schools see PARA 784 et seq ante.

11 As to the General Teaching Council for England see PARA 809 et seq ante.

12 Education Act 1994 s 18B(3) (as added: see note 1 supra).

13 Ibid s 18B(4) (as added: see note 1 supra). The provisions of the Education Act 2005 s 11(2)-(4) (publication of inspection reports: see PARA 1177 ante) apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in s 11(2): Education Act 1994 s 18B(4) (as so added).

14 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by ibid s 19(5) (as amended: see note 3 supra).

15 'Records' includes information recorded in any form: ibid s 18B(12)(e) (as added: see note 1 supra).

16 'Document' includes information recorded in any form: ibid s 18B(12)(e) (as added: see note 1 supra).

17 Ibid s 18B(5) (as added: see note 1 supra). The Education Act 2005 s 58 (inspection of computer records: see PARA 1172 ante) applies for the purposes of the Education Act 1994 s 18B (as added) as it applies for the purposes of the Education Act 2005 Pt 1 Chs 1-2 (ss 1-18), Chs 5-7 (ss 44-63) (see PARA 1168 et seq ante): Education Act 1994 s 18B(5) (as so added). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by s 19(5) (as amended: see note 3 supra).

18 Ibid s 18B(6) (as added: see note 1 supra). This is expressed to be without prejudice to s 18B(5) (as added) (see the text and notes 14-17 supra).

19 Ie under ibid s 18B(1) (as added): see the text to notes 1-6 supra.

20 Any such notice must be given in writing, and may be sent by post: ibid s 18B(8) (as added: see note 1 supra). Any such notice may (without prejudice to any other lawful method of giving it) be addressed to a training provider at any address which the training provider has notified to the Training and Development Agency for Schools as its address: s 18B(8) (as so added).

21 Ibid s 18B(7)(a) (as added: see note 1 supra).

22 Ibid s 18B(7)(b) (as added: see note 1 supra).

## UPDATE

### **1346 Inspection of teacher training by Her Majesty's Chief Inspector of Schools in England**

NOTE 1--Now, 'the Chief Inspector' means Her Majesty's Chief Inspector of Education, Children's Services and Skills: 1994 Act s 18B(1) (amended by the Education and Inspections Act 2006 Sch 14 para 19(2)). As to Her Majesty's Chief Inspector of

Education, Children's Services and Skills see PARA 1167A.1. For 'the Education Act 2005 s 1(6), Sch 1 para 5(1) or (2)' read 'the Education and Inspections Act 2006 Sch 12 para 9(1)': 1994 Act s 18B(10) (substituted by the 2006 Act Sch 14 para 19(6)). For 'the Education Act 2005 ss 2-4 or Sch 1 para 5(1) or (2)' read 'the Education and Inspections Act 2006 Sch 12 para 9(1)': 1994 Act s 18B(11) (substituted by the 2006 Act Sch 14 para 19(7)); Education Act 1994 s 18B(11) (as so added).

TEXT AND NOTE 7--Head (a) omitted: 1994 Act s 18B(2) (substituted by the Education and Inspections Act 2006 Sch 14 para 19(3)).

TEXT AND NOTE 10--Omit words 'the Secretary of State,': 1994 Act s 18B(3) (amended by the Education and Inspections Act 2006 Sch 14 para 19(4), Sch 18 Pt 5).

NOTE 13--Omit words 'The provisions of ... provisions mentioned in s 11(2)': 1994 Act s 18B(4) (amended by the Education and Inspections Act 2006 Sch 14 para 19(5), Sch 18 Pt 5).

TEXT AND NOTES 21, 22--Education Act 1994 s 18B(7) amended: Education and Skills Act 2008 s 164.

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### **1347. Inspection of teacher training by Her Majesty's Chief Inspector of Education and Training in Wales.**

The Chief Inspector<sup>1</sup> may inspect and report on: (1) any initial training of teachers<sup>2</sup>, or of specialist teaching assistants, for schools<sup>3</sup>; or (2) any in-service training<sup>4</sup> of such teachers or assistants<sup>5</sup>, which is provided by a training provider in Wales<sup>6</sup>. When asked to do so by the National Assembly for Wales, the Chief Inspector must: (a) give advice to the Assembly on such matters connected with training falling within head (1) or head (2) above as may be specified in the Assembly's request<sup>7</sup>; and (b) inspect and report on such one or more relevant training providers<sup>8</sup> as may be so specified<sup>9</sup>. The Chief Inspector may at any time give advice to the Assembly, a funding agency<sup>10</sup> or the General Teaching Council for Wales<sup>11</sup>, on any matter connected with training falling within head (1) or head (2) above<sup>12</sup>. The Chief Inspector may make such reports of inspections carried out by him as he considers appropriate, and arrange for any such report to be published in such manner as he considers appropriate<sup>13</sup>.

When inspecting a training provider, the Chief Inspector has at all reasonable times a right of entry to the premises<sup>14</sup> of the training provider, and a right to inspect, and take copies of, any records<sup>15</sup> kept by the training provider, and any other documents<sup>16</sup> containing information relating to the training provider, which he considers relevant to the exercise of his functions<sup>17</sup>. A training provider to which an inspection relates must give the Chief Inspector all assistance in connection with the exercise of his functions which it is reasonably able to give, and must secure that all such assistance is also given by persons who work for the training provider<sup>18</sup>. The Chief Inspector may not carry out any inspection<sup>19</sup> unless: (i) at least eight weeks previously, he has given notice<sup>20</sup> of his intention to carry out the inspection to the training provider concerned, or where the training is provided by a partnership or association of training providers, to one of those training providers<sup>21</sup>; or (ii) with the agreement of that training provider or (as the case may be) one of those training providers, he has given it shorter notice of that intention<sup>22</sup>.

1 The Her Majesty's Chief Inspector of Education and Training in Wales: Education Act 1994 s 18C(1) (s 18C added by the Education Act 2005 s 98, Sch 14 para 13). As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

Any reference in the Education Act 1994 s 18C (as added) to the Chief Inspector must be read, in relation to any inspection which he is authorised or required to carry out under s 18C (as added) as including a reference to any person authorised to act on his behalf under the Education Act 2005 s 19(8), Sch 2 para 5(1) or (2) (not yet in force) (see PARA 1230 ante); Education Act 1994 s 18C(10) (as so added). Nothing in s 18C (as added) is to be taken as prejudicing the generality of the Education Act 2005 ss 20-23 (not yet in force) (see PARA 1231 ante) or Sch 2 para 5(1) or (2) (not yet in force) (see PARA 1230 ante); Education Act 1994 s 18C(11) (as so added).

2 As to the training of teachers see PARA 784 et seq ante.

3 Education Act 1994 s 18C(1)(a) (as added: see note 1 supra). For the meaning of 'school' see PARA 81 ante; definition applied by s 19(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 128; and the Education Act 2005 Sch 14 para 14(b)).

4 'In-service training' includes any training provided to a teacher serving an induction period (within the meaning of the Teaching and Higher Education Act 1998 s 19 (as amended) (see PARA 774 ante)); Education Act 1994 s 18C(12)(e) (as added: see note 1 supra).

5 Ibid s 18C(1)(b) (as added: see note 1 supra).

6 Ibid s 18C(1) (as added: see note 1 supra). For the meaning of 'training provider' see PARA 795 note 5 supra; definition applied by s 18C(12)(c) (as so added).

Nothing in s 18C (as added) confers any right or imposes any duty, whether as regards the carrying out of any inspection or otherwise, in relation to any course which consists of instruction given wholly or mainly for purposes other than training falling within head (1) or head (2) in the text: s 18C(9) (as so added).

7 Ibid s 18C(2)(a) (as added: see note 1 supra).

8 'Relevant training provider' means any training provider who provides training falling within head (1) or head (2) in the text: ibid s 18C(12)(d) (as added: see note 1 supra).

9 Ibid s 18C(2)(b) (as added: see note 1 supra).

10 'Funding agency' means the Higher Education Funding Council for Wales or the Training and Development Agency for Schools: ibid s 18C(12)(b) (as added: see note 1 supra). As to the Higher Education Funding Council for Wales see PARA 733 et seq ante; and as to the Training and Development Agency for Schools see PARA 784 et seq ante.

11 As to the General Teaching Council for Wales see PARA 834 et seq ante.

12 Education Act 1994 s 18C(3) (as added: see note 1 supra).

13 Ibid s 18C(4) (as added: see note 1 supra). The provisions of the Education Act 2005 s 29(2)-(4) (not yet in force) (publication of inspection reports: see PARA 1247 ante) apply in relation to the publication of any such report as they apply in relation to the publication of a report under any of the provisions mentioned in s 29(2) (not yet in force): Education Act 1994 s 18C(4) (as so added).

14 As to the meaning of 'premises' see PARA 1352 note 3 post; definition applied by ibid s 19(5) (as amended: see note 3 supra).

15 'Records' includes information recorded in any form: ibid s 18C(12)(f) (as added: see note 1 supra).

16 'Document' includes information recorded in any form: ibid s 18C(12)(f) (as added: see note 1 supra).

17 Ibid s 18C(5) (as added: see note 1 supra). The Education Act 2005 s 58 (not yet in force in relation to Wales) (inspection of computer records: in relation to Wales see PARA 1231 ante) applies for the purposes of the Education Act 1994 s 18C (as added) as it applies for the purposes of the Education Act 2005 Pt 1 Chs 3-4 (ss 19-43) (not yet in force), Chs 5-7 (ss 44-63) (ss 44-61 not yet in force in relation to Wales) (see PARA 1227 et seq ante): Education Act 1994 s 18C(5) (as so added). As to the meaning of 'functions' see PARA 14 note 5 ante; definition applied by s 19(5) (as amended: see note 3 supra).

18 Ibid s 18C(6) (as added: see note 1 supra). This is expressed to be without prejudice to s 18C(5) (as added) (see the text and notes 14-17 supra).

19 Ie under ibid s 18C(1) (as added): see the text to notes 1-6 supra.

20 Any such notice must be given in writing, and may be sent by post: ibid s 18C(8) (as added: see note 1 supra). Any such notice may (without prejudice to any other lawful method of giving it) be addressed to a training provider at any address which the training provider has notified to a funding agency as its address: s 18C(8) (as so added).

21 Ibid s 18C(7)(a) (as added: see note 1 supra).

22 Ibid s 18C(7)(b) (as added: see note 1 supra).

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## **(7) SUPPORT AND SERVICES FOR YOUNG PEOPLE**

### **1348. Inspection in England.**

Her Majesty's Chief Inspector of Schools in England<sup>1</sup>:

2511 (1) must advise the Secretary of State<sup>2</sup> on request about matters relating to the provision of services to encourage, enable or assist participation by young persons in education or training<sup>3</sup>;

2512 (2) may give the Secretary of State other advice about those matters<sup>4</sup>;

2513 (3) must, when requested to do so by the Secretary of State, inspect and report on the provision of those services<sup>5</sup>; and

2514 (4) may undertake such other inspections of the provision of those services as he thinks fit<sup>6</sup>.

1 As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante.

2 As to the Secretary of State see PARA 52 ante.

3 Learning and Skills Act 2000 s 118(1)(a). The text refers to the services provided in pursuance of s 114(1): see PARA 1149 ante. For the purposes of s 118(1), the reference to the provision of services includes a reference to the management and use of resources in providing services: s 118(3).

4 Ibid s 118(1)(b).

5 Ibid s 118(1)(c). A request under s 118(1)(c) may: (1) be general or in relation to specific matters (s 118(2)(a)); (2) relate to a specific person or institution providing services, or to a specific class of person or institution (s 118(2)(b)); and (3) relate to a specific area (s 118(2)(c)).

A person carrying out or participating in an inspection under s 118(1)(c) (see head (3) in the text) or s 118(1)(d) (see head (4) in the text) of services provided by a person or institution in pursuance of s 114(1) (see PARA 1149 ante) has the same powers as an inspector of schools under the Education Act 2005 s 10(1)(a), (d) (right of access: see PARA 1176 ante) and s 58 (computer records: see PARA 1172 ante); Learning and Skills Act 2000 s 118(4), (5) (s 118(5) substituted by the Education Act 2005 s 61, Sch 9 para 26(1), (2)). As to Her Majesty's Inspectorate of Schools in England see PARA 1168 et seq ante. Where an inspection under the Learning and Skills Act 2000 s 118(1)(c) or s 118(1)(d) takes place, the Education Act 2005 s 11 (publication of reports: see PARA 1177 ante) applies: Learning and Skills Act 2000 s 118(4), (6) (s 118(6) amended by the Education Act 2005 Sch 9 para 26(1), (3)). Where an inspection under the Learning and Skills Act 2000 s 118(1)(c) or s 118(1)(d) takes place, a person who wilfully obstructs a person in carrying out or participating in the inspection is guilty of an offence, and is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 118(4), (7). As to the standard scale see PARA 481 note 4 ante.

6 Ibid s 118(1)(d). See note 5 supra.

## **UPDATE**

### **1348 Inspection in England**

TEXT AND NOTES--Learning and Skills Act 2000 s 118 and Education Act 2005 Sch 9 para 26 repealed: Education and Skills Act 2008 s 79, Sch 2. For provision as to support services see PARA 1154A.

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### **1349. Inspection in Wales.**

Her Majesty's Chief Inspector of Education and Training in Wales<sup>1</sup>:

2515 (1) must advise the National Assembly for Wales<sup>2</sup> on request about matters relating to the provision of youth support services<sup>3</sup>;

2516 (2) may give the Assembly other advice about those matters<sup>4</sup>;

2517 (3) must, when requested to do so by the Assembly, inspect and report on the provision of those services<sup>5</sup>; and

2518 (4) may undertake such other inspections of the provision of those services as he thinks fit<sup>6</sup>.

1 As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 Learning and Skills Act 2000 s 127(1)(a). The text refers to services provided in pursuance of s 123(1); see PARA 1155 ante. For the meaning of 'youth support services' see PARA 1155 ante. The reference in s 127(1) to the provision of services includes a reference to the management and use of resources in providing services: s 127(4). The Assembly must consult the Chief Inspector before making a request under s 127(1)(a) (see head (1) in the text) or s 127(1)(c) (see head (3) in the text): s 127(2).

4 Ibid s 127(1)(b).

5 Ibid s 127(1)(c). See note 3 supra. A request under s 127(1)(c) may: (1) be general or in relation to specific matters (s 127(3)(a)); (2) relate to a specific person or institution providing services, or to a specific class of person or institution (s 127(3)(b)); and (3) may relate to a specific area (s 127(3)(c)).

A person carrying out or participating in an inspection under s 127(1)(c) (see head (3) in the text) or s 127(1)(d) (see head (4) in the text) has the same powers as an inspector under the School Inspections Act 1996 s 6(3)(a) and s 6(3)(b) (right of access: see PARA 1193 ante) and s 42 (as amended) (computer records: see PARA 1192 note 32 ante): Learning and Skills Act 2000 s 128(1), (2). As to Her Majesty's Inspectorate of Schools in Wales under the School Inspections Act 1996 see PARA 1188 ante; and as to Her Majesty's Inspectorate of Schools in Wales under the Education Act 2005 see PARA 1227 ante. Where an inspection under s 127(1)(c) or s 127(1)(d) takes place, the School Inspections Act 1996 s 42A (as added; prospectively repealed) (publication of reports: see PARA 1220 ante) applies: Learning and Skills Act 2000 s 128(1), (3).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (2)(b), the Learning and Skills Act 2000 s 128(2) is substituted, and s 128(3) amended, so as to provide that a person carrying out or participating in an inspection under s 127(1)(c) or s 127(1)(d) has the same powers as an inspector has under the Education Act 2005 s 24(3)(a), (d) (right of access: see PARA 1232 ante) and s 58 (computer records: see PARA 1231 ante); and, where an inspection under the Learning and Skills Act 2000 s 127(1)(c) or s 127(1)(d) takes place, the Education Act 2005 s 29 (publication of reports: see PARA 1247 ante) applies: see the Learning and Skills Act 2000 s 128(1)-(3) (s 128(2) prospectively substituted, and s 128(3) prospectively amended, by the Education Act 2005 s 61, Sch 9 para 27(1), (2)). At the date at which this volume states the law, no such day had been appointed.

Where the Chief Inspector arranges for the publication of a report of an inspection under the Learning and Skills Act 2000 s 127(1)(c) or s 127(1)(d), the person who provides the inspected service must: (a) prepare a written statement of the action which he proposes to take in the light of the report and the period within which he proposes to take it (s 128(1), (4)(a)); (b) publish the statement within such period, and in such manner, as may be prescribed by regulations made by the Assembly (s 128(1), (4)(b)); and (c) send copies of the statement to such persons as may be prescribed by regulations made by the Assembly (s 128(1), (4)(c)). As to the making of regulations under the Learning and Skills Act 2000 generally see PARA 972 note 7 ante. As to the period within

which and the manner in which the person who provides the inspected service must publish the statement (see head (b) supra) see the Inspection of Youth Support Services in Wales Regulations 2004, SI 2004/679, reg 2(1)-(2); and as to the persons to whom he must send copies (see head (c) supra) see reg 2(3)-(4).

Where a local authority provides an inspected service, or secures or participates in the provision of an inspected service, the authority: (i) must ensure that the action specified in any statement prepared under head (a) supra is sufficient to remedy any weakness mentioned in the report (Learning and Skills Act 2000 s 128(1), (5)(a)); and (ii) must take all reasonable steps to ensure that the action specified in the statement is taken within the period specified (s 128(1), (5)(b)). If the Assembly considers that a local authority is failing to comply with its duties under heads (i) and (ii) supra, the Assembly may give directions to the local authority about the performance of those duties, and the authority must comply with the directions: s 128(6). For the meaning of 'local authority' see PARA 1155 note 2 ante.

6 Ibid s 127(1)(d). See note 5 supra.

## **UPDATE**

### **1349 Inspection in Wales**

NOTE 1--Repeal now in force in relation to Wales: SI 2006/1338.

NOTE 5--SI 2004/679 reg 2(3) amended: SI 2005/3238.

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## **(8) LOCAL EDUCATION AUTHORITIES**

### **1350. Inspection of local education authorities.**

The Chief Inspector<sup>1</sup> may, and if requested to do so by the Secretary of State or, in relation to Wales, by the National Assembly for Wales<sup>2</sup>, must, arrange for the inspection<sup>3</sup> of any local education authority<sup>4</sup>. Such an inspection in England<sup>5</sup> consists of a review of the way in which the authority is performing any function<sup>6</sup> conferred on it in its capacity as a local education authority, other than a function falling within the remit of the Adult Learning Inspectorate<sup>7</sup>. Such an inspection in Wales<sup>8</sup> consists of a review of the way in which the authority is performing any of its functions, of whatever nature, which relates to the provision of education for persons of compulsory school age<sup>9</sup> (whether at school<sup>10</sup> or otherwise), or for persons of any age above or below that age who are registered as pupils<sup>11</sup> at schools maintained by the authority<sup>12</sup>. Any such inspection must be conducted: (1) by one of Her Majesty's Inspectors of Schools in England or, as the case may require, by one of Her Majesty's Inspectors of Schools in Wales<sup>13</sup>; or (2) by any additional authorised<sup>14</sup> inspector<sup>15</sup>, but he may be assisted by such other persons (whether or not members of the Chief Inspector's staff) as the Chief Inspector thinks fit<sup>16</sup>.

If requested to do so by the Chief Inspector for England, the Audit Commission<sup>17</sup> may assist with any such inspection of a local education authority in England<sup>18</sup>; and, if requested to do so by the Chief Inspector for Wales, the Auditor General for Wales<sup>19</sup> may assist with any such inspection of a local education authority in Wales<sup>20</sup>. For these purposes, a local education authority must provide the Chief Inspector with such information as may be prescribed<sup>21</sup>, and must do so in such form and within such period following a request made by the Chief Inspector in any prescribed circumstances, or at such other times, as regulations may provide<sup>22</sup>.

Where such an inspection has been completed, the inspector must make a written report on the matters reviewed in the course of the inspection, and send copies of the report to any local education authority to which the inspection relates and to the Secretary of State<sup>23</sup>. Where a local education authority receives a copy of such a report, it must prepare a written statement of the action which it proposes to take in the light of the report and the period within which it proposes to take it<sup>24</sup>, and must publish the report, and the statement so prepared within such period, and in such manner, as may be prescribed<sup>25</sup>. The Chief Inspector may arrange for the report to be published in such manner as he considers appropriate<sup>26</sup>.

1     I.e., in relation to a local education authority in England, Her Majesty's Chief Inspector of Schools in England and, in relation to a local education authority in Wales, Her Majesty's Chief Inspector of Education and Training in Wales: Education Act 1997 s 38(7) (amended by virtue of the Learning and Skills Act 2000 s 73(1), (3)(a)). As to Her Majesty's Chief Inspector of Schools in England see PARA 1168 ante. As to Her Majesty's Chief Inspector of Education and Training in Wales under the School Inspections Act 1996 (repealed in relation to England; prospectively repealed in relation to Wales) see PARA 1188 ante; and as to Her Majesty's Chief Inspector of Education and Training in Wales under the Education Act 2005 (not yet in force in relation to Wales) see PARA 1227 ante. As to local education authorities see PARA 20 ante.

2     A request by the Secretary of State or the National Assembly for Wales under the Education Act 1997 s 38 (as amended) may relate to one or more local education authorities, and must specify the local education authority or authorities concerned, and the functions to which the inspection is to relate: s 38(3). Before making any such request the Secretary of State or the Assembly must consult the Chief Inspector as to the matters to be specified in the request in accordance with s 38(3): s 38(4). As to the Secretary of State see PARA 52 ante. As



to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 le under *ibid* s 38 (as amended): see the text and notes 1-2 *supra*, 4-16 *infra*.

4 *Ibid* s 38(1).

5 For the meaning of 'England' see PARA 52 note 11 ante.

6 As to the meaning of 'function' see PARA 14 note 5 ante; definition applied by the Education Act 1997 s 56(2).

7 *Ibid* s 38(2) (substituted by the Children Act 2004 s 51). The text refers to the remit of the Adult Learning Inspectorate under the Learning and Skills Act 2000 s 53 (see PARA 1313 ante).

The substitution made by the Children Act 2004 s 51 comes into effect as from a day to be appointed under s 67(7)(e). In relation to England, the appointed day is 1 April 2005 (see the Children Act 2004 (Commencement No 1) Order 2005, SI 2005/394, art 2(2)(e)).

8 For the meaning of 'Wales' see PARA 52 note 13 ante.

9 As to the meaning of 'compulsory school age' see PARA 15 ante; definition applied by virtue of the Education Act 1997 s 56(2).

10 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Education Act 1997 s 56(2).

11 For the meaning of 'registered pupil' see PARA 512 ante; definition applied by *ibid* s 56(2).

12 *Ibid* s 38(2).

As from a day to be appointed under the Children Act 2004 s 67(7)(e), the Education Act 1997 s 38(2) is replaced in relation to Wales, so as to provide that an inspection of a local education authority in Wales under the Education Act 1997 s 38 (as amended) is to consist of a review of the way in which the authority is performing: (1) any function conferred on it in its capacity as a local education authority; and (2) the functions conferred on it under the Children Act 2004 s 25 (prospectively amended; not yet in force) (co-operation to improve well-being: Wales) and s 26 (not yet in force) (children and young people's plans: Wales) so far as relating to education, training or youth support services (within the meaning of the Learning and Skills Act 2000 s 123 (provision of services directed by the National Assembly for Wales: see PARA 1155 ante); see the Education Act 1997 s 38(2), (2A) (s 38(2) prospectively substituted, and s 38(2A) prospectively added, by the Children Act 2004 s 51). At the date at which this volume states the law, no such day had been appointed in relation to Wales.

13 Education Act 1997 s 38(5)(a). As to Her Majesty's Inspectors of Schools in England see PARA 1168 ante. As to Her Majesty's Inspectors of Schools in Wales see PARA 1188 ante.

14 le authorised, in relation to England, under the Education Act 2005 s 1(6), Sch 1 para 2 (see PARA 1169 ante) or, in relation to Wales, under s 19(8), Sch 2 para 2 (not yet in force) (see PARA 1228 ante): Education Act 1997 s 38(5)(b) (amended by the Education Act 2005 s 61, Sch 9 para 11).

The amendment made by the Education Act 2005 Sch 9 para 11 comes into effect as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, the references to the Education Act 2005 s 19(8), Sch 2 para 2 (not yet in force) are to be read, in relation to Wales, as references to the School Inspections Act 1996 s 4, Sch 1 para 2 (as amended; prospectively repealed) (see PARA 1189 ante).

15 Education Act 1997 s 38(5)(b) (as amended: see note 14 *supra*). For the purposes of ss 38-41 (as amended), references to 'the inspector' in relation to an inspection under s 38 (as amended) are references to the person conducting the inspection: s 38(7).

16 *Ibid* s 38(5).

17 'The Audit Commission' means the Audit Commission for Local Authorities and the National Health Service in England and Wales: *ibid* s 41(7). As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

18 Ibid s 41(1) (amended by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 17, 18). The provisions of the Education Act 1997 s 41(2)-(5) have effect where the Audit Commission assists with any such inspection: s 41(1). Section 40 (as substituted) (inspector's rights of entry etc: see PARA 1351 post) applies to the Audit Commission and to any authorised person as it applies to the inspector: s 41(2). Any information obtained by virtue of s 40 (as substituted) by a person falling within one of the categories of: (1) the Audit Commission and any authorised person; and (2) the inspector and any person assisting him, may be disclosed for the purposes of the inspection, or the preparation or making of the report under s 39(1) (see the text to note 23 infra), to a person falling within the other category: s 41(3), (4). Any report prepared under s 39(1) is to be prepared by the inspector acting in conjunction with the Audit Commission: s 41(5). The Audit Commission must not provide assistance under s 41 (as amended) unless, before it does so, the Chief Inspector has agreed to pay the Audit Commission an amount equal to the full costs incurred by the Audit Commission in providing the assistance: s 41(6). 'Authorised person' means a person authorised by the Audit Commission for the purposes of s 41: s 41(7).

19 As to the Auditor General for Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 796 et seq.

20 Education Act 1997 s 41A(1) (s 41A added by the Public Audit (Wales) Act 2004 s 66, Sch 2 paras 17, 19). The provisions of the Education Act 1997 s 41A(2)-(5) (as added) have effect where the Auditor General for Wales assists with any such inspection: s 41A(1) (as so added). Section 40 (as substituted) (inspector's rights of entry etc: see PARA 1351 post) applies to the Auditor General for Wales and to any authorised person as it applies to the inspector: s 41A(2) (as so added). Any information obtained by virtue of s 40 (as substituted) by a person falling within one of the categories of: (1) the Auditor General for Wales and any authorised person; and (2) the inspector and any person assisting him, may be disclosed for the purposes of the inspection, or the preparation or making of the report under s 39(1) (see the text to note 23 infra), to a person falling within the other category: s 41A(3), (4) (as so added). Any report prepared under s 39(1) is to be prepared by the inspector acting in conjunction with the Auditor General for Wales: s 41A(5) (as so added). The Auditor General for Wales must not provide assistance under s 41A (as added) unless, before it does so, the Chief Inspector for Wales has agreed to pay the Auditor General for Wales an amount equal to the full costs incurred by the Auditor General for Wales in providing the assistance: s 41A(6) (as so added). 'Authorised person' means a person authorised by the Auditor General for Wales for the purposes of s 41A (as added): s 41A(7) (as so added).

21 As prescribed by regulations: ibid s 56(1). At the date at which this volume states the law, no regulations had been made under s 38 (as amended). As to the making of regulations under the Education Act 1997 generally see PARA 888 note 16 ante.

22 Ibid s 38(6).

23 Ibid s 39(1).

24 Ibid s 39(2). Any function of a local education authority in England which is conferred by or under s 39 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 3 para (j).

25 Education Act 1997 s 39(3). 'Prescribed' means prescribed by regulations: s 56(1). As to the regulations made see the Education (Publication of Local Education Authority Inspection Reports) Regulations 1998, SI 1998/880 (amended by SI 2002/2649; further amended in relation to England by SI 2001/783; and further amended in relation to Wales by SI 2001/3710; SI 2005/761).

26 Education Act 1997 s 39(4). In relation to England, the provisions of the Education Act 2005 s 11(2)-(4) (publication of inspection reports: see PARA 1177 ante) apply in relation to the publication of any report under the Education Act 1997 s 39 (as amended) as they apply in relation to the publication of a report under any of the provisions mentioned in the Education Act 2005 s 11(2); and in relation to Wales, the provisions of s 29(2)-(4) (not yet in force) (publication of inspection reports: see PARA 1247 ante) apply in relation to the publication of any report under the Education Act 1997 s 39 (as amended) as they apply in relation to the publication of a report under any of the provisions mentioned in the Education Act 2005 s 29(2) (not yet in force): Education Act 1997 s 39(4) (amended by the School Standards and Framework Act 1998 s 134(3); and the Education Act 2005 Sch 9 para 12(a)). The amendment made by the Education Act 2005 Sch 9 para 12(a) comes into effect as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, in relation to Wales, the provisions of the School Inspections Act 1996 s 42A(2)-(4) (as added; prospectively repealed) (publication of inspection reports: see PARA 1220 ante) apply in relation to the publication of any report under the Education Act 1997 s 39 (as amended) as they apply in relation to the publication of a report under any of the provisions mentioned in the School Inspections Act 1996 s 42A(2) (as added; prospectively repealed).

## UPDATE

### **1350 Inspection of local education authorities**

TEXT AND NOTES--Replaced in relation to England. 1997 Act ss 38(2), 41 repealed, ss 38(5), (7), 39(4) amended: Education and Inspections Act 2006 Sch 14 paras 22-24, Sch 18 Pt 5.

In relation to England, Her Majesty's Chief Inspector of Education, Children's Services and Skills (see PARA 1167A.1) may inspect and review local authorities' performance of specific statutory functions: see the 2006 Act Pt 8 Ch 4 (ss 135-142). The functions to which Pt 8 Ch 4 applies include the functions conferred on or exercisable by a local authority in its capacity as a local education authority: s 135(1)(b). The Chief Inspector may inspect the overall performance by any local authority in England of the functions to which Pt 8 Ch 4 applies, or the performance by any such authority of any particular function or functions comprised in the functions to which Pt 8 Ch 4 applies: see ss 136, 142. On completing the inspection, the Chief Inspector must make and publish a report: see s 137; Education and Inspections Act 2006 (Inspection of Local Authorities) Regulations 2007, SI 2007/462. The Chief Inspector must conduct annual reviews of the overall performance by each local authority in England of its functions in its capacity as a local education authority and award each authority a performance rating: see the 2006 Act s 138.

NOTE 7--In relation to Wales, appointed day is 31 July 2008: SI 2008/1904.

NOTE 12--Day now appointed in relation to Wales: SI 2008/17.

2004 Act s 25 further amended: Offender Management Act 2007 Sch 3 para 4(5).

NOTES 14, 26--Day now appointed in relation to Wales: SI 2006/1338.

NOTE 25--SI 1998/880 further amended: SI 2005/3238 (Wales).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/11. INSPECTION AND INTERVENTION/(8) LOCAL EDUCATION AUTHORITIES/1351. Inspector's rights of entry etc.

### **1351. Inspector's rights of entry etc.**

Where a local education authority<sup>1</sup> is inspected<sup>2</sup>, the inspector<sup>3</sup>, and any person assisting him, has at all reasonable times a right of entry to: (1) the premises of the local education authority<sup>4</sup>; (2) the premises of any school maintained by the authority<sup>5</sup>; and (3) any other premises at which exceptional provision of education at schools or otherwise<sup>6</sup> is provided, other than premises which are or form part of a private dwelling house but are not a school<sup>7</sup>. The inspector, and any person assisting him, also has at all reasonable times a right to inspect and take copies of: (a) any records<sup>8</sup> kept by, and any other documents<sup>9</sup> containing information relating to, the local education authority or any school maintained by the authority<sup>10</sup>; and (b) any records kept by a person who provides exceptional provision of education at schools or otherwise<sup>11</sup> that relate to the provision of that education, and any other documents containing information that so relates<sup>12</sup>, which he considers relevant to the exercise of his functions<sup>13</sup>. The local education authority and the governing body of any school maintained by the authority<sup>14</sup>: (i) must give the inspector and any person assisting him, all assistance in connection with the exercise of his functions which they are reasonably able to give<sup>15</sup>; and (ii) must secure that all such assistance is also given by persons who work at the school<sup>16</sup>. It is an offence wilfully to obstruct the inspector or any person assisting him in the exercise of his functions in relation to the inspection<sup>17</sup>.

1 As to local education authorities see PARA 20 ante.

2 Ie inspected under the Education Act 1997 s 38 (as amended) (see PARA 1350 ante): s 40(1) (s 40 substituted by the Education Act 2002 s 180).

3 As to the meaning of 'the inspector' see PARA 1350 note 15 ante.

4 Education Act 1997 s 40(2)(a) (as substituted: see note 2 supra).

5 Ibid s 40(2)(b) (as substituted: see note 2 supra).

6 Ie 'relevant section 19 education', being education provided to a child by virtue of arrangements made by the local education authority under the Education Act 1996 s 19 (as amended) (exceptional provision of education at schools or otherwise: see PARA 457 ante): Education Act 1997 s 40(8) (as substituted: see note 2 supra).

7 Ibid s 40(2)(c) (as substituted: see note 2 supra).

8 For these purposes, 'records' includes information recorded in any form: ibid s 40(8) (as substituted: see note 2 supra).

9 For these purposes, 'document' includes information recorded in any form: ibid s 40(8) (as substituted: see note 2 supra).

10 Ibid s 40(3)(a) (as substituted: see note 2 supra).

11 Ie 'relevant section 19 education': see note 6 supra.

12 Education Act 1997 s 40(3)(b) (as substituted: see note 2 supra).

13 Ibid s 40(3) (as substituted: see note 2 supra). The Education Act 2005 s 58 (inspection of computer records: see PARAS 1172, 1231 ante) applies for the purposes of the Education Act 1997 s 40(3) (as substituted) as it applies for the purposes of the Education Act 2005 Pt 1 (ss 1-63) (see PARA 1167 et seq ante): Education Act 1997 s 40(4) (as substituted (see note 2 supra); and amended by the Education Act 2005 s 61, Sch 9 para

13). The amendment made by the Education Act 2005 Sch 9 para 13 comes into effect as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, the appointed day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until such a day is appointed, in relation to Wales, the School Inspections Act 1996 s 42 (as amended; prospectively repealed) (inspection of computer records: see PARA 1192 note 32 ante) applies for the purposes of the Education Act 1997 s 40(3) (as substituted) as it applies for the purposes of the School Inspections Act 1996 Pt 1 (ss 1-25) (as amended; prospectively repealed) (see PARA 1187 et seq ante).

14 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

15 Education Act 1997 s 40(5)(a) (as substituted: see note 2 supra). Section 40(5) (as substituted) is without prejudice to s 40(2)-(3) (as substituted) (see the text and notes 3-13 supra): s 40(5) (as so substituted).

16 Ibid s 40(5)(b) (as substituted: see note 2 supra). See note 15 supra.

17 Ibid s 40(6) (as substituted: see note 2 supra). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 40(7) (as so substituted). As to the standard scale see PARA 481 note 4 ante.

## UPDATE

### 1351 Inspector's rights of entry etc

TEXT AND NOTES--In England, Her Majesty's Chief Inspector of Education, Children's Services and Skills (see PARA 1167A.1) may, at any reasonable time, enter any premises for the purposes of any inspection conducted by him under the Education and Inspections Act 2006 s 136 (see PARA 1350) or any review conducted by him under s 138 (see PARA 1350), other than any domestic premises that are not a school: s 139. Where the Chief Inspector exercises his power of entry for the purpose of conducting such an inspection or review, he may, at a reasonable time, require the production of documents (including computer records); inspect, take copies or remove from the premises any such documents; inspect computers; and inspect the state and management of the premises: s 140(1)-(8). Obstruction of the exercise of a power conferred by s 139 or s 140 or failure to comply with a requirement imposed under s 140 is an offence, and a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 140(9). In relation to the functions of a local authority in England which the Chief Inspector inspects under Pt 8 Ch 4 (ss 135-142) (see s 135(1)), the Chief Inspector may require such a local authority, or anyone with whom such an authority has entered into arrangements in the performance of any of those functions, to provide him with any information, documents or other items relating to those functions: see s 141.

NOTE 13--Day now appointed in relation to Wales: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(1) PROVISION OF SITES AND PREMISES/1352. Provision of sites and buildings for foundation, voluntary controlled and foundation special schools.

## **12. LAND AND PREMISES**

### **(1) PROVISION OF SITES AND PREMISES**

#### **1352. Provision of sites and buildings for foundation, voluntary controlled and foundation special schools.**

In the case of a foundation, voluntary controlled or foundation special school<sup>1</sup>, the local education authority<sup>2</sup> must provide any new site<sup>3</sup> which is to be provided in addition to, or instead of, the school's existing site or part of its existing site<sup>4</sup>, and provide any buildings which are to form part of the school premises<sup>5</sup>. However, this does not apply in relation to the provision of any site or buildings which the authority or promoters are required to provide<sup>6</sup>, nor does this require the local education authority to finance the acquisition by the governing body<sup>7</sup> of any site or buildings provided otherwise than by the authority<sup>8</sup>.

Where a site is provided for a school under these provisions, the local education authority must transfer its interest<sup>9</sup> in the site, and in any buildings on the site which are to form part of the school premises: (1) to the trustees of the school to be held by them on trust for the purposes of the school<sup>10</sup>; or (2) if the school has no trustees, to the school's foundation body<sup>11</sup> or, in the absence of such a body, to the governing body, to be held by that body for the relevant purposes<sup>12</sup>. Where: (a) such a transfer is made<sup>13</sup>; and (b) the transfer is made to persons who possess, or are or may become entitled to, any sum representing proceeds of the sale of other premises which have been used for the purposes of the school<sup>14</sup>, those persons must notify the local education authority that head (b) above applies to them and they or their successors must pay to the local education authority so much of that sum as, having regard to the value of the interest transferred, may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the Secretary of State<sup>15</sup>.

1 As to foundation, voluntary controlled and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

2 As to local education authorities see PARA 20 ante.

3 For these purposes, 'site' does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question: School Standards and Framework Act 1998 s 22(7), Sch 3 para 2(11). 'Premises', in relation to a school, includes any detached playing fields but, except where otherwise expressly provided, does not include a teacher's dwelling-house: Education Act 1996 s 579(1); definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8).

4 Ibid Sch 3 para 2(1)(a).

5 Ibid Sch 3 para 2(1)(b).

6 Ibid Sch 3 para 2(2)(a). The reference in the text to the provision of any site or buildings is a reference to the provision of any site or building by virtue of Sch 6 Pt III paras 11-15 (as amended; prospectively amended) (provision of premises in connection with statutory proposals: see PARAS 141-144 ante). As to promoters and proposals for new foundation or voluntary schools see PARA 132 et seq ante.

7 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

8 School Standards and Framework Act 1998 Sch 3 para 2(2)(b).

9 References to an interest in land include any easement, right or charge in, to or over land: Education Act 1996 s 579(2); definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). 'Land' includes buildings and other structures, land covered with water, and any interest in land: Education Act 1996 s 579(1); definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

10 Ibid Sch 3 para 2(3)(a). References to land or other property held on trust, or by trustees, for the purposes of a school include references to land or other property which: (1) is held on trust for purposes which (whether the trust deed expressly so provides or not) include the purposes of the school; and (2) is used for the purposes of the school: s 21(3)(c).

11 For the meaning of 'foundation body' see PARA 104 note 6 ante.

12 School Standards and Framework Act 1998 Sch 3 para 2(3)(b). For these purposes, 'the relevant purposes' means: (1) in relation to a transfer to a school's foundation body, the purposes of the schools comprising the group for which that body acts; and (2) in relation to a transfer to a school's governing body, the purposes of the school: Sch 3 para 2(11). For the meaning of 'the group' see PARA 104 note 6 ante.

Where any doubt or dispute arises as to the persons to whom the authority is required to make the transfer, it is to be made to such persons as the Secretary of State thinks proper: Sch 3 para 2(4). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer: Sch 3 para 2(5).

13 Ibid Sch 3 para 2(6)(a).

14 Ibid Sch 3 para 2(6)(b). The reference in Sch 3 para 2(6)(b) to proceeds of the sale of other premises includes a reference to: (1) consideration for the creation or disposition of any kind of interest in other premises, including rent; and (2) interest which has accrued in respect of any such consideration: Sch 3 para 2(7).

15 Ibid Sch 3 para 2(6). For the purposes of any agreed determination under Sch 3 para 2(6), regard must be had to any guidance given from time to time by the Secretary of State: Sch 3 para 2(7). For the purposes of the School Standards and Framework Act 1998, references to disposing of land include references to: (1) granting or disposing of any interest in land; (2) entering into a contract to dispose of land or to grant or dispose of any such interest; and (3) granting an option to purchase any land or any such interest: s 142(6).

Any sum paid under Sch 3 para 2(6) must be treated for the purposes of the Schools Sites Act 1841 s 14 (as amended) (sale or exchange of land held on trust for the purposes of a school: see PARA 1354 post) as a sum applied in the purchase of a site for the school: School Standards and Framework Act 1998 Sch 3 para 2(8).

A determination may be made under Sch 3 para 2(6) in respect of any property subject to a trust which has arisen under the Reverter of Sites Act 1987 s 1 (as amended) (right of reverter replaced by trust for sale: see CHARITIES vol 8 (2010) PARA 70) if, and only if: (a) the determination is made by the Secretary of State; and (b) he is satisfied that steps have been taken to protect the interests of the beneficiaries under the trust: School Standards and Framework Act 1998 Sch 3 para 2(9).

Schedule 3 para 2(6) applies for the purpose of compensating the authority notified under Sch 3 para 2(6) only in relation to such part of the sum mentioned in Sch 3 para 2(6)(b) (see head (b) in the text), if any, as remains after the application of s 76, Sch 22 paras 1-3 (as amended) (see PARAS 1364-1367 post) to that sum: Sch 3 para 2(10).

## UPDATE

### **1352 Provision of sites and buildings for foundation, voluntary controlled and foundation special schools**

NOTE 6--In the case of a school in England, the reference to the provision of any site or buildings is a reference to the provision of any site or building by virtue of the Education and Inspections Act 2006 Sch 2 Pt 3 paras 21-27 (see PARA 165A.2): 1998 Act Sch 3 para 2(2)(a) (amended by the 2006 Act Sch 3 para 31).

NOTE 15--For 'Sch 22 paras 1-3' read 'Sch 22 paras A1-A16 or 1-3': 1998 Act Sch 3 para 2(10) (amended by the Education and Inspections Act 2006 Sch 4 para 22).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(1) PROVISION OF SITES AND PREMISES/1353. Provision of sites for voluntary aided schools.

### **1353. Provision of sites for voluntary aided schools.**

In the case of a voluntary aided school<sup>1</sup>, the local education authority<sup>2</sup> must provide any new site<sup>3</sup> which is to be provided in addition to, or instead of, the school's existing site, or part of its existing site<sup>4</sup>. However, this does not apply in relation to the provision of any site which persons other than the authority are required to provide by virtue of any enactment<sup>5</sup>, nor does this require the local education authority to finance the acquisition by the governing body<sup>6</sup> of any site or buildings provided otherwise than by the authority<sup>7</sup>.

Where a site is provided for a school under these provisions, the local education authority must transfer its interest in the site, and in any buildings on the site which are to form part of the school premises: (1) to the trustees of the school to be held by them on trust for the purposes of the school<sup>8</sup>; or (2) if the school has no trustees, to the school's foundation body<sup>9</sup>, to be held by that body for the relevant purposes<sup>10</sup>.

Where a site is provided for a school under these provisions<sup>11</sup> and work is required to be done to the site to clear it or make it suitable for building purposes<sup>12</sup>, the local education authority and the governing body of the school may make an agreement providing for the making of such payments, or of such other adjustments of their respective rights and liabilities<sup>13</sup>, as will secure that the cost of the work is borne by the authority<sup>14</sup>. Where a site is provided for a school under these provisions<sup>15</sup> and there are buildings on the site which are of value for the purposes of the school<sup>16</sup>, the local education authority and the governing body of the school may make an agreement providing for the making of such payments, or of such other adjustments of their respective rights and liabilities, as appear to be desirable having regard to the governing body's duties<sup>17</sup> with respect to the school premises<sup>18</sup>.

1 As to voluntary schools see PARA 102 et seq ante.

2 As to local education authorities see PARA 20 ante.

3 For these purposes, 'site' does not include playing fields but otherwise includes any site which is to form part of the premises of the school in question: School Standards and Framework Act 1998 s 22(7), Sch 3 para 4(9). As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of s 142(8).

4 Ibid Sch 3 para 4(1).

5 Ibid Sch 3 para 4(2)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 114).

6 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

7 School Standards and Framework Act 1998 Sch 3 para 4(2)(b).

8 Ibid Sch 3 para 4(3)(a). As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

9 For the meaning of 'foundation body' see PARA 104 note 6 ante.

10 School Standards and Framework Act 1998 Sch 3 para 4(3)(b). For these purposes, 'the relevant purposes' means, in relation to a transfer to a school's foundation body, the purposes of the schools comprising the group for which that body acts: Sch 3 para 4(9). For the meaning of 'the group' see PARA 104 note 6 ante.

Where any doubt or dispute arises as to the persons to whom the authority is required to make the transfer, it is to be made to such persons as the Secretary of State thinks proper: Sch 3 para 4(4). As to the Secretary of

State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The authority must pay to the persons to whom the transfer is made their reasonable costs in connection with the transfer: Sch 3 para 4(5).

11 Ibid Sch 3 para 4(6)(a).

12 Ibid Sch 3 para 4(6)(b).

13 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).

14 Ibid Sch 3 para 4(6). Where it appears to the Secretary of State that provision for any payment or other adjustment ought to have been made under Sch 3 para 4(6) but has not been made, he may give directions providing for the making of such payment or other adjustment as he thinks proper: Sch 3 para 4(8).

15 Ibid Sch 3 para 4(7)(a).

16 Ibid Sch 3 para 4(7)(b).

17 Ie under ibid Sch 3 para 3.

18 Ibid Sch 3 para 4(7) (amended, in relation to England, by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 6). In relation to Wales, this provision must be read as referring to school buildings rather than school premises. 'School buildings', in relation to a school, means any building or part of a building forming part of the school premises, other than a building or part required only: (1) as a caretaker's dwelling; (2) for use in connection with playing fields; (3) to afford facilities for enabling functions under the National Health Service Act 1977 s 5(1), (1A), Sch 1 (as amended) (provision of medical and dental services for pupils: see HEALTH SERVICES vol 54 (2008) PARA 33) to be carried out; or (4) to afford facilities for providing milk, meals or other refreshment for pupils in attendance at the school: Education Act 1996 s 579(1); definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

Where it appears to the Secretary of State that provision for any payment or other adjustment ought to have been made under Sch 3 para 4(7) (as amended) but has not been made, he may give directions providing for the making of such payment or other adjustment as he thinks proper: Sch 3 para 4(8).

## **UPDATE**

### **1353 Provision of sites for voluntary aided schools**

NOTE 18--Definition of 'school buildings' in 1996 Act s 579(1) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 185.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(1) PROVISION OF SITES AND PREMISES/1354. Provision of school premises under the School Sites Acts.

### **1354. Provision of school premises under the School Sites Acts.**

The School Sites Acts<sup>1</sup> afford facilities for persons and bodies who might otherwise be under disabilities to convey land for certain purposes connected with education<sup>2</sup>.

The School Sites Act 1841 enabled a donor with a beneficial interest in land to convey up to one acre of the land as a site for a school for the education of poor persons or for a teacher's residence, subject to provisos, one of which was that the land should revert to him or his successors if at any time in the future the land ceased to be used for the purposes mentioned in the Act<sup>3</sup>.

Difficulties arose where reverter occurred but the donor or his successors could not be traced<sup>4</sup>. The Reverter of Sites Act 1987 substituted a trust for sale<sup>5</sup> for the right of reverter<sup>6</sup> and provided for the making of Charity Commissioners' schemes, enabling an alternative use to be made of school sites if and when the school closed<sup>7</sup>.

The Charity Commissioners are empowered to establish a scheme extinguishing the rights of beneficiaries under the trust and requiring the property to be held on trust for specified charitable purposes, and those purposes must be as similar as possible to those obtaining before the reverter, and must also provide for enabling a beneficiary who has not consented to the scheme to claim compensation within five years<sup>8</sup>. Before a scheme is made, notice of the application for a scheme must be published in two national newspapers and a local one<sup>9</sup>. An appeal against the making of a scheme may be brought within three months of the order making the scheme<sup>10</sup>.

It is also provided that the power of sale of land or buildings<sup>11</sup> is exercisable at any time in relation to land in relation to which (but for the exercise of the power) a trust may subsequently arise<sup>12</sup>, and that the exercise of that power in respect of any land prevents any such trust arising in relation to that land or any land representing the proceeds of sale of that land<sup>13</sup>.

1 The School Sites Act 1841, the School Sites Act 1844, the School Sites Act 1849, School Sites Act 1851 and the School Sites Act 1852: see the text and notes 2-3 infra.

2 Such disabilities existed under the Mortmain and Charitable Uses Act 1888 (repealed by the Charities Act 1960 ss 38, 48(2), Sch 7 Pt II). The powers are therefore no longer necessary but much land was conveyed under the School Sites Acts and their provisions continue to apply to the land so conveyed. As to the School Sites Act 1841 see the text and note 3 infra.

The School Sites Act 1844 was concerned with parliamentary grants for the education of the poor: see s 1 (amended by the Statute Law Revision Act 1891) (terms and conditions upon which parliamentary aid is given towards the building of schools); the School Sites Act 1844 s 2 (amended by the Statute Law Revision Act 1891) (applications by trustees of ancient endowed schools for parliamentary aid for rebuilding schools); the School Sites Act 1844 s 4 (grant of sites to ministers and churchwardens and their successors); and s 5 (amended by the Statute Law Revision Act 1891) (grant of part of glebe). Where any parliamentary grant was made towards the provision, repair or furnishing of any school premises with the consent of the trustees or holders of the legal estate, no sale, exchange or mortgage can validly be made of the premises, subject to certain exceptions, without the consent of the Secretary of State unless the grant is repaid to the Treasury: see the School Grants Act 1855 s 1 (amended by the Statute Law Revision 1892; the Statute Law (Repeals) Act 1978 s 1, Sch 2 para 2; and the Statute Law (Repeals) Act 1981). As to savings in relation to purchasers for value without notice see the School Grants Act 1855 s 2. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

The School Sites Act 1849 extended and explained the provisions of the School Sites Acts: see the School Sites Act 1849 s 1 (amended by the Statute Law Revision Act 1891) (apportionment of rents and fines); the School

Sites Act 1849 s 2 (amended by the Statute Law Revision Act 1891) (liabilities of tenants and remedies of landlords); the School Sites Act 1849 s 3 (amended by the Statute Law Revision Act 1891) (limitation of land to be granted in same parish); the School Sites Act 1849 s 4 (amended by the Statute Law Revision Act 1891; and the Charities Act 1960 Sch 7 Pt II) (sites for schools for instruction of masters of elementary schools); and the School Sites Act 1849 s 5 (power to convey to corporations as trustees).

The School Sites Act 1851 amended the School Sites Act 1841 and the School Sites Act 1849: see the School Sites Act 1851 ss 1, 2.

The School Sites Act 1852 concerned conveyances and endowments: see the School Sites Act 1852 s 1 (amended by the Statute Law Revision Act 1891).

3 See the School Sites Act 1841 s 2 (amended by the Statute Law Revision (No 2) Act 1888). The words in the School Sites Act 1841 s 2 (as amended) regarding 'the purposes in this Act mentioned' relate to education in general: *Fraser v Canterbury Diocesan Board of Finance (No 2)* [2005] UKHL 65, [2005] 3 WLR 964, [2005] All ER (D) 319 (Oct) (revsg [2004] EWCA Civ 15, [2004] All ER (D) 261 (Jan), (2004) Independent, 6 February; and disapproving *Fraser v Canterbury Diocesan Board of Finance* [2001] Ch 669, CA). See also *Marchant v Onslow* [1995] Ch 1, [1994] 2 All ER 707, [1994] ELR 451; *Bath and Wells Diocesan Board of Finance v Jenkinson* [2002] EWHC 218 (Ch), [2003] Ch 89. There is no reference in the School Sites Act 1841 s 2 (as amended) to 'the purposes in the deed of grant mentioned', so that a breach of any restrictions in the deed would not have the drastic consequence of causing a reverter, although those restrictions could be enforced in the same way as those in any other charitable trust: *Fraser v Canterbury Diocesan Board of Finance (No 2)* supra. See also CHARITIES vol 8 (2010) PARA 70.

The School Sites Act 1841 made provision in relation to: the grant of land by the Chancellor and Council of the Duchy of Lancaster (see s 3 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law Revision Act 1890)); persons entitled to convey lands (see the School Sites Act 1841 s 5 (amended by the Mental Treatment Act 1930 s 20(5); the Law Reform (Married Women and Tortfeasors) Act 1935 s 5, Sch 2; and the Mental Health Act 1959 s 149(4)); the conveyance of land by corporations, justices and trustees (see the School Sites Act 1841 s 6 (amended by the Local Government Act 1929 s 137, Sch 12 Pt VII; the Local Government Act 1933 s 307, Sch 11 Pt IV; and the London Government Act 1939 s 207, Sch 8)); grants of land to corporations or trustees to be held by them for school purposes (see the School Sites Act 1841 s 7 (amended by the Statute Law Revision (No 2) Act 1888)); estates vested in trustees which may be conveyed to the minister and churchwardens (see the School Sites Act 1841 s 8 (amended by the Statute Law Revision (No 2) Act 1888)); the number of sites which may be granted by one person for separate schools (see the School Sites Act 1841 s 9 (amended by the Statute Law Revision (No 2) Act 1888)); forms of grants (see the School Sites Act 1841 s 10 (amended by the Statute Law Revision (No 2) Act 1888; and the Education (Scotland) Act 1945 Sch 5)); application of purchase money for land sold by any ecclesiastical corporation sole (see the School Sites Act 1841 s 11 (amended by the Statute Law Revision (No 2) Act 1888)); form of certificate required by ecclesiastical corporations sole (see the School Sites Act 1841 s 13 (amended by the Statute Law Revision (No 2) Act 1888)); sale or exchange land or buildings by trustees (see the School Sites Act 1841 s 14 (amended by the Statute Law Revision (No 2) Act 1888; and the Statute Law (Repeals) Act 1978)); and the prohibition of schoolmasters acquiring life interest by virtue of appointment (see the School Sites Act 1841 s 17 (amended by the Statute Law Revision (No 2) Act 1888)).

As to the Chancellor and Council of the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 305. As to ecclesiastical corporations sole see ECCLESIASTICAL LAW vol 14 para 1253.

4 See eg *Re Clayton's Deed Poll*, *Williams Deacon's Bank Ltd v Kennedy* [1980] Ch 99, [1979] 2 All ER 1133; *Re Rowhook Mission Hall*, *Horsham* [1985] Ch 62, [1984] 3 All ER 179.

5 Trusts for sale have now been subsumed under trusts of land: see the Trusts of Land and Appointment of Trustees Act 1996 ss 1, 4, 5; and REAL PROPERTY vol 39(2) (Reissue) PARA 66; TRUSTS vol 48 (2007 Reissue) PARA 605.

6 See the Reverter of Sites Act 1987 s 1 (as amended); and CHARITIES vol 8 (2010) PARA 70.

7 See *ibid* ss 2, 3; and CHARITIES vol 8 (2010) PARAS 71-72.

8 See *ibid* s 2.

9 See *ibid* s 3(1).

10 See *ibid* s 4(2), (3), (4) (s 4(4) as amended); and CHARITIES vol 8 (2010) PARA 73.

11 Ie the power of sale conferred by the School Sites Act 1841 s 14 (as amended): see note 3 supra.

12 Ie under the Reverter of Sites Act 1987 s 1 (as amended): see note 6 supra.

13 See *ibid* s 6(2); and CHARITIES vol 8 (2010) PARA 60.

**UPDATE**

**1354 Provision of school premises under the School Sites Acts**

NOTE 3--*Fraser*, cited, reported at [2006] 1 AC 377.

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**1355. Additional property for use by an institution within the further education sector.**

The Secretary of State<sup>1</sup> may by order<sup>2</sup> provide for any land<sup>3</sup> or other property of a local authority<sup>4</sup> to be made available for use by an institution within the further education sector<sup>5</sup> (a 'new sector institution') where in his opinion the following requirements are satisfied<sup>6</sup>:

- 2519 (1) the property either has within the preceding six months been used for the purpose of the provision of further education<sup>7</sup> by an institution maintained by a local education authority<sup>8</sup>, but its use for that purpose has been discontinued or the local education authority intends its use for that purpose to be discontinued<sup>9</sup> or it is being used for that purpose but the local education authority intends its use for that purpose to be discontinued<sup>10</sup>; and
- 2520 (2) it is necessary or desirable for the property to be available for use for the purposes of the new sector institution, but the governing body<sup>11</sup> of that institution has been unable to secure agreement with the local authority, on such terms as may reasonably be required, to secure that the property is so available<sup>12</sup>.

The Secretary of State must not make such an order unless the governing body of the new sector institution applies to him, before the end of the period of three years beginning with the operative date<sup>13</sup>, for such an order to be made<sup>14</sup>, and he has consulted the appropriate learning and skills council<sup>15</sup> and the local authority<sup>16</sup>. For the purpose of making any property available for use for the purposes of an institution, an order may: (a) transfer to, and vest in, the governing body the property concerned<sup>17</sup> and any rights or liabilities of the local authority acquired or incurred for the purpose of the provision of further education there<sup>18</sup>; or (b) confer any rights or impose any liabilities and, to the extent (if any) that the order does so, it has effect as if contained in an agreement between the local authority and the governing body<sup>19</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 Such orders are local in nature, and are not recorded in this work. As to the making of orders under the Further and Higher Education Act 1992 generally see PARA 585 note 6 ante.

3 'Land' includes buildings and other structures, land covered with water and any interest in land: Further and Higher Education Act 1992 s 90(1). 'Interest in land' includes any easement, right or charge in, to or over land: s 90(1).

4 For the meaning of 'local authority' see PARA 586 note 5 ante.

5 For the meaning of 'further education' see PARA 18 ante; definition applied by the Further and Higher Education Act 1992 s 90(1) (definition added by the Education Act 1996 s 582(1), Sch 37 para 115(2)).

6 Further and Higher Education Act 1992 s 34(1). Stamp duty is not chargeable in respect of any transfer effected under or by virtue of the Further and Higher Education Act 1992 s 34: s 88(1). This is subject to the requirement that no instrument (other than a statutory instrument) made or executed under or in pursuance of s 34 may be treated as duly stamped unless it is stamped with the duty to which it would, but for s 88 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp

denoting that it is not chargeable with any duty or that it has been duly stamped: Further and Higher Education Act 1992 s 88(2). A land transaction effected under or by virtue of s 34 is also exempt from charge for the purposes of stamp duty land tax: s 88A(1) (s 88A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 18). Relief under the Further and Higher Education Act 1992 s 88A (as added) must be claimed in a land transaction return or an amendment of such a return: s 88A(2) (as so added). For the meanings of 'land transaction' and 'land transaction return' see PARA 587 note 8 ante.

7 For these purposes, references to use for the purpose of the provision of further education are references to use wholly or mainly for that purpose: *ibid* s 34(6).

8 As to local education authorities see PARA 20 ante.

9 Further and Higher Education Act 1992 s 34(2)(a)(i).

10 *Ibid* s 34(2)(a)(ii).

11 For the meaning of 'governing body' in relation to an educational institution see PARA 584 note 5 ante.

12 Further and Higher Education Act 1992 s 34(2)(b).

13 *Ie* the operative date in relation to further education corporations established under *ibid* s 15: see PARA 583 note 4 ante.

14 *Ibid* s 34(3)(a).

15 *Ibid* Pt I (ss 1-61A) (as amended) refers to a 'council' but for the purposes of that Part, any reference to a council is a reference to a learning and skills council: s 61A(1) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 37). For the purposes of the Further and Higher Education Act 1992 Pt I (as amended), a reference to the 'appropriate council', in relation to any educational institution, is to be construed as follows: (1) if the institution mainly serves the population of England, the reference is to the Learning and Skills Council for England; (2) if the institution mainly serves the population of Wales, the reference is to the National Council for Education and Training for Wales; (3) if the institution receives financial support from the other Council, the reference is to that Council also: s 61A(2) (as so added). As to the Learning and Skills Council for England see PARA 1072 *et seq* ante; and as to the National Council for Education and Training for Wales see PARA 1113 *et seq* ante.

16 *Ibid* s 34(3)(b) (modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, regs 8(1), 9). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Secretary of State must also consult the Education Transfer Council: see the Further and Higher Education Act 1992 s 34(3)(b) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)). As to the Education Transfer Council see PARA 1380 *et seq* post.

17 Further and Higher Education Act 1992 s 34(4)(a)(i).

18 *Ibid* s 34(4)(a)(ii). This does not apply to any liability of the local authority in respect of the principal of, or interest on, any loan: s 34(5).

19 *Ibid* s 34(4)(b).

## UPDATE

### **1355 Additional property for use by an institution within the further education sector**

TEXT AND NOTES--A sixth form college is excluded for these purposes: Further and Higher Education Act 1992 s 34(1) (amended by Apprenticeships, Skills, Children and Learning Act 2009 Sch 8 para 4).

TEXT AND NOTE 15--For 'appropriate learning and skills council' read 'appropriate body': 1992 Act s 34(3)(b) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238). There is no requirement for the National Assembly for Wales to consult itself: 1992 Act s 34(7) (added by SI 2005/3238).

NOTE 15--1992 Act s 61A(1) repealed: SI 2005/3238. For 'appropriate council' read 'appropriate body'; for 'National Council for Education and Training for Wales' read 'National Assembly for Wales'; and for 'other Council ... that Council' read 'other body ... that body': 1992 Act s 61A(2) (amended by SI 2005/3238).



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## **(2) ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND**

### **(i) Acquisition of Land by Agreement**

#### **1356. Acquisition of land by agreement.**

For the removal of doubt, it has been declared that making land<sup>1</sup> available for the purposes of a school<sup>2</sup> or institution which is, or is to be, maintained by a local education authority<sup>3</sup> or which such an authority has power to assist<sup>4</sup>, is a function of the authority<sup>5</sup>, even though the land will not be held by the authority<sup>6</sup>. A local education authority must not acquire by agreement any land required for the purposes of a foundation, voluntary or foundation special school<sup>7</sup> unless it is satisfied that the arrangements made<sup>8</sup>:

- 2521 (1) as to the vesting of the land to be acquired<sup>9</sup>; and
- 2522 (2) as to the appropriation of that land for the purposes of the school<sup>10</sup>,

are such as to secure that the expenditure ultimately borne by it will not include any expenditure which, if the land had been acquired by the governing body<sup>11</sup> of the school, would have fallen to be borne by the governing body<sup>12</sup>.

1 As to the meaning of 'land' see PARA 1352 note 9 ante.

2 For the meaning of 'school' see PARA 81 ante.

3 Education Act 1996 s 531(1)(a). As to local education authorities see PARA 20 ante; and as to maintained schools generally see PARA 94 et seq ante.

4 Ibid s 531(1)(b). As to assisted schools see PARA 45 ante.

5 I.e a function within the meaning of the Local Government Act 1972 s 120 (which relates to the acquisition by a local authority by agreement of land for the purpose of any of their functions: see LOCAL GOVERNMENT vol 69 (2009) PARA 509).

6 Education Act 1996 s 531(1).

7 As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

8 Education Act 1996 s 531(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 147).

9 Education Act 1996 s 531(2)(a).

10 Ibid s 531(2)(b).

11 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

12 Education Act 1996 s 531(2).

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## **(ii) Compulsory Purchase of Land**

### **1357. Compulsory purchase of land.**

The Secretary of State<sup>1</sup> may authorise a local education authority<sup>2</sup> to purchase compulsorily any land<sup>3</sup>, whether within or outside its area, which: (1) is required for the purposes of any school<sup>4</sup> or institution which is, or is to be, maintained by it or which it has power to assist<sup>5</sup>; or (2) is otherwise required for the purposes of its functions<sup>6</sup> under the Education Act 1996<sup>7</sup>; or (3) is required for the purposes of any academy<sup>8</sup> which has been or is to be established as a result of the implementation of proposals made pursuant to a notice published by the local education authority<sup>9</sup> and forms the whole or part of the site identified in that notice<sup>10</sup>. The Secretary of State must not authorise the compulsory purchase of any land required for the purposes of a foundation, voluntary or foundation special school<sup>11</sup> unless he is satisfied that the arrangements made<sup>12</sup>:

- 2523 (a) as to the vesting of the land to be purchased<sup>13</sup>; and
- 2524 (b) as to the appropriation of that land for the purposes of the school<sup>14</sup>,

are such as to secure that the expenditure ultimately borne by the local education authority will not include any expenditure which, if the land had been purchased by the governing body<sup>15</sup> of the school, would have fallen to be borne by the governing body<sup>16</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to local education authorities see PARA 20 ante.

3 For these purposes, 'land' includes buildings and other structures and land covered with water: Education Act 1996 s 530(4). As to the meaning of 'land' generally see PARA 1352 note 9 ante. As to the compulsory purchase of land generally see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq.

4 For the meaning of 'school' see PARA 81 ante.

5 Education Act 1996 s 530(1)(a). As to maintained schools generally see PARA 94 et seq ante. As to assisted schools see PARA 45 ante.

6 As to the meaning of 'functions' see PARA 14 note 5 ante.

7 Education Act 1996 s 530(1)(b).

8 As to academies see PARA 496 et seq ante.

9 Ie published under the Education Act 2002 s 70 (prospectively repealed) (proposals for additional secondary schools: see PARAS 150 et seq, 497 et seq ante): Education Act 1996 s 530(1)(c) (added by the Education Act 2002 s 70(9), Sch 8 para 9(2)). The Education Act 1996 s 530(1)(c) (as added) is amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so that the reference to the Education Act 2002 s 70 is replaced by a reference to the Education Act 2005 s 66 (not yet in force) (proposals for new secondary schools in England: see PARA 158 et seq ante): see the Education Act 1996 s 530(1)(c) (as so added; and prospectively amended by the Education Act 2005 s 72, Sch 12 para 3). At the date at which this volume states the law, no such day had been appointed.

10 Education Act 1996 s 530(1)(c) (as added: see note 9 supra). The text refers to the site identified in the notice in accordance with the Education Act 2002 s 70(3)(a) (prospectively repealed). When the amendment referring to the Education Act 2005 s 66 comes into effect (see note 9 supra), the reference will be to the site identified in the notice in accordance with the Education Act 2005 s 66(3)(a) (not yet in force).

11 As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

12 Education Act 1996 s 530(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 146(a)).

13 Education Act 1996 s 530(2)(a).

14 Ibid s 530(2)(b).

15 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

16 Education Act 1996 s 530(2). However, s 530(2) (as amended) does not apply where the local education authority proposes that expenditure to be incurred in connection with the purchase should ultimately be borne by it under the School Standards and Framework Act 1998 Sch 6 para 18 (power to give assistance to governing body of voluntary aided school in carrying out statutory proposals: see PARA 147 ante), including that provision as applied by any enactment: Education Act 1996 s 530(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 146(b); and the Education Act 2002 s 215(1), Sch 21 para 53).

## **UPDATE**

### **1357 Compulsory purchase of land**

NOTES 9, 10, 16--1996 Act s 530(1)(c) substituted, s 530(3) amended: Education and Inspections Act 2006 Sch 3 para 11.

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### **(iii) Appropriation of Land**

#### **1358. Appropriation of land by local education authority.**

A local education authority<sup>1</sup> may appropriate<sup>2</sup> for any purpose for which it is authorised by statute to acquire land<sup>3</sup> by agreement<sup>4</sup> any land which belongs to it and is no longer required<sup>5</sup> for the purpose for which it is held immediately before the appropriation<sup>6</sup>. The appropriation is, however, also subject to the rights of other persons in, over or in respect of the land concerned<sup>7</sup>.

1 The Local Government Act 1972 s 122(1) (see the text and notes 2-7 *infra*) applies to principal councils. 'Principal council' means a council elected for a principal area (see s 270(1)); and, by virtue of the Education Act 1996, 'principal council' includes a local education authority (see s 12(1)). As to local education authorities see PARA 20 *ante*. As to principal councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23.

2 It is subject to the Local Government Act 1972 s 122(2), (2A), (2B), (4) (s 122(2) as amended; and s 122(2A), (2B) as added); see LOCAL GOVERNMENT vol 69 (2009) PARA 513. As to restrictions on the change in use of school playing fields see PARA 1376 *post*; as to restrictions on the appropriation of land formerly used as a school see PARA 1359 *post*; and as to the duty to inform the Secretary of State of a proposal to change the use of land formerly used as a school see PARA 1360 *post*.

3 'Land' includes any interest in land and any easement or right in, to or over land: *ibid* s 270(1).

4 It is under the Local Government Act 1972 or under any other enactment: see PARA 1356 *ante*; and LOCAL GOVERNMENT vol 69 (2009) PARA 509.

5 The authority is the sole judge of whether or not the land is still required for the purpose for which it is held immediately before the appropriation, and its decision cannot be challenged in the absence of bad faith: *Dowty Boulton Paul Ltd v Wolverhampton Corpn (No 2)* [1973] Ch 94, [1972] 2 All ER 1073; *affd* [1976] Ch 13, [1973] 2 All ER 491, CA.

6 See the Local Government Act 1972 s 122(1).

7 *Ibid* s 122(1).

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**1359. Restriction on appropriation of land formerly used for the purposes of a school.**

If:

- 2525 (1) a freehold or leasehold interest in land<sup>1</sup> is held by a local education authority<sup>2</sup>;
- 2526 (2) the authority proposes to make an appropriation of the land<sup>3</sup>; and
- 2527 (3) at any time in the period of eight years ending with the day on which the appropriation is proposed to be made, the land was used wholly or mainly for the purposes of a county school<sup>4</sup> or community school<sup>5</sup>,

then, unless the Secretary of State<sup>6</sup> consents, the authority must not make the appropriation<sup>7</sup>. If an authority makes an appropriation in contravention of this provision, the Secretary of State may purchase the interest concerned compulsorily<sup>8</sup>.

On completion of such a compulsory purchase the Secretary of State must transfer the interest to a person concerned with the running of an academy<sup>9</sup>.

1 As to the meaning of 'land', and as to the meaning of 'interest in land', see PARA 1352 note 9 ante.

2 Education Act 1996 s 482(6), Sch 35A para 5(1)(a) (Sch 35A added by the Education Act 2002 s 65(3), Sch 7 Pt 1 para 1). As to local education authorities see PARA 20 ante.

3 I.e. under the Local Government Act 1972 s 122 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 513); Education Act 1996 Sch 35A para 5(1)(b) (as added: see note 2 supra).

4 Such schools are now known as community schools: see PARA 102 et seq ante.

5 Education Act 1996 Sch 35A para 5(1)(c) (as added: see note 2 supra). As to community schools see PARA 102 et seq ante. See also PARA 1406 note 8 post.

6 As to the Secretary of State see PARA 52 ante.

7 Education Act 1996 Sch 35A para 5(2) (as added: see note 2 supra). For the purposes of Sch 35A para 5(2) (as added), the consent of the Secretary of State may be given in relation to a particular case or class of case, and may be given subject to conditions: Sch 35A para 12 (as so added).

8 Ibid Sch 35A para 6(1), (2) (as added: see note 2 supra). Schedule 35A para 3(6)-(9) (as added) (restriction on the disposal of land formerly used as a school: see PARA 1362 post) applies to a compulsory purchase of an interest under Sch 35A para 6(2) (as added) as it applies to a compulsory purchase of an interest under Sch 35A para 3(5) (as added) (see PARA 1362 post): Sch 35A para 6(3) (as so added).

9 Ibid Sch 35A paras 3(7), 6(3) (as added: see note 2 supra). As to academies see PARA 496 et seq ante.

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**1360. Duty to inform Secretary of State of proposal to change use of land formerly used as a school.**

If:

2528 (1) a freehold or leasehold interest in land<sup>1</sup> is held by a local education authority<sup>2</sup>;

2529 (2) the authority proposes to change the use of the land in such a way that (were the change made) the land would cease to be capable of use wholly or mainly for the purposes of a school<sup>3</sup>; and

2530 (3) at any time in the period of eight years ending with the date of the proposed change of use, the land was used wholly or mainly for the purposes of a county school<sup>4</sup> or community school<sup>5</sup>,

the authority must inform the Secretary of State<sup>6</sup> of the proposal<sup>7</sup>.

1 As to the meaning of 'land', and as to the meaning of 'interest in land', see PARA 1352 note 9 ante.

2 Education Act 1996 s 482(6), Sch 35A para 7(1)(a) (Sch 35A added by the Education Act 2002 s 65(3), Sch 7 Pt 1 para 1). As to local education authorities see PARA 20 ante.

3 Education Act 1996 Sch 35A para 7(1)(b) (as added: see note 2 supra).

4 Such schools are now known as community schools: see PARA 102 et seq ante.

5 Education Act 1996 Sch 35A para 7(1)(c) (as added: see note 2 supra). As to community schools see PARA 102 et seq ante. See also PARA 1406 note 8 post.

6 As to the Secretary of State see PARA 52 ante.

7 Education Act 1996 Sch 35A para 7(2) (as added: see note 2 supra). Regulations under Sch 35A (as added) may include provision that information to be given under Sch 35A para 7 (as added) is to be given in a specified way: Sch 35A para 11(g) (as so added). 'Regulations' means regulations made under the Education Act 1996: s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under Sch 35A (as added).

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#### **(iv) Disposal of Land**

### **A. DISPOSAL OF LAND BY LOCAL EDUCATION AUTHORITIES**

#### **1361. Disposal of land under the Local Government Act 1972 by a local education authority.**

The Local Government Act 1972 provides that a local education authority<sup>1</sup> may, subject to certain conditions<sup>2</sup>, dispose of land in any manner it wishes<sup>3</sup>. Except with the consent of the Secretary of State<sup>4</sup>, a local education authority must not dispose of land under these provisions, otherwise than by way of a short tenancy<sup>5</sup> for a consideration less than the best that can reasonably be obtained<sup>6</sup>. A local education authority may not dispose of any land consisting or forming part of an open space<sup>7</sup> unless, before disposing of the land, it causes notice of its intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and considers any objections to the proposed disposal which may be made to it<sup>8</sup>.

1 The Local Government Act 1972 s 123(1) (see the text and notes 2-3 *infra*) applies to principal councils. 'Principal council' means a council elected for a principal area (see s 270(1)); and, by virtue of the Education Act 1996, 'principal council' includes a local education authority (see s 12(1)). As to local education authorities see PARA 20 *ante*. As to principal councils see LOCAL GOVERNMENT vol 69 (2009) PARA 23.

2 The subject to the Local Government Act 1972 s 123(2), (2A), (2B) (s 123(2A), (2B) as added): see the text and notes 4-8 *infra*. As to restrictions on the disposal of school playing fields see PARA 1376 *post*; and as to the restriction on the disposal of land formerly used as a school see PARA 1362 *post*.

3 See *ibid* s 123(1). In *R v Barnet London Borough Council, ex p Pardes House School Ltd* [1989] COD 512, [1989] EGCS 64, Farquharson J held that, when disposing of land used for educational purposes, the local education authority, in fulfilling its duty to act fairly, must consider its own policy with regard to the use of land for educational purposes.

4 As to the Secretary of State see PARA 52 *ante*. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

5 For these purposes, a disposal of land is a disposal by way of a short tenancy if it consists: (1) of the grant of a term not exceeding seven years; or (2) of the assignment of a term which at the date of the assignment has not more than seven years to run: Local Government Act 1972 s 123(7). See LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 27.

6 *Ibid* s 123(2). Section 123(2) (prohibition on disposal of land below market value without consent of the Secretary of State: see LOCAL GOVERNMENT vol 69 (2009) PARA 515) does not apply in the case of a disposal: (1) to the governing body of a foundation, voluntary or foundation special school; or (2) to persons proposing to establish such a school: School Standards and Framework Act 1998 s 22, Sch 3 Pt III para 12. As to the disapplication of restrictions on local authority disposals see also PARA 306 *ante*. As to foundation, voluntary and foundation special schools see PARA 102 *et seq* *ante*; and as to special schools generally see PARA 1027 *et seq* *ante*.

The Local Government Act 1972 s 123(2) does not apply to a disposal to a person for the purposes of an academy: Education Act 1996 s 482(6), Sch 35A para 10(2) (Sch 35A added by the Education Act 2002 s 65(3), Sch 7 Pt 1 para 1). As to academies see PARA 496 *et seq* *ante*.

7 As to open spaces see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 501 *et seq*.

8 Local Government Act 1972 s 123(2A) (s 123(2A), (2B) added by the Local Government, Planning and Land Act 1980 s 118, Sch 23 para 14). See LOCAL GOVERNMENT vol 69 (2009) PARA 515. The Local Government Act 1972 s 123(2A) (as added) does not apply to a disposal which is made to a person for the purposes of an academy and for no consideration: Education Act 1996 Sch 35A para 10(3) (as added: see note 6 supra). See also PARA 1362 post.

Where by virtue of the Local Government Act 1972 s 123(2A) (as added) a local education authority disposes of land which is held for the purposes of the Public Health Act 1875 s 164 (pleasure grounds: see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 556) or held in accordance with the Open Spaces Act 1906 s 10 (duty to maintain open spaces and burial grounds: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1164; OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 577), the land is by virtue of the disposal to be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with those statutory provisions: Local Government Act 1972 s 123(2B) (as so added).



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**1362. Restriction on the disposal of land formerly used for the purposes of a school.**

If:

- 2531 (1) a freehold or leasehold interest in land<sup>1</sup> is held by a local education authority<sup>2</sup>;
- 2532 (2) the authority proposes to make a disposal in respect of the interest<sup>3</sup>, or to enter into a contract to make a disposal in respect of it, or to grant an option to make an acquisition<sup>4</sup> in respect of it<sup>5</sup>; and
- 2533 (3) at any time in the period of eight years ending with the day on which the disposal, contract or option is proposed to be made, entered into or granted, the land was used wholly or mainly for the purposes of a county school<sup>6</sup> or community school<sup>7</sup>,

then, unless the Secretary of State<sup>8</sup> consents<sup>9</sup>, the authority must not make the disposal or enter into the contract or grant the option<sup>10</sup>. If an authority makes a disposal or enters into a contract or grants an option in contravention of the provision described above<sup>11</sup>, then: (a) in the case of a grant of an option, the Secretary of State may by notice served on the option holder repudiate the option at any time before it is exercised<sup>12</sup>; (b) in the case of a contract to make a disposal in respect of an interest, the Secretary of State may by notice served on the other party to the contract repudiate it at any time before a conveyance of the interest concerned<sup>13</sup> is executed<sup>14</sup>; (c) in the case of a disposal in respect of an interest (whether or not in pursuance of an option or a contract under head (a) or head (b) above), the Secretary of State may purchase the interest concerned<sup>15</sup> compulsorily<sup>16</sup>.

On completion of a compulsory purchase of an interest under head (c) above, the Secretary of State must transfer the interest to a person concerned with the running of an academy<sup>17</sup>.

1 As to the meaning of 'land', and as to the meaning of 'interest in land', see PARA 1352 note 9 ante.

2 Education Act 1996 s 482(6), Sch 35A para 2(1)(a) (Sch 35A added by the Education Act 2002 s 65(3), Sch 7 Pt 1 para 1). As to local education authorities see PARA 20 ante.

3 For the purposes of the Education Act 1996 Sch 35A paras 2-3 (as added), references to a disposal in respect of an interest are references to a disposal of the whole interest or of a lesser interest: Sch 35A para 4(1) (a) (as added: see note 2 supra).

4 For the purposes of ibid Sch 35A paras 2-3 (as added), references to an acquisition in respect of an interest are references to an acquisition of the whole interest or of a lesser interest: Sch 35A para 4(1)(b) (as added: see note 2 supra).

5 Ibid Sch 35A para 2(1)(b) (as added: see note 2 supra).

6 Such schools are now known as community schools: see PARA 102 et seq ante.

7 Education Act 1996 Sch 35A para 2(1)(c) (as added: see note 2 supra). As to community schools see PARA 102 et seq ante. See also PARA 1406 note 8 post.

8 As to the Secretary of State see PARA 52 ante.

9 For the purposes of the Education Act 1996 Sch 35A para 2(2) (as added), the consent of the Secretary of State may be given in relation to a particular case or class of case, and may be given subject to conditions: Sch 35A para 12 (as added: see note 2 supra). Regulations under Sch 35A (as added) may include provision that consent under Sch 35A para 2 (as added) is to be sought in a specified way: Sch 35A para 11(f) (as so added). 'Regulations' means regulations made under the Education Act 1996: s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under Sch 35A (as added).

10 Ibid Sch 35A para 2(2) (as added: see note 2 supra). Schedule 35A para 2(2) (as added) does not apply to a disposal made in pursuance of a contract made, or option granted, before 26 July 2002 (ie the coming into force of Sch 35A para 2 (as added): see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 2): Education Act 1996 Sch 35A para 2(3) (as so added). See also PARAS 1361 ante, 1376 post. Nor does Sch 35A para 2(2) (as added) apply to: (1) a disposal in favour of a person for the purposes of an academy and for no consideration; (2) a contract to make such a disposal; or (3) a grant of an option for a person to make an acquisition for the purposes of an academy and for no consideration: Sch 35A para 2(4) (as so added). As to academies see PARA 496 et seq ante.

A disposal or contract or grant is not invalid by reason only that it is made in contravention of Sch 35A para 2(2) (as added): Sch 35A para 2(5) (as so added). A person acquiring an interest in land or entering into a contract to acquire it is not to be concerned to enquire whether consent required by Sch 35A para 2(2) (as added) has been given: Sch 35A para 2(6) (as so added).

11 Ibid Sch 35A para 3(1) (as added: see note 2 supra).

12 Ibid Sch 35A para 3(2) (as added: see note 2 supra). Such a repudiation has effect when the notice is served, and as if the repudiation were made by the authority: Sch 35A para 3(4) (as so added).

13 If the disposal referred to in ibid Sch 35A para 3(3) (as added) or Sch 35A para 3(5) (as added) (see the text and notes 15-16 infra) is a disposal of a lesser interest (see note 3 supra), the reference to the interest concerned is to the lesser interest: Sch 35A para 4(2) (as added: see note 2 supra).

14 Ibid Sch 35A para 3(3) (as added: see note 2 supra). Such a repudiation has effect when the notice is served, and as if the repudiation were made by the authority: Sch 35A para 3(4) (as so added).

15 See note 13 supra.

16 Education Act 1996 Sch 35A para 3(5) (as added: see note 2 supra).

The Acquisition of Land Act 1981 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 501 et seq) applies in relation to the compulsory purchase of an interest under the Education Act 1996 Sch 35A para 3(5) (as added): Sch 35A para 3(6) (as so added). If the Secretary of State acquires an interest by compulsory purchase under Sch 35A para 3(5) (as added), he is entitled to recover from the authority an amount equal to the aggregate of: (1) the compensation agreed or awarded in respect of the purchase; (2) any interest payable by him in respect of the compensation; and (3) the costs and expenses incurred by him in connection with the making of the compulsory purchase order: Sch 35A para 3(8) (as so added). The authority must provide the Secretary of State with such information as he may require it to provide in connection with a compulsory purchase under Sch 35A para 3(5) (as added): Sch 35A para 3(9) (as so added).

17 Ibid Sch 35A para 3(7) (as added: see note 2 supra).

Where: (1) a freehold or leasehold interest in land is transferred for no consideration from a local authority to a person for the purposes of an academy, whether or not by virtue of a scheme under Sch 35A para 1 (as added) (see PARA 1406 post); and (2) at any time on or after 26 July 2002 (ie the day on which Sch 35A (as added) came into force: see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 2), the authority is granted an option to make a reacquisition of the interest (subject to whatever conditions), the rule against perpetuities does not apply to the option: Education Act 1996 Sch 35A para 9 (as so added). As to the rule against perpetuities see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1008 et seq. Where a lease is granted by or transferred from a local authority to a person for the purposes of an academy on or after 26 July 2002, the Law of Property Act 1925 s 153 (as amended) (enlargement of leases granted for no rent etc: see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1386) does not apply to permit that person to enlarge the term under the lease: Education Act 1996 Sch 35A para 10(1) (as so added).

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### **1363. Disposal of land of a voluntary aided school by a local education authority in England.**

Where a local education authority<sup>1</sup> in England<sup>2</sup> disposes of relevant land<sup>3</sup> enhanced in value wholly or partly by means of capital expenditure<sup>4</sup> incurred by the governing body<sup>5</sup> of a voluntary aided school after 1 April 2002<sup>6</sup>, the authority must notify the relevant body<sup>7</sup> that these provisions apply to it and that it must pay to the relevant body so much of the proceeds of disposal as may be determined to be just, either by agreement between the trustees and the relevant body or, in default of agreement, by the Secretary of State<sup>8</sup>. However, these provisions do not apply unless the relevant body gives to the local education authority no later than 12 months after the expenditure is incurred a statement setting out the amount of expenditure<sup>9</sup>, and stating that it is capital expenditure<sup>10</sup>.

If the local education authority permits relevant land to be used for purposes not connected with the school, it must be treated for these purposes as having disposed of the land<sup>11</sup>, and must pay to the relevant body so much of the value of the land as may be determined to be just, either by agreement between the trustees and the relevant body or, in default of agreement, by the Secretary of State<sup>12</sup>.

1 As to local education authorities see PARA 20 ante.

2 The School Standards and Framework Act 1998 s 76, Sch 22 Pt IV para 11 was added by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 12. The Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, applies only in relation to England: see art 2. For the meaning of 'England' see PARA 52 note 11 ante.

3 For these purposes, 'relevant land' means any caretaker's dwelling, or other buildings which are not school buildings, which form part of the premises of a voluntary aided school: School Standards and Framework Act 1998 Sch 22 para 11(1)(d) (as added: see note 2 supra). For the meaning of 'school building' see PARA 1353 note 18 ante; definition applied by virtue of s 142(8). As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of s 142(8). As to voluntary schools see PARA 102 et seq ante. For the meaning of 'school' see PARA 81 ante; definition applied by virtue of s 142(8).

4 For these purposes, 'capital expenditure' has the meaning given by the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, art 13 (see PARA 308 note 9 ante), as it has effect from time to time: School Standards and Framework Act 1998 Sch 22 para 11(1)(a) (as added: see note 2 supra).

5 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante.

6 School Standards and Framework Act 1998 Sch 22 para 11(2) (as added: see note 2 supra). The date referred to in the text is the 'commencement date', being the date on which the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002, SI 2002/906, came into force (see reg 1(1)): School Standards and Framework Act 1998 Sch 22 para 11(1)(b) (as so added).

7 For these purposes, 'relevant body' means the governing body of a voluntary aided school, or, if the school has been discontinued and the governing body dissolved, the trustees: *ibid* Sch 22 para 11(1)(c) (as added: see note 2 supra). As to proposals to discontinue a voluntary school see PARAS 131 et seq, 1277 et seq ante. For the meaning of 'trustee' for this purpose see PARA 1364 note 6 post.

8 *Ibid* Sch 22 para 11(4) (as added: see note 2 supra). In making a determination under Sch 22 para 11(4) (as added), the relevant body and the local education authority, or the Secretary of State, as the case may be, must have regard in particular to any enhancement in value of the relevant land attributable to expenditure by

or on behalf of the governing body: Sch 22 para 11(5) (as so added). As to the Secretary of State see PARA 52 ante.

- 9 Ibid Sch 22 para 11(3)(a) (as added: see note 2 supra).
- 10 Ibid Sch 22 para 11(3)(b) (as added: see note 2 supra).
- 11 Ibid Sch 22 para 11(6)(a) (as added: see note 2 supra).
- 13 Ibid Sch 22 para 11(4), (6)(b) (as added: see note 2 supra).

## UPDATE

### **1363 Disposal of land of a voluntary aided school by a local education authority in England**

NOTE 4--'Capital expenditure' means expenditure of the governing body in question which falls to be capitalised in accordance with proper accounting practices: see 1998 Act Sch 22 paras 11(1)(a), 12 (Sch 22 para 11(1)(a) substituted, paras 11(7), (8), 12 added by the Education and Inspections Act 2006 Sch 4 paras 16, 17). However, the Secretary of State may (1) by regulations prescribe classes or descriptions of expenditure which are to be treated for the purposes of the 1998 Act Sch 22 para 11 as being, or as not being, capital expenditure of any governing body or of any prescribed class or description of governing body (Sch 22 para 11(7)(a)); (2) by direction provide that expenditure of a particular governing body which is expenditure of a particular class or description is to be treated for the purposes of Sch 22 para 11 as being, or as not being, capital expenditure of that body (Sch 22 para 11(7)(b)). Directions under Sch 22 para 11(7)(b) may be expressed to have effect in specified circumstances or subject to specified conditions: Sch 22 para 11(8).

TEXT AND NOTE 8--The proportion of the proceeds of disposal which must be paid to the relevant body is now determined by agreement between the local education authority and the relevant body, or by the adjudicator where the authority or the relevant body have referred the matter to him for determination and, by the time of his determination, the matter has not been determined by such an agreement: 1998 Act Sch 22 para 11(4) (Sch 22 para 11(4) amended, para 11(4A), (4B) added by the Education and Inspections Act 2006 Sch 4 para 16). In determining whether to make such a reference to the adjudicator, the authority or, as the case may be, the relevant body, must (1) have regard, in particular, to any guidance given from time to time by the Secretary of State (1998 Act Sch 22 para 11(4A)); and (2) give the other notice of its intention to make the reference (Sch 22 para 11(4B)).

NOTE 8--For 'Secretary of State' read 'adjudicator'; the relevant body and the local education authority or the adjudicator must also have regard in particular to any guidance given from time to time by the Secretary of State: 1998 Act Sch 22 para 11(5) (Sch 22 para 11(5) amended, para 11(5A)-(5C) added by the Education and Inspections Act 2006 Sch 4 para 16). See further 1998 Act Sch 22 para 11(5A)-(5C).

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## ***B. DISPOSAL OF LAND BY FOUNDATION, VOLUNTARY OR FOUNDATION SPECIAL SCHOOLS***

### **1364. Disposal of land by governing bodies of foundation, voluntary or foundation special schools.**

The Secretary of State<sup>1</sup> must give written consent to the governing body<sup>2</sup> of a foundation, voluntary or foundation special school<sup>3</sup> for the disposal<sup>4</sup> of:

- 2534 (1) any land<sup>5</sup> acquired<sup>6</sup> under transfers under certain provisions of the Education Act 1996 or the School Standards and Framework Act 1998<sup>7</sup>;
- 2535 (2) any land acquired from a foundation body<sup>8</sup>;
- 2536 (3) any land acquired from the Funding Agency for Schools<sup>9</sup>;
- 2537 (4) any land acquired, or enhanced in value, wholly or partly by means of any maintenance, special purpose or capital grant<sup>10</sup>;
- 2538 (5) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of the school<sup>11</sup> and treated by the local education authority<sup>12</sup> as expenditure of a capital nature<sup>13</sup>; or
- 2539 (6) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal<sup>14</sup> of any land acquired or enhanced in value as mentioned in any of heads (1) to (5) above<sup>15</sup>.

Where the governing body applies to the Secretary of State for his consent to any such disposal and he decides to give that consent, he may do one or more of the following<sup>16</sup>: (a) require the land or any part of the land to be transferred to such local authority<sup>17</sup> as he may specify, subject to the payment by that authority of such sum by way of consideration, if any, as he determines to be appropriate<sup>18</sup>; and (b) give the governing body, when the land or any part of the land is disposed of, a direction to pay, either to him or to such local authority as he may specify, the whole or any part of the proceeds of disposal<sup>19</sup> and a direction as to the use to which the whole or any part of the proceeds of disposal should be put<sup>20</sup>.

These provisions do not apply to any disposal which: (i) is made by the governing body of a foundation or foundation special school after 7 June 2005<sup>21</sup>; and (ii) is a disposal to the trustees of the school made on the school becoming a school with a foundation<sup>22</sup>.

<sup>1</sup> As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>2</sup> As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

<sup>3</sup> As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

<sup>4</sup> School Standards and Framework Act 1998 s 76, Sch 22 para 1(1), (2) (Sch 22 para 1(2) amended by the Education Act 2005 s 107, Sch 17 paras 1, 2(1), (4)). For these purposes, 'disposal' includes: (1) a compulsory disposal (School Standards and Framework Act 1998 Sch 22 para 10(1)(b)(i)); and (2) in the case of any

premises held under a tenancy to which the Landlord and Tenant Act 1954 Pt II (ss 23-46) (as amended) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 701 et seq) applies, the termination of that tenancy under Pt II (as amended) (School Standards and Framework Act 1998 Sch 22 para 10(1)(b)(ii)). For the purposes of Sch 22 para 10(1)(b)(ii), expressions to which a meaning is given for the purposes of the Landlord and Tenant Act 1954 have the same meaning as in the Landlord and Tenant Act 1954 (see LANDLORD AND TENANT): School Standards and Framework Act 1998 Sch 22 para 10(2). As to the meaning of 'disposing of land' see PARA 1352 note 15 ante. As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of s 142(8).

The School Standards and Framework Act 1998 Sch 22 para 1 (as amended) is subject to Sch 22 para 1(1A) (as added) (see the text and notes 21-22 infra): Sch 22 para 1(1) (amended by the Education Act 2005 Sch 17 paras 1, 2(1), (2)(a)).

5 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6 References in *ibid* Sch 22 para 1(1) (as amended), in relation to the governing body or trustees of a foundation, voluntary or foundation special school and in relation to a time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), to any land being acquired in a particular way or to any grant being provided in a particular way, is a reference to the land being acquired in that way by, or (as the case may be) to the grant being provided in that way to, the governing body or trustees of that school at a time when it was a voluntary, grant-maintained or grant-maintained special school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 Sch 22 para 10(3). For these purposes, 'the trustees' in relation to a school, means any person (other than the governing body) holding property on trust for the purposes of the school: Sch 22 para 10(1)(a). As to grant-maintained and grant-maintained special schools see PARA 102 notes 16-17 ante.

In Sch 22 para 1(1) (as amended), references, in relation to the governing body of a foundation, voluntary or foundation special school, to any land being acquired in a particular way, include references to the land being acquired in that way by the temporary governing body for the school: Sch 22 para 10(5).

7 *Ibid* Sch 22 para 1(1)(a). This provision applies to transfers under the Education Act 1996 s 201(1)(a) (repealed), the School Standards and Framework Act 1998 s 22, Sch 3 para 2 (see PARA 1352 ante), Sch 6 para 16 (see PARA 145 ante) (including that provision as applied by any enactment), Sch 22 para 5(4)(c) (as amended) (see PARAS 1369-1370 post), Sch 22 para 5(4B)(d) (as added) (see PARA 1371 post) or any regulations made under s 35, Sch 8 para 5 (see PARA 116 ante): Sch 22 para 1(1)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 118(1), (2); and the Education Act 2005 Sch 17 paras 1, 2(1), (2)(b)).

8 School Standards and Framework Act 1998 Sch 22 para 1(1)(b). For the meaning of 'foundation body' see PARA 104 note 6 ante.

9 *Ibid* Sch 22 para 1(1)(c). The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

10 *Ibid* Sch 22 para 1(1)(d). The reference in the text to grants is a reference to grants within the meaning of the Education Act 1996 Pt III Ch VI (ss 244-258) (repealed).

11 References in the School Standards and Framework Act 1998 Sch 22 para 1(1) (as amended), in relation to the governing body or trustees of a foundation, voluntary or foundation special school and in relation to a time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), to any expenditure being incurred for the purposes of the school are references to such expenditure being incurred for the purposes of that school at a time when it was a voluntary, grant-maintained or grant-maintained special school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 Sch 22 para 10(4).

12 As to local education authorities see PARA 20 ante.

13 School Standards and Framework Act 1998 Sch 22 para 1(1)(e). However, Sch 22 para 1(1)(e) does not apply in the case of any expenditure incurred on or after 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) unless the authority: (1) prepared a statement in writing containing details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure and the total cost (or estimated total cost) of that acquisition or those works and indicating that the expenditure was being treated by it as expenditure of a capital nature; and (2) sent a copy of the statement to the governing body either before, or no later than 12 months after, the expenditure was incurred: Sch 22 para 1(5).

14 For these purposes, references to 'proceeds of disposal' in relation to a disposal of land, are references to: (1) any consideration for the disposal, including rent (*ibid* Sch 22 para 10(1)(c)(i)); (2) any compensation for the disposal, including any compensation paid by the landlord on the quitting of any premises within Sch 22 para 10(1)(b)(ii) (see note 4 *supra*) by the governing body, foundation body or trustees, whether or not the compensation is required to be paid by the Landlord and Tenant Act 1954 s 37 (as amended) (compensation where order for new tenancy precluded on certain grounds: see LANDLORD AND TENANT vol 27(2) (2006 Reissue)

PARAS 758-761) (School Standards and Framework Act 1998 Sch 22 para 10(1)(c)(ii)); and (3) interest which has accrued in respect of any such consideration or compensation (Sch 22 para 10(1)(c)(iii)). For the purposes of Sch 22 para 10(1)(c)(iii), expressions to which a meaning is given for the purposes of the Landlord and Tenant Act 1954 have the same meaning as in the Landlord and Tenant Act 1954 (see LANDLORD AND TENANT): School Standards and Framework Act 1998 Sch 22 para 10(2).

15 Ibid Sch 22 para 1(1)(f).

16 Ibid Sch 22 para 1(3) (amended by the Education Act 2005 Sch 17 paras 1, 2(1), (5)).

17 For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

18 Ibid Sch 22 para 1(3)(a). Where a transfer under Sch 22 para 1(3)(a) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 37).

19 School Standards and Framework Act 1998 Sch 22 para 1(3)(b)(i). More than one direction may be given under Sch 22 para 1(3)(b)(i) in relation to a disposal of land within Sch 22 para 1(1) (as amended) (see the text and notes 1-15 supra) where it is just to do so, in particular where the disposal involves the creation of a lease: Sch 22 para 1(4).

20 Ibid Sch 22 para 1(3)(b)(ii).

21 Ibid Sch 22 para 1(1A)(a) (Sch 22 para 1(1A) added by the Education Act 2005 Sch 17 paras 1, 2(1), (3)). The date referred to in the text is the date of the commencement of the School Standards and Framework Act 1998 Sch 22 para 1(1A) (as added): see the Education Act 2005 s 125(2).

22 School Standards and Framework Act 1998 Sch 22 para 1(1A)(b) (as added: see note 21 supra). The text refers to a school becoming a school with a foundation falling within s 21(1)(a) (see PARA 104 ante): Sch 22 para 1(1A)(b) (as so added).

## UPDATE

### **1364-1368 Disposal of Land by Foundation, Voluntary or Foundation Special Schools**

1998 Act Sch 22 paras 1-4 (amended by the Education and Inspections Act 2006 Sch 4 paras 3-8, Sch 18 Pt 6) now apply only in relation to schools in Wales. The 1998 Act Sch 22 paras A1-A27 (added by the 2006 Act Sch 4 para 2) make similar provision in relation to schools in England.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(2) ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND/(iv) Disposal of Land/B. DISPOSAL OF LAND BY FOUNDATION, VOLUNTARY OR FOUNDATION SPECIAL SCHOOLS/1365. Disposal of land by foundation bodies.

### **1365. Disposal of land by foundation bodies.**

The Secretary of State<sup>1</sup> must give written consent to the foundation body<sup>2</sup> for the disposal<sup>3</sup> of:

- 2540 (1) any land<sup>4</sup> acquired under certain provisions of the School Standards and Framework Act 1998 or the Education Act 2002<sup>5</sup>;
- 2541 (2) any land acquired from the governing body of a maintained school<sup>6</sup>;
- 2542 (3) any land acquired from another foundation body<sup>7</sup>;
- 2543 (4) any land acquired, or enhanced in value, wholly or partly by means of any grant provided by the Secretary of State on or after 1 September 1999<sup>8</sup>;
- 2544 (5) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of any of the schools comprising the group<sup>9</sup> for which the body acts and treated by the local education authority<sup>10</sup> as expenditure of a capital nature<sup>11</sup>; or
- 2545 (6) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal<sup>12</sup> of any land acquired or enhanced in value as mentioned in any of heads (1) to (5) above<sup>13</sup>.

Where the foundation body applies to the Secretary of State for his consent to any such disposal and he decides to give that consent, he may do either or both of the following<sup>14</sup>: (a) require the land or any part of the land to be transferred to such local authority<sup>15</sup> as he may specify, subject to the payment by that authority of such sum by way of consideration, if any, as he determines to be appropriate<sup>16</sup>; and (b) give the foundation body, when the land or any part of the land is disposed of, a direction to pay, either to him or to such local authority as he may specify, the whole or any part of the proceeds of disposal, and give a direction as to the use to which the whole or any part of the proceeds of disposal should be put<sup>17</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'foundation body' see PARA 104 note 6 ante.

3 School Standards and Framework Act 1998 s 76, Sch 22 para 2(1), (2). As to the meaning of 'disposal' see PARA 1364 note 4 ante.

4 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of *ibid* s 142(8).

5 *Ibid* Sch 22 para 2(1)(a). This provision applies to land acquired under s 22, Sch 3 para 2 (see PARA 1352 ante), Sch 3 para 4 (as amended) (see PARA 1353 ante), Sch 3 para 9 (see PARA 308 ante), ss 28(8), 29(7), 31(8), Sch 6 para 16 (see PARA 145 ante), Sch 6 para 20 (see PARA 147 ante) (including that provision as applied by any enactment), s 74, Sch 21 para 5 (see PARA 1401 post), Sch 21 para 6 (see PARA 1402 post) or under any regulations made under s 35, Sch 8 para 5 (see PARA 116 ante) or acquired under the Education Act 2002 s 70, Sch 8 para 8(5) (prospectively repealed) (see PARA 156 ante): School Standards and Framework Act 1998 Sch 22 para 2(1)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 118(1), (3)). The School Standards and Framework Act 1998 Sch 22 para 2(1)(a) (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so that the reference to the Education Act 2002 s 70, Sch 8 para 8(5) (prospectively repealed) is replaced by a reference to the Education Act 2005 s 66, Sch 10 para 14(5) (not yet in force) (proposals for new secondary schools in England: see PARA 165 ante): see the School Standards and Framework Act 1998 Sch 22 para 2(1)(a) (as so amended; and prospectively amended by the



Education Act 2005 s 72, Sch 12 para 15(1), (2)). At the date at which this volume states the law, no such day had been appointed.

6 School Standards and Framework Act 1998 Sch 22 para 2(1)(b). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. As to maintained schools generally see PARA 94 et seq ante.

7 Ibid Sch 22 para 2(1)(c).

8 Ibid Sch 22 para 2(1)(d). The reference in the text to 1 September 1999 is a reference to the appointed day: see PARA 102 note 3 ante.

9 For the meaning of 'the group' see PARA 104 note 6 ante.

10 As to local education authorities see PARA 20 ante.

11 School Standards and Framework Act 1998 Sch 22 para 2(1)(e). However, Sch 22 para 2(1)(e) does not apply in the case of any expenditure incurred on or after 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) unless the authority: (1) prepared a statement in writing containing details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and indicating that the expenditure was being treated by it as expenditure of a capital nature; and (2) sent a copy of the statement to the foundation body either before, or no later than 12 months after, the expenditure was incurred: Sch 22 para 2(5).

12 As to the meaning of 'proceeds of disposal' see PARA 1364 note 14 ante.

13 School Standards and Framework Act 1998 Sch 22 para 2(1)(f).

14 Ibid Sch 22 para 2(3) (amended by the Education Act 2005 Sch 17 paras 1, 3).

15 For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

16 Ibid Sch 22 paras 1(3)(a), 2(3)(a). Where a transfer under Sch 22 para 2(3)(a) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 37).

17 School Standards and Framework Act 1998 Sch 22 paras 1(3)(b), 2(3)(b). More than one direction may be given under Sch 22 para 2(3)(b) to make a payment in relation to the proceeds of disposal of land within Sch 22 para 2(1) (see the text and notes 1-13 supra) where it is just to do so, in particular where the disposal involves the creation of a lease: Sch 22 para 2(4).

## UPDATE

### **1364-1368 Disposal of Land by Foundation, Voluntary or Foundation Special Schools**

1998 Act Sch 22 paras 1-4 (amended by the Education and Inspections Act 2006 Sch 4 paras 3-8, Sch 18 Pt 6) now apply only in relation to schools in Wales. The 1998 Act Sch 22 paras A1-A27 (added by the 2006 Act Sch 4 para 2) make similar provision in relation to schools in England.

### **1365 Disposal of land by foundation bodies**

NOTE 5--Day now appointed: SI 2006/2129.

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**1366. Disposal of land by trustees of foundation or foundation special schools which have a foundation.**

The Secretary of State<sup>1</sup> must give written consent to the trustees<sup>2</sup> of a foundation or foundation special school<sup>3</sup> for the disposal<sup>4</sup> of:

- 2546 (1) any land<sup>5</sup> acquired under certain provisions of the School Standards and Framework Act 1998<sup>6</sup>;
- 2547 (2) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired as mentioned in head (1) above<sup>7</sup>; or
- 2548 (3) any land which was acquired<sup>8</sup> by the trustees from the governing body of the school or of another foundation or foundation special school<sup>9</sup>.

Where the trustees apply to the Secretary of State for his consent to any such disposal and he decides to give that consent, he may do either or both of the following<sup>10</sup>: (a) require the land or any part of the land to be transferred to such local authority<sup>11</sup> as he may specify, subject to the payment by that authority of such sum by way of consideration, if any, as he determines to be appropriate<sup>12</sup>; and (b) give the trustees, when the land or any part of the land is disposed of, a direction to pay to such local authority as he may specify the whole or any part of the proceeds of the disposal<sup>13</sup>, and a direction as to the use to which the whole or any part of the proceeds of disposal should be put<sup>14</sup>.

Where the trustees of a foundation or foundation special school wish, in the case of any land held by them for the purposes of the school, to use the land for purposes not connected with the provision of education in maintained schools, the provisions described above<sup>15</sup> apply as if any such change of use of the land were a disposal of the land<sup>16</sup>, and the value of the land as at the date of any direction under head (b) above is treated as proceeds of the disposal of the land<sup>17</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'trustee' see PARA 1364 note 6 ante.

3 As to foundation and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

4 School Standards and Framework Act 1998 s 76, Sch 22 para 2A(1), (3) (Sch 22 para 2A added by the Education Act 2005 s 107, Sch 17 paras 1, 4). As to the meaning of 'disposal' see PARA 1364 note 4 ante.

5 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

6 Ibid Sch 22 para 2A(1)(a) (as added: see note 4 supra). The text refers to any land acquired under s 22, Sch 3 para 2 (see PARA 1352 ante), Sch 6 para 16 (see PARA 145 ante) (including that provision as applied by any enactment), Sch 22 para 5(4B)(d) (as added) (see PARA 1371 post) or under any regulations made under s 35, Sch 8 para 5 (see PARA 116 ante): Sch 22 para 2A(1)(a) (as so added).

7 Ibid Sch 22 para 2A(1)(b) (as added: see note 4 supra).

8     le any land which: (1) had been acquired by the governing body under a transfer under the Education Act 1996 s 201(1)(a) (repealed), the School Standards and Framework Act 1998 s 22, Sch 3 para 2 (see PARA 1352 ante), Sch 6 para 16 (see PARA 145 ante) (including that provision as applied by any enactment), Sch 22 para 5(4B)(d) (as added) (see PARA 1371 post) or under any regulations made under Sch 8 para 5 (see PARA 116 ante); or (2) had been acquired by the governing body, or enhanced in value, wholly or partly with the proceeds of disposal of land acquired as mentioned in head (1) supra: Sch 22 para 2A(2) (as added: see note 4 supra).

9     Ibid Sch 22 para 2A(1)(c) (as added: see note 4 supra).

10    Ibid Sch 22 para 2A(4) (as added: see note 4 supra).

11    For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of ibid s 142(8).

12    Ibid Sch 22 para 2A(4)(a) (as added: see note 4 supra).

13    Ibid Sch 22 para 2A(4)(b)(i) (as added: see note 4 supra). More than one direction may be given under Sch 22 para 2A(4)(b)(i) (as added) in relation to a disposal of land within Sch 22 para 2A(1) (as added) (see the text and notes 1-9 supra) where it is just to do so, in particular where the disposal involves the creation of a lease: Sch 22 para 2A(5) (as so added).

14    Ibid Sch 22 para 2A(4)(b)(ii) (as added: see note 4 supra)

15    Ibid Sch 22 para 2A(1)-(5) (as added): see the text and notes 1-14 supra.

16    Ibid Sch 22 para 2A(6)(a) (as added: see note 4 supra).

17    Ibid Sch 22 para 2A(6)(b) (as added: see note 4 supra).

## UPDATE

### **1364-1368 Disposal of Land by Foundation, Voluntary or Foundation Special Schools**

1998 Act Sch 22 paras 1-4 (amended by the Education and Inspections Act 2006 Sch 4 paras 3-8, Sch 18 Pt 6) now apply only in relation to schools in Wales. The 1998 Act Sch 22 paras A1-A27 (added by the 2006 Act Sch 4 para 2) make similar provision in relation to schools in England.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(2) ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND/(iv) Disposal of Land/B. DISPOSAL OF LAND BY FOUNDATION, VOLUNTARY OR FOUNDATION SPECIAL SCHOOLS/1367. Disposal of land by trustees of foundation, voluntary or foundation special schools.

**1367. Disposal of land by trustees of foundation, voluntary or foundation special schools.**

Where the trustees<sup>1</sup> of a foundation, voluntary or foundation special school<sup>2</sup> dispose of<sup>3</sup>:

- 2549 (1) any land<sup>4</sup> acquired under certain provisions of the Education Act 1996 or the School Standards and Framework Act 1998<sup>5</sup>; or
- 2550 (2) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred on or after 1 September 1999<sup>6</sup> for the purposes of the school<sup>7</sup> and treated by the local education authority<sup>8</sup> as expenditure of a capital nature<sup>9</sup>; or
- 2551 (3) any land acquired by the governing body of the school under a transfer under certain provisions of the Education Act 1996<sup>10</sup>, or wholly or partly with the proceeds of disposal<sup>11</sup> of any land so acquired, and transferred by the governing body to be held on trust by the trustees<sup>12</sup>,

they must notify the local education authority that head (1), head (2) or head (3), as the case may be, applies to them and they or their successors will pay to the authority so much of the proceeds of disposal as may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the Secretary of State<sup>13</sup>.

Where a voluntary aided school was, immediately before 1 September 1999, a controlled school<sup>14</sup>, any disposal by the trustees of the school of any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred under certain provisions of the Education Act 1996<sup>15</sup>, the trustees must notify the local education authority that this is the case and they or their successors will pay to the authority so much of the proceeds of disposal as may be determined to be just, either by agreement between them and the authority or, in default of agreement, by the Secretary of State<sup>16</sup>.

Where the trustees of a foundation, voluntary or foundation special school dispose of:

- 2552 (a) any land acquired from the Funding Agency for Schools<sup>17</sup>; or
- 2553 (b) any land acquired, or enhanced in value, wholly or partly by means of certain grants under the Education Act 1996<sup>18</sup>; or
- 2554 (c) any land acquired wholly or partly with the proceeds of disposal of any land acquired or enhanced in value as mentioned in head (a) or head (b) above<sup>19</sup>,

the trustees must notify the local education authority that head (a), head (b) or head (c), as the case may be, applies to them and they and their successors must undertake to the authority to use the proceeds of disposal for the purposes of the school<sup>20</sup>, or for the purposes of any other existing or proposed foundation, voluntary or foundation special school, whether or not such proposals have yet been published under any enactment in respect of that proposed school<sup>21</sup>.

Where the trustees of a foundation, voluntary or foundation special school dispose of any land acquired, or enhanced in value, wholly or partly by means of any grant made in pursuance of a special agreement<sup>22</sup>, the governing body of the school must repay such a grant to the local

education authority by whom the school is maintained, unless the governing body and the authority otherwise agree<sup>23</sup>.

Where the trustees of a foundation, voluntary or foundation special school wish, in the case of any land held by them for the purposes of the school, to use the land for purposes not connected with the provision of education in maintained schools, the provisions described above<sup>24</sup> apply as if any such change of use of the land were a disposal of the land<sup>25</sup>, and the value of the land as at the date of any determination<sup>26</sup> or of any direction<sup>27</sup> is treated as proceeds of the disposal of the land<sup>28</sup>.

1 For the meaning of 'trustee' see PARA 1364 note 6 ante.

2 As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

3 School Standards and Framework Act 1998 s 76, Sch 22 para 3(1). As to the meaning of 'disposal' see PARA 1364 note 4 ante. Schedule 22 para 3 (as amended) is subject to Sch 22 para 3(2A) (as added): Sch 22 para 3(1) (amended by the Education Act 2005 s 107, Sch 17 paras 1, 5(1), (2)(a)). Nothing in the School Standards and Framework Act 1998 Sch 22 para 3(1) (as amended) applies in relation to any disposal to the extent that it is a disposal to which Sch 22 para 2A (as added) (see PARA 1366 ante) applies: Sch 22 para 3(2A) (added by the Education Act 2005 Sch 17 paras 1, 5(1), (3)).

4 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

5 Ibid Sch 22 para 3(1)(a). The text refers to land acquired under the Education Act 1996 s 60, s 61 or s 70 (all repealed), the School Standards and Framework Act 1998 s 22, Sch 3 para 2 (see PARA 1352 ante), Sch 3 para 4 (as amended) (see PARA 1353 ante), Sch 3 para 9 (see PARA 308 ante), Sch 6 para 16 (see PARA 145 ante), Sch 6 para 20 (see PARA 147 ante) (including that provision as applied by any enactment), Sch 22 para 5(4B)(d) (as added) (see PARA 1371 post) or under any regulations made under s 35, Sch 8 para 5 (see PARA 116 ante) or acquired under the Education Act 2002 s 70, Sch 8 para 8(5) (prospectively repealed) (see PARA 156 ante): School Standards and Framework Act 1998 Sch 22 para 3(1)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 118(1), (4); and the Education Act 2005 Sch 17 paras 1, 5(1), (2)(b)). The School Standards and Framework Act 1998 Sch 22 para 3(1)(a) (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so that the reference to the Education Act 2002 s 70, Sch 8 para 8(5) (prospectively repealed) is replaced by a reference to the Education Act 2005 s 66, Sch 10 para 14(5) (not yet in force) (proposals for new secondary schools in England: see PARA 165 ante): see the School Standards and Framework Act 1998 Sch 22 para 3(1)(a) (as so amended; and prospectively amended by the Education Act 2005 s 72, Sch 12 para 15(1), (3)). At the date at which this volume states the law, no such day had been appointed.

6 I.e. the appointed day: see PARA 102 note 3 ante.

7 References in the School Standards and Framework Act 1998 Sch 22 para 3(1) (as amended; prospectively amended), in relation to the governing body or trustees of a foundation, voluntary or foundation special school and in relation to a time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), to any expenditure being incurred for the purposes of the school are references to such expenditure being incurred for the purposes of that school at a time when it was a voluntary, grant-maintained or grant-maintained special school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 Sch 22 para 10(4). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. As to grant-maintained and grant-maintained special schools see PARA 102 notes 16-17 ante.

8 As to local education authorities see PARA 20 ante.

9 School Standards and Framework Act 1998 Sch 22 para 3(1)(b). Schedule 22 para 3(1)(b) does not apply in the case of any expenditure unless the authority: (1) prepared a statement in writing containing details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and indicating that the expenditure was being treated by it as expenditure of a capital nature; and (2) sent a copy of the statement to the trustees either before, or no later than 12 months after, the expenditure was incurred: Sch 22 para 3(6).

References in Sch 22 para 3(1) (as amended; prospectively amended), in relation to the governing body or trustees of a foundation, voluntary or foundation special school and in relation to a time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), to any land being acquired in a particular way or to any grant being provided in a particular way are references to the land being acquired in that way by, or (as the

case may be) to the grant being provided in that way to, the governing body or trustees of that school at a time when it was a voluntary, grant-maintained or grant-maintained special school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 Sch 22 para 10(3).

10    Ie the Education Act 1996 s 201(1)(a) (repealed).

11    As to the meaning of 'proceeds of disposal' see PARA 1364 note 14 ante.

12    School Standards and Framework Act 1998 Sch 22 para 3(1)(c). As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

13    Ibid Sch 22 para 3(3). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

In making any determination under Sch 22 para 3(3), the trustees and the authority, or the Secretary of State, as the case may be, must have regard in particular to: (1) the value, as at the date of the determination, of the land acquired from the authority; (2) any enhancement in value of the land attributable to expenditure by the local education authority, the trustees or the governing body of the school on school buildings on the land; and (3) any payments already made by the trustees to the authority in respect of the current school site or any payments already made under the Education Act 1996 s 60(4) (repealed) or under the School Standards and Framework Act 1998 Sch 3 para 2(6) (see PARA 1352 ante) or Sch 6 para 16(5) (see PARA 145 ante): Sch 22 para 3(4). For the meaning of 'school building' see PARA 1353 note 18 ante; definition applied by virtue of s 142(8).

More than one determination may be made under Sch 22 para 3(3) in relation to a disposal of land within Sch 22 para 3(1)(a), (b), (c) (Sch 22 para 3(1)(a) as amended; prospectively amended) (see the text and notes 1-12 supra) where it is just to do so, in particular where the disposal involves the creation of a lease: Sch 22 para 3(5).

Schedule 22 para 3(3) does not apply in the case of land acquired under the Education Act 1996 s 60 (repealed), s 61 (repealed), the School Standards and Framework Act 1998 Sch 3 para 2 (see PARA 1352 ante) or Sch 3 para 4 (as amended) (see PARA 1353 ante) by the trustees of an institution which is, or has at any time been, within the further education sector (as defined by the Education Act 1996 s 4(3) (see PARA 579 ante)): School Standards and Framework Act 1998 Sch 22 para 3(7).

14    Ie within the meaning of the Education Act 1996. Controlled schools are now voluntary controlled schools under the School Standards and Framework Act 1998: see PARA 102 et seq ante.

15    School Standards and Framework Act 1998 Sch 22 para 3(2). This provision applies to expenditure incurred under the Education Act 1996 s 63 (repealed) or s 64 (repealed).

16    School Standards and Framework Act 1998 Sch 22 para 3(3). In making any determination under Sch 22 para 3(3), the trustees and the authority, or the Secretary of State, as the case may be, must have regard in particular to: (1) the value, as at the date of the determination, of the land acquired from the authority; (2) any enhancement in value of the land attributable to expenditure by the local education authority, the trustees or the governing body of the school on school buildings on the land; and (3) any payments already made by the trustees to the authority in respect of the current school site or under the Education Act 1996 s 60(4) (repealed), the School Standards and Framework Act 1998 Sch 3 para 2(6) (see PARA 1352 ante) or Sch 6 para 16(5) (see PARA 145 ante): Sch 22 para 3(4).

More than one determination may be made under Sch 22 para 3(3) in relation to a disposal of land within Sch 22 para 3(2) (see the text and notes 14-15 supra) where it is just to do so, in particular where the disposal involves the creation of a lease: Sch 22 para 3(5).

Schedule 22 para 3(3) does not apply in the case of land acquired under the Education Act 1996 s 60 (repealed), s 61 (repealed), the School Standards and Framework Act 1998 s 22, Sch 3 para 2 (see PARA 1352 ante) or Sch 3 para 4 (as amended) (see PARA 1353 ante) by the trustees of an institution which is, or has at any time been, within the further education sector (as defined by the Education Act 1996 s 4(3) (see PARA 579 ante)): School Standards and Framework Act 1998 Sch 22 para 3(7).

17    Ibid Sch 22 para 3(1)(d). The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

18    Ibid Sch 22 para 3(1)(e). The reference in the text to grants under the Education Act 1996 is a reference to any maintenance, special purpose or capital grant within the meaning of Pt III Ch VI (ss 211-217) (repealed) or any grant paid under s 216(2) (repealed).

19    School Standards and Framework Act 1998 Sch 22 para 3(1)(f).

20    Ibid Sch 22 para 3(8)(a).

21 Ibid Sch 22 para 3(8)(b) (amended by the Education Act 2002 Sch 21 para 118(1), (4)(b)). As to the publication of proposals in respect of foundation, voluntary or foundation special schools see PARA 132 et seq ante. Where it appears to the Secretary of State that the trustees have not given a suitable undertaking under the School Standards and Framework Act 1998 Sch 22 para 3(8) (as amended), he may direct the trustees to pay to the authority either the whole or any part of the proceeds of disposal as he determines to be just: Sch 22 para 3(9).

More than one direction may be given under Sch 22 para 3(9) in relation to a disposal of land within Sch 22 para 3(1)(d), (e), (f) (see the text and notes 17-19 supra) where it is just to do so, in particular where the disposal involves the creation of a lease: Sch 22 para 3(10).

22 Ibid Sch 22 para 3(1)(g). The reference in the text to a special agreement is a reference to a special agreement as defined by the Education Act 1996 s 32(5) (repealed). A 'special agreement' was an agreement made under the Education Act 1944 s 15, Sch 3 (repealed) or deemed to have been so made by virtue of Sch 3 para 11 (repealed) (agreement providing for the making of a grant by a local education authority to persons specified in the agreement in consideration of their execution of proposals for the establishment of a school or the alteration of the premises of a school): Education Act 1996 s 32(5) (repealed).

23 School Standards and Framework Act 1998 Sch 22 para 3(11).

24 Ie ibid Sch 22 para 3(1)-(11) (as amended): see the text and notes 1-23 supra.

25 Ibid Sch 22 para 3(12)(a).

26 Ie any determination under ibid Sch 22 para 3(3): see the text and note 16 supra.

27 Ie any direction under ibid Sch 22 para 3(9): see note 21 supra.

28 Ibid Sch 22 para 3(12)(b).

## UPDATE

### **1364-1368 Disposal of Land by Foundation, Voluntary or Foundation Special Schools**

1998 Act Sch 22 paras 1-4 (amended by the Education and Inspections Act 2006 Sch 4 paras 3-8, Sch 18 Pt 6) now apply only in relation to schools in Wales. The 1998 Act Sch 22 paras A1-A27 (added by the 2006 Act Sch 4 para 2) make similar provision in relation to schools in England.

### **1367 Disposal of land by trustees of foundation, voluntary or foundation special schools**

NOTE 5--Day now appointed: SI 2006/2129.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(2) ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND/(iv) Disposal of Land/B. DISPOSAL OF LAND BY FOUNDATION, VOLUNTARY OR FOUNDATION SPECIAL SCHOOLS/1368. Land required by local education authority for new school.

### **1368. Land required by local education authority for new school.**

Where, on an application made by a local education authority<sup>1</sup>, the Secretary of State<sup>2</sup> is satisfied:

- 2555 (1) that any relevant land<sup>3</sup> held, or held on trust<sup>4</sup>, for the purposes of a foundation, voluntary or foundation special school by the governing body or the trustees of the school, or held by a foundation body<sup>5</sup> for the purposes of the group<sup>6</sup> of schools for which it acts, is not required for the purposes of the school or, as the case may be, those schools<sup>7</sup>; and
- 2556 (2) that that land is required by the authority as the site for a new maintained school or as the site to which a maintained school is to be transferred<sup>8</sup>,

he may by order require the relevant land to be transferred to the authority by the body or trustees holding the land, subject to the payment by the authority of such sum by way of consideration, if any, as he determines to be appropriate<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 For these purposes, 'relevant land' means land which was acquired by the governing body of the school, or, as the case may be, one of the schools mentioned in the School Standards and Framework Act 1998 s 76, Sch 22 para 4(1)(a) (see head (1) in the text), under a transfer under the Education Act 1996 s 201(1)(a) (repealed): School Standards and Framework Act 1998 Sch 22 para 4(3). References in Sch 22 para 4(3), in relation to the governing body or trustees of a foundation, voluntary or foundation special school and in relation to a time before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), to any land being acquired in a particular way or to any grant being provided in a particular way, are references to the land being acquired in that way by, or (as the case may be) to the grant being provided in that way to, the governing body or trustees of that school at a time when it was a voluntary, grant-maintained or grant-maintained special school within the meaning of the Education Act 1996: School Standards and Framework Act 1998 Sch 22 para 10(3). As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of s 142(8). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante. As to grant-maintained and grant-maintained special schools see PARA 102 notes 16-17 ante. For the meaning of 'trustee' see PARA 1364 note 6 ante.

4 As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

5 For the meaning of 'foundation body' see PARA 104 note 6 ante.

6 For the meaning of 'the group' see PARA 104 note 6 ante.

7 School Standards and Framework Act 1998 Sch 22 para 4(1)(a).

8 Ibid Sch 22 para 4(1)(b). For the meaning of 'maintained school' see PARA 94 ante.

9 Ibid Sch 22 para 4(2). Orders under Sch 22 para 4(2) are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante. Orders under Sch 22 para 4(2) are local in nature, and are not



recorded in this work. Where a transfer under Sch 22 para 4(2) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 37). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post. For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

## **UPDATE**

### **1364-1368 Disposal of Land by Foundation, Voluntary or Foundation Special Schools**

1998 Act Sch 22 paras 1-4 (amended by the Education and Inspections Act 2006 Sch 4 paras 3-8, Sch 18 Pt 6) now apply only in relation to schools in Wales. The 1998 Act Sch 22 paras A1-A27 (added by the 2006 Act Sch 4 para 2) make similar provision in relation to schools in England.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(2) ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND/(iv) Disposal of Land/C. DISPOSAL OF LAND AND PREMISES ON DISCONTINUANCE OF FOUNDATION, VOLUNTARY OR FOUNDATION SPECIAL SCHOOLS/1369. Disposal of land by governing bodies on discontinuance of foundation, voluntary or foundation special schools.

### ***C. DISPOSAL OF LAND AND PREMISES ON DISCONTINUANCE OF FOUNDATION, VOLUNTARY OR FOUNDATION SPECIAL SCHOOLS***

#### **1369. Disposal of land by governing bodies on discontinuance of foundation, voluntary or foundation special schools.**

Provision is made by the School Standards and Framework Act 1998 in relation to the disposal of land<sup>1</sup> by governing bodies<sup>2</sup> on the discontinuance of foundation, voluntary or foundation special schools<sup>3</sup>, and comparable provision has been made in relation to schools which are part of the group<sup>4</sup> for which a foundation body acts<sup>5</sup> and for the disposal of land by trustees<sup>6</sup>.

Where proposals to discontinue a foundation, voluntary or foundation special school have been approved, adopted or determined to be implemented under any enactment<sup>7</sup>, or where the Secretary of State<sup>8</sup> has given a direction requiring a maintained school to be discontinued<sup>9</sup> or requiring a foundation special school to be discontinued<sup>10</sup>, the governing body of the school must apply to the Secretary of State for him to exercise his powers under heads (a) to (c) below in relation to any of the following land held by the governing body for the purposes of the school<sup>11</sup>:

- 2557 (1) any land acquired under transfers under certain provisions of the Education Act 1996 or the School Standards and Framework Act 1998<sup>12</sup>;
- 2558 (2) any land acquired from a foundation body<sup>13</sup>;
- 2559 (3) any land acquired from the Funding Agency for Schools<sup>14</sup>;
- 2560 (4) any land acquired, or enhanced in value, wholly or partly by means of any maintenance, special purpose or capital grant<sup>15</sup>;
- 2561 (5) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature<sup>16</sup>; or
- 2562 (6) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal<sup>17</sup> of any land acquired or enhanced in value as mentioned in any of heads (1) to (5) above<sup>18</sup>.

On such an application, the Secretary of State may do one or more of the following: (a) he may require the land or any part of the land to be transferred to such local authority<sup>19</sup> as he may specify, subject to the payment by that authority of such sum by way of consideration, if any, as he determines to be appropriate<sup>20</sup>; (b) he may direct the governing body to pay, either to him or to such local authority as he may specify, the whole or any part of the value, as at the date of the direction, of the whole or any part of the land referred to in heads (1) to (6) above<sup>21</sup>; and (c) in a case where the discontinuance of the school is connected with proposals under any enactment to establish, or to make a prescribed alteration to, any other school or schools, he may require the land or any part of the land to be transferred to the governing body of such maintained school or the temporary governing body of such new school as he may specify<sup>22</sup>.

Where the governing body fails to make such an application<sup>23</sup>, the Secretary of State may nevertheless make any such requirement or give any such direction as mentioned in heads (a) to (c) above<sup>24</sup>.

1 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'disposal' see PARA 1364 note 4 ante.

2 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

3 See the School Standards and Framework Act 1998 s 76, Sch 22 para 5 (as amended). As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

4 For the meaning of 'the group' see PARA 104 note 6 ante.

5 See PARA 1370 post. For the meaning of 'foundation body' see PARA 104 note 6 ante.

6 See PARA 1371 post.

7 School Standards and Framework Act 1998 Sch 22 para 5(1)(a) (substituted by the Education Act 2002 s 215(1), Sch 21 para 118(1), (5)(a)). As to proposals to discontinue a foundation, voluntary or foundation special school see PARAS 131 et seq, 1277 et seq ante.

8 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

9 In where the Secretary of State has given a direction under the School Standards and Framework Act 1998 s 19(1) (as substituted) (see PARA 1273 ante) requiring a maintained school to be discontinued: Sch 22 para 5(1)(b)(i). For the meaning of 'maintained school' see PARA 94 ante.

10 Ibid Sch 22 para 5(1)(b)(ii). The text refers to the situation where the Secretary of State has given a direction under s 32(1) (see PARA 149 ante) requiring a foundation special school to be discontinued: Sch 22 para 5(1)(b)(ii).

11 Ibid Sch 22 para 5(2).

12 Ibid Sch 22 paras 1(1)(a), 5(2). This provision applies to transfers under the Education Act 1996 s 201(1)(a) (repealed), the School Standards and Framework Act 1998 s 22, Sch 3 para 2 (see PARA 1352 ante), Sch 6 para 16 (see PARA 145 ante) (including that provision as applied by any enactment), Sch 22 para 5(4)(c) (as amended) (see the text and note 22 infra; and PARA 1370 post), Sch 22 para 5(4B)(d) (as added) (see PARA 1371 post) or any regulations made under s 35, Sch 8 para 5 (see PARA 116 ante): Sch 22 para 1(1)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 118(1), (2); and the Education Act 2005 Sch 17 paras 1, 2(1), (2)(b)).

13 School Standards and Framework Act 1998 Sch 22 paras 1(1)(b), 5(2).

14 Ibid Sch 22 paras 1(1)(c), 5(2). The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

15 Ibid Sch 22 paras 1(1)(d), 5(2). The reference in the text to grants is a reference to grants within the meaning of the Education Act 1996 Pt III Ch VI (ss 244-258) (repealed).

16 School Standards and Framework Act 1998 Sch 22 paras 1(1)(e), 5(2).

17 As to the meaning of 'proceeds of disposal' see PARA 1364 note 14 ante.

18 School Standards and Framework Act 1998 Sch 22 paras 1(1)(f), 5(2).

19 For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of ibid s 142(8).

20 Ibid Sch 22 paras 1(3)(a), 5(4)(a). Where a transfer under Sch 22 para 5(4)(a) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by

agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 37).

21 School Standards and Framework Act 1998 Sch 22 para 5(4)(b).

22 Ibid Sch 22 para 5(4)(c) (amended by the Education Act 2002 Sch 21 para 118(1), (5)(b)). Where a transfer under the School Standards and Framework Act 1998 Sch 22 para 5(4)(c) (as amended) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (as amended: see note 20 supra). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post.

23 Ie as required by ibid Sch 22 para 5(2) (see the text and notes 11-18 supra).

24 Ibid Sch 22 para 5(5) (amended by the Education Act 2005 Sch 17 paras 1, 6(1), (3)).

## UPDATE

### **1369 Disposal of land by governing bodies on discontinuance of foundation, voluntary or foundation special schools**

TEXT AND NOTE 7--Now, approved, adopted, confirmed or determined: 1998 Act Sch 22 para 5(1)(a) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

TEXT AND NOTES 9, 10--The directions referred to are now a direction under the 1998 Act s 19(1) requiring a foundation, voluntary or foundation special school in Wales to be discontinued, a direction under s 32(1) requiring a foundation special school in Wales to be discontinued, a direction under the Education and Inspections Act 2006 s 68(1) requiring a foundation, voluntary or foundation special school in England to be discontinued, or a direction under s 17(1) requiring a foundation special school in England to be discontinued: 1998 Act Sch 22 para 5(1)(b)(i)-(iv) (substituted by the 2006 Act 2006 Sch 4 para 9(2)).

TEXT AND NOTES 11-18--In relation to a school in England, the land referred to is, with certain exceptions, land falling within the 1998 Sch 22 para A1(1)(a)-(i) (as added: see PARAS 1364-1368): see 1998 Act Sch 22 para 5(2), (2A), (2B) (Sch 22 para 5(2) amended, paras 5(2A), (2B) added by the Education and Inspections Act 2006 Sch 4 para 9(3), (4)).

TEXT AND NOTES 19, 20--Now head (a) he may require the land or any part of the land to be transferred to such local authority as he may specify, subject to the payment by that local authority of such sum by way of consideration (if any) as he determines to be appropriate: 1998 Act Sch 22 para 5(4)(a) (substituted by the Education and Inspections Act 2006 Sch 4 para 9(7)).

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(2) ACQUISITION, APPROPRIATION AND DISPOSAL OF LAND/(iv) Disposal of Land/C. DISPOSAL OF LAND AND PREMISES ON DISCONTINUANCE OF FOUNDATION, VOLUNTARY OR FOUNDATION SPECIAL SCHOOLS/1370. Disposal of land by foundation bodies on discontinuance of foundation, voluntary or foundation special schools.

**1370. Disposal of land by foundation bodies on discontinuance of foundation, voluntary or foundation special schools.**

The provisions described below apply where a foundation, voluntary or foundation special school<sup>1</sup> is a member of a group<sup>2</sup> for which a foundation body acts<sup>3</sup>. Where proposals to discontinue a foundation, voluntary or foundation special school have been approved, adopted or determined to be implemented under any enactment<sup>4</sup>, or where the Secretary of State<sup>5</sup> has given a direction requiring a maintained school to be discontinued<sup>6</sup> or requiring a foundation special school to be discontinued<sup>7</sup>, the body must apply to the Secretary of State for him to exercise his powers under heads (a) to (c) below in relation to any of the following land<sup>8</sup> held by the foundation body for the purposes of the schools comprising the group<sup>9</sup>:

- 2563 (1) any land acquired under certain provisions of the School Standards and Framework Act 1998<sup>10</sup>;
- 2564 (2) any land acquired from the governing body of a maintained school<sup>11</sup>;
- 2565 (3) any land acquired from another foundation body<sup>12</sup>;
- 2566 (4) any land acquired, or enhanced in value, wholly or partly by means of any grant provided by the Secretary of State on or after 1 September 1999<sup>13</sup>;
- 2567 (5) any land acquired, or enhanced in value, wholly or partly by means of expenditure incurred for the purposes of any of the schools comprising the group for which the body acts and treated by the local education authority<sup>14</sup> as expenditure of a capital nature<sup>15</sup>; or
- 2568 (6) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal<sup>16</sup> of any land acquired or enhanced in value as mentioned in any of heads (1) to (5) above<sup>17</sup>.

On such an application, the Secretary of State may do one or more of the following, namely: (a) he may require the land or any part of the land to be transferred to such local authority<sup>18</sup> as he may specify, subject to the payment by that authority of such sum by way of consideration, if any, as he determines to be appropriate<sup>19</sup>; (b) he may direct the foundation body to pay, either to him or to such local authority as he may specify, the whole or any part of the value, as at the date of the direction, of the whole or any part of the land referred to in heads (1) to (6) above<sup>20</sup>; and (c) in a case where the discontinuance of the school is connected with proposals under any enactment to establish, or to make a prescribed alteration to, any other school or schools, require the land or any part of the land to be transferred to the governing body of such maintained school or the temporary governing body of such new school as he may specify<sup>21</sup>.

Where the foundation body fails to make such an application<sup>22</sup>, the Secretary of State may nevertheless make any such requirement or give any such direction as mentioned in heads (a) to (c) above<sup>23</sup>.

1 As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

2 For the meaning of 'the group' see PARA 104 note 6 ante.

3 See the School Standards and Framework Act 1998 s 76, Sch 22 para 5(3). For the meaning of 'foundation body' see PARA 104 note 6 ante. As to the parallel provisions relating to governing bodies see PARA 1369 ante; and as to those in relation to trustees see PARA 1371 post.

4 Ibid Sch 22 para 5(1)(a) (substituted by the Education Act 2002 s 215(1), Sch 21 para 118(1), (5)(a)). As to proposals to discontinue a foundation, voluntary or foundation special school see PARAS 131 et seq, 1277 et seq ante.

5 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

6 Ie where the Secretary of State has given a direction under the School Standards and Framework Act 1998 s 19(1) (as substituted) (see PARA 1273 ante) requiring a maintained school to be discontinued: Sch 22 para 5(1)(b)(i). For the meaning of 'maintained school' see PARA 94 ante.

7 Ibid Sch 22 para 5(1)(b)(ii). The text refers to the situation where the Secretary of State has given a direction under s 32(1) (see PARA 149 ante) requiring a foundation special school to be discontinued: Sch 22 para 5(1)(b)(ii).

8 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of ibid s 142(8).

9 Ibid Sch 22 para 5(3).

10 Ibid Sch 22 paras 2(1)(a), 5(3). This provision applies to land acquired under s 22, Sch 3 para 2 (see PARA 1352 ante), Sch 3 para 4 (as amended) (see PARA 1353 ante), Sch 3 para 9 (see PARA 308 ante), ss 28(8), 29(7), 31(8), Sch 6 para 16 (see PARA 145 ante), Sch 6 para 20 (see PARA 147 ante) (including that provision as applied by any enactment), s 74, Sch 21 para 5 (see PARA 1401 post), Sch 21 para 6 (see PARA 1402 post) or under any regulations made under s 35, Sch 8 para 5 (see PARA 116 ante) or acquired under the Education Act 2002 s 70, Sch 8 para 8(5) (prospectively repealed) (see PARA 156 ante): School Standards and Framework Act 1998 Sch 22 para 2(1)(a) (amended by the Education Act 2002 s 215(1), Sch 21 para 118(1), (3)). The School Standards and Framework Act 1998 Sch 22 para 2(1)(a) (as amended) is further amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so that the reference to the Education Act 2002 s 70, Sch 8 para 8(5) (prospectively repealed) is replaced by a reference to the Education Act 2005 s 66, Sch 10 para 14(5) (not yet in force) (proposals for new secondary schools in England: see PARA 165 ante): see the School Standards and Framework Act 1998 Sch 22 para 2(1)(a) (as so amended; and prospectively amended by the Education Act 2005 s 72, Sch 12 para 15(1), (2)). At the date at which this volume states the law, no such day had been appointed.

11 School Standards and Framework Act 1998 Sch 22 paras 2(1)(b), 5(3). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

12 Ibid Sch 22 paras 2(1)(c), 5(3).

13 Ibid Sch 22 paras 2(1)(d), 5(3). The reference in the text to 1 September 1999 is a reference to the appointed day: see PARA 102 note 3 ante.

14 As to local education authorities see PARA 20 ante.

15 School Standards and Framework Act 1998 Sch 22 paras 2(1)(e), 5(3). However, Sch 22 para 2(1)(e) does not apply in the case of any expenditure incurred on or after 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) unless the authority: (1) prepared a statement in writing containing details of the amount of the expenditure, the acquisition or works funded (or to be funded) by such expenditure, and the total cost (or estimated total cost) of that acquisition or those works, and indicating that the expenditure was being treated by it as expenditure of a capital nature; and (2) sent a copy of the statement to the foundation body either before, or no later than 12 months after, the expenditure was incurred: Sch 22 para 2(5).

16 As to the meaning of 'proceeds of disposal' see PARA 1364 note 14 ante.

17 School Standards and Framework Act 1998 Sch 22 paras 2(1)(f), 5(3).

18 For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of ibid s 142(8).

19 Ibid Sch 22 paras 1(3)(a), 5(4)(a). Where a transfer under Sch 22 para 5(4)(a) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by

agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 37).

20 School Standards and Framework Act 1998 Sch 22 para 5(4)(b).

21 Ibid Sch 22 para 5(4)(c) (amended by the Education Act 2002 Sch 21 para 118(1), (5)(b)). Where a transfer under the School Standards and Framework Act 1998 Sch 22 para 5(4)(c) (as amended) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (as amended: see note 19 supra). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post.

22 Ie as required by ibid Sch 22 para 5(3) (see the text and notes 8-17 supra).

23 Ibid Sch 22 para 5(5) (amended by the Education Act 2005 Sch 17 paras 1, 6(1), (3)).

## UPDATE

### **1370 Disposal of land by foundation bodies on discontinuance of foundation, voluntary or foundation special schools**

TEXT AND NOTE 4--Now approved, adopted, confirmed or determined: 1998 Act Sch 22 para 5(1)(a) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

TEXT AND NOTES 6, 7--The directions referred to are now a direction under the 1998 Act s 19(1) requiring a foundation, voluntary or foundation special school in Wales to be discontinued, a direction under s 32(1) requiring a foundation special school in Wales to be discontinued, a direction under the Education and Inspections Act 2006 s 68(1) requiring a foundation, voluntary or foundation special school in England to be discontinued, or a direction under s 17(1) requiring a foundation special school in England to be discontinued: 1998 Act Sch 22 para 5(1)(b)(i)-(iv) (substituted by the 2006 Act 2006 Sch 4 para 9(2)).

TEXT AND NOTES 9-17--In relation to a school in England, the land referred to is, with certain exceptions, land falling within the 1998 Sch 22 para A7(1)(a)-(h) (as added: see PARAS 1364-1368): see 1998 Act Sch 22 para 5(3), (3A), (3B) (Sch 22 para 5(3) amended, paras 5(3A), (3B) added by the Education and Inspections Act 2006 Sch 4 para 9(5), (6)).

NOTE 10--Day now appointed: SI 2006/2129.

TEXT AND NOTES 18, 19--Now head (a) he may require the land or any part of the land to be transferred to such local authority as he may specify, subject to the payment by that local authority of such sum by way of consideration (if any) as he determines to be appropriate: 1998 Act Sch 22 para 5(4)(a) (substituted by the Education and Inspections Act 2006 Sch 4 para 9(7)).

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**1371. Disposal of land by trustees on discontinuance of foundation, voluntary or foundation special schools.**

In relation to the disposal of land<sup>1</sup> on the discontinuance of foundation, voluntary or foundation special schools<sup>2</sup>, the statutory provisions relating to the disposal of land by trustees<sup>3</sup> apply where the trustees of the school dispose of certain land<sup>4</sup> or wish to use any such land for purposes not connected with the provision of education in maintained schools<sup>5</sup>.

Where the school is a foundation or foundation special school which has a foundation, the trustees of the school must apply to the Secretary of State for him to exercise his powers under heads (a) to (d) below in relation to any land which is held by the trustees for the purposes of the school<sup>6</sup>, and which is:

- 2569 (1) any land acquired under certain provisions of the School Standards and Framework Act 1998<sup>7</sup>;
- 2570 (2) any land acquired, or enhanced in value, wholly or partly with the proceeds of disposal of any land acquired as mentioned in head (1) above<sup>8</sup>; or
- 2571 (3) certain land which was acquired<sup>9</sup> by the trustees from the governing body of the school or of another foundation or foundation special school<sup>10</sup>.

On such an application, the Secretary of State may do one or more of the following, namely: (a) require the land or any part of the land to be transferred to such local authority as he may specify, subject to the payment by that authority of such sum by way of consideration, if any, as he determines to be appropriate<sup>11</sup>; (b) where the trustees have power to use the land for the purposes of another foundation or foundation special school or for the purposes of a voluntary school, direct the trustees to exercise that power in such manner as he may specify<sup>12</sup>; (c) direct the trustees to pay to such local authority as he may specify the whole or any part of the value, as at the date of the direction, of the whole or any part of the land referred to in heads (1) to (3) above<sup>13</sup>; and (d) in a case where the discontinuance of the school is connected with proposals under any enactment to establish, or to make a prescribed alteration to, any other school or schools, require the land or any part of the land to be transferred to the trustees, foundation body<sup>14</sup> or governing body of such maintained school as he may specify, or to the trustees, foundation body or temporary governing body of such new school as he may specify<sup>15</sup>.

Where the trustees fail to make such an application<sup>16</sup>, the Secretary of State may nevertheless make any such requirement or give any such direction as mentioned in heads (a) to (d) above<sup>17</sup>.

1 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'disposal' see PARA 1364 note 4 ante.

2 See *ibid* s 76, Sch 22 para 5 (as amended); and PARAS 1369-1370 ante. As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

3 *Ie* the provisions of *ibid* Sch 22 para 3 (as amended; prospectively amended): see PARA 1367 ante. For the meaning of 'trustee' see PARA 1364 note 6 ante.



4 le any land falling within *ibid* Sch 22 para 3(1) (as amended; prospectively amended) or Sch 22 para 3(2) (see *PARA 1367 ante*) but not within Sch 22 para 2A(1)(a) (as added) (see the text and note 7 *infra*), Sch 22 para 2A(1)(b) (as added) (see the text and note 8 *infra*) or Sch 22 para 2A(1)(c) (as added) (see the text and notes 9-10 *infra*): Sch 22 para 5(6)(a) (amended by the Education Act 2005 s 107, Sch 17 paras 1, 6(1), (4)).

5 School Standards and Framework Act 1998 Sch 22 para 5(6)(b). For the meaning of 'maintained school' see *PARA 94 ante*.

6 *Ibid* Sch 22 para 5(4A) (Sch 22 para 5(4A), (4B) added by the Education Act 2005 Sch 17 paras 1, 6(1), (2)).

7 School Standards and Framework Act 1998 Sch 22 para 2A(1)(a) (Sch 22 para 2A added by the Education Act 2005 s 107, Sch 17 paras 1, 4); School Standards and Framework Act 1998 Sch 22 para 5(4A) (as added: see note 6 *supra*). The text refers to any land acquired under s 22, Sch 3 para 2 (see *PARA 1352 ante*), Sch 6 para 16 (see *PARA 145 ante*) (including that provision as applied by any enactment), Sch 22 para 5(4B)(d) (as added) (see the text and notes 14-15 *infra*) or under any regulations made under s 35, Sch 8 para 5 (see *PARA 116 ante*): Sch 22 paras 2A(1)(a), 5(4A) (as so added).

8 *Ibid* Sch 22 para 2A(1)(b) (as added: see note 7 *supra*); Sch 22 para 5(4A) (as added: see note 6 *supra*).

9 le any land which: (1) had been acquired by the governing body under a transfer under the Education Act 1996 s 201(1)(a) (repealed), the School Standards and Framework Act 1998 Sch 3 para 2 (see *PARA 1352 ante*), Sch 6 para 16 (see *PARA 145 ante*) (including that provision as applied by any enactment), Sch 22 para 5(4B)(d) (as added) (see the text and notes 14-15 *infra*) or under any regulations made under Sch 8 para 5 (see *PARA 116 ante*); or (2) had been acquired by the governing body, or enhanced in value, wholly or partly with the proceeds of disposal of land acquired as mentioned in head (1) *supra*: Sch 22 para 2A(2) (as added: see note 7 *supra*); Sch 22 para 5(4A) (as added: see note 6 *supra*).

10 *Ibid* Sch 22 para 2A(1)(c) (as added: see note 7 *supra*); Sch 22 para 5(4A) (as added: see note 6 *supra*).

11 *Ibid* Sch 22 para 2A(4)(a) (as added: see note 7 *supra*); Sch 22 para 5(4B)(a) (as added: see note 6 *supra*).

12 *Ibid* Sch 22 para 5(4B)(b) (as added: see note 6 *supra*).

13 *Ibid* Sch 22 para 5(4B)(c) (as added: see note 6 *supra*).

14 For the meaning of 'foundation body' see *PARA 104 note 6 ante*.

15 School Standards and Framework Act 1998 Sch 22 para 5(4B)(d) (as added: see note 6 *supra*).

16 le as required by *ibid* Sch 22 para 5(4A) (as added) (see the text and notes 6-10 *supra*).

17 *Ibid* Sch 22 para 5(5) (amended by the Education Act 2005 Sch 17 paras 1, 6(1), (3)).

## UPDATE

### **1371 Disposal of land by trustees on discontinuance of foundation, voluntary or foundation special schools**

TEXT AND NOTES 1-5--1998 Sch 22 para 5(6) now applies only in relation to schools in Wales; similar provision is made in relation to schools in England by Sch 22 para 5(5A) (added by the Education and Inspections Act 2006 Sch 4 para 9(12)).

TEXT AND NOTES 6-10--In relation to a school in England, the land referred to is, with certain exceptions, land falling within the 1998 Sch 22 para A13(1), (2) or (3) (as added: see *PARAS 1364-1368*): see 1998 Act Sch 22 para 5(4ZA), (4ZB), (4A) (Sch 22 paras 5(4ZA), (4ZB) added, para 5(4A) amended by the Education and Inspections Act 2006 Sch 4 para 9(8), (9)).

TEXT AND NOTE 11--Now head (a) require the land or any part of the land to be transferred to such local authority as he may specify, subject to the payment by that local authority of such sum by way of consideration (if any) as he determines to be appropriate: 1998 Act Sch 22 para 5(4B)(a) (substituted by the Education and Inspections Act 2006 Sch 4 para 9(10)).

NOTE 12--1998 Act Sch 22 para 5(4B)(b) amended: Education and Inspections Act 2006 Sch 4 para 9(10).

NOTE 16--Now as required by the 1998 Act Sch 22 para 5(4A) or (4ZA): Sch 22 para 5(5) (amended by the Education and Inspections Act 2006 Sch 4 para 9(11)).

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**1372. Disposal of land and premises by governing bodies or foundation bodies on discontinuance of foundation or voluntary schools by notice.**

Where the governing body<sup>1</sup> of a foundation or voluntary school<sup>2</sup> applies for the Secretary of State's<sup>3</sup> consent to serve a notice to discontinue the school<sup>4</sup> and he gives such consent, he may impose any requirements in relation to the governing body or, where the school is a member of the group<sup>5</sup> for which a foundation body<sup>6</sup> acts, in relation to the foundation body that he thinks just:

- 2572 (1) in respect of the repayment of all or part of any expenditure incurred by him<sup>7</sup>;
- 2573 (2) in respect of the transfer to the local education authority<sup>8</sup> of any premises<sup>9</sup> used for the purposes of the school which he is satisfied the authority will need for any purpose connected with education<sup>10</sup>;
- 2574 (3) where any premises are to be so transferred, in respect of the payment by the authority of so much of the value of those premises as is just having regard to the extent to which the premises were provided otherwise than at public expense<sup>11</sup>;
- 2575 (4) where any premises used for the purposes of the school are not to be so transferred, in respect of the payment by the governing body or the foundation body, as the case may be, to the authority of so much of the value of those premises as is just having regard to the extent to which they were provided at public expense<sup>12</sup>.

1 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

2 As to foundation and voluntary schools see PARA 102 et seq ante.

3 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4 School Standards and Framework Act 1998 s 76, Sch 22 para 6(1). The reference in the text to notice to discontinue the school is a reference to notice under s 30(1): see PARA 135 ante.

5 For the meaning of 'the group' see PARA 104 note 6 ante.

6 For the meaning of 'foundation body' see PARA 104 note 6 ante.

7 School Standards and Framework Act 1998 Sch 22 para 6(2)(a). The reference in the text to expenditure incurred by the Secretary of State is a reference to expenditure incurred by the Secretary of State as mentioned in s 30(2): see PARA 135 note 6 ante.

8 As to local education authorities see PARA 20 ante.

9 As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

10 Ibid Sch 22 para 6(2)(b). Where a transfer under Sch 22 para 6(2)(b) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such

other things under that Act as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 37). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post. For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

11 Ibid Sch 22 para 6(2)(c). For these purposes, 'at public expense' means at the expense of: (1) the Funding Agency for Schools; or (2) any local education authority or an authority which was a local education authority within the meaning of any enactment repealed by the Education Act 1944 or an earlier Act (ie an authority within the School Standards and Framework Act 1998 s 30(2)(d): see PARA 135 note 6 ante): Sch 22 para 6(3). The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

12 Ibid Sch 22 para 6(2)(d). See *R v Secretary of State for Education and Science, ex p Inner London Education Authority* [1990] COD 412, (1990) Times, 17 May, CA.

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**1373. Disposal of land and premises by trustees on discontinuance of foundation or voluntary schools by notice.**

In relation to the disposal of land<sup>1</sup> and premises<sup>2</sup> on the discontinuance of foundation or voluntary schools<sup>3</sup>, the statutory provisions relating to the disposal of land by trustees<sup>4</sup> apply where the trustees of the school dispose of certain land<sup>5</sup> or wish to use any such land for purposes not connected with the provision of education in maintained schools<sup>6</sup>.

1 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the meaning of 'disposal' see PARA 1364 note 4 ante.

2 As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of ibid s 142(8).

3 See ibid s 76, Sch 22 para 6; and PARA 1372 ante. As to foundation and voluntary schools see PARA 102 et seq ante.

4 Ie the provisions of ibid Sch 22 para 3 (as amended; prospectively amended): see PARA 1367 ante. For the meaning of 'trustee' see PARA 1364 note 6 ante.

5 Ie any land falling within ibid Sch 22 para 3(1) (as amended; prospectively amended) or Sch 22 para 3(2): see PARA 1367 ante.

6 Ibid Sch 22 para 6(4). For the meaning of 'maintained school' see PARA 94 ante.

**UPDATE**

**1373 Disposal of land and premises by trustees on discontinuance of foundation or voluntary schools by notice**

TEXT AND NOTES--1998 Sch 22 para 6(4) now applies only in relation to schools in Wales; similar provision is made in relation to schools in England by Sch 22 para 6(3A) (added by the Education and Inspections Act 2006 Sch 4 para 10).

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**1374. Disposal of property held by, and rights and liabilities of, governing bodies of maintained schools on dissolution.**

Where a governing body of a maintained school<sup>1</sup> is dissolved<sup>2</sup>:

- 2576 (1) all land<sup>3</sup> or other property of the governing body which is used or held for the purposes of the school<sup>4</sup>; and  
 2577 (2) all rights and liabilities<sup>5</sup>, including rights and liabilities in relation to staff, of the governing body subsisting immediately before the date of dissolution which were acquired or incurred for the purposes of the school<sup>6</sup>,

must on the date of dissolution be transferred<sup>7</sup> to, and vest in the local education authority<sup>8</sup> or one or more of the following, namely the governing body of a maintained school and the temporary governing body of a new school<sup>9</sup>, if the Secretary of State<sup>10</sup> so directs before the date of dissolution<sup>11</sup>. However, this does not apply to: (a) any land or other property for which provision has been made for transfer or payment<sup>12</sup>; (b) any property of whatever nature which is held by the governing body on trust for the purposes of the school<sup>13</sup>; or (c) any liabilities of the governing body in respect of any loan made to the governing body, unless the Secretary of State otherwise directs by order made before the date of dissolution<sup>14</sup>.

A governing body which is to be dissolved<sup>15</sup> may transfer any land or other property which is held by it on trust for the purposes of the school<sup>16</sup> to any person to hold such land or other property on trust for purposes connected with the provision of education in maintained schools<sup>17</sup>.

1 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. For the meaning of 'maintained school' see PARA 94 ante.

2 I.e. by virtue of the Education Act 2002 s 19(6), Sch 1 para 5 (in relation to England see PARA 203 ante; and in relation to Wales see PARA 251 ante): School Standards and Framework Act 1998 s 76, Sch 22 para 7(1) (amended by the Education Act 2002 s 215(1), Sch 21 para 118(1), (6)).

3 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 Ibid Sch 22 para 7(2)(a).

5 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).

6 Ibid Sch 22 para 7(2)(b).

7 The Education Reform Act 1988 s 198(2) (as substituted), Sch 10 paras 6-8 (as amended) (construction of agreements: see PARA 1394 post) apply in relation to transfers under the School Standards and Framework Act 1998 Sch 22 para 7 as they apply in relation to transfers to which the Education Reform Act 1988 Sch 10 (as amended; modified for certain purposes) (see PARAS 1389-1395 post) applies: School Standards and Framework Act 1998 Sch 22 para 9(2).

8 As to local education authorities see PARA 20 ante.

9 For the meaning of 'new school' see PARA 202 ante; definition applied by virtue of the School Standards and Framework Act 1998 Sch 22 para 10(1)(d).

10 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

11 School Standards and Framework Act 1998 Sch 22 para 7(2). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post. For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of s 142(8).

12 Ibid Sch 22 para 7(3)(a). The reference in the text to provision for transfer or payment is a reference to provision for transfer or payment under Sch 22 para 5(4) (as amended) (see PARAS 1369-1370 ante) or Sch 22 para 6(2) (see PARA 1372 ante).

13 Ibid Sch 22 para 7(3)(b).

14 Ibid Sch 22 para 7(3)(c). Orders under Sch 22 para 7(3)(c) are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante. Orders under Sch 22 para 7(3)(c) are local in nature, and are not recorded in this work.

15 Ie as mentioned in ibid Sch 22 para 7(1) (as amended: see note 2 supra).

16 As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

17 School Standards and Framework Act 1998 Sch 22 para 7(4). However, Sch 22 para 7(4) does not apply to any land or other property so held by the governing body of a foundation, voluntary or foundation special school where any other persons also hold any property on trust for the purposes of the school: Sch 22 para 7(5). Any such land or other property must on the date of dissolution be transferred to, and by virtue of the School Standards and Framework Act 1998 vest in, those persons: Sch 22 para 7(5). As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

Where any doubt or dispute arises as to the persons to whom any land or other property within Sch 22 para 7(5) falls to be transferred under Sch 22 para 7(5), it is to be treated as falling to be transferred to such persons as the Secretary of State thinks proper: Sch 22 para 7(6).

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**1375. Notice by trustees terminating foundation or voluntary school's occupation of existing site.**

Where trustees<sup>1</sup> have given a notice<sup>2</sup> which is effective to terminate a foundation or voluntary school's<sup>3</sup> occupation of any land<sup>4</sup>, and any expenditure has been incurred on the relevant premises<sup>5</sup>, the Secretary of State<sup>6</sup> may impose any requirements that he thinks just:

- 2578 (1) in respect of the repayment by the trustees of all or part of any such expenditure which was incurred by him<sup>7</sup>;
- 2579 (2) in respect of the transfer by the trustees to the local education authority<sup>8</sup> of the whole or part of the relevant premises where he is satisfied the authority will need them for any purpose connected with education<sup>9</sup>;
- 2580 (3) to the extent that the relevant premises are to be so transferred, in respect of the payment by the authority to the trustees of so much of the value of those premises as is just having regard to the extent to which the premises were provided otherwise than at public expense<sup>10</sup>;
- 2581 (4) to the extent that the relevant premises are not to be so transferred, in respect of the payment by the trustees to the authority of so much of the value of those premises as is just having regard to the extent to which they were provided at public expense<sup>11</sup>.

1 For the meaning of 'trustee' see PARA 1364 note 6 ante.

2 I.e. notice falling within the School Standards and Framework Act 1998 s 30(10): see PARA 135 ante.

3 As to foundation and voluntary schools see PARA 102 et seq ante.

4 School Standards and Framework Act 1998 s 76, Sch 22 para 8(1). As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of s 142(8).

5 I.e. as mentioned in ibid s 30(2)(a)-(d): see PARA 135 note 6 ante. As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of s 142(8).

6 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

7 School Standards and Framework Act 1998 Sch 22 para 8(2)(a).

8 As to local education authorities see PARA 20 ante.

9 School Standards and Framework Act 1998 Sch 22 para 8(2)(b). Where a transfer under Sch 22 para 8(2) (b) relates to registered land, it is the duty of the transferor to execute any such instrument under the Land Registration Act 2002 (see LAND REGISTRATION vol 26 (2004 Reissue) PARA 915 et seq), to deliver any such certificate under that Act and to do such other things under that Act as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee: School Standards and Framework Act 1998 Sch 22 para 9(1) (amended by the Land Registration Act 2002 s 133, Sch 11 para 37). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 post. For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).



10 Ibid Sch 22 para 8(2)(c). For these purposes, 'at public expense' means at the expense of: (1) the Funding Agency for Schools; or (2) any local education authority or an authority which was a local education authority within the meaning of any enactment repealed by the Education Act 1944 or an earlier Act (ie an authority within the School Standards and Framework Act 1998 s 30(2)(d): see PARA 135 note 6 ante): Sch 22 para 8(3). The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

11 Ibid Sch 22 para 8(2)(d).

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#### ***D. SCHOOL PLAYING FIELDS***

##### **1376. Control of disposals or changes in use of school playing fields in England.**

In England<sup>1</sup>, the consent of the Secretary of State<sup>2</sup> is required where a local authority<sup>3</sup> or, in certain cases<sup>4</sup>, the governing body of a maintained school<sup>5</sup> or a foundation body<sup>6</sup> disposes of any playing fields<sup>7</sup>: (1) which are, immediately before the date of the disposal, used by a maintained school for the purposes of the school<sup>8</sup>; or (2) which are not then so used but have been so used at any time within the period of ten years ending with that date<sup>9</sup>.

The Secretary of State's consent is also required where a local authority takes any action<sup>10</sup>, which is intended or likely to result in a change of use of any playing fields<sup>11</sup>:

- 2582 (a) which are, immediately before the date when the action is taken, used by a maintained school for the purposes of the school<sup>12</sup>; or
- 2583 (b) which are not then so used but have been so used at any time within the period of ten years ending with that date<sup>13</sup>,

whereby the playing fields will be used for purposes which do not consist of or include their use as playing fields by a maintained school for the purposes of the school<sup>14</sup>.

1 Nothing in the School Standards and Framework Act 1998 s 77 (see the text and notes 2-14 *infra*) applies in relation to Wales: s 77(9). For the meaning of 'Wales' see PARA 52 note 13 *ante*.

2 For these purposes, the Secretary of State's consent may be given in relation to a particular disposal or change of use or generally in relation to disposals or changes of use of a particular description, and in either case may be given subject to conditions: *ibid* s 77(5). As to the Secretary of State see PARA 52 *ante*.

3 See *ibid* s 77(1), (2)(a). For these purposes, 'local authority' includes a parish council: s 77(7). For the meaning of 'local authority' generally see PARA 50 note 1 *ante*; definition applied by virtue of s 142(8). As to areas and authorities in England see LOCAL GOVERNMENT vol 69 (2009) PARA 24 *et seq*. As to parish councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 27-34.

Section 77 has effect despite anything in the Local Government Act 1972 ss 123, 127 (both as amended) (general power to dispose of land: see LOCAL GOVERNMENT vol 69 (2009) PARAS 515, 520) or in any other enactment: School Standards and Framework Act 1998 s 77(6). Any consent which a local authority is required to obtain by virtue of s 77 is in addition to any consent required by virtue of the Local Government Act 1972 ss 123, 127 (both as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 515, 520): School Standards and Framework Act 1998 s 77(6).

4 *Ie* where the consent of the Secretary of State is not required by virtue of *ibid* s 76, Sch 22 para 1 (as amended) (see PARA 1364 *ante*) or Sch 22 para 2 (as amended) (see PARA 1365 *ante*): s 77(2)(b). Note that, until Sch 22 (as amended) came into force on 1 September 1999 (*ie* the appointed day: see PARA 102 note 3 *ante*), s 77(2)(b) had effect as if the reference to Sch 22 para 1 (as amended) or Sch 22 para 2 (as amended) were a reference to the Education Act 1996 s 231(7) (repealed): see the School Standards and Framework Act 1998 (School Playing Fields) (Modification) (England) Regulations 1999, SI 1999/1, reg 2 (revoked).

5 See the School Standards and Framework Act 1998 s 77(1), (2)(b)(i). As to the governing body of a maintained school, in relation to England, see PARA 203 *et seq* *ante*. For these purposes, any reference to a maintained school includes, in relation to any time falling before the appointed day (see note 4 *supra*), a reference to the school as: (1) a county, voluntary or maintained special school; or (2) a grant-maintained or grant-maintained special school, within the meaning of the Education Act 1996: School Standards and Framework Act 1998 s 77(8). As to county, voluntary and maintained special schools see PARA 102 *ante*; and as

to grant-maintained and grant-maintained special schools see PARA 102 notes 16-17 ante. For the meaning of 'maintained school' generally see PARA 94 ante.

6 See *ibid* s 77(1), (2)(b)(ii). For the meaning of 'foundation body' see PARA 104 note 6 ante.

7 See *ibid* s 77(1). For these purposes, 'playing fields' means land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of such land: s 77(7). As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of s 142(8). 'Prescribed' means prescribed by regulations; and 'regulations' means regulations made by the Secretary of State under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations generally under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under s 77(7).

Section 77(1) does not apply to a disposal which is made by a local authority (within the meaning of s 77: see note 3 *supra*) to a person for the purposes of an academy, and for no consideration: Education Act 1996 s 482(6), Sch 35A para 10(4) (Sch 35A added by the Education Act 2002 s 65(3), Sch 7 Pt 1 para 1). As to academies see PARA 496 *et seq* ante. See also PARA 1362 ante.

8 School Standards and Framework Act 1998 s 77(1)(a).

9 *Ibid* s 77(1)(b).

10 *Ie* other than the making of a disposal falling within the School Standards and Framework Act 1998 s 77(1): see the text and notes 1-9 *supra*.

11 *Ibid* s 77(3). However s 77(3) does not apply where the land in question will, on a change of use falling within s 77(3), become used in connection with the provision by a local authority of educational facilities for a maintained school or any recreational facilities: s 77(4).

12 *Ibid* s 77(3)(a).

13 *Ibid* s 77(3)(b).

14 *Ibid* s 77(3).

## UPDATE

### 1376 Control of disposals or changes in use of school playing fields in England

NOTE 5--'Maintained school' includes a maintained nursery school: 1998 Act s 77(7) (definition added by the Education and Inspections Act 2006 Sch 4 para 18(8)).

TEXT AND NOTE 6--After 'foundation body' read 'or, in certain cases, the trustees of a foundation, voluntary or foundation special school': see 1998 Act s 77(1), (2), (2A), (2B) (s 77(1) amended, s 77(2) substituted, s 77(2A), (2B) added by the Education and Inspections Act 2006 Sch 4 para 18(2)-(4)).

TEXT AND NOTE 10--For 'a local authority' read 'a body of trustees to whom s 77(1) applies': 1998 Act s 77(3) (s 77(3) amended by the Education and Inspections Act 2006 Sch 4 para 18(5)).

NOTE 11--Omit 'by a local authority': 1998 Act s 77(4) (s 77(4) amended, s 77(4A) added by the Education and Inspections Act 2006 Sch 4 para 18(6), (7), Sch 18 Pt 6). The 1998 Act s 77(3) applies in relation to the trustees of a foundation, voluntary or foundation special school only if the playing fields in question are land falling within Sch 22 para A13(1), (2) or (3) (as added: see PARAS 1364-1368): s 77(4A) (as so added).

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### ***E. DISPOSAL OF LAND USED AND HELD BY FURTHER EDUCATION INSTITUTIONS***

#### **1377. Disposal of land in the case of designated institutions.**

Where trustees dispose of land<sup>1</sup>:

- 2584 (1) which after 1 October 2000 (in relation to England)<sup>2</sup> or after 1 April 2001 (in relation to Wales)<sup>3</sup> is transferred to trustees<sup>4</sup> under the provisions concerning the transfer of property on designation of a further education institution<sup>5</sup>;
- 2585 (2) which is held by trustees for the purposes of an institution which became a designated institution after 1 October 2000 (in relation to England) or after 1 April 2001 (in relation to Wales)<sup>6</sup>; and
- 2586 (3) which was acquired or enhanced in value wholly or partly by means of certain grants paid under the Education Act 1996 or the School Standards and Framework Act 1998<sup>7</sup>,

they must notify the Learning and Skills Council for England, in respect of land in England, and the National Council for Education and Training for Wales, in respect of land in Wales<sup>8</sup>, and pay to the Council so much of the proceeds of disposal as may be determined to be just by agreement between the trustees and the Council<sup>9</sup> or, in default of agreement, by the Secretary of State<sup>10</sup>.

Where trustees permit land to be used for purposes not connected with the designated institution they are treated for the purposes of these provisions as having disposed of the land<sup>11</sup>, and must pay to the appropriate Council so much of the value of the land as may be determined to be just, either by agreement between the trustees and the Council<sup>12</sup> or, in default of agreement, by the Secretary of State<sup>13</sup>.

Where a designated institution has ceased to exist, these provisions apply to land which satisfied the conditions of heads (1) to (3) above immediately before the institution ceased to exist<sup>14</sup>. Where trustees permit such land to be used for purposes not connected with an institution within the further education sector<sup>15</sup> they are treated as having disposed of the land<sup>16</sup>, and must pay to the appropriate Council so much of the value of the land as may be determined to be just by agreement between the trustees and the Council<sup>17</sup> or, in default of agreement, by the Secretary of State<sup>18</sup>.

1 Learning and Skills Act 2000 s 144(3).

2 I.e the commencement of ibid s 144 in relation to England: see the Learning and Skills Act 2000 (Commencement No 2 and Savings) Order 2000, SI 2000/2559, art 2(1), Schedule Pt I. For the meaning of 'England' see PARA 52 note 11 ante.

3 I.e the commencement of the Learning and Skills Act 2000 s 144 in relation to Wales: see the Learning and Skills Act 2000 (Commencement No 3 and Transitional Provisions) (Wales) Order 2001, SI 2001/1274, art 2(1), Schedule Pt I. For the meaning of 'Wales' see PARA 52 note 13 ante.

4 le the 'appropriate transferees' under the Further and Higher Education Act 1992 s 32(3)(b) (ie in relation to an institution not conducted by a company): see PARA 600 note 12 head (2) ante.

5 Learning and Skills Act 2000 s 144(1).

6 Ibid s 144(2)(a).

7 Ibid s 144(2)(b). This provision applies to grants under the Education Act 1996 s 65 (repealed) or the School Standards and Framework Act 1998 s 22, Sch 3 para 5 (as amended) (grants: see PARA 309 ante).

8 Learning and Skills Act 2000 s 144(3), (9). As to the Learning and Skills Council for England see PARA 1072 et seq ante; and as to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

9 Ibid s 144(4)(a). In making a determination under s 144(4), regard must be had, in particular, to: (1) the value of the land at the date of the determination; and (2) any enhancement of the land's value which is attributable to expenditure by the trustees or the governing body of the designated institution: s 144(5). More than one determination may be made under s 144(4) in relation to a particular disposal where it is just to do so, in particular where the disposal involves the creation of a lease: s 144(6).

10 Ibid s 144(4)(b). See note 9 supra.

11 Ibid s 144(7)(a).

12 Ibid s 144(4)(a), (7)(b). See note 9 supra.

13 Ibid s 144(4)(b), (7)(b). See note 9 supra.

14 Ibid s 144(8)(a).

15 le within the meaning given by the Further and Higher Education Act 1992 s 91(3): see PARA 579 ante.

16 Learning and Skills Act 2000 s 144(7)(a), (8)(b).

17 Ibid s 144(4)(a), (7)(b), (8)(b). See note 9 supra.

18 Ibid s 144(4)(b), (7)(b), (8)(b). See note 9 supra.

## UPDATE

### 1377 Disposal of land in the case of designated institutions

TEXT AND NOTES--References to National Council for Education and Training for Wales now to National Assembly for Wales; and references to a Council are now to an authority: 2000 Act s 144(3), (4), (9) (amended by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

TEXT AND NOTE 10--Now, in default of agreement, by the Secretary of State if the land is in England or, if the land is in Wales, by an arbitrator, the expense of which is to be borne equally by the trustees and the National Assembly for Wales, to be appointed by the President of the Chartered Institute of Arbitrators: 2000 Act s 144(4)(b) (substituted by SI 2005/3238).

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### **1378. Disposal of land held by further education corporations.**

The Secretary of State<sup>1</sup> may by order provide for the dissolution of any further education corporation<sup>2</sup> and the transfer of property, rights and liabilities<sup>3</sup> of the corporation<sup>4</sup> to:

- 2587 (1) any person appearing to the Secretary of State to be wholly or mainly engaged in the provision of educational facilities or services of any description<sup>5</sup>;
- 2588 (2) any body corporate established for purposes which include the provision of such facilities or services<sup>6</sup>;
- 2589 (3) a learning and skills council<sup>7</sup>; or
- 2590 (4) a Higher Education Funding Council<sup>8</sup>.

A transfer under head (1) or head (2) above requires the consent of the person or body in question<sup>9</sup>.

Where the recipient of a transfer under any such order is not a charity<sup>10</sup> established for charitable purposes<sup>11</sup> which are exclusively educational purposes, any property transferred must be transferred on trust to be used for charitable purposes which are exclusively educational purposes<sup>12</sup>.

Before making an order in respect of a further education corporation, the Secretary of State must consult: (a) the corporation<sup>13</sup>; and (b) the appropriate learning and skills council<sup>14</sup>, unless the order was made for the purpose of giving effect to a proposal of that council<sup>15</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'further education corporation' see PARA 579 note 3 ante.

3 As to the transfer of rights and liabilities see PARA 586 note 9 ante. As to the meaning of 'liability' see PARA 586 note 7 ante.

4 Further and Higher Education Act 1992 s 27(1). An order under s 27 may apply the provisions of s 26 (as amended) (transfer of staff: see PARA 589 ante) with such modifications as the Secretary of State may consider necessary or desirable: s 27(6). Orders under s 27 are local in nature, and are not recorded in this work.

Stamp duty is not chargeable in respect of any transfer effected under or by virtue of s 27: s 88(1). However, no instrument (other than a statutory instrument) made or executed under or in pursuance of s 27 is to be treated as duly stamped unless it is stamped with the duty to which it would, but for s 88 (and, if applicable, the Finance Act 1982 s 129 (as amended) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1093)), be liable or it has, in accordance with the provisions of the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: Further and Higher Education Act 1992 s 88(2). A land transaction effected under or by virtue of s 27 is also exempt from charge for the purposes of stamp duty land tax: s 88A(1) (s 88A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 18). Relief under the Further and Higher Education Act 1992 s 88A (as added) must be claimed in a land transaction return or an amendment of such a return: s 88A(2) (as so added). For the meanings of 'land transaction' and 'land transaction return' see PARA 587 note 8 ante.

5 Ibid s 27(2)(a).

6 Ibid s 27(2)(b).

7 Ibid s 27(3)(a). The Further and Higher Education Act 1992 Pt I (ss 15-61A) (as amended) refers to a 'council' but for the purposes of that Part, any reference to a council is a reference to a learning and skills council: s 61A(1) (s 61A added by the Learning and Skills Act 2000 s 149, Sch 9 paras 1, 37). For the purposes of the Further and Higher Education Act 1992, the learning and skills councils are the Learning and Skills Council for England and the National Council for Education and Training for Wales: s 90(2A) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 41). As to the Learning and Skills Council for England see PARA 1072 et seq ante; and as to the National Council for Education and Training for Wales see PARA 1113 et seq ante. If, in construing any Act, a dispute arises as to whether any functions are exercisable by one of the learning and skills councils, the dispute must be determined by the Secretary of State after consulting the National Assembly for Wales: Further and Higher Education Act 1992 s 90(2B) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 41).

8 Further and Higher Education Act 1992 s 27(3)(b). As to the Higher Education Funding Councils see PARA 733 et seq ante.

9 Ibid s 27(2).

10 'Charity' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 1): see the Further and Higher Education Act 1992 s 27(5); and the Interpretation Act 1978 s 17(2)(a).

11 'Charitable purposes' has the same meaning as in the Charities Act 1993 (see CHARITIES vol 8 (2010) PARA 2): see the Further and Higher Education Act 1992 s 27(5); and the Interpretation Act 1978 s 17(2)(a). As to the charitable status of further education corporations see PARA 595 ante.

12 Further and Higher Education Act 1992 s 27(4).

13 Ibid s 27(7)(a).

14 See note 7 supra. For the purposes of ibid Pt I (as amended), a reference to the 'appropriate council', in relation to any educational institution, is to be construed as follows: (1) if the institution mainly serves the population of England, the reference is to the Learning and Skills Council for England; (2) if the institution mainly serves the population of Wales, the reference is to the National Council for Education and Training for Wales; (3) if the institution receives financial support from the other Council, the reference is to that Council also: s 61A(2) (as added: see note 7 supra). For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

15 Ibid s 27(7)(b).

## UPDATE

### 1378 Disposal of land held by further education corporations

TEXT AND NOTE 7--Now head (3) the Learning and Skills Council for England, in the case of a further education corporation in England: 1992 Act s 27(3)(a) (substituted by the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238).

NOTE 7--1992 Act ss 61A(1), 90(2A), (2B) repealed: SI 2005/3238.

NOTES 10, 11--1992 Act s 27(5) amended: Further Education and Training Act 2007 Sch 1 para 8.

TEXT AND NOTES 14, 15--Now head (b) the appropriate body, unless the order was made for the purpose of giving effect to a proposal of that body: 1992 Act s 27(7)(b) (amended by SI 2005/3238). There is no requirement for the National Assembly for Wales to consult itself: 1992 Act s 27(8) (added by SI 2005/3238).

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## ***F. DISPOSAL OF LAND USED AND HELD BY HIGHER EDUCATION INSTITUTIONS***

### **1379. Disposal of land under the Universities and Colleges Estates Acts.**

The universities and colleges to which the Universities and College Estates Acts 1925 and 1964 apply<sup>1</sup> have statutory powers, exercisable in accordance with their statutes<sup>2</sup> and additional to any pre-existing powers<sup>3</sup>, to dispose of their land<sup>4</sup>, including land held upon any trusts or for purposes connected with the university or college<sup>5</sup>. These powers include powers of sale and exchange<sup>6</sup>, leasing powers<sup>7</sup>, and powers to accept surrenders of leases and regrants in fee simple<sup>8</sup>, to grant water rights<sup>9</sup>, to grant land for public and charitable purposes<sup>10</sup>, to dedicate streets and open spaces<sup>11</sup>, to enter into forestry dedication covenants<sup>12</sup>, to compromise claims and release restrictions<sup>13</sup>, to vary leases and grants<sup>14</sup>, to apportion rents<sup>15</sup>, to deal separately with the surface and minerals<sup>16</sup>, to grant options<sup>17</sup>, to enter into contracts<sup>18</sup>, and to do and execute all necessary acts and deeds<sup>19</sup>. There are prescribed modes of investing or applying capital money<sup>20</sup>. There is power to raise money and a general power to effect other transactions concerning land<sup>21</sup>.

Changes were made under the Universities and Colleges Estates Act 1964 in the law relating to property held by universities or their colleges, the most important of which are: (1) to release land transactions by colleges and halls in universities in England and Wales from restrictions imposed by the Ecclesiastical Leases Acts of 1571, 1572, 1575 and 1836<sup>22</sup>; (2) to enable the universities of Oxford, Cambridge and Durham and their colleges to execute most transactions relating to land themselves<sup>23</sup>; and (3) to make provision for the transfer to those universities and their colleges and halls of all capital money held on their behalf and to enable them to receive and apply capital money derived from their land transactions<sup>24</sup>.

1 The Universities and College Estates Acts 1925 and 1964 apply to the universities (and their colleges and halls) of Oxford (including the Cathedral or House of Christ Church in Oxford), Cambridge and Durham (but not Newcastle) and the Colleges of St Mary of Winchester and of King Henry VI at Eton: Universities and College Estates Act 1925 s 1; Universities and College Estates Act 1964 s 2(1); Universities of Durham and Newcastle upon Tyne Act 1963 s 19.

2 See the Universities and College Estates Act 1925 s 41(2).

3 See *ibid* s 42 (amended by the Universities and College Estates Act 1964 s 3(1), Sch 1 Pt II para 14).

4 'Land' includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or otherwise) and all other corporeal hereditaments; also a manor, an advowson, and a rent and all other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land: Universities and College Estates Act 1925 s 43(iv) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2)). 'Mines and minerals' mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working: see the Universities and College Estates Act 1925 s 43(vii) (amended by the Universities and College Estates Act 1964 s 4(1)). 'Hereditaments' means real property which on an intestacy might before the commencement of the Law of Property Act 1922 (see REAL PROPERTY vol 39(2) (Reissue) PARA 79) have devolved on an heir: University and College Estates Act 1925 s 43(iii). 'Manor' includes lordship, and reputed manor or lordship: see s 43(vi). 'Rent' includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise: see s 43(ix).



5 See *ibid* s 41(1). As to the power to transfer to the university or college lands vested in individual members see s 40 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 9).

6 See the Universities and College Estates Act 1925 s 2 (amended by the Statute Law (Repeals) Act 1969; and the Universities and College Estates Act 1964 Sch 1 Pt I para 1); the University and Colleges Estates Act 1925 s 3 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 1; and the Law of Property (Amendment) Act 1926 s 7, Schedule); and the University and Colleges Estates Act 1925 ss 4, 5 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 2). See also the Settled Land Act 1925 ss 38-40 (as amended); and SETTLEMENTS vol 42 (Reissue) PARAS 827-836.

7 See the Universities and College Estates Act 1925 s 6, s 7 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 3); the University and Colleges Estates Act 1925 ss 8, 9 (amended by virtue of the Decimal Currency Act 1969 s 10(1)); the Universities and College Estates Act 1925 s 10 (amended by the Universities and College Estates Act 1925 (Amendment) Regulations 1978, SI 1978/443, reg 2, Schedule para 1); and the Universities and College Estates Act 1925 ss 11-12. See also the Settled Land Act 1925 ss 41-48 (as amended); and SETTLEMENTS vol 42 (Reissue) PARAS 837-847.

As to the effect of the Ecclesiastical Leases Act 1571 see *Eton College v Minister of Agriculture, Fisheries and Food* [1964] Ch 274, [1962] 3 All ER 290; and ECCLESIASTICAL LAW vol 14 para 1153.

8 See the Universities and College Estates Act 1925 s 13 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 4). See also the Settled Land Act 1925 s 52; and SETTLEMENTS vol 42 (Reissue) PARA 859.

9 See the Universities and College Estates Act 1925 s 14 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 5). See also the Settled Land Act 1925 s 54; and SETTLEMENTS vol 42 (Reissue) PARA 868.

10 See the Universities and College Estates Act 1925 s 15 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 2, Sch 1 Pt II para 6; and the Universities and College Estates Act 1925 (Amendment) Regulations 1978, SI 1978/443, Schedule para 2). See also the Settled Land Act 1925 s 55; and SETTLEMENTS vol 42 (Reissue) PARA 864.

11 See the Universities and College Estates Act 1925 s 16 (amended by the Highways Act 1959 s 312(2), Sch 22; the London Government Act 1963 ss 16(2), 93(1), Sch 6 para 70, Sch 18 Pt II; the Universities and College Estates Act 1964 Sch 1 Pt II para 7; and the Highways Act 1980 s 343(2), Sch 24 para 3; and prospectively amended by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 2 para 4(1), (3)). See also the Settled Land Act 1925 s 56 (as amended); and SETTLEMENTS vol 42 (Reissue) PARA 865.

12 See the Forestry Act 1967 s 5 (as amended), Sch 2 para 2; and FORESTRY vol 52 (2009) PARA 119.

13 See the Universities and College Estates Act 1925 s 17 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 3); the Universities and College Estates Act 1925 s 20 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 8). See also the Settled Land Act 1925 s 58 (as amended), s 61; and SETTLEMENTS vol 42 (Reissue) PARAS 863, 872.

14 See the Universities and College Estates Act 1925 ss 18, 20 (s 20 amended, except in relation to Winchester and Eton, by the Universities and College Estates Act 1964 ss 2, 3, Sch 1 Pt II para 8). See also the Settled Land Act 1925 ss 59(1), 61; and SETTLEMENTS vol 42 (Reissue) PARAS 860, 863.

15 See the Universities and College Estates Act 1925 ss 19, 20 (s 20 as amended: see note 14 *supra*). See also the Settled Land Act 1925 ss 60, 61; and SETTLEMENTS vol 42 (Reissue) PARAS 862-863.

16 See the Universities and College Estates Act 1925 s 22. See also the Settled Land Act 1925 s 50; and SETTLEMENTS vol 42 (Reissue) PARA 856.

17 See the Universities and College Estates Act 1925 s 23 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 4, Sch 1 Pt II para 9). See also the Settled Land Act 1925 s 51; and SETTLEMENTS vol 42 (Reissue) PARA 871.

18 See the Universities and College Estates Act 1925 s 24 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 10). See also the Settled Land Act 1925 s 90; and SETTLEMENTS vol 42 (Reissue) PARAS 869-870.

19 See the Universities and College Estates Act 1925 s 25. See also the Settled Land Act 1925 s 112; and SETTLEMENTS vol 42 (Reissue) PARAS 702, 875.

20 See the Universities and College Estates Act 1925 s 26 (amended by the Finance Act 1963 s 73(8), Sch 14 Pt VI; the Universities and College Estates Act 1964 Sch 1 Pt I para 5, Sch 1 Pt II para 11; the Statute Law (Repeals) Act 1969; the Agricultural Holdings Act 1986 s 100, Sch 14 para 13; the Statute Law (Repeals) Act 1998; and the Trustee Act 2000 s 40(1), Sch 2 Pt II para 29). See also the Settled Land Act 1925 s 73 (as

amended); and SETTLEMENTS vol 42 (Reissue) PARA 808. As to further provisions in relation to application of moneys see the Universities and College Estates Act 1925 s 27 (prospectively amended by the Constitutional Reform Act 2005 Sch 11 Pt 2 para 4(1), (3)); the Universities and College Estates Act 1925 s 28 (amended by the Universities and College Estates Act 1964 Sch 1 Pt II para 12); and the Universities and College Estates Act 1925 s 29 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 13, Sch 3 Pt II). See also the Settled Land Act 1925 s 79; and SETTLEMENTS vol 42 (Reissue) PARA 807.

21 See the Universities and College Estates Act 1925 ss 21, 30 (s 30 amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 6); the Universities and College Estates Act 1925 s 31 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 7); the Universities and College Estates Act 1925 s 32 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 8; and the Statute Law (Repeals) Act 2004); the Universities and College Estates Act 1925 s 38 (amended by the Universities and College Estates Act 1964 Sch 1 Pt I para 9); and the Universities and College Estates Act 1925 Sch 1 (amended by the Universities and College Estates Act 1964 s 4, Sch 3 Pt II, Sch 4). In relation to capital money see the Universities and College Estates Act 1964 s 3.

22 Ibid s 1(1) (amended by the Statute Law (Repeals) Act 1998). As to the Ecclesiastical Leases Act 1571 see ECCLESIASTICAL LAW vol 14 para 1153.

23 See the Universities and College Estates Act 1964 s 2, Sch 1.

24 See *ibid* s 3, Sch 2.

## **UPDATE**

### **1379 Disposal of land under the Universities and Colleges Estates Acts**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTES 11, 20--Constitutional Reform Act 2005 Sch 11 in force on 1 October 2009: SI 2009/1604.

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### **(3) LAND AND PROPERTY TRANSFERS**

#### **(i) The Education Transfer Council**

##### **1380. Dissolution and transfer of functions.**

The Education Transfer Council<sup>1</sup> (formerly known as the 'Education Assets Board'<sup>2</sup>) was dissolved on 31 December 2000<sup>3</sup> and provision was made for the transfer of some of its functions to the Secretary of State in relation to England or the National Assembly for Wales<sup>4</sup> in relation to Wales<sup>5</sup>. Despite its dissolution on 31 December 2000, the provisions concerning the establishment and operation of the Education Transfer Council remain in force<sup>6</sup>.

1 See the Education Reform Act 1988 s 197(1) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)).

The Education Transfer Council was not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown: Education Reform Act 1988 s 197(8) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)). The Education Transfer Council's property was not to be regarded as property of, or property held on behalf of, the Crown: Education Reform Act 1988 s 197(8) (as so amended).

2 See the School Standards and Framework Act 1998 s 136(1), (2) (repealed).

3 See *ibid* s 137(3)(a) (repealed); the Education Transfer Council (Winding up) Regulations 2000, SI 2000/2729, reg 3; and the Education Transfer Council (Dissolution) Order 2000 (dated 13 December 2000).

4 As to the National Assembly for Wales see PARA 53 ante.

5 See the Education Reform Act 1988 s 198, Sch 10 (as amended; modified for certain purposes); and PARAS 1389-1395 post.

6 See *ibid* s 197(9), Sch 8 (as amended); and PARAS 1381, 1383-1386 post.

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### **1381. Functions and powers.**

The principal functions of the Education Transfer Council<sup>1</sup> were those conferred or imposed on it under the Education Reform Act 1988<sup>2</sup> and the Further and Higher Education Act 1992<sup>3</sup>. The Council also had power to undertake such other activities as it considered necessary or expedient to undertake for the purposes of or in connection with carrying out any of its functions<sup>4</sup>. The Council had the power to do anything which appeared to it to be necessary or expedient for the purpose of or in connection with the discharge of its functions, including in particular power: (1) to acquire and dispose of land<sup>5</sup> and other property<sup>6</sup>; (2) to enter into contracts<sup>7</sup>; (3) to invest any sums not immediately required for the purpose of the discharge of its functions<sup>8</sup>; and (4) to accept gifts of money, land or other property<sup>9</sup>.

1 As to the dissolution of the Education Transfer Council see PARA 1380 ante.

2 Ie the Education Reform Act 1988 s 198 (as amended; modified for certain purposes), Sch 10 (as amended; modified for certain purposes): see PARAS 1389-1395 post.

3 Ibid s 197(4) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 para 43(a); and by virtue of the School Standards and Framework Act 1998 s 136(2)). This provision applies to the Further and Higher Education Act 1992 s 36 (as amended; modified for certain purposes) (see PARA 1397 post) and Sch 5 (as amended; modified for certain circumstances) (see PARA 1398 post).

In exercising its functions under the Education Acts, the Council had to comply with any directions given to it by the Secretary of State: Education Reform Act 1988 s 197(6) (amended by the Education Act 1996 s 582(1), Sch 37 para 74(2); and by virtue of the School Standards and Framework Act 1998 s 136(2)). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the Education Reform Act 1988 s 197(10) (added by the Education Act 1996 Sch 37 para 74(5)). As to the Secretary of State see PARA 52 ante.

4 Education Reform Act 1988 s 197(4) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)).

5 'Land' includes buildings and other structures, land covered with water, and any interest in land: Education Reform Act 1988 s 235(1). References to an interest in land include references to any easement, right or charge in, to or over land: s 235(2)(g).

6 Ibid s 197(9), Sch 8 para 2(1)(a). Schedule 8 para 2(1) includes the power to borrow money, subject to the approval of the Secretary of State in the case of each transaction: see Sch 8 para 2(2) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)). As to the Secretary of State see PARA 52 ante.

7 Education Reform Act 1988 Sch 8 para 2(1)(b). See note 6 supra.

8 Ibid Sch 8 para 2(1)(c). See note 6 supra.

9 Ibid Sch 8 para 2(1)(d). See note 6 supra.

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### **1382. Duty to provide information.**

Any local education authority<sup>1</sup> and any governing body of a maintained school<sup>2</sup> had to give the Education Transfer Council<sup>3</sup> such information as the Council required for the purposes of the exercise of any of its functions under the Education Acts<sup>4</sup>.

A local education authority had to give the Council within such reasonable time as the Council specified, such information as the Council required for the purposes of the exercise of any of its functions under the Further and Higher Education Act 1992<sup>5</sup> or the Education Reform Act 1988<sup>6</sup>.

The governing body of any institution within the further education sector<sup>7</sup> or the higher education sector<sup>8</sup> had to give the Council, within such reasonable time as the Council specified, such information as the Council required for the purpose of the exercise of any of its functions under the Education Acts<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. As to maintained schools generally see PARA 94 et seq ante.

3 As to the dissolution of the Education Transfer Council see PARA 1380 ante.

4 Education Reform Act 1988 s 197(7) (amended by the Education Act 1993 s 47(5); the Education Act 1996 s 582(1), Sch 37 para 74(3); the School Standards and Framework Act 1998 s 140(3), Sch 31; and by virtue of the School Standards and Framework Act 1998 s 136(2)). For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the Education Reform Act 1988 s 197(10) (added by the Education Act 1996 Sch 37 para 74(5)). As to the functions of the Education Transfer Council see PARA 1381 ante.

5 See PARAS 1397-1398 post.

6 Education Reform Act 1988 s 197(7A) (added by the Further and Higher Education Act 1992 s 93, Sch 8 para 43(c); and amended by virtue of the School Standards and Framework Act 1998 s 136(2)). This provision applies to the Education Reform Act 1988 s 126 (transfer of property etc to higher education corporations: see PARA 676 ante) or s 130 (transfer of property etc to certain designated institutions: see PARA 702 ante).

7 As to further education see PARA 579 et seq ante.

8 As to the higher education sector see PARA 646 et seq ante.

9 Education Reform Act 1988 s 197(7B) (added by the Further and Higher Education Act 1992 Sch 8 para 43(c); and amended by the Education Act 1996 Sch 37 para 74(4); and by virtue of the School Standards and Framework Act 1998 s 136(2)).

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### **1383. Composition.**

The Education Transfer Council<sup>1</sup> consisted of a chairman and not less than two nor more than ten other members<sup>2</sup> appointed by the Secretary of State<sup>3</sup>. One of the members of the Council was the chief officer<sup>4</sup>. A person held and vacated office<sup>5</sup> as a member or as chairman or chief officer of the Council in accordance with the terms of his appointment and, on ceasing to be a member, was eligible for re-appointment<sup>6</sup>.

The Council had power to appoint employees<sup>7</sup>, and to determine their remuneration and allowances and the terms and conditions of their appointment<sup>8</sup>.

1 As to the dissolution of the Education Transfer Council see PARA 1380 ante.

2 As to the payment to members of salaries or fees, travelling, subsistence or other allowances and for the payment of, or payment towards, pensions see the Education Reform Act 1988 s 197(9), Sch 8 para 6(1). The Secretary of State had power to direct the Council to pay compensation where a person ceased to be a member of the Council: see Sch 8 para 6(2). As to the Secretary of State see PARA 52 ante.

3 Ibid s 197(2) (s 197(2), (3) amended by virtue of the School Standards and Framework Act 1998 s 136(2)). In appointing the members of the Council the Secretary of State had to have regard to the desirability of including persons who appeared to him to have experience of, and to have shown capacity in, property management, local government or education: Education Reform Act 1988 s 197(3) (as so amended).

4 See ibid s 197, Sch 8 para 3(1). As to the appointment and approval by the Secretary of State of the chief officer see Sch 8 para 3(2)-(4).

5 A person could at any time by notice in writing to the Secretary of State resign his office as a member or as chairman of the Council: ibid Sch 8 para 4(2).

6 Ibid Sch 8 para 4(1). As to the removal of a member from office where the member was absent without permission or was unable or unfit to discharge his functions see Sch 8 para 5.

7 Ibid Sch 8 para 8(1).

8 See ibid Sch 8 para 8(2), (3). A determination under Sch 8 para 8(2) or Sch 8 para 8(3) required the approval of the Secretary of State: Sch 8 para 8(4) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 20(b)(i), Sch 31).

As to the application of a scheme under the Superannuation Act 1972 s 1 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 567) to the employees of the Council see the Education Reform Act 1988 Sch 8 para 8(5) (amended by the Superannuation Act 1972 s 1, Sch 1); and the Education Reform Act 1988 Sch 8 para 8(6), (7) (amended by the School Standards and Framework Act 1998 Sch 30 para 20(b)(ii)).

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**1384. Grants to the Education Transfer Council.**

The Secretary of State<sup>1</sup> had power to make grants to the Education Transfer Council<sup>2</sup> of such amounts and subject to such conditions as he might determine<sup>3</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the dissolution of the Education Transfer Council see PARA 1380 ante.

3 Education Reform Act 1988 s 197(5) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)).

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### **1385. Accounts.**

The Education Transfer Council<sup>1</sup> had to keep proper accounts and proper records in relation to the accounts<sup>2</sup>, and prepare in respect of each financial year<sup>3</sup> a statement of accounts in such form as the Secretary of State<sup>4</sup> might direct with the approval of the Treasury<sup>5</sup> and send copies of the statement to the Secretary of State and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement related<sup>6</sup>.

1 As to the dissolution of the Education Transfer Council see PARA 1380 ante.

2 Education Reform Act 1988 s 197(9), Sch 8 para 17(1)(a).

3 For these purposes 'financial year' means the period beginning with the date on which the Council was established and ending with the second 31 March following that date, and each successive period of 12 months: *ibid* Sch 8 para 17(3).

4 As to the Secretary of State see PARA 52 ante.

5 Education Reform Act 1988 Sch 8 para 17(1)(b). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

6 See *ibid* Sch 8 para 17(1)(c). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726. The Comptroller and Auditor General had to examine, certify and report on each statement received by him in pursuance of Sch 8 para 17 and had to lay copies of each statement and of his report before each House of Parliament: Sch 8 para 17(2).



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### **1386. Proceedings.**

The Education Transfer Council<sup>1</sup> had power to establish a committee for any purpose<sup>2</sup>. It could authorise the chairman, the chief officer<sup>3</sup> or any such committee to exercise such of its functions as it might determine<sup>4</sup>.

The validity of any proceedings of the Council or of any committee of the Council was not affected by a vacancy among the members or by any defect in the appointment of a member<sup>5</sup>.

The Council had power to regulate its own procedure and that of any of its committees<sup>6</sup>.

Every document purporting to be an instrument made or issued by or on behalf of the Council and to be duly executed under the Council's seal<sup>7</sup>, or to be signed or executed by a person authorised by the Council to act in that behalf, is to be received in evidence and to be treated, without further proof, as being so made or issued unless the contrary is shown<sup>8</sup>.

1 As to the dissolution of the Education Transfer Council see PARA 1380 ante.

2 Education Reform Act 1988 s 197(9), Sch 8 para 9(1). The number of the members of a committee established under Sch 8 para 9 and the terms on which they were to hold and vacate office were fixed by the Council: Sch 8 para 9(2). Such a committee could include persons who were not members of the Council: Sch 8 para 9(3). The Council has to keep under review the structure of committees established under Sch 8 para 9 and the scope of each committee's activities: Sch 8 para 9(4).

3 As to the chairman and chief officer of the Education Transfer Council see PARA 1383 ante.

4 See the Education Reform Act 1988 Sch 8 para 11.

5 Ibid Sch 8 para 13. As to members of the Education Transfer Council and their appointment see PARA 1383 ante.

6 Ibid Sch 8 para 14.

7 The application of the seal of the Education Transfer Council was authenticated by the signature of the chairman or of some other person authorised either generally or specially by the Education Transfer Council to act for that purpose and of one other member: ibid Sch 8 para 15.

8 Ibid Sch 8 para 16.

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## **(ii) Procedures for Property Transfers**

### **A. IN GENERAL**

#### **1387. Land and property transfers.**

The procedures for land and property transfers in relation to educational establishments were originally performed by the Education Transfer Council<sup>1</sup>. On the dissolution of the Education Transfer Council some of its functions became the responsibility of the Secretary of State<sup>2</sup> in relation to England or the National Assembly for Wales<sup>3</sup> in relation to Wales. The provisions relating to the Education Transfer Council have not been repealed, so that it is possible that a successor body to the Education Transfer Council might be established or that the Education Transfer Council might be re-established<sup>4</sup>.

The procedures which became the responsibility of the Secretary of State or the National Assembly for Wales concern land transfers in relation to schools changing category or joining or leaving foundation bodies<sup>5</sup>, property transfers to former grant-maintained schools<sup>6</sup> (both of which are effected under the Education Reform Act 1988) and property transfers under the Further and Higher Education Act 1992<sup>7</sup>. Other functions which were not transferred to the Secretary of State or the National Assembly for Wales may be exercisable where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>8</sup>.

1 As to the Education Transfer Council and its dissolution see PARAS 1380-1386 ante.

2 As to the Secretary of State see PARA 52 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 See PARA 1380 ante.

5 The Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, modify the Education Reform Act 1988 s 198 (as amended), Sch 10 (as amended) so that the Secretary of State or the National Assembly for Wales may exercise powers in relation to transfers of land on schools changing category or joining or leaving foundation bodies under any regulations made or to be made under the School Standards and Framework Act 1998 s 21(5) (see PARA 104 ante) or s 35, Sch 8 para 5 (see PARA 116 ante): see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, regs 5-7; and PARAS 1389-1396 post.

6 The Education Reform Act 1988 s 198 (as amended) and Sch 10 (as amended), as they are applied to transfers under the Education Act 1996 s 201 (repealed) by the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4 and the School Standards and Framework Act 1998 (Commencement No 7 and Saving and Transitional Provisions) Order 1999, SI 1999/2323, art 8, are modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, regs 16-19: see reg 15; and PARAS 1389-1396 post. As to grant-maintained schools see PARA 102 note 16 ante.

7 As to the procedures in relation to property transfers under the Further and Higher Education Act 1992 see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, regs 8-14; and PARAS 1397-1398 post.

8 Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Education Reform Act 1988 s 198 (as amended) (see PARA 1388 post) applies to any transfer under any of the following provisions: (1) s 126 (see PARA 676 ante) (higher education corporations) or s 130 (see PARA 702 ante) (designated institutions); (2) the School Standards and Framework Act 1998 s 74, Sch 21 (see PARAS 1399-1404 post); or (3) any regulations made under s 21(5), (9) (see PARA 104 ante) or under s 20, Sch 2 para 10 (see PARA 102 ante) or Sch 8 para 5 (see PARA 116 ante): Education Reform Act 1988 s 198(1) (substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 2(2)).

The provisions described in heads (1)-(3) supra, so far as they relate to transfers, have in each case effect subject to the Education Reform Act 1988 Sch 10 (as amended) (see PARAS 1389-1395 post): see s 198(1) (as so substituted). However, nothing in the provisions of Sch 10 (as amended; modified for certain purposes) other than Sch 10 para 2(4) (as substituted; modified for certain purposes) (see PARA 1390 post) or s 198(3) (as substituted; modified for certain purposes) (see PARA 1388 post) applies in relation to any transfer agreement falling to be made under the School Standards and Framework Act 1998 Sch 21 para 4 (see PARA 1400 post) or Sch 21 para 7 (see PARA 1403 post) or any corresponding provision of regulations under the School Standards and Framework Act 1998: Education Reform Act 1988 s 198(1A) (added by the School Standards and Framework Act 1998 Sch 29 para 2(2)). As to transitional provisions see the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4.

As to the functions and powers of the Education Transfer Council generally see PARA 1381 ante.

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## ***B. PROCEDURES UNDER THE EDUCATION REFORM ACT 1988***

### **1388. Procedures for property transfers.**

The powers described below are exercisable by the Secretary of State<sup>1</sup> in relation to England or the National Assembly for Wales<sup>2</sup> in relation to Wales until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>3</sup>.

The procedures under the Education Reform Act 1988 for transfers<sup>4</sup> have effect for the purpose of: (1) dividing and apportioning property, rights and liabilities<sup>5</sup> which fall to be transferred by a transferor authority or body where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one school<sup>6</sup> or other educational institution<sup>7</sup>; (2) excluding from transfer certain property, rights and liabilities which would otherwise fall to be transferred<sup>8</sup>; (3) providing for identifying and defining the property, rights and liabilities which fall to be transferred<sup>9</sup>; and (4) making supplementary and consequential provision in relation to such transfers<sup>10</sup>. In carrying out the functions conferred or imposed under the procedure for transfers, the Secretary of State or the Assembly must not act on behalf of the transferor, the transferee or any other interested person, but must seek to ensure that all such persons' interests are protected<sup>11</sup>.

If a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, then further provision is made as to its powers<sup>12</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 As to the Education Transfer Council and its dissolution see PARA 1380 et seq ante.

4 I.e the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes): see PARAS 1389-1395 post. As to the transfers to which Sch 10 (as amended; modified for certain purposes) applies see PARA 1387 ante.

5 'Liability' includes obligation: *ibid* s 235(1).

6 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of *ibid* s 235(7) (amended by the Education Act 1996 s 582(1), Sch 37 para 81(4)).

7 Education Reform Act 1988 s 198(2)(a) (s 198(2)-(4) substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 2(2)). As to the modification of the Education Reform Act 1988 s 198 (as substituted) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 16. As to the division and apportionment of property see PARA 1389 post. As to grant-maintained schools see PARA 102 note 16 ante.

8 Education Reform Act 1988 s 198(2)(b) (as substituted: see note 7 supra).

9 *Ibid* s 198(2)(c) (as substituted: see note 7 supra). As to the identification of property rights and liabilities see PARA 1390 post.

10 *Ibid* s 198(2)(d) (as substituted: see note 7 supra). As to the supplementary and consequential provisions that have been made see PARAS 1391-1395 post.

11 *Ibid* s 198(3) (as substituted (see note 7 *supra*); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 6(a)).

Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, in carrying out the functions conferred or imposed on it by the Education Reform Act 1988 Sch 10 (as amended) (see PARAS 1389-1395 *post*): (1) it must, subject to s 198(4) (as substituted: see note 12 *infra*), not act on behalf of the transferor, the transferee or any other interested person, but must seek to ensure that all such persons' interests are protected; and (2) it is its duty, so far as it is reasonably practicable for it to do so, to secure that each transfer to which s 198 (as amended) applies is, so far as possible, fully effective on the date on which it takes effect under the Education Reform Act 1988 or under or by virtue of the School Standards and Framework Act 1998: see the Education Reform Act 1988 s 198(3) (as so substituted). As to the functions conferred or imposed on the Education Transfer Council by Sch 10 (as amended) see PARA 1387 *ante*. See also *R v Secretary of State for Education, ex p Southwark London Borough Council* [1995] ELR 308, [1994] COD 298.

12 As to the provisions that apply where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, regs 6(b), 16. Where the transferor under any transfer to which the Education Reform Act 1988 s 198 (as amended) applies is a local authority and in accordance with Sch 10 (as amended) (see PARAS 1389-1396 *post*) anything falls to be or may be done by the Education Transfer Council for the purposes of or in connection with that transfer: (1) it may not be done by the transferee; and (2) in doing it the Education Transfer Council must be regarded as acting on behalf and in the name of the transferee: s 198(4) (as substituted: see note 7 *supra*). In a case where the transferee is a body corporate established under the Education Reform Act 1988 or the School Standards and Framework Act 1998, head (2) *supra* applies both in relation to things done before and in relation to things done after that body is established: Education Reform Act 1988 s 198(4) (as so substituted). 'Local authority' means a county council, a county borough council, a district council, a London borough council or the Common Council of the City of London: s 235(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 83). As to areas and authorities in England and Wales see LOCAL GOVERNMENT vol 69 (2009) PARA 22 *et seq*. As to the London boroughs and their councils see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35-39, 59 *et seq*; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

Not later than the end of the period of six months beginning with the transfer date applicable in relation to any transfer to a higher education corporation under the Education Reform Act 1988 s 126 (see PARA 676 *ante*), the Education Transfer Council must provide the higher education funding council with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to the Education Transfer Council: s 198(5) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 para 44; and the School Standards and Framework Act 1998 Sch 29 para 2(3)). If in any case within the Education Reform Act 1988 s 198(5) (as amended) full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under s 198(5) (as amended), the Education Transfer Council must provide the higher education funding council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for it to do so: s 198(6) (amended by the School Standards and Framework Act 1998 Sch 29 para 2(3)). For the meaning of 'transfer date' in relation to higher education corporations see PARA 676 note 6 *ante*. In relation to a designated institution, 'transfer date' means the designation date in relation to that institution: see ss 130(8), 228(10). As to the designation dates see PARAS 70, 702 *ante*. As to the Higher Education Funding Councils see PARA 733 *et seq post*.

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### **1389. Division and apportionment of property.**

The provisions described below are exercisable by the Secretary of State<sup>1</sup> in relation to England or the National Assembly for Wales<sup>2</sup> in relation to Wales until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>3</sup>.

Any property, rights and liabilities<sup>4</sup> of a transferor authority<sup>5</sup> held or used or subsisting:

- 2591 (1) for the purposes of more than one relevant institution<sup>6</sup>; or
- 2592 (2) partly for the purposes of one or more relevant institutions and partly for other purposes of the transferor authority<sup>7</sup>,

must, where the nature of the property, right or liability permits, be divided or apportioned between the transferees, or, as the case may be, between the transferor authority and the transferee or transferees, in such proportions as may be appropriate<sup>8</sup>.

Similarly, any property, rights or liabilities of a transferor body must, where the nature of the property, rights or liability permits, be divided or apportioned between the transferees or, as the case may be, between the transferor body and the transferee or transferees, in such proportions as may be appropriate<sup>9</sup>.

Where any estate or interest in land falls to be divided in accordance with the provisions described above<sup>10</sup> any rent payable under a lease in respect of that estate or interest<sup>11</sup> and any rent charged on that estate or interest<sup>12</sup> must correspondingly be divided or apportioned so that each part is payable in respect of, or charged on, only one part of the estate or interest and the other part or parts are payable in respect of, or charged on, only the other part or parts of the estate or interest<sup>13</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 As to the Education Transfer Council and its dissolution see PARA 1380 et seq ante.

4 As to the meaning of 'liability' see PARA 1388 note 5 ante.

5 For these purposes, references to a transferor authority are references to a local authority which is the transferor for the purposes of any transfer to which the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes) applies: Sch 10 para 1(5)(c) (Sch 10 para 1 substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 3). As to transitional provisions see the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4. For the meaning of 'local authority' see PARA 1388 note 12 ante.

6 Education Reform Act 1988 Sch 10 para 1(1)(a) (as substituted: see note 5 supra). As to the transfers to which Sch 10 (as amended; modified for certain purposes) applies see PARA 1387 ante. For these purposes, 'relevant institution' means: (1) any institution which a body corporate is established under the Education Reform Act 1988 to conduct; (2) any institution to which s 130 (see PARA 702 ante) applies; and (3) any maintained school: Sch 10 para 1(5)(a) (as substituted: see note 5 supra). As to maintained schools generally see PARA 94 et seq ante.

7 Ibid Sch 10 para 1(1)(b) (as substituted: see note 5 supra).

8 Ibid Sch 10 para 1(1) (as substituted: see note 5 supra). Any such property, right or liability as is mentioned in Sch 10 para 1(1) (as substituted) the nature of which does not permit its division or apportionment must be transferred to the transferee (or to one or other of the transferees) or retained by the transferor authority or body according to: (1) in the case of an estate or interest in land, whether on the transfer date the transferor authority or body or the transferee (or one or other of the transferees) appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or (2) in the case of any other property or any right or liability, which of them appears on the transfer date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent: Sch 10 para 1(4) (as substituted: see note 5 supra). For these purposes, references to a transferor body are references to any foundation body which is the transferor for the purposes of any transfer to which Sch 10 (as amended; modified for certain purposes) applies: Sch 10 para 1(5)(d) (as substituted: see note 5 supra). For the meaning of 'foundation body' see PARA 104 note 6 ante; definition applied by virtue of Sch 10 para 1(5)(d) (as so substituted). As to the meaning of 'interest in land', and as to the meaning of 'land', see PARA 1381 note 5 ante.

However, where these provisions apply to land transfers in relation to schools changing category or joining or leaving foundation bodies, the cases described in heads (1) and (2) supra are subject to such arrangements for the protection of the other person or persons concerned as may be agreed between the transferor authority or body and the transferee or determined by the Secretary of State or the National Assembly for Wales under Sch 10 para 3 (as substituted and modified) (see PARA 1391 post): Sch 10 para 1(4) (as substituted (see note 5 supra); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(a)).

Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the cases described in heads (1) and (2) supra are subject to such arrangements for the protection of the other person or persons concerned as may be agreed between the transferor authority or body and the relevant person or determined by the Secretary of State or the Assembly under the Education Reform Act 1988 Sch 10 para 3 (as substituted) (see PARA 1391 post): Sch 10 para 1(4) (as so substituted). For these purposes, 'the relevant person' means: (a) in a case where the transferor is a transferor authority, the successor body or the Education Transfer Council; (b) in a case where the transferor is a transferor body, the transferee: Sch 10 para 1(5)(b) (as so substituted). As to the transfer date see PARA 1388 note 12 ante. As to schools changing categories see PARA 112 ante; and as to schools joining or leaving foundation bodies see PARA 104 ante.

As to the modification of Sch 10 para 1 (as substituted) in relation to schools changing category or joining or leaving foundation bodies see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209 reg 7(b); and in relation to property transfers to former grant-maintained schools in England see reg 17(a). As to grant-maintained schools see PARA 102 note 16 ante.

Any transfer of any estate or interest in land under the Education Reform Act 1988 Sch 10 para 1 (as substituted; modified for certain purposes) whether by virtue of an agreement or instrument entered into before or after the transfer date, is regarded as having taken place on the transfer date: Sch 10 para 2(5) (substituted by the School Standards and Framework Act 1998 Sch 29 para 4).

9 Education Reform Act 1988 Sch 10 para 1(2) (as substituted: see note 5 supra). Any such property, right or liability as is mentioned in Sch 10 para 1(2) (as substituted) the nature of which does not permit its division or apportionment must be transferred to the transferee (or to one or other of the transferees) or retained by the transferor authority or body according to: (1) in the case of an estate or interest in land, whether on the transfer date the transferor authority or body or the transferee (or one or other of the transferees) appears to be in greater need of the security afforded by that estate or interest or, where none of them appears to be in greater need of that security, which of them appears on that date to be likely to make use of the land to the greater extent; or (2) in the case of any other property or any right or liability, which of them appears on the transfer date to be likely to make use of the property or (as the case may be) to be affected by the right or liability to the greater extent: Sch 10 para 1(4) (as so substituted). However, where these provisions apply to land transfers in relation to schools changing category or joining or leaving foundation bodies, the cases described in heads (1) and (2) supra are subject to such arrangements for the protection of the other person or persons concerned as may be agreed between the transferor authority or body and the transferee or determined by the Secretary of State or the National Assembly for Wales under Sch 10 para 3 (as substituted and modified) (see PARA 1391 post): Sch 10 para 1(4) (as so substituted; and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(a)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the cases described in heads (1) and (2) supra are subject to such arrangements for the protection of the other person or persons concerned as may be agreed between the transferor authority or body and the relevant person or determined by the Secretary of State under the Education Reform Act 1988 Sch 10 para 3 (as substituted) (see PARA 1391 post): Sch 10 para 1(4) (as so substituted).

10 Ie through ibid Sch 10 para 1(1) (as substituted) or Sch 10 para 1(2) (as substituted): see the text and notes 4-9 supra.

- 11 Ibid Sch 10 para 1(3)(a) (as substituted: see note 5 supra).
- 12 Ibid Sch 10 para 1(3)(b) (as substituted: see note 5 supra).
- 13 Ibid Sch 10 para 1(3) (as substituted: see note 5 supra).



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### **1390. Identification of property, rights and liabilities.**

The functions described below are exercisable by the Secretary of State<sup>1</sup> in relation to England or the National Assembly for Wales<sup>2</sup> in relation to Wales until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>3</sup>.

The transferor and the transferee<sup>4</sup> must, whether before or after the transfer date<sup>5</sup>, so far as practicable arrive at such written agreements and execute such other instruments as are necessary or expedient to identify or define the property, rights and liabilities<sup>6</sup> transferred to the transferee or retained by the transferor or for making any arrangements relating to the division and apportionment of property<sup>7</sup> and as will<sup>8</sup>:

- 2593 (1) afford to the transferor and the transferee as against one another such rights and safeguards as they may require for the proper discharge of their respective functions<sup>9</sup>; and
- 2594 (2) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarifications and modifications of the effect of the provision of the Education Reform Act 1988 or of the School Standards and Framework Act 1998 under which the transfer is required on the property, rights and liabilities of the transferor as will best serve the proper discharge of the respective functions of the transferor and the transferee<sup>10</sup>.

Any such agreement must provide so far as it is expedient: (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to interests in land or not, and whether involving the surrender of any existing interest or the creation of a new interest or not<sup>11</sup>; (b) for the granting of indemnities in connection with the severance of leases and other matters<sup>12</sup>; (c) for responsibility for registration of any matter in any description of statutory register<sup>13</sup>.

If and to the extent that he or it is requested to do so by the transferor or the transferee, the Secretary of State or the Assembly must<sup>14</sup>:

- 2595 (i) assist the transferor, the transferee and any other interested person in identifying or defining the property, rights and liabilities transferred to the transferee or retained by the transferor<sup>15</sup>;
- 2596 (ii) advise such persons as to the terms of any agreement or instrument falling to be made under the provisions described above<sup>16</sup>;
- 2597 (iii) prepare drafts of any such agreement or instrument<sup>17</sup>; and
- 2598 (iv) assist the parties in executing and giving effect to any such agreement or instrument<sup>18</sup>.

Within six months after the transfer date the transferor must send the Secretary of State or the Assembly a copy of an executed transfer agreement or, if no agreement has been executed, so notify him or it<sup>19</sup>.

- 1 As to the Secretary of State see PARA 52 ante.
  - 2 As to the National Assembly for Wales see PARA 53 ante.
  - 3 As to the Education Transfer Council and its dissolution see PARA 1380 et seq ante.
  - 4 Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 para 2(1) (as substituted) applies to the transferor and the relevant person: see Sch 10 para 2(1) (Sch 10 para 2 substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 4). As to transitional provisions see the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4. As to the transfers to which the Education Reform Act 1988 Sch 10 (as amended; modified for certain purposes) applies see PARA 1387 ante. For these purposes, 'the relevant person' means: (1) in a case where the transferor is a local authority, the Education Transfer Council; (2) in a case where the transferor is not a local authority, the transferee: Education Reform Act 1988 Sch 10 para 2(6) (as so substituted). For the meaning of 'local authority' see PARA 1388 note 12 ante. As to the modification of Sch 10 para 2(6) (as substituted) in relation to schools changing category or joining or leaving foundation bodies see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209 reg 7(g). As to the modification of the Education Reform Act 1988 Sch 10 para 2(1) (as substituted) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(b). As to grant-maintained schools see PARA 102 note 16 ante.
  - 5 As to the transfer date see PARA 1388 note 12 ante.
  - 6 As to the meaning of 'liability' see PARA 1388 note 5 ante.
  - 7 Ie such arrangements as are mentioned in the Education Reform Act 1988 Sch 10 para 1(4) (as amended; modified for certain purposes): see PARA 1389 ante.
  - 8 Ibid Sch 10 para 2(1) (as substituted (see note 4 supra); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(c)).
  - 9 Education Reform Act 1988 Sch 10 para 2(1)(a) (as substituted: see note 4 supra).
  - 10 Ibid Sch 10 para 2(1)(b) (as substituted: see note 4 supra). This provision also applies to any regulations made under the School Standards and Framework Act 1998.
- Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established and it appears to the successor body or the Education Transfer Council, in the case of any transfer under which the transferor is a local authority, that any agreements and instruments required to be made or executed in pursuance of the Education Reform Act 1988 Sch 10 para 2(1) (as substituted) have been made or executed, it must deliver those agreements and instruments, if any, to the transferee: Sch 10 para 10 (amended by the School Standards and Framework Act 1998 Sch 29 paras 9, 10). Where land is transferred in relation to schools changing category or joining or leaving foundation bodies, the Education Reform Act 1988 Sch 10 para 10 (as amended) does not apply: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(o). The Education Reform Act 1988 Sch 10 para 10 (as amended) does not apply in relation to property transfers to former grant-maintained schools in England: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(h). For the meaning of 'local authority' see PARA 1388 note 12 ante. As to schools changing categories see PARA 112 ante; and as to schools joining or leaving foundation bodies see PARA 104 ante.
- Any transfer of any estate or interest in land under the Education Reform Act 1988 Sch 10 para 2 (as substituted; modified for certain purposes) whether by virtue of an agreement or instrument entered into before or after the transfer date, is regarded as having taken place on the transfer date: Sch 10 para 2(5) (as substituted: see note 4 supra). As to the meaning of 'interest in land', and as to the meaning of 'land', see PARA 1381 note 5 ante.
- 11 Ibid Sch 10 para 2(2)(a) (as substituted: see note 4 supra).
  - 12 Ibid Sch 10 para 2(2)(b) (as substituted: see note 4 supra).
  - 13 Ibid Sch 10 para 2(2)(c) (as substituted: see note 4 supra).
  - 14 Ibid Sch 10 para 2(3) (as substituted (see note 4 supra); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(d)(i)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, it must carry out the duties conferred by the Education Reform Act 1988 Sch 10 para 2(3) (as substituted), except in a case where the transferor is a local authority: Sch 10 para 2(3) (as so substituted). As to the modification of Sch 10 para 2(3) (as substituted) in relation to property transfers to former grant-maintained schools in England see Sch 10 para

2(3) (as substituted; and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(c)).

15 Education Reform Act 1988 Sch 10 para 2(3)(a) (as substituted: see note 4 supra).

16 Ibid Sch 10 para 2(3)(b) (as substituted: see note 4 supra). The reference in the text to the provisions described above is a reference to Sch 10 para 2(1) (as substituted; modified for certain purposes): see the text and notes 4-10 supra.

17 Ibid Sch 10 para 2(3)(d) (as substituted: see note 4 supra).

18 Ibid Sch 10 para 2(3)(e) (as substituted: see note 4 supra). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, it must, except in a case where the transferee is a local authority, assist the transferor, the transferee and any other interested person to negotiate any agreement or instrument made under Sch 10 para 2(1) (as substituted) (see the text and notes 4-10 supra) and mediate in any such negotiations: see Sch 10 para 2(3)(c) (as substituted: see note 4 supra). Where land is transferred in relation to schools changing category or joining or leaving foundation bodies, Sch 10 para 2(3)(c) (as substituted) does not apply: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(d)(ii).

If and to the extent that they are requested to do so by any person falling to make a transfer agreement under the School Standards and Framework Act 1998 s 74, Sch 21 para 4 (see PARA 1400 post) or Sch 21 para 7 (see PARA 1403 post) or any corresponding provision of regulations under the School Standards and Framework Act 1998, the Secretary of State or the National Assembly for Wales must exercise any one or more functions falling within the Education Reform Act 1988 Sch 10 para 2(3) (as substituted and modified) in relation to such an agreement, or an instrument made pursuant to such an agreement, as if it were an agreement or instrument falling to be made under Sch 10 para 2(1) (as substituted and modified) (see the text and notes 4-10 supra): Sch 10 para 2(4) (as substituted (see note 4 supra); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(f)).

Where a successor body to the Education Transfer Council is established or where the Education Transfer Council is re-established, if and to the extent that it is requested to do so by any person falling to make a transfer agreement under the School Standards and Framework Act 1998 Sch 21 para 4 (see PARA 1400 post) or Sch 21 para 7 (see PARA 1403 post) or any corresponding provision of regulations under the School Standards and Framework Act 1998, it must exercise any one or more functions falling within the Education Reform Act 1988 Sch 10 para 2(3) (as substituted) in relation to such an agreement, or an instrument made pursuant to such an agreement, as if it were an agreement or instrument falling to be made under Sch 10 para 2(1) (as substituted) (see the text and notes 4-10 supra): Sch 10 para 2(4) (as so substituted).

As to the modification of Sch 10 para 2(4) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(c).

19 Education Reform Act 1988 Sch 10 para 2(3A) (added by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(e)). However, where a successor body to the Education Transfer Council is established or where the Education Transfer Council is re-established, the Education Reform Act 1988 Sch 10 para 2(3A) (as added) does not apply: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(e).

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### **1391. Resolution of disputes.**

The powers described below are exercisable by the Secretary of State<sup>1</sup> in relation to England or the National Assembly for Wales<sup>2</sup> in relation to Wales until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>3</sup>.

In the case of any matter on which agreement is required to be reached under the statutory provisions relating to the identification of property, rights and liabilities<sup>4</sup>, if such an agreement has not been reached within a period of six months from the transfer date<sup>5</sup>, the Secretary of State or the Assembly may give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under the provisions relating to the identification of property, rights and liabilities<sup>6</sup>.

Any property, rights or liabilities required by such a direction to be transferred to the transferee are regarded as having been transferred to, and vested<sup>7</sup> in, the transferee on the transfer date<sup>8</sup>. The Secretary of State or the Assembly must consult the transferor, the transferee and any other interested person before giving a direction<sup>9</sup>.

Any reference in a determination of the Education Transfer Council to a matter being referred to the Education Transfer Council for determination in the event of the parties failing to reach agreement is to be read as requiring the matter to be referred to the Secretary of State or the National Assembly for Wales, as the case may be, in such event<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 As to the Education Transfer Council and its dissolution see PARA 1380 et seq ante.

4 I.e. the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 para 2(1) (as substituted and modified): see PARA 1390 ante. As to the meaning of 'liability' see PARA 1388 note 5 ante.

5 As to the transfer date see PARA 1388 note 12 ante.

6 Education Reform Act 1988 Sch 10 para 3(2) (Sch 10 para 3 substituted by the School Standards and Framework Act 1998 s 137, Sch 29 para 5; and the Education Reform Act 1988 Sch 10 para 3(2) modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(i)). As to transitional provisions see the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4. As to the transfers to which the Education Reform Act 1988 Sch 10 (as amended; modified for certain purposes) applies see PARA 1387 ante.

Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, it must notify the Secretary of State if it appears to it that it is unlikely in the case of any matter on which agreement is required to be reached under Sch 10 para 2(1) (as substituted) (see PARA 1390 ante) that such an agreement will be reached: Sch 10 para 3(1) (as so substituted). Where the Secretary of State has received such a notification under Sch 10 para 3(1) (as substituted), he may, whether before or after the transfer date, give a direction determining that matter, and may include in the direction any provision which might have been included in an agreement under Sch 10 para 2(1) (as substituted): Sch 10 para 3(2) (as so substituted). Where land is transferred in relation to schools changing category or joining or leaving foundation bodies Sch 10 para 3(1) (as substituted) does not apply: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(h). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the meaning of 'land' see PARA 1381 note 5 ante. As to schools changing categories see PARA 112 ante; and as to schools joining or leaving foundation bodies see PARA 104 ante.

As to the modification of the Education Reform Act 1988 Sch 10 para 3 (as substituted) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(d). See also regs 18, 19. As to grant-maintained schools see PARA 102 note 16 ante.

Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established and it appears, in the case of any transfer under which the transferor is a local authority, that any agreements and instruments required to be made or executed in pursuance of a direction under the Education Reform Act 1988 Sch 10 para 3 (as substituted) have been made or executed, it must deliver those agreements and instruments, if any, to the transferee: Sch 10 para 10 (amended by the School Standards and Framework Act 1998 Sch 29 paras 9, 10). Where land is transferred in relation to schools changing category or joining or leaving foundation bodies, the Education Reform Act 1988 Sch 10 para 10 (as amended) does not apply: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(o). The Education Reform Act 1988 Sch 10 para 10 (as amended) does not apply in relation to property transfers to former grant-maintained schools in England: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(h). For the meaning of 'local authority' see PARA 1388 note 12 ante.

7     Ie by virtue of the Education Reform Act 1988.

8     Ibid Sch 10 para 3(3) (as substituted: see note 6 supra).

9     Ibid Sch 10 para 3(4) (as substituted (see note 6 supra); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(j)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Secretary of State must consult the transferor, the transferee and any other interested person before giving a direction under the Education Reform Act 1988 Sch 10 para 3 (as substituted): Sch 10 para 3(4) (as so substituted). The successor body or the Education Transfer Council must give the Secretary of State such assistance and advice as he may require for the purpose of determining any matter under Sch 10 para 3 (as substituted): Sch 10 para 3(5) (as substituted: see note 6 supra). Where land is transferred in relation to schools changing category or joining or leaving foundation bodies Sch 10 para 3(5) (as substituted) does not apply: see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(k).

10    Ibid reg 4. Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, reg 4 will not apply: see PARA 1387 ante.

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### **1392. Right to production of documents of title.**

Where a transfer to which these provisions apply<sup>1</sup> relates to registered land<sup>2</sup>, it is the duty of the transferor to execute any such instrument under the Land Registration Acts 1925 to 1986<sup>3</sup>, to deliver any such certificate under those Acts and to do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee<sup>4</sup>. Where on any such transfer the transferor is entitled to retain possession of any documents relating in part to the title to any land or other property transferred to the transferee, the transferor is treated as having given to the transferee an acknowledgment in writing of the right of the transferee to production of that document and to delivery of copies of it<sup>5</sup>.

1     In a transfer to which the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes) applies: see PARA 1387 ante.

2     As to the meaning of 'land' see PARA 1381 note 5 ante.

3     As to the Land Registration Acts 1925 to 1986 see LAND REGISTRATION.

4     Education Reform Act 1988 Sch 10 para 4(1) (added by the Further and Higher Education Act 1992 s 93, Sch 8 para 65; and amended by the Education Act 1993 s 47(8); and by the Education Act 1996 s 582(1), Sch 37 para 82(1)(a), (2)(b)).

5     Education Reform Act 1988 Sch 10 para 4(2) (renumbered by the Further and Higher Education Act 1992 Sch 8 para 65). The Law of Property Act 1925 s 64 (production and safe custody of documents: see SALE OF LAND vol 42 (Reissue) PARA 299) has effect accordingly, and on the basis that the acknowledgment did not contain any such expression of contrary intention as is mentioned in s 64 (see SALE OF LAND vol 42 (Reissue) PARA 299): Education Reform Act 1988 Sch 10 para 4(2) (as so renumbered).

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### **1393. Proof of title by certificate.**

The powers described below are exercisable by the Secretary of State<sup>1</sup> in relation to England or the National Assembly for Wales<sup>2</sup> in relation to Wales until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>3</sup>.

The Secretary of State or the Assembly may issue<sup>4</sup> a certificate stating that any property specified in the certificate, or any such interest in or right over any such property as may be so specified, or any right or liability<sup>5</sup> so specified, was or was not transferred by virtue of the Education Reform Act 1988 or the School Standards and Framework Act 1998 to any body corporate or persons so specified, and any such certificate is conclusive evidence for all purposes of that fact<sup>6</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 As to the Education Transfer Council and its dissolution see PARA 1380 et seq ante.

4 Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, it may issue a certificate: see the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 para 5 (amended by the School Standards and Framework Act 1998 s 137, Sch 29 paras 6, 10). As to transitional provisions see the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4.

5 As to the meaning of 'liability' see PARA 1388 note 5 ante.

6 Education Reform Act 1988 Sch 10 para 5 (amended by the School Standards and Framework Act 1998 Sch 29 para 6; and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(l)). As to the transfers to which the Education Reform Act 1988 Sch 10 (as amended; modified for certain purposes) applies see PARA 1387 ante. As to the modification of Sch 10 para 5 (as amended) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(e). As to grant-maintained schools see PARA 102 note 16 ante.

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### **1394. Construction of agreements.**

Where in the case of any transfer to which these provisions apply<sup>1</sup> any rights or liabilities<sup>2</sup> transferred are rights or liabilities under an agreement<sup>3</sup> to which the transferor was a party immediately before the transfer date<sup>4</sup>, the agreement, unless the context otherwise requires, has effect on and after the transfer date as if:

- 2599 (1) the transferee had been a party to the agreement<sup>5</sup>;
- 2600 (2) for any reference<sup>6</sup> to the transferor there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the transferee<sup>7</sup>;
- 2601 (3) any reference<sup>8</sup> to a specified officer of the transferor or a person employed by the transferor in a specified capacity were, as respects anything falling to be done on or after the transfer date, a reference to such person as the transferee may appoint or, in default of appointment, to an officer or employee of the transferee who corresponds as closely as possible to the person referred to in the agreement<sup>9</sup>; and
- 2602 (4) where the agreement refers to property, rights or liabilities which fall to be apportioned or divided between the transferor and the transferee, the agreement constituted two separate agreements separately enforceable by and against the transferor and the transferee as regards the part of the property, rights or liabilities retained by the transferor or, as the case may be, the part vesting in the transferee, and not as regards the other part<sup>10</sup>.

The transferee under a transfer to which these provisions apply and any other person has<sup>11</sup>, as from the transfer date, the same rights, powers and remedies, and in particular the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority, for ascertaining, perfecting or enforcing any right or liability transferred to and vested in the transferee<sup>12</sup> as he would have had if that right or liability had at all times been a right or liability of the transferee<sup>13</sup>.

Any legal proceedings or applications to any authority pending on the transfer date by or against the transferor, in so far as they relate to any property, right or liability transferred to the transferee<sup>14</sup>, or to any agreement relating to any such property, right or liability, is continued by or against the transferee to the exclusion of the transferor<sup>15</sup>.

1    I.e. a transfer to which the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes) applies: see PARA 1387 ante.

2    As to the meaning of 'liability' see PARA 1388 note 5 ante.

3    The Education Reform Act 1988 Sch 10 para 6(1) (see the text and notes 4-10 infra) applies to any agreement whether in writing or not and whether or not of such a nature that rights and liabilities under it could be assigned by the transferor: s 198(2) (as substituted), Sch 10 para 6(2).

4    As to the transfer date see PARA 1388 note 12 ante.

5    Education Reform Act 1988 Sch 10 para 6(1)(a). Schedule 10 para 6 has effect for the interpretation of agreements subject to the context, and does not apply where the context otherwise requires: Sch 10 para 8.



6     Ie any reference whether express or implied and, if express, however worded: *ibid* Sch 10 para 6(1)(b).

7     *Ibid* Sch 10 para 6(1)(b). See note 5 *supra*.

8     Ie any reference whether express or implied and, if express, however worded: *ibid* Sch 10 para 6(1)(c).

9     *Ibid* Sch 10 para 6(1)(c). See note 5 *supra*.

10    *Ibid* Sch 10 para 6(1)(d). Schedule 10 para 6(1)(d) applies in particular to the covenants, stipulations and conditions of any lease by or to the transferor: Sch 10 para 6(1)(d). See note 5 *supra*.

11    Ie without prejudice to the generality of *ibid* Sch 10 para 6: see the text and notes 1-10 *supra*.

12    Ie by virtue of the Education Reform Act 1988 or the School Standards and Framework Act 1998.

13    Education Reform Act 1988 Sch 10 para 7(1) (amended by the School Standards and Framework Act 1998 s 137, Sch 29 para 7). As to transitional provisions see the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4. The Education Reform Act 1988 Sch 10 para 7 (as amended) has effect for the interpretation of agreements subject to the context, and does not apply where the context otherwise requires: Sch 10 para 8.

14    Ie by virtue of the Education Reform Act 1988 or the School Standards and Framework Act 1998.

15    Education Reform Act 1988 Sch 10 para 7(2) (amended by the School Standards and Framework Act 1998 Sch 29 para 7). See note 13 *supra*.

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### **1395. Third parties affected by vesting provisions.**

The provisions described below are exercisable by the Secretary of State<sup>1</sup> in relation to England or the National Assembly for Wales<sup>2</sup> in relation to Wales until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>3</sup>.

Any transaction effected between a transferor and a transferee<sup>4</sup> is binding<sup>5</sup> on all other persons, and notwithstanding that it would otherwise have required the consent or concurrence of any person other than the transferor and the transferee<sup>6</sup>. Where as a result of any such transaction any person's rights or liabilities<sup>7</sup> become enforceable as to part by or against the transferor and as to part by or against the transferee, the transferee<sup>8</sup> must give that person written notification of that fact<sup>9</sup>.

Where in consequence of a transfer to which these provisions apply<sup>10</sup> or of anything done in pursuance of these provisions:

- 2603 (1) the rights or liabilities of any person other than the transferor or the transferee which were enforceable against or by the transferor become enforceable as to part against or by the transferor and as to part against or by the transferee<sup>11</sup>; and
- 2604 (2) the value of any property or interest of that person is thereby diminished<sup>12</sup>,

such compensation as may be just must be paid to that person by the transferor, the transferee or both<sup>13</sup>.

Where the transferor or the transferee purports by any conveyance or transfer to transfer to some person other than the transferor or the transferee for consideration any land<sup>14</sup> or other property which before the transfer date<sup>15</sup> belonged to the transferor, or which is an interest in property which before that date belonged to the transferor, the conveyance or transfer is as effective as if both the transferor and the transferee had been parties to it and had thereby conveyed or transferred all their interest in the property conveyed or transferred<sup>16</sup>.

A court has the power described below<sup>17</sup> if at any stage in proceedings before it to which the transferor or transferee and a person other than the transferor or the transferee are parties it appears that the issues in the proceedings: (a) depend on the identification or definition of any of the property, rights or liabilities transferred which the transferor and the transferee have not yet effected<sup>18</sup>; or (b) raise a question of construction on the relevant statutory provisions<sup>19</sup> which would not arise if the transferor and the transferee constituted a single person<sup>20</sup>. In any such case the court has power, if it thinks fit on the application of a party to the proceedings other than the transferor or the transferee, to hear and determine the proceedings on the footing that such one of the transferor and the transferee as is a party to the proceedings represents and is answerable for the other of them, and that the transferor and the transferee constitute a single person<sup>21</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the National Assembly for Wales see PARA 53 ante.

3 As to the Education Transfer Council and its dissolution see PARA 1380 et seq ante.

4 Ie in pursuance of the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 para 2(1) (as substituted; modified for certain purposes) (see PARA 1390 ante) or of a direction under Sch 10 para 3 (as substituted; modified for certain purposes) (see PARA 1391 ante).

5 Ie without prejudice to the generality of ibid Sch 10 paras 6-8 (as amended): see PARA 1394 ante.

6 Ibid Sch 10 para 9(1). As to the transfers to which Sch 10 (as amended; modified for certain purposes) applies see PARA 1387 ante.

7 As to the meaning of 'liability' see PARA 1388 note 5 ante.

8 Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, it must give the written notification: see the Education Reform Act 1988 Sch 10 para 9(2) (amended by the School Standards and Framework Act 1998 s 137, Sch 29 para 10). As to transitional provisions see the School Standards and Framework Act 1998 (Commencement No 5 and Saving and Transitional Provisions) Order 1999, SI 1999/120, art 4.

9 Education Reform Act 1988 Sch 10 para 9(2) (modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(m)). As to the modification of the Education Reform Act 1988 Sch 10 para 9(2) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(f). As to grant-maintained schools see PARA 102 note 16 ante.

10 Ie a transfer to which the Education Reform Act 1988 Sch 10 (as amended; modified for certain purposes) applies: see PARA 1387 ante.

11 Ibid Sch 10 para 9(3)(a).

12 Ibid Sch 10 para 9(3)(b).

13 Ibid Sch 10 para 9(3). Any dispute as to whether and if so how much compensation is payable under Sch 10 para 9(3), or as to the person to whom it is to be paid, must be referred to and determined by an arbitrator: see Sch 10 para 9(4).

Any recommendation or appointment to the office of arbitrator in exercise of the function under Sch 10 para 9(4) must be made, by virtue of the Constitutional Reform Act 2005 s 85(1)(b), Sch 14 Pt 3, in accordance with ss 85-93, 96: see COURTS. Any function of the Lord Chancellor under the Education Reform Act 1988 Sch 10 para 9(4) is a 'protected function' within the meaning of the Constitutional Reform Act 2005 and may not be transferred, modified or abolished by an order under s 19(1): see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 477 et seq.

14 As to the meaning of 'land' see PARA 1381 note 5 ante.

15 As to the transfer date see PARA 1388 note 12 ante.

16 Education Reform Act 1988 Sch 10 para 9(5).

17 Ie the power set out in ibid Sch 10 para 9(7): see the text to note 21 infra.

18 Ibid Sch 10 para 9(6)(a) (amended by the School Standards and Framework Act 1998 Sch 29 para 8(c); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(n)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Education Reform Act 1988 Sch 10 para 9(6)(a) (as amended) also applies to the successor body or the Education Transfer Council: see Sch 10 para 9(6)(a) (amended by the School Standards and Framework Act 1998 Sch 29 paras 8(a), 8(c), 10). As to the modification of the Education Reform Act 1988 Sch 10 para 9(6) (as amended) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(g).

19 Ie the relevant provisions of the Education Reform Act 1988 or the School Standards and Framework Act 1998, or any regulations made under the School Standards and Framework Act 1998.

20 Education Reform Act 1988 Sch 10 para 9(6)(b) (amended by the School Standards and Framework Act 1998 Sch 29 para 8(b)).

21 Education Reform Act 1988 Sch 10 para 9(7). Any judgment or order given by a court in proceedings determined on that footing bind both the transferor and the transferee accordingly: Sch 10 para 9(8). It is the duty of the transferor and of the transferee to keep one another informed of any case where the transferor or the transferee under a transfer to which Sch 10 (as amended and modified) applies may be prejudiced by Sch 10 para 9(5) (see the text and notes 14-16 *supra*) or any judgment or order given by virtue of Sch 10 para 9(8): Sch 10 para 9(9) (amended by the School Standards and Framework Act 1998 Sch 29 para 8(c); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 7(n)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Education Reform Act 1988 Sch 10 para 9(9) (as amended) applies to the successor body or the Education Transfer Council: see Sch 10 para 9(9) (amended by the School Standards and Framework Act 1998 Sch 29 paras 8(c), 10). As to the modification of the Education Reform Act 1988 Sch 10 para 9(9) (as amended) in relation to property transfers to former grant-maintained schools in England see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 17(g).

If either the transferor or the transferee claims that he has been prejudiced under the Education Reform Act 1988 Sch 10 para 9(9) (as amended) and that the other of them ought to indemnify or make a payment to him on that account and has unreasonably failed to meet that claim, he may refer the matter to the Secretary of State for determination by the Secretary of State: Sch 10 para 9(10). As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 *ante*.

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### **1396. Provision of information.**

Any local education authority<sup>1</sup>, governing body<sup>2</sup> of a maintained school and institution within the further education sector<sup>3</sup> must give the Secretary of State<sup>4</sup> or, as the case may be, the National Assembly for Wales<sup>5</sup> such information as he or it may require for the purposes of the exercise of his or its functions in relation to certain property transfers<sup>6</sup>.

1 As to local education authorities see PARA 20 ante.

2 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. As to maintained schools generally see PARA 94 et seq ante.

3 Ie within the meaning of the Further and Higher Education Act 1992 s 91 (as amended): see PARA 579 ante.

4 As to the Secretary of State see PARA 52 ante.

5 As to the National Assembly for Wales see PARA 53 ante.

6 Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 3. This provision applies to property transfers under the Education Acts as modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209. For the meaning of 'the Education Acts' see PARA 1 note 14 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8). As to the transfers to which the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, apply see PARAS 1387 ante, 1397 post. Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, reg 3 will not apply: see PARA 1387 ante. See also PARA 1382 ante. As to the Education Transfer Council and its dissolution see PARAS 1380-1386 ante.

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### ***C. PROCEDURES UNDER THE FURTHER AND HIGHER EDUCATION ACT 1992***

#### **1397. Transfer of land and property to institutions within the further education sector.**

The provisions described below are exercisable by the Secretary of State<sup>1</sup> in relation to England<sup>2</sup> or the National Assembly for Wales<sup>3</sup> in relation to Wales<sup>4</sup> until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>5</sup>.

Where any land<sup>6</sup> or other property or rights which immediately before the operative date<sup>7</sup> in relation to any institution were held on trust for any particular purposes, or (as the case may be) for the general purposes of the institution<sup>8</sup>, and fall to be transferred under the Further and Higher Education Act 1992<sup>9</sup>, they continue to be so held by the transferee<sup>10</sup>.

The statutory provisions in relation to the identification and apportionment of property<sup>11</sup> have effect for the purpose of:

- 2605 (1) dividing and apportioning property, rights and liabilities<sup>12</sup> which fall to be transferred under any such transfer where that property has been used or held, or the rights or liabilities have been acquired or incurred, for the purposes of more than one educational institution<sup>13</sup>;
- 2606 (2) excluding from transfer in certain circumstances property, rights and liabilities which would otherwise fall to be transferred<sup>14</sup>;
- 2607 (3) providing for identifying and defining the property, rights and liabilities which fall to be transferred<sup>15</sup>; and
- 2608 (4) making supplementary and consequential provisions in relation to transfers<sup>16</sup>.

In carrying out the functions conferred or imposed by the provisions relating to the identification and apportionment of property, the Secretary of State or the Assembly must not act on behalf of the transferor, the transferee or any other interested person, but must seek to ensure that all such persons' interests are protected<sup>17</sup>.

The Secretary of State or the Assembly must, not later than the end of the period of six months beginning with the operative date in relation to a further education corporation<sup>18</sup>, provide the appropriate learning and skills council<sup>19</sup> with a written statement giving such particulars of all property, rights and liabilities transferred to that corporation as are then available to him or it<sup>20</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 As to the Education Transfer Council and its dissolution see PARAS 1380-1387 ante. Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, it is its duty, in carrying out the functions conferred or imposed on it by the Further and Higher Education Act 1992 Sch 5 (as amended) (see PARA 1398 post) to secure that each transfer to which s 36 (as amended) applies is, so far as practicable, fully effective on the date on which it takes effect under the Further and Higher Education Act 1992: s 36(5) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)). As to transfers to which the Further and Higher Education Act 1992 s 36 (as amended; modified for certain purposes) applies see note 9 infra.

Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, and where in accordance with the Further and Higher Education Act 1992 Sch 5 (as amended) anything falls to be or may be done by the successor body or the Education Transfer Council for the purposes of or in connection with any such transfer: (1) it may not be done by the transferee; and (2) in doing it the successor body or the Education Transfer Council is to be regarded as acting on behalf and in the name of the transferee: s 36(6) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)). In a case where the transferee is a body corporate established under the Further and Higher Education Act 1992, head (1) supra applies both in relation to things done before and in relation to things done after that body is established under the Further and Higher Education Act 1992: s 36(6).

6 As to the meaning of 'land' see PARA 1355 note 3 ante.

7 As to the meaning of 'operative date' see PARAS 583 note 4, 584 note 10 ante.

8 Further and Higher Education Act 1992 s 36(2)(a).

9 Ibid s 36(2)(b). Section 36 (as amended; modified for certain purposes) applies to any transfer under s 23 (as amended) (see PARA 586 ante) or s 32 (as amended) (see PARA 600 ante), and those provisions are subject to Sch 5 (as amended; modified for certain purposes) (see PARA 1398 post): s 36(1). As to savings in relation to appeals pending under the Further and Higher Education Act 1992 see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, regs 13-14.

10 Further and Higher Education Act 1992 s 36(2).

11 Ie ibid Sch 5 (as amended; modified for certain purposes): see PARA 1398 post.

12 As to the meaning of 'liability' see PARA 586 note 7 ante.

13 Further and Higher Education Act 1992 s 36(3)(a).

14 Ibid s 36(3)(b).

15 Ibid s 36(3)(c).

16 Ibid s 36(3)(d). As to transfers to which s 36 (as amended; modified for certain purposes) applies see note 9 supra.

17 Ibid s 36(6) (substituted by the Education New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 10(b)). However, where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established the Further and Higher Education Act 1992 s 36(6) (as substituted as a modification) does not apply: see note 5 supra. As to the modification of s 36(5) (as amended) (see note 5 supra) in relation to schools changing category or joining or leaving foundation bodies see the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209 reg 10(a).

18 Ie a further education corporation established under the Further and Higher Education Act 1992 s 15: see PARA 583 ante.

19 Ibid Pt I (ss 15-61A) (as amended) refers to a 'council' but for the purposes of that Part, any reference to a council is a reference to a learning and skills council: s 61A(1) (added by the Learning and Skills Act 2000 Sch 9 paras 1, 37). For the purposes of the Further and Higher Education Act 1992 Pt I (as amended), a reference to the 'appropriate council', in relation to any educational institution, is to be construed as follows: (1) if the institution mainly serves the population of England, the reference is to the Learning and Skills Council for England; (2) if the institution mainly serves the population of Wales, the reference is to the National Council for Education and Training for Wales; (3) if the institution receives financial support from the other Council, the reference is to that Council also: s 61A(2) (as so added). As to the Learning and Skills Council for England see PARA 1072 et seq ante; and as to the National Council for Education and Training for Wales see PARA 1113 et seq ante.

20 See *ibid* s 36(7) (modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 10(c)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Further and Higher Education Act 1992 s 36(7) (as amended) applies to the Education Transfer Council: s 36(7) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)).

If in any case within the Further and Higher Education Act 1992 s 36(7) (as modified) full particulars of all property, rights and liabilities transferred to the corporation concerned are not given in the statement required under s 36(7) (as modified), the Secretary of State or the Assembly must provide the appropriate learning and skills council with a further written statement giving any such particulars omitted from the earlier statement as soon as it is possible for him or it to do so: s 36(8) (modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 10(c)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, the Further and Higher Education Act 1992 s 36(8) (as amended) applies to it: s 36(8) (amended by virtue of the School Standards and Framework Act 1998 s 136(2)).

## **UPDATE**

### **1397 Transfer of land and property to institutions within the further education sector**

NOTE 19--1992 Act s 61A(1) repealed: National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238. For 'appropriate council' read 'appropriate body'; for 'National Council for Education and Training for Wales' read 'National Assembly for Wales'; and for 'other Council ... that Council' read 'other body ... that body': 1992 Act s 61A(2) (amended by SI 2005/3238).



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### **1398. Identification and apportionment of property, rights and liabilities.**

The provisions described below are exercisable by the Secretary of State<sup>1</sup> in relation to England<sup>2</sup> or the National Assembly for Wales<sup>3</sup> in relation to Wales<sup>4</sup> until such time as a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established<sup>5</sup>.

Any property, rights and liabilities<sup>6</sup> of a transferor authority<sup>7</sup> held or used, or subsisting for the purposes of more than one relevant institution<sup>8</sup>, or partly for the purposes of one or more relevant institutions and partly for other purposes of the transferor authority<sup>9</sup>, are to be divided or apportioned between the transferees, or (as the case may be) between the transferor authority and the transferee or transferees, in such proportions as may be appropriate<sup>10</sup>. The transferor and the transferee must, whether before or after the operative date<sup>11</sup>, so far as practicable arrive at such written agreements, and execute such other instruments, as are necessary or expedient to identify or define the property, rights and liabilities transferred to the transferee or retained by the transferor<sup>12</sup>. Where property, rights and liabilities have been identified and apportioned, provision is made in relation to the documents of title<sup>13</sup>, third parties affected by the vesting of property rights or liabilities<sup>14</sup>, proof of title by certificate<sup>15</sup> and in relation to the construction of agreements<sup>16</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 For the meaning of 'England' see PARA 52 note 11 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 For the meaning of 'Wales' see PARA 52 note 13 ante.

5 As to the Education Transfer Council and its dissolution see PARAS 1380-1387 ante.

6 As to the meaning of 'liability' see PARA 586 note 7 ante.

7 For these purposes, references to a transferor authority are references to a local authority who is the transferor for the purposes of any transfer to which the Further and Higher Education Act 1992 s 36, Sch 5 (as amended; modified for certain purposes) applies: see Sch 5 para 1(4)(a). As to transfers to which Sch 5 (as amended; modified for certain purposes) applies see PARA 1397 ante. For the meaning of 'local authority' see PARA 586 note 5 ante.

8 See *ibid* Sch 5 para 1(1)(a). For these purposes, references to a relevant institution are references to: (1) any institution for the conduct of which a body corporate is established under the Further and Higher Education Act 1992; and (2) any institution in relation to which s 32 (as amended) (see PARA 600 ante) has effect: see Sch 5 para 1(4)(b).

9 See *ibid* Sch 5 para 1(1)(b).

10 See *ibid* Sch 5 para 1(1). As to further provisions in relation to the division and apportionment of property see Sch 5 para 1 (amended by virtue of the School Standards and Framework Act 1998 s 136(2); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 11(a)).

11 As to the meaning of 'operative date' see PARAS 583 note 4, 584 note 10 ante.

12 See the Further and Higher Education Act 1992 Sch 5 para 2(1). As to further provisions in relation to the identification of rights and liabilities see Sch 5 paras 2, 3 (both amended by virtue of the School Standards and Framework Act 1998 s 136(2); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 11(b)-(f)). Additional provision is made in relation to the identification of rights and liabilities where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established: see the Further and Higher Education Act 1992 Sch 5 paras 4, 5 (both amended by virtue of the School Standards and Framework Act 1998 s 136(2); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 11(g)).

13 See the Further and Higher Education Act 1992 Sch 5 para 6 (amended by the Land Registration Act 2002 s 133, Sch 11 para 27).

14 See the Further and Higher Education Act 1992 Sch 5 para 7 (amended by virtue of the School Standards and Framework Act 1998 s 136(2); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 11(h), (i)). Where a successor body to the Education Transfer Council is established or the Education Transfer Council is re-established, additional provision is made in relation to the delivery of documents to the transferee: see the Further and Higher Education Act 1992 Sch 5 para 8 (amended by virtue of the School Standards and Framework Act 1998 s 136(2); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 11(j)).

15 As to proof of title see the Further and Higher Education Act 1992 s 87, Sch 7 para 1 (amended by virtue of the School Standards and Framework Act 1998 s 136(2); and modified by the Education (New Procedures for Property Transfers) Regulations 2000, SI 2000/3209, reg 12).

16 As to the construction of agreements see the Further and Higher Education Act 1992 Sch 7 paras 2-4.

## **UPDATE**

### **1398 Identification and apportionment of property, rights and liabilities**

NOTE 14--See Constitutional Reform Act 2005 ss 19, 85, Sch 7 para 4, Sch 14 Pt 3.

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### **(iii) Transfer of Land from Grant-maintained Schools on 1 September 1999**

#### **1399. Rules relating to transfers.**

Provision was made for the transfer of land<sup>1</sup> from grant-maintained<sup>2</sup> or grant-maintained special schools<sup>3</sup> to community, foundation, voluntary or community special schools<sup>4</sup> on 1 September 1999<sup>5</sup>. Where any land was transferred to and vested in any body on 1 September 1999, any rights or liabilities<sup>6</sup> enjoyed or incurred by the transferor in connection with the land, and subsisting immediately before the 1 September 1999, were also transferred to, and vested<sup>7</sup> in, that body<sup>8</sup>.

1 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

2 As to the meaning of 'grant-maintained school' see PARA 102 note 16 ante; definition applied by virtue of ibid s 74, Sch 21 para 1.

3 As to the meaning of 'grant-maintained special school' see PARA 102 note 17 ante; definition applied by virtue of ibid Sch 21 para 1.

4 As to community, foundation, voluntary and community special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

5 See the School Standards and Framework Act 1998 Sch 21 paras 4-10; and PARAS 1400-1404 post. The reference in the text to 1 September 1999 is a reference to the appointed day: see PARA 102 note 3 ante. Schedule 21 Pt II paras 3-9 (see PARAS 1400-1403 post) applies to schools which, in accordance with s 20, Sch 2 became community, foundation, voluntary or community special schools on 1 September 1999: Sch 21 para 3(1). Schedule 21 Pt II has effect subject to Sch 21 Pt III para 10 (property excluded from transfers: see PARA 1404 post): Sch 21 para 3(2).

6 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).

7 Ie by virtue of the School Standards and Framework Act 1998.

8 Ibid Sch 21 para 2(1). Schedule 21 is subject to the Education Reform Act 1988 s 198 (as amended; modified for certain purposes), which with s 198(2) (as substituted), Sch 10 (as amended; modified for certain purposes) (see PARAS 1388-1395 ante) makes further provision in relation to transfers of property, rights and liabilities: School Standards and Framework Act 1998 Sch 21 para 2(3). References to the transfer date in the Education Reform Act 1988 Sch 10 (as amended; modified for certain purposes), as applied by virtue of the School Standards and Framework Act 1998 Sch 21 para 2(3), are references to the appointed day: Sch 21 para 2(3).

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#### **1400. Transfers for purposes of community schools.**

Where a grant-maintained school<sup>1</sup> (an 'existing school') became a community school<sup>2</sup>: (1) any publicly funded land<sup>3</sup> had to be transferred on 1 September 1999<sup>4</sup> to, and vested<sup>5</sup> in, the local education authority<sup>6</sup>; (2) any other land which, immediately before 1 September 1999, was held by the governing body for the purposes of the existing school was to be transferred to, and vested in, the authority in accordance with a transfer agreement<sup>7</sup>; and (3) any land which, immediately before 1 September 1999, was held by any trustees for the purposes of the existing school<sup>8</sup> was to be transferred to, and vested in, the authority in accordance with a transfer agreement<sup>9</sup>.

Where these provisions applied to an existing school and any land held by a person or body other than the governing body of the school was, immediately before 1 September 1999, used for the purposes of the school, any rights or liabilities<sup>10</sup> enjoyed or incurred by the governing body in connection with the use of the land<sup>11</sup> and subsisting immediately before 1 September 1999<sup>12</sup>, were required on that day to be transferred to, and vested in, the local education authority<sup>13</sup>.

Where these provisions applied to an existing school and any land held by a person or body other than any trustees who held any land for the purposes of the school was, immediately before 1 September 1999, used for the purposes of the school, any rights or liabilities enjoyed or incurred by any such trustees in connection with the use of the land<sup>14</sup> and subsisting immediately before 1 September 1999<sup>15</sup> were required on that day to be transferred to, and vested in, the local education authority in accordance with a transfer agreement<sup>16</sup>.

1 As to the meaning of 'grant-maintained school' see PARA 102 note 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 74, Sch 21 para 1.

2 Ibid Sch 21 para 4(1). As to community schools see PARA 102 et seq ante.

Schedule 21 is subject to the Education Reform Act 1988 s 198, Sch 10 (as amended; modified for certain purposes) (see PARAS 1388-1395 ante): see PARA 1399 note 8 ante.

3 For these purposes, 'publicly funded land' means land which: (1) immediately before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) was held by the governing body for the purposes of the existing school; and (2) was acquired from a local authority under a transfer under the Education Act 1996 s 201(1)(a) (repealed) or from the Funding Agency for Schools or was acquired wholly by means of any maintenance, special purpose or capital grant (ie within the meaning of Pt III Ch VI (ss 244-258) (repealed)): School Standards and Framework Act 1998 Sch 21 para 4(3). As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of s 142(8). For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of s 142(8). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

4 Ie the appointed day: see PARA 102 note 3 ante.

5 Ie by virtue of the School Standards and Framework Act 1998.

6 Ibid Sch 21 para 4(2)(a). Stamp duty is not chargeable in respect of any transfer to a local authority under any of the following provisions, ie s 74, Sch 21 para 4 or Sch 21 para 7 (see PARA 1403 post) or any corresponding provision of regulations under s 20, Sch 2 para 10 (see PARA 102 ante), Sch 22 para 4(2) (see PARA 1368 ante), Sch 22 para 5(4) (see PARAS 1369-1370 ante), Sch 22 para 6(2)(b) (see PARA 1372 ante), Sch 22 para 7(2) (see PARA 1374 ante) or Sch 22 para 8(2)(b) (see PARA 1375 ante), or any regulations under s 35, Sch 8

para 5 (see PARA 116 ante): s 79(1). However, no instrument (other than a statutory instrument) made or executed under or in pursuance of any of the provisions mentioned in s 79(1) is to be treated as duly stamped unless it is stamped with the duty to which it would be liable but for s 79(1) or it has, in accordance with the Stamp Act 1891 s 12 (as substituted) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1111), been stamped with a particular stamp denoting that it is not chargeable with any duty or that it has been duly stamped: School Standards and Framework Act 1998 s 79(2). In s 79(1), any reference to a transfer under any provision or regulations mentioned in s 79(1) is to be read as a reference to a transfer under that provision or those regulations taken with the Education Reform Act 1988 s 198 (as amended; modified for certain purposes) and Sch 10 (as amended; modified for certain purposes) (see PARAS 1388-1395 ante), if those provisions of the Education Reform Act 1988 apply to the transfer by virtue of any provision of the School Standards and Framework Act 1998 or the Education Reform Act 1988: School Standards and Framework Act 1998 s 79(3). As to stamp duty generally see STAMP DUTIES AND STAMP DUTY RESERVE TAX. As to local education authorities see PARA 20 ante. For the purposes of stamp duty land tax, a land transaction entered into by virtue of any of the provisions mentioned in s 79(1) is exempt from charge: s 79A(1) (s 79A added by the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003, SI 2003/2867, reg 2, Schedule Pt 1 para 28). Relief under the School Standards and Framework Act 1998 s 79A (as added) must be claimed in a land transaction return or an amendment of such a return: s 79A(2) (as so added). For these purposes, 'land transaction' has the meaning given by the Finance Act 2003 s 43(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX); and 'land transaction return' has the meaning given by the Finance Act 2003 s 76(1) (see STAMP DUTIES AND STAMP DUTY RESERVE TAX): School Standards and Framework Act 1998 s 79A(3) (as so added).

7 Ibid Sch 21 para 4(2)(b). For these purposes, 'transfer agreement' means an agreement: (1) made for the purposes of Sch 21 para 4(2) or Sch 21 para 9(2) (see the text and notes 14-16 infra) between the local education authority and the governing body or, as the case may be, trustees mentioned in Sch 21 para 4(2) or Sch 21 para 9(2); and (2) providing for the land in question to be transferred to, and vested in, the authority on 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), whether or not in consideration of the payment by the authority of such amount as may have been agreed between the parties: Sch 21 paras 4(4), 9(4).

8 As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

9 School Standards and Framework Act 1998 Sch 21 para 4(2)(c). Where immediately before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) any land vested in a local authority was by virtue of any statutory provision required to be transferred to the governing body or to any trustees of an existing school within the meaning of any of the provisions of Sch 21 paras 4-7, but the land had not yet been so transferred, that provision applied to the school as if it had been so transferred by that time: Sch 21 para 8. As to property excluded from transfers see PARA 1404 post.

10 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).

11 Ibid Sch 21 para 9(1)(a).

12 Ibid Sch 21 para 9(1)(b).

13 Ibid Sch 21 para 9(1). However, nothing in Sch 21 para 9 applied in relation to land to which Sch 21 para 4 (see the text and notes 1-9 supra) applied: Sch 21 para 9(3).

14 Ibid Sch 21 para 9(2)(a).

15 Ibid Sch 21 para 9(2)(b).

16 Ibid Sch 21 para 9(2).

## UPDATE

### 1400 Transfers for purposes of community schools

NOTE 6--Also, stamp duty is not chargeable in respect of any transfer to a local authority under any regulations made under the Education and Inspections Act 2006 s 24 by virtue of s 24(3)(b) (see PARA 165A.5): School Standards and Framework Act 1998 s 79(1) (amended by the 2006 Act Sch 3 para 27, Sch 18 Pt 3).

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#### **1401. Transfers for purposes of foundation schools.**

Where a grant-maintained school<sup>1</sup> (an 'existing school') became a foundation school<sup>2</sup> and, as from 1 September 1999<sup>3</sup>, the school (as a foundation school) became a member of the group<sup>4</sup> for which a foundation body<sup>5</sup> acts<sup>6</sup>, any land<sup>7</sup> which immediately before 1 September 1999 was held by the governing body<sup>8</sup> for the purposes of the existing school was required on that day to be transferred to, and vested<sup>9</sup> in, the foundation body<sup>10</sup>.

Where these provisions applied to an existing school and any land held by a person or body other than the governing body of the school was, immediately before 1 September 1999, used for the purposes of the school, any rights or liabilities<sup>11</sup> enjoyed or incurred by the governing body in connection with the use of the land<sup>12</sup> and subsisting immediately before 1 September 1999<sup>13</sup>, were required on that day to be transferred to, and vested in, the foundation body<sup>14</sup>.

1 As to the meaning of 'grant-maintained school' see PARA 102 note 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 74, Sch 21 para 1.

2 Ibid Sch 21 para 5(1)(a). As to foundation schools see PARA 102 et seq ante.

Schedule 21 is subject to the Education Reform Act 1988 s 198, Sch 10 (as amended; modified for certain purposes) (see PARAS 1388-1395 ante): see PARA 1399 note 8 ante.

3 I.e. the appointed day: see PARA 102 note 3 ante.

4 For the meaning of 'the group' see PARA 104 note 6 ante.

5 For the meaning of 'foundation body' see PARA 104 note 6 ante.

6 School Standards and Framework Act 1998 Sch 21 para 5(1)(b).

7 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of ibid s 142(8).

8 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

9 I.e. by virtue of the School Standards and Framework Act 1998.

10 Ibid Sch 21 para 5(2). Any reference in Sch 21, in relation to a school, to land being transferred to, and vesting in, a foundation body is a reference to its being transferred to, and vesting in, that body for the purposes of the schools comprising the group for which that body acts: Sch 21 para 2(2). As to outstanding transfers to existing schools see Sch 21 para 8; and PARA 1400 note 9 ante. As to property excluded from transfers see PARA 1404 post.

11 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).

12 Ibid Sch 21 para 9(1)(a).

13 Ibid Sch 21 para 9(1)(b).

14 Ibid Sch 21 para 9(1). However, nothing in Sch 21 para 9 applied in relation to land to which Sch 21 para 5 applied: Sch 21 para 9(3).

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#### **1402. Transfers for purposes of voluntary schools.**

Where a grant-maintained school<sup>1</sup> (an 'existing school') became a voluntary school<sup>2</sup> and as from 1 September 1999<sup>3</sup> the school (as a voluntary school) became a member of the group<sup>4</sup> for which a foundation body<sup>5</sup> acts<sup>6</sup>, any land<sup>7</sup> which immediately before 1 September 1999 was held by the governing body<sup>8</sup> for the purposes of the existing school was required on that day to be transferred to, and vested<sup>9</sup> in, the foundation body<sup>10</sup>.

Where these provisions applied to an existing school and any land held by a person or body other than the governing body of the school was, immediately before 1 September 1999, used for the purposes of the school, any rights or liabilities<sup>11</sup> enjoyed or incurred by the governing body in connection with the use of the land<sup>12</sup> and subsisting immediately before 1 September 1999<sup>13</sup>, were required on that day to be transferred to, and vested in, the foundation body<sup>14</sup>.

1 As to the meaning of 'grant-maintained school' see PARA 102 note 16 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 74, Sch 21 para 1.

2 Ibid Sch 21 para 6(1)(a). As to voluntary schools see PARA 102 et seq ante.

Schedule 21 is subject to the Education Reform Act 1988 s 198, Sch 10 (as amended; modified for certain purposes) (see PARAS 1388-1395 ante): see PARA 1399 note 8 ante.

3 I.e. the appointed day: see PARA 102 note 3 ante.

4 For the meaning of 'the group' see PARA 104 note 6 ante.

5 For the meaning of 'foundation body' see PARA 104 note 6 ante.

6 School Standards and Framework Act 1998 Sch 21 para 6(1)(b).

7 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of ibid s 142(8).

8 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

9 I.e. by virtue of the School Standards and Framework Act 1998.

10 Ibid Sch 21 para 6(2). As to outstanding transfers to existing schools see Sch 21 para 8; and PARA 1400 note 9 ante. As to land transferred to and vesting in a foundation body see Sch 21 para 2(2); and PARA 1401 note 10 ante. As to property excluded from transfers see PARA 1404 post.

11 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of ibid s 142(8).

12 Ibid Sch 21 para 9(1)(a).

13 Ibid Sch 21 para 9(1)(b).

14 Ibid Sch 21 para 9(1). However, nothing in Sch 21 para 9 applied in relation to land to which Sch 21 para 6 (see the text and notes 1-10 supra) applied: Sch 21 para 9(3).

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### **1403. Transfers for purposes of community special schools.**

Where a grant-maintained special school<sup>1</sup> (an 'existing school') became a community special school<sup>2</sup>: (1) any publicly funded land<sup>3</sup> was required on 1 September 1999<sup>4</sup> to be transferred to, and vested<sup>5</sup> in, the local education authority<sup>6</sup>; (2) any other land which, immediately before 1 September 1999, was held by the governing body for the purposes of the existing school was required to be transferred to, and vested in, the authority in accordance with a transfer agreement<sup>7</sup>; and (3) any land which, immediately before 1 September 1999, was held by any trustees for the purposes of the existing school<sup>8</sup> was required to be transferred to, and vested in, the authority in accordance with a transfer agreement<sup>9</sup>.

Where these provisions applied to an existing school and any land held by a person or body other than the governing body of the school was, immediately before 1 September 1999, used for the purposes of the school, any rights or liabilities<sup>10</sup> enjoyed or incurred by the governing body in connection with the use of the land<sup>11</sup> and subsisting immediately before 1 September 1999<sup>12</sup>, were required on that day to be transferred to, and vested in, the local education authority<sup>13</sup>.

Where these provisions applied to an existing school and any land held by a person or body other than any trustees who held any land for the purposes of the school was, immediately before 1 September 1999, used for the purposes of the school, any rights or liabilities enjoyed or incurred by any such trustees in connection with the use of the land<sup>14</sup> and subsisting immediately before 1 September 1999<sup>15</sup>, were required on that day to be transferred to, and vested in, the local education authority in accordance with a transfer agreement<sup>16</sup>.

1 As to the meaning of 'grant-maintained special school' see PARA 102 note 17 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 74, Sch 21 para 1.

2 Ibid Sch 21 para 7(1). As to community special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante. Schedule 21 is subject to the Education Reform Act 1988 s 198, Sch 10 (as amended; modified for certain purposes) (see PARAS 1388-1395 ante): see PARA 1399 note 8 ante.

3 For these purposes, 'publicly funded land' means land which: (1) immediately before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante) was held by the governing body for the purposes of the existing school; and (2) was acquired from a local authority under a transfer under the Education Act 1996 s 201(1)(a) (repealed) or from the Funding Agency for Schools or was acquired wholly by means of any maintenance, special purpose or capital grant (ie within the meaning of the Education Act 1996 Pt III Ch VI (ss 244-258) (repealed)): School Standards and Framework Act 1998 Sch 21 para 7(3). For the meaning of 'local authority' see PARA 50 note 1 ante; definition applied by virtue of s 142(8). As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of s 142(8). As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. The Funding Agency for Schools has been abolished: see PARA 65 note 6 ante.

4 Ie the appointed day: see PARA 102 note 3 ante.

5 Ie by virtue of the School Standards and Framework Act 1998.

6 Ibid Sch 21 para 7(2)(a). As to stamp duty payable in respect of certain transfers to a local authority see PARA 1400 note 6 ante. As to local education authorities see PARA 20 ante.

7 Ibid Sch 21 para 7(2)(b). For these purposes, 'transfer agreement' means an agreement: (1) made for the purposes of Sch 21 para 7(2) or Sch 21 para 9(2) (see the text and notes 14-16 infra) between the local education authority and the governing body or, as the case may be, the trustees mentioned in Sch 21 para 7(2)



or Sch 21 para 9(2); and (2) providing for the land in question to be transferred to, and vested in, the authority on 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), whether or not in consideration of the payment by the authority of such amount as may have been agreed between the parties: Sch 21 paras 7(4), 9(4).

8 As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

9 School Standards and Framework Act 1998 Sch 21 para 7(2)(c). As to outstanding transfers to existing schools see Sch 21 para 8; and PARA 1400 note 9 ante. As to property excluded from transfers see PARA 1404 post.

10 As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of *ibid* s 142(8).

11 *Ibid* Sch 21 para 9(1)(a).

12 *Ibid* Sch 21 para 9(1)(b).

13 *Ibid* Sch 21 para 9(1). However, nothing in Sch 21 para 9 applied in relation to land to which Sch 21 para 7 applied: Sch 21 para 9(3).

14 *Ibid* Sch 21 para 9(2)(a).

15 *Ibid* Sch 21 para 9(2)(b).

16 *Ibid* Sch 21 para 9(2).

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#### **1404. Property excluded from transfers.**

The rules relating to transfers of land on 1 September 1999<sup>1</sup> do not have the effect of transferring to, or vesting in, any body:

- 2609 (1) any excluded land, rights or liabilities<sup>2</sup>;
- 2610 (2) any rights or liabilities under a contract of employment<sup>3</sup>;
- 2611 (3) any liability of a governing body<sup>4</sup> in respect of the principal of, or any interest on, any loan<sup>5</sup>;
- 2612 (4) any liability in tort<sup>6</sup>; or
- 2613 (5) any rights or liabilities which are determined in accordance with regulations to be rights or liabilities falling within these categories<sup>7</sup>.

<sup>1</sup> I.e. the School Standards and Framework Act 1998 s 74, Sch 21 Pt II paras 3-9: see PARAS 1399-1403 ante. The reference in the text to 1 September 1999 is a reference to the appointed day: see PARA 102 note 3 ante.

<sup>2</sup> Ibid Sch 21 para 10(1)(a). As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of s 142(8). As to the meaning of 'liability' see PARA 1434 note 5 post; definition applied by virtue of s 142(8). The reference in the text to excluded land, rights or liabilities is a reference to land, rights or liabilities excluded under Sch 21 para 10(2) or Sch 21 para 10(3). Where before 1 September 1999 (ie the appointed day: see PARA 102 note 3 ante), the prospective transferee and transferor agreed in writing that any land should be excluded from the operation of Sch 21 Pt II (see PARAS 1399-1403 ante) and the Secretary of State gave his written approval of the agreement, the land, and any rights or liabilities relating to it, were so excluded: Sch 21 para 10(2). An agreement under Sch 21 para 10(2) may provide for the land to be used or held for the purposes of the school, as a school of a new category, on such terms as may be specified in or determined in accordance with the agreement: Sch 21 para 10(4). Where in default of agreement under Sch 21 para 10(2) the prospective transferee or transferor applied to the Secretary of State to exclude any land from the operation of Sch 21 Pt II and the Secretary of State by order directed its exclusion, the land, and any rights or liabilities relating to it, were so excluded: Sch 21 para 10(3). Directions under Sch 21 para 10(3) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and have effect as if contained in such an agreement: Sch 21 para 10(4). Orders under Sch 21 para 10 are not made by statutory instrument: see s 138(2) (as amended); and PARA 82 note 15 ante. Orders under Sch 21 para 10 are local in nature, and are not recorded in this work. For these purposes, 'the prospective transferee', in relation to any land, means the body to whom, apart from the School Standards and Framework Act 1998 Sch 21 para 10(2) or Sch 21 para 10(3), the land would fall to be transferred under Sch 21 Pt II (see PARAS 1399-1403 ante); and 'the prospective transferor' is to be construed accordingly: Sch 21 para 10(5). For these purposes, 'new category' means one of the categories set out in s 20(1) (see PARA 102 ante): Sch 21 para 10(5). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

<sup>3</sup> Ibid Sch 21 para 10(1)(b). For the meaning of 'contract of employment' see PARA 355 note 9 ante.

<sup>4</sup> As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

<sup>5</sup> School Standards and Framework Act 1998 Sch 21 para 10(1)(c).

<sup>6</sup> Ibid Sch 21 para 10(1)(d).

<sup>7</sup> Ibid Sch 21 para 10(1)(e). 'Regulations' means regulations made under the School Standards and Framework Act 1998: s 142(1). As to the making of regulations generally under the School Standards and Framework Act 1998 see PARA 82 note 15 ante. At the date at which this volume states the law, no regulations had been made under Sch 21.



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#### **1405. Transfer of land by governing body to trustees.**

Where a building is to be provided for a foundation or voluntary school<sup>1</sup> and the building:

2614 (1) is to form part of the school premises<sup>2</sup>; and

2615 (2) is to be constructed partly on land<sup>3</sup> held by the governing body<sup>4</sup> and partly on land held on trust for the purposes of the school<sup>5</sup> by persons other than the governing body<sup>6</sup>,

the governing body must transfer to those persons the land held by the governing body on which the building is to be constructed<sup>7</sup>.

1 As to foundation and voluntary schools see PARA 102 et seq ante.

2 School Standards and Framework Act 1998 s 75(1)(a).

3 As to the meaning of 'land' see PARA 1352 note 9 ante; definition applied by virtue of ibid s 142(8).

4 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

5 As to the meaning of 'land or other property held on trust, or by trustees, for the purposes of a school' see PARA 104 note 6 ante.

6 School Standards and Framework Act 1998 s 75(1)(b).

7 Ibid s 75(1). Schedule 22 para 1 (as amended) (see PARA 1364 ante) does not apply to any transfer required by s 75(1): s 75(2).

#### **UPDATE**

#### **1405 Transfer of land by governing body to trustees**

NOTE 7--After 'Schedule 22' read 'para A1 or' 1998 Act s 75(2) (amended by the Education and Inspections Act 2006 Sch 4 para 19).

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#### **(iv) Transfer of Land to Academies**

##### **1406. Transfer schemes.**

The Secretary of State<sup>1</sup> may make a scheme in relation to land<sup>2</sup> if the following requirements are met<sup>3</sup>:

- 2616 (1) a local education authority<sup>4</sup> holds a freehold or leasehold interest in the land<sup>5</sup> when the scheme is made<sup>6</sup>;
- 2617 (2) at any time in the period of eight years ending with the day on which the scheme is made, the land was used wholly or mainly for the purposes of a county school<sup>7</sup> or community school<sup>8</sup>;
- 2618 (3) at the time the scheme is made the land is no longer used as mentioned in head (2) above or the Secretary of State thinks it is about to be no longer so used<sup>9</sup>;
- 2619 (4) before making the scheme the Secretary of State consulted the authority<sup>10</sup>.

The Secretary of State may also make a scheme in relation to land if: (a) a local education authority holds a freehold or leasehold interest in the land when the scheme is made<sup>11</sup>; (b) the land forms the whole or part of a site specified in a notice published pursuant to proposals for new secondary schools<sup>12</sup> as a possible site for a new school<sup>13</sup>; and (c) before making the scheme, the Secretary of State consulted the authority<sup>14</sup>.

Any such scheme must meet the following requirements<sup>15</sup>:

- 2620 (i) it must provide for a transfer of the authority's interest in the land or in such part of it as is specified in the scheme<sup>16</sup>;
- 2621 (ii) the transfer must be to a person (the transferee) who is specified in the scheme and is concerned with the running of an academy<sup>17</sup>;
- 2622 (iii) the transfer must be made to the transferee for the purposes of the academy<sup>18</sup>;
- 2623 (iv) in the case of a scheme falling within heads (a) to (c) above, the academy must have been the subject of proposals published under the Education Act 2002<sup>19</sup>;
- 2624 (v) the scheme must provide for the transfer to the transferee of any right or liability<sup>20</sup> held by the authority as holder of the interest in the land or specified part concerned<sup>21</sup>.

A scheme may include such supplementary, incidental, consequential or transitional provisions as the Secretary of State thinks are appropriate<sup>22</sup>. It must be so expressed that it does not come into force<sup>23</sup> while the land concerned is used as mentioned in head (2) above<sup>24</sup>. When a scheme comes into force it has effect to transfer (in accordance with its provisions) the interests, rights and liabilities to which it applies<sup>25</sup>. A transfer made by virtue of a scheme is binding on all persons (as well as on the authority and the transferee) even if, apart from this provision, it would have required the consent or concurrence of any person<sup>26</sup>.

Regulations under these provisions<sup>27</sup> may in particular include:

- 2625 (A) provision requiring a person to be appointed by the Secretary of State in connection with the proposed making of a scheme<sup>28</sup>;

- 2626 (B) provision requiring the appointed person to identify the interests, rights and liabilities to be the subject of such a scheme<sup>29</sup>;
- 2627 (C) provision requiring the authority concerned to provide the appointed person with such documents as he may require in order to identify the interests, rights and liabilities to be the subject of such a scheme<sup>30</sup>;
- 2628 (D) provision requiring an authority whose interest is (or is to be) transferred by virtue of such a scheme to execute instruments and deliver certificates for the purposes of the enactments relating to registered land<sup>31</sup>;
- 2629 (E) provision treating such an authority as having given acknowledgement in writing of the right to production of documents<sup>32</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 As to the meaning of 'land' see PARA 1352 note 9 ante.

3 Education Act 1996 s 482(6), Sch 35A para 1(1) (Sch 35A added by the Education Act 2002 s 65(3), Sch 7 Pt 1 para 1).

4 As to local education authorities see PARA 20 ante.

5 As to the meaning of 'interest in land' see PARA 1352 note 9 ante.

6 Education Act 1996 Sch 35A para 1(1)(a) (as added: see note 3 supra).

7 County schools are now community schools: see PARA 105 ante.

8 Education Act 1996 Sch 35A para 1(1)(b) (as added: see note 3 supra). As to community schools see PARA 102 et seq ante. A dwelling-house used by an authority for occupation by a person employed to work at a school is to be treated for the purposes of Sch 35A (as added) as used for the purposes of the school: Sch 35A para 13 (as so added).

9 Ibid Sch 35A para 1(1)(c) (as added: see note 3 supra).

10 Ibid Sch 35A para 1(1)(d) (as added: see note 3 supra).

11 Ibid Sch 35A para 1(2)(a) (as added: see note 3 supra).

12 Ie published under the Education Act 2002 s 70 (prospectively repealed) (proposals for additional secondary schools: see PARAS 150 et seq, 497 et seq ante); Education Act 1996 Sch 35A para 1(2)(b) (as added: see note 3 supra). The Education Act 1996 Sch 35A para 1(2)(b) (as added) is amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so that the reference to the Education Act 2002 s 70 (prospectively repealed) is replaced by a reference to the Education Act 2005 s 66 (not yet in force) (proposals for new secondary schools in England: see PARA 158 et seq ante); see the Education Act 1996 Sch 35A para 1(2)(b) (as so added; and prospectively amended by the Education Act 2005 s 72, Sch 12 para 5(1), (2)). At the date at which this volume states the law, no such day had been appointed.

13 Education Act 1996 Sch 35A para 1(2)(b) (as added: see note 3 supra).

14 Ibid Sch 35A para 1(2)(c) (as added: see note 3 supra).

15 Ibid Sch 35A para 1(3) (as added: see note 3 supra).

16 Ibid Sch 35A para 1(3)(a) (as added: see note 3 supra).

17 Ibid Sch 35A para 1(3)(b) (as added: see note 3 supra).

Where: (1) a freehold or leasehold interest in land is transferred for no consideration from a local authority to a person for the purposes of an academy, whether or not by virtue of a scheme under Sch 35A para 1 (as added); and (2) at any time on or after 26 July 2002 (ie the day on which Sch 35A (as added) came into force: see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 2), the authority is granted an option to make a reacquisition of the interest (subject to whatever conditions), the rule against perpetuities does not apply to the option: Education Act 1996 Sch 35A para 9 (as so added). As to the rule against perpetuities see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1008 et seq. Where a lease is granted by or transferred from a local authority to a person for the purposes of an academy on or after 26 July 2002, the Law of Property Act 1925 s 153 (as amended) (enlargement of leases granted for no rent etc: see LANDLORD AND TENANT vol 27(3)

(2006 Reissue) PARA 1386) does not apply to permit that person to enlarge the term under the lease: Education Act 1996 Sch 35A para 10(1) (as so added). As to academies see PARA 496 et seq ante.

18 Ibid Sch 35A para 1(3)(c) (as added: see note 3 supra).

19 Ibid Sch 35A para 1(3)(d) (as added: see note 3 supra). The text refers to proposals published under the Education Act 2002 s 70 (prospectively repealed) (proposals for additional secondary schools: see PARAS 150 et seq, 497 et seq ante): Education Act 1996 Sch 35A para 1(3)(d) (as so added). The Education Act 1996 Sch 35A para 1(3)(d) (as added) is amended as from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b) so that the reference to the Education Act 2002 s 70 (prospectively repealed) is replaced by a reference to the Education Act 2005 s 66 (not yet in force) (proposals for new secondary schools in England: see PARA 158 et seq ante): see the Education Act 1996 Sch 35A para 1(3)(d) (as so added; and prospectively amended by the Education Act 2005 s 72, Sch 12 para 5(1), (3)). At the date at which this volume states the law, no such day had been appointed.

20 This reference to a right or liability includes a reference to a right or liability as a trustee, but excludes a reference to a liability in respect of the principal of or interest on a loan: Education Act 1996 Sch 35A para 1(4) (as added: see note 3 supra).

21 Ibid Sch 35A para 1(3)(e) (as added: see note 3 supra).

22 Ibid Sch 35A para 1(5) (as added: see note 3 supra).

23 A scheme comes into force on the day it specifies for it to come into force, or on the day it otherwise identifies as the day for it to come into force: ibid Sch 35A para 1(7) (as added: see note 3 supra).

24 Ibid Sch 35A para 1(6) (as added: see note 3 supra).

25 Ibid Sch 35A para 1(8) (as added: see note 3 supra).

26 Ibid Sch 35A para 1(9) (as added: see note 3 supra).

27 I.e. regulations under ibid Sch 35A (as added). 'Regulations' means regulations made under the Education Act 1996: s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under Sch 35A (as added).

28 Ibid Sch 35A para 11(1)(a) (as added: see note 3 supra).

29 Ibid Sch 35A para 11(1)(b) (as added: see note 3 supra).

30 Ibid Sch 35A para 11(1)(c) (as added: see note 3 supra).

31 Ibid Sch 35A para 11(1)(d) (as added: see note 3 supra).

32 Ibid Sch 35A para 11(1)(e) (as added: see note 3 supra).

## **UPDATE**

### **1406 Transfer schemes**

NOTES 12, 19--Day now appointed: SI 2006/2129. 1996 Act Sch 35A para 1(2)(b), (3)(d) amended: Education and Inspections Act 2006 Sch 3 para 12.

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### **1407. Transfer of land from former academies.**

The following provisions apply if:

- 2630 (1) a freehold or leasehold interest in land<sup>1</sup> is transferred from a local education authority<sup>2</sup> on or after 28 July 2000<sup>3</sup>;
- 2631 (2) the transfer is made to a person for the purposes of an academy<sup>4</sup>; and
- 2632 (3) the first or the second condition set out below is satisfied<sup>5</sup>.

The first condition referred to above is that the school concerned ceases to be an academy<sup>6</sup>, and immediately before the school ceases to be an academy the interest is held by a person for the purposes of the academy<sup>7</sup>. The second condition is that, although the school concerned continues to be an academy, the interest ceases to be held for the purposes of the academy<sup>8</sup>.

The Secretary of State<sup>9</sup> may make a scheme providing for the transfer of the interest from the person holding it<sup>10</sup> to the authority from which the transfer mentioned in head (1) above was made<sup>11</sup>. Such a scheme may include such supplementary, incidental, consequential or transitional provisions as the Secretary of State thinks are appropriate<sup>12</sup>. A scheme comes into force on the day it specifies for it to come into force<sup>13</sup>. When a scheme comes into force it has effect to transfer (in accordance with its provisions) the interest to which it applies<sup>14</sup>. A transfer made by virtue of a scheme is binding on all persons (as well as on the authority and the transferee) even if it would otherwise have required the consent or concurrence of any person<sup>15</sup>.

1 As to the meaning of 'land', and as to the meaning of 'interest in land', see PARA 1352 note 9 ante.

2 As to local education authorities see PARA 20 ante.

3 Education Act 1996 s 482(6), Sch 35A para 8(1)(a) (Sch 35A added by the Education Act 2002 s 65(3), Sch 7 Pt 1 para 1). The date mentioned in the text (ie 28 July 2000) is the date on which the Learning and Skills Act 2000 Sch 8 para 8 (repealed), which first contained the provisions now re-enacted as the Education Act 1996 Sch 35A (as added), came into force.

Schedule 35A para 8 (as added) applies whether or not the transfer is made by virtue of a scheme under Sch 35A para 1 (as added) (see PARA 1406 ante): Sch 35A para 8(4) (as so added).

4 Ibid Sch 35A para 8(1)(b) (as added: see note 3 supra). As to academies see PARA 496 et seq ante.

Where: (1) a freehold or leasehold interest in land is transferred for no consideration from a local authority to a person for the purposes of an academy, whether or not by virtue of a scheme under Sch 35A para 1 (as added) (see PARA 1406 ante); and (2) at any time on or after 26 July 2002 (ie the day on which Sch 35A (as added) came into force: see the Education Act 2002 (Commencement No 1) Order 2002, SI 2002/2002, art 2), the authority is granted an option to make a reacquisition of the interest (subject to whatever conditions), the rule against perpetuities does not apply to the option: Education Act 1996 Sch 35A para 9 (as so added). As to the rule against perpetuities see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1008 et seq. Where a lease is granted by or transferred from a local authority to a person for the purposes of an academy on or after 26 July 2002, the Law of Property Act 1925 s 153 (as amended) (enlargement of leases granted for no rent etc: see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1386) does not apply to permit that person to enlarge the term under the lease: Education Act 1996 Sch 35A para 10(1) (as so added).

5 Ibid Sch 35A para 8(1)(c) (as added: see note 3 supra).



6 Ibid Sch 35A para 8(2)(a) (as added: see note 3 supra). Schedule 35A para 8(2) (as added) applies whether or not, on the school ceasing to be an academy, it simultaneously ceases to function as a school: Sch 35A para 8(5) (as so added).

7 Ibid Sch 35A para 8(2)(b) (as added: see note 3 supra). See note 6 supra.

8 Ibid Sch 35A para 8(3) (as added: see note 3 supra).

9 As to the Secretary of State see PARA 52 ante.

10 Education Act 1996 Sch 35A para 8(6)(a) (as added: see note 3 supra).

11 Ibid Sch 35A para 8(6)(b) (as added: see note 3 supra).

12 Ibid Sch 35A para 8(7) (as added: see note 3 supra).

13 Ibid Sch 35A para 8(8) (as added: see note 3 supra).

14 Ibid Sch 35A para 8(9) (as added: see note 3 supra).

15 Ibid Sch 35A para 8(10) (as added: see note 3 supra).

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## **(v) Transfer of Land on Reorganisation of Schools involving the Establishment of a Further Education Corporation**

### **1408. Use of land by a further education corporation on the reorganisation of schools.**

Where, in connection with a reorganisation of schools<sup>1</sup> maintained by a local education authority<sup>2</sup>, any land<sup>3</sup> used for the purposes of one or more of the schools affected by the reorganisation or, as the case may be, the school so affected:

- 2633 (1) ceases to be so used or continues to be so used for a limited period<sup>4</sup>; and
- 2634 (2) while it is so used, or after it has ceased to be so used, is used for the purposes of an institution conducted by a further education corporation<sup>5</sup>,

and the land to be transferred belongs to the local authority, the land and any other property of the local authority used for the purposes of the school on that land is treated<sup>6</sup> as used for the purposes of the educational institution conducted by the corporation<sup>7</sup>.

1 For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 115(3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 para 46(b)).

2 For the purposes of the Further and Higher Education Act 1992 s 58 (as amended) there is a reorganisation of schools maintained by a local education authority if, in the case of each of the schools affected by the reorganisation or (if there is only one) the school so affected the local education authority ceases to maintain the school, or a prescribed alteration within the meaning of the School Standards and Framework Act 1998 s 28 (as amended; prospectively amended) (see PARA 132 ante) has been made to the school, whether or not the reorganisation also involves the establishment of one or more new schools: Further and Higher Education Act 1992 s 58(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 45). As to local education authorities see PARA 20 ante.

3 As to the meaning of 'land' see PARA 1355 note 3 ante.

4 Further and Higher Education Act 1992 s 58(1)(a).

5 Ibid s 58(1)(b). For the meaning of 'further education corporation' see PARA 579 note 3 ante.

6 Ie for the purposes of ibid s 23 (as amended): see PARA 586 ante.

7 Ibid s 58(2).

## **UPDATE**

### **1408 Use of land by a further education corporation on the reorganisation of schools**

NOTE 2--In relation to England, for 'School Standards and Framework Act 1998 s 28' read 'Education and Inspections Act 2006 s 18': 1992 Act s 58(3), (4) (s 58(3) amended, s 58(4) added by the Education and Inspections Act 2006 Sch 3 para 6).

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## **(4) EDUCATIONAL PREMISES**

### **(i) Required Standards for School Premises**

#### **1409. Prescribed standards for school premises.**

The standards to which the premises<sup>1</sup> of schools maintained<sup>2</sup> by local education authorities<sup>3</sup> must conform are prescribed by regulations<sup>4</sup>. Different standards may be prescribed<sup>5</sup> for such descriptions of schools as are specified in the regulations<sup>6</sup>. Where a school is maintained by a local education authority, the authority must secure that the school premises conform to the prescribed standards<sup>7</sup>.

1 As to the meaning of 'premises' see PARA 1352 note 3 ante.

2 As to maintained schools generally see PARA 94 et seq ante.

3 As to local education authorities see PARA 20 ante.

4 Education Act 1996 s 542(1) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 158(a), Sch 31). 'Regulations' means regulations made by the Secretary of State under the Education Act 1996: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. As to the regulations that have been made under s 542(1) (as amended) see the Education (School Premises) Regulations 1999, SI 1999/2, Pt II (regs 3-7), which prescribes the standard for school facilities, including washrooms for pupils and staff (regs 3, 4), medical accommodation (reg 5), staff accommodation (reg 6), and ancillary facilities (reg 7); Pt III (regs 8-14), which prescribes standards applying only to boarding schools including sleeping (reg 8), washroom (reg 9), and living accommodation (reg 10), accommodation for the preparation and consumption of meals (reg 11), sick rooms (reg 12), staff accommodation (reg 13) and storage facilities (reg 14); Pt IV (regs 15-23), which prescribes the structural requirements of schools, including load bearing structures (reg 15), weather protection (reg 16), health, safety and welfare (reg 17), acoustics (reg 18), lighting (reg 19), heating (reg 20), ventilation (reg 21), water supplies (reg 22) and drainage (reg 23); and Pt V (reg 24, Sch 2), which specifies the standard and size of team playing fields. As to savings see reg 26. As to the determination of numbers of pupils for the purposes of the Education (School Premises) Regulations 1999, SI 1999/2, see reg 2, Sch 1.

As to the application of regulations made prior to the Education Act 1996 see *Reffell v Surrey County Council* [1964] 1 All ER 743, [1964] 1 WLR 358; *Ward v Hertfordshire County Council* [1970] 1 All ER 535, [1970] 1 WLR 356, CA. See also *Ching v Surrey County Council* [1910] 1 KB 736, 8 LGR 369, CA; *Morris v Carnarvon County Council* [1910] 1 KB 840, 8 LGR 485, CA.

5 Ie without prejudice to the generality of the Education Act 1996 s 569(4) (regulations may make different provision for different cases, etc: see PARA 40 note 5 ante).

6 Ibid s 542(1).

7 Ibid s 542(2). Section 542(2) has effect subject to s 543 (as amended) (see PARA 1410 post): s 542(4) (amended by the School Standards and Framework Act 1998 Sch 30 para 158(c)). In relation to Wales, any expenses incurred in making to the school buildings of a voluntary aided school such alterations as may be required by the local education authority for the purpose of securing that the school premises conform to the standards prescribed under the Education Act 1996 s 542 (as amended) are payable by the governing body of the school: School Standards and Framework Act 1998 s 22(7), Sch 3 para 3(2)(a). For the meaning of 'school building' see PARA 1353 note 18 ante; definition applied by virtue of s 142(8). As to voluntary schools see PARA 102 et seq ante. As to the governing body of a maintained school, in relation to England, see PARA 203 et seq

ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. For the meaning of 'England' see PARA 52 note 11 ante; and for the meaning of 'Wales' see PARA 52 note 13 ante.

Any function of a local education authority in England which is conferred by or under the Education Act 1996 s 542 (as amended) may be exercised by, or by employees of, such person as may be authorised in that behalf by the local education authority whose function it is: Contracting Out (Local Education Authority Functions) (England) Order 2002, SI 2002/928, art 3, Sch 1 para (aaa).

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#### **1410. Relaxation of prescribed standards in special cases.**

Where the Secretary of State<sup>1</sup> is satisfied, having regard to the nature of the school's<sup>2</sup> existing site<sup>3</sup>, to any existing buildings on the site<sup>4</sup>, or to other special circumstances affecting the school premises<sup>5</sup>, that it would be unreasonable to require conformity with any prescribed requirement<sup>6</sup> as to any matter<sup>7</sup>, he may direct that despite the fact that the prescribed requirement is not satisfied the school premises are to be taken, as respects the matters specified in the direction, to conform to the prescribed standards so long as<sup>8</sup> the direction remains in force<sup>9</sup> and any conditions specified in the direction as respects those matters are observed<sup>10</sup>.

Where the school is to have an additional or new site<sup>11</sup>, and the Secretary of State is satisfied, having regard to the shortage of suitable sites, that it would be unreasonable to require conformity with any prescribed requirement relating to sites<sup>12</sup>, he may direct that, despite the fact that the prescribed requirement is not satisfied, the school premises are to be taken, as respects the matters specified in the direction, to conform to the prescribed standards so long as<sup>13</sup> the direction remains in force<sup>14</sup> and any conditions specified in the direction as respects those matters are observed<sup>15</sup>.

Where the school is to have additional buildings, or is to be transferred to a new site<sup>16</sup>, where existing buildings not previously part of the school premises or where temporary buildings are to be used for that purpose<sup>17</sup>, and where the Secretary of State is satisfied, having regard to the need to control public expenditure in the interests of the national economy, that it would be unreasonable to require conformity with any prescribed requirement relating to buildings<sup>18</sup>, he may direct that, despite the fact that the prescribed requirement is not satisfied, the school premises are to be taken, as respects the matters specified in the direction, to conform to the prescribed standards so long as<sup>19</sup> the direction remains in force<sup>20</sup> and any conditions specified in the direction as respects those matters are observed<sup>21</sup>.

Where in relation to any playing fields<sup>22</sup> used by the school for the purposes of the school, if the Secretary of State is satisfied that, having regard to other facilities for physical education available to the school, it would be unreasonable to require conformity with any prescribed requirement relating to playing fields<sup>23</sup>, he may direct that, despite the fact that the prescribed requirement is not satisfied, the school premises are to be taken, as respects the matters specified in the direction, to conform to the prescribed standards so long as<sup>24</sup> the direction remains in force<sup>25</sup> and any conditions specified in the direction as respects those matters are observed<sup>26</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 For the meaning of 'school' see PARA 81 ante.

3 Education Act 1996 s 543(2)(a).

4 Ibid s 543(2)(b).

5 Ibid s 543(2)(c). As to the meaning of 'premises' see PARA 1352 note 3 ante.

6 For these purposes, 'prescribed requirement' means a requirement of regulations under *ibid* s 542 (as amended) (see *PARA 1409 ante*): s 543(5).

7 *Ibid* s 543(2).

8 *Ibid* s 543(1) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 159(a)).

9 Education Act 1996 s 543(1)(a).

10 *Ibid* s 543(1)(b).

11 *Ibid* s 543(3)(a).

12 *Ibid* s 543(3)(b).

13 *Ibid* s 543(1) (as amended: see note 8 *supra*).

14 *Ibid* s 543(1)(a).

15 *Ibid* s 543(1)(b).

16 *Ibid* s 543(4)(a).

17 *Ibid* s 543(4)(b).

18 *Ibid* s 543(4)(c).

19 *Ibid* s 543(1) (as amended: see note 8 *supra*).

20 *Ibid* s 543(1)(a).

21 *Ibid* s 543(1)(b).

22 For these purposes, 'playing fields' means land in the open air which is provided for the purposes of physical education or recreation, other than any prescribed description of such land: School Standards and Framework Act 1998 s 77(7); definition applied by virtue of the Education Act 1996 s 543(4A) (added by the School Standards and Framework Act 1998 Sch 30 para 159(b)). As to the meaning of 'land' see *PARA 1352 note 9 ante*.

23 Education Act 1996 s 543(4A) (as added: see note 22 *supra*).

24 *Ibid* s 543(1) (as amended: see note 8 *supra*).

25 *Ibid* s 543(1)(a).

26 *Ibid* s 543(1)(b).

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### **1411. Approval of school premises and boarding hostels.**

The Secretary of State<sup>1</sup> may by regulation<sup>2</sup> make provision requiring his approval to be obtained for the provision of new premises<sup>3</sup> for, or the alteration<sup>4</sup> of the premises<sup>5</sup>: (1) of any school maintained by a local education authority<sup>6</sup> and of any special school<sup>7</sup> not maintained by a local education authority<sup>8</sup>; or (2) of any boarding hostel provided by a local education authority for persons receiving education at any such school<sup>9</sup>. Provision may also be made by regulation for the inspection of any such hostel<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 'Regulations' means regulations made by the Secretary of State under the Education Act 1996: s 579(1). As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under s 544 (as amended) but, by virtue of s 582(3), Sch 39 para 1, the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to England, by SI 2001/692; SI 2004/571; and amended, in relation to Wales, by SI 2001/3708) have effect as if so made. See further note 10 infra.

3 As to the meaning of 'premises' see PARA 1352 note 3 ante.

4 As to the meaning of 'alteration' see PARA 132 note 6 ante.

5 Education Act 1996 s 544(1) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 160(a), Sch 31).

6 Education Act 1996 s 544(1)(a), (3)(a) (amended by the School Standards and Framework Act 1998 Sch 30 para 160(b)(i), (ii), Sch 31). As to local education authorities see PARA 20 ante. As to maintained schools see PARA 94 ante.

7 As to special schools see PARA 1027 et seq ante.

8 Education Act 1996 s 544(1)(a), (3)(c).

9 Ibid s 544(1)(b).

10 Ibid s 544(2). As to the inspection of hostels in Wales for pupils with special educational needs see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351, reg 9 (revoked, in relation to England, by SI 2001/692).

### **UPDATE**

### **1411 Approval of school premises and boarding hostels**

NOTE 2--SI 1989/351 revoked in relation to England: SI 2008/1701.



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### **1412. Exemption from building byelaws of approved buildings.**

Where plans for, or particulars in respect of, a building required for the purposes of any school<sup>1</sup> or other educational institution are approved by the Secretary of State<sup>2</sup>, he may by order direct that any provision of a local Act or of a byelaw made under a local Act<sup>3</sup>: (1) does not apply in relation to the building<sup>4</sup>; or (2) does apply in relation to it with such modifications as may be specified in the order<sup>5</sup>.

1 For the meaning of 'school' see PARA 81 ante.

2 The reference in the text to plans or particulars approved by the Secretary of State includes a reference to particulars submitted to and approved by him under regulations under the Education Act 1996 s 544 (as amended) (see PARA 1411 ante) or the Education Reform Act 1988 s 218(7) (as amended; prospectively repealed) (see PARA 628 ante): Education Act 1996 s 545(2)(a) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 161, Sch 31). As from a day to be appointed under the Education Act 2002 s 216(4), the reference to the Education Reform Act 1988 s 218(7) is repealed: see the Education Act 1996 s 545(2)(a) (as so amended; prospectively amended by the Education Act 2002 s 215, Sch 21 para 55, Sch 22 Pt 3). At the date at which this volume states the law, no such day had been appointed.

As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

3 Education Act 1996 s 545(1). Orders under s 545 are not statutory instruments: see s 568(2) (as amended); and PARA 15 note 6 ante.

4 Ibid s 545(1)(a).

5 Ibid s 545(1)(b).

### **UPDATE**

### **1412 Exemption from building byelaws of approved buildings**

NOTE 2--Day now appointed in relation to England: SI 2006/2895.

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### **1413. Access and facilities for the disabled in educational institutions.**

Any person undertaking the provision of a building intended for purposes of any of the following<sup>1</sup>:

- 2635 (1) universities, university colleges and colleges, schools and halls of universities<sup>2</sup>;
- 2636 (2) institutions within the higher education sector<sup>3</sup>;
- 2637 (3) schools and institutions which provide higher education or further education (or both) and are maintained or assisted by local education authorities<sup>4</sup>;
- 2638 (4) institutions within the further education sector<sup>5</sup>,

must, in the means of access both to and within the building and in the parking facilities and sanitary conveniences, make provision, in so far as it is in the circumstances both practicable and reasonable, for the needs of persons using the building who are disabled<sup>6</sup>.

The Disability Discrimination Act 1995 places a duty upon educational establishments to make reasonable adjustments to facilities to prevent discrimination<sup>7</sup>.

1 Chronically Sick and Disabled Persons Act 1970 s 8(1).

2 Ibid s 8(2)(a).

3 Ibid s 8(2)(aa) (added by the Education Reform Act 1988 s 237, Sch 12 para 69; and substituted by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 72). The reference in the text to institutions within the higher education sector is a reference to institutions within the higher education sector within the meaning of the Further and Higher Education Act 1992 s 91(5); see PARA 646 ante.

4 Chronically Sick and Disabled Persons Act 1970 s 8(2)(b) (substituted by the Education Reform Act 1988 Sch 12 para 69). For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Chronically Sick and Disabled Persons Act 1970 s 8(2) (amended by the Education Reform Act 1988 Sch 12 para 69; and the Education Act 1996 s 582(1), Sch 37 para 19). For the meaning of 'higher education' see PARA 19 ante; definition applied by virtue of the Chronically Sick and Disabled Persons Act 1970 s 8(2) (as so amended). For the meaning of 'further education' see PARA 18 ante; definition applied by virtue of s 8(2) (as so amended).

5 Ibid s 8(2)(ba) (added by the Further and Higher Education Act 1992 Sch 8 Pt II para 72). The reference in the text to institutions within the further education sector is a reference to institutions within the further education sector within the meaning of the Further and Higher Education Act 1992 s 91(3); see PARA 579 ante.

6 Chronically Sick and Disabled Persons Act 1970 s 8(1). As from a day to be appointed, any person undertaking the provision of a building intended for purposes mentioned in s 8(2) (as amended) (see the text and notes 2-5 supra) will be required, in the means of access both to and within the building and in the parking facilities and sanitary conveniences, to make appropriate provision for the needs of persons using the building who are disabled, unless such body as may be prescribed by the Secretary of State is satisfied, after carrying out any procedures which may be so prescribed, that in the circumstances it is either not practicable to make such provision or not reasonable that such provision should be made: s 8(1) (prospectively amended by the Disabled Persons Act 1981 s 6(1)). At the date at which this volume states the law, no such day had been appointed. Different bodies and different procedures may be prescribed for different classes of buildings or other premises to which the Chronically Sick and Disabled Persons Act 1970 s 8(1) (prospectively amended) applies: s 8(1) (as so prospectively amended). For these purposes, 'appropriate provision' in relation to any case, means provision conforming with so much of the Design Note as is relevant to that case: s 8(1A) (prospectively added by the Disabled Persons Act 1981 s 6(4)). For these purposes, 'prescribed' means prescribed by regulations made by statutory instrument, which are subject to annulment in pursuance of a

resolution of either House of Parliament: Chronically Sick and Disabled Persons Act 1970 s 8(1A) (as so prospectively added). For these purposes, 'the Design Note' means Design Note 18 *Access for the Physically Disabled to Educational Buildings*, published on behalf of the Secretary of State: Chronically Sick and Disabled Persons Act 1970 s 8(1A) (as so prospectively added).

As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

As to the power of the Secretary of State to define the expression 'disabled' see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1063.

7 See the Disability Discrimination Act 1995 ss 19-21 (as amended; prospectively further amended); and DISCRIMINATION vol 13 (2007 Reissue) PARA 582 et seq.

## **UPDATE**

### **1413 Access and facilities for the disabled in educational institutions**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## **(ii) Control of Harmful Materials**

### **1414. Control of potentially harmful materials and apparatus in schools.**

In relation to any school<sup>1</sup> maintained by a local education authority<sup>2</sup>, and any special school<sup>3</sup> not maintained by a local education authority<sup>4</sup>, regulations<sup>5</sup> may make provision for requiring the Secretary of State's approval to be obtained for the use in such schools of such materials or apparatus as may be specified in the regulations, being materials or apparatus which could or might involve a serious risk to health<sup>7</sup>.

1 For the meaning of 'school' see PARA 81 ante.

2 Education Act 1996 s 546(2)(a) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 162). As to local education authorities see PARA 20 ante. As to maintained schools generally see PARA 94 et seq ante.

3 As to special schools see PARA 1027 et seq ante.

4 Education Act 1996 s 546(2)(c).

5 'Regulations' means regulations made by the Secretary of State under the Education Act 1996: s 579(1). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante. As to the making of regulations under the Education Act 1996 generally see PARA 40 note 5 ante. At the date at which this volume states the law, no regulations had been made under s 546, but by virtue of s 582(3), Sch 39 para 1, the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351 (amended, in relation to England, by SI 2001/692; SI 2004/571; and amended, in relation to Wales, by SI 2001/3708) have effect as if so made. As to substances and apparatus involving health hazards see the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351, reg 7 (amended, in relation to England, by SI 2004/571). As to the control of hazardous equipment and materials in further education institutions see PARA 1415 post.

7 Education Act 1996 s 546(1).

## **UPDATE**

### **1414 Control of potentially harmful materials and apparatus in schools**

NOTE 5--SI 1989/351 revoked in relation to England: SI 2008/1701.

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### **1415. Control of hazardous equipment and materials in further education institutions.**

The Secretary of State<sup>1</sup> may by regulations<sup>2</sup> require the governing body<sup>3</sup> of a further education institution<sup>4</sup> in England to prevent the use in the institution of specified equipment or specified materials without the approval of the Secretary of State<sup>5</sup>. The Secretary of State may specify equipment or materials in this way only if he thinks the equipment or materials might endanger a person's health or safety<sup>6</sup>.

The National Assembly for Wales<sup>7</sup> may by regulations<sup>8</sup> require the governing body of a further education institution in Wales to prevent the use in the institution of specified equipment or specified materials without the approval of the Assembly<sup>9</sup>. The Assembly may specify equipment or materials in this way only if it thinks the equipment or materials might endanger a person's health or safety<sup>10</sup>.

1 As to the Secretary of State see PARA 52 ante.

2 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England): s 212(1). For the meaning of 'England' see PARA 52 note 11 ante. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 ante. As to the regulations made under s 203 in relation to England see the Education (Hazardous Equipment and Materials) (England) Regulations 2004, SI 2004/571.

3 For the meaning of 'governing body' in relation to an educational institution under the Further and Higher Education Act 1992 see PARA 584 note 5 ante.

4 For the purposes of the Education Act 2002 s 203, 'further education institution' means an institution within the further education sector: s 203(5). As to references to institutions within the further education sector see PARA 579 ante.

5 Ibid s 203(1).

6 Ibid s 203(2).

7 As to the National Assembly for Wales see PARA 53 ante.

8 'Regulations' means regulations made under the Education Act 2002 by the National Assembly for Wales (in relation to Wales): s 212(1). For the meaning of 'Wales' see PARA 52 note 13 ante. By virtue of the Interpretation Act 1978 s 17(2)(b), the Education (Schools and Further and Higher Education) Regulations 1989, SI 1989/351, reg 7 (amended by SI 2004/571), which was made under the Education Reform Act 1988 s 218(1) (e) (repealed in relation to England; prospectively repealed in relation to Wales), has effect as if made under the Education Act 2002 s 203 in relation to Wales.

9 Ibid s 203(3).

10 Ibid s 203(4).

### **UPDATE**

### **1415 Control of hazardous equipment and materials in further education institutions**

NOTE 8--SI 1989/351 revoked in relation to England: SI 2008/1701.



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### (iii) Nuisance or Disturbance

#### 1416. Nuisance or disturbance on school premises.

The Education Act 1996 makes provision in relation to nuisance and disturbance on: (1) premises<sup>1</sup> including playgrounds, playing fields and other premises for outdoor recreation of any school maintained by a local education authority<sup>2</sup>, any special school not so maintained<sup>3</sup>, and any independent school<sup>4</sup>; or (2) premises which are provided by a local education authority pursuant to its duty to secure facilities for recreation and social and physical training<sup>5</sup> and used wholly or mainly in connection with the provision of instruction or leadership in sporting, recreational or outdoor activities<sup>6</sup>.

Any person who without lawful authority is present on such premises and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises, whether or not any such persons are present at the time, is guilty of an offence<sup>7</sup>. Where a police constable<sup>8</sup>, or a person whom the appropriate authority<sup>9</sup> has authorised to exercise this power, has reasonable cause to suspect that any person is committing or has committed such an offence, he may remove him from the premises in question<sup>10</sup>.

Proceedings for such an offence may not be brought by any person other than a police constable or an authorised person<sup>11</sup>; and proceedings for such an offence committed on premises of a foundation, voluntary aided or foundation special school may not be brought by a local education authority without first obtaining the consent of the governing body<sup>12</sup>.

1 As to the meaning of 'premises' see PARA 1352 note 3 ante.

2 Education Act 1996 s 547(2)(a) (amended by the School Standards and Framework Act 1998 s 140(1), (3), Sch 30 para 163(a), Sch 31). As to local education authorities see PARA 20 ante. As to maintained schools generally see PARA 94 et seq ante. As to licence generally to enter school premises see *Wandsworth London Borough Council v A* [2000] 1 WLR 1246, [2000] LGR 81, [2000] ELR 257, CA.

3 Education Act 1996 s 547(2)(aa) (s 547(2)(aa), (ab) added by the Education Act 2002 s 206, Sch 20 para 1(1), (2)). As to special schools see PARA 1027 et seq ante.

4 Education Act 1996 s 547(2)(ab) (as added: see note 3 supra). For the meaning of 'independent school' see PARA 465 ante.

5 Ibid s 547(2A)(a) (s 547(2A) added by the Education Act 2002 Sch 20 para 1(1), (3)). The duty referred to in the text is the local education authority's duty under the Education Act 1996 s 508 (as amended): see PARA 556 ante.

6 Ibid s 547(2A)(b) (as added: see note 5 supra).

7 Ibid s 547(1). A person guilty of an offence under s 547(1) is liable on summary conviction to a fine not exceeding level 2 on the standard scales: s 547(1). As to the standard scale see PARA 481 note 4 ante.

8 As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

9 For these purposes, 'the appropriate authority' means: (1) in relation to premises of a foundation, voluntary aided or foundation special school, a local education authority or the governing body; (2) in relation to premises of any other school maintained by a local education authority, and premises provided by a local education authority under the Education Act 1996 s 508 (as amended) (see PARA 556 ante), a local education authority; and (3) in relation to premises of a special school which is not so maintained or of an independent school, the proprietor of the school: s 547(4) (substituted by the Education Act 2002 Sch 20 para 1(1), (5)). For

the meaning of 'proprietor' see PARA 60 note 7 ante. As to foundation, voluntary and foundation special schools see PARA 102 et seq ante. As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

10 Education Act 1996 s 547(3) (amended by the Education Act 2002 Sch 20 para 1(1), (4)). A local education authority may not authorise a person to exercise the power conferred by the Education Act 1996 s 547(3) (as amended) in relation to premises of a foundation, voluntary or foundation special school without first obtaining the consent of the governing body: s 547(5) (amended by the School Standards and Framework Act 1998 Sch 30 para 163(c)).

11 Education Act 1996 s 547(6) (s 547(6), (7) substituted by the Education Act 2002 Sch 20 para 1(1), (6)). For these purposes, 'authorised person' means: (1) in relation to an offence committed on premises of a foundation, voluntary aided or foundation special school, a local education authority or a person whom the governing body has authorised to bring such proceedings; (2) in relation to an offence committed on premises of any other school maintained by a local education authority, or on premises provided by a local education authority under the Education Act 1996 s 508 (as amended) (see PARA 556 ante), a local education authority; and (3) in relation to an offence committed on premises of a special school which is not so maintained or of an independent school, a person whom the proprietor of the school has authorised to bring such proceedings: s 547(7) (as so substituted).

12 Ibid s 547(8) (amended by the School Standards and Framework Act 1998 Sch 30 para 163(c)).

## **UPDATE**

### **1416 Nuisance or disturbance on school premises**

NOTE 5--In relation to England, the duty referred to is the local education authority's duty under the 1996 Act s 507A or 507B (see PARA 556): s 547(2A)(a) (amended by the Education and Inspections Act 2006 Sch 1 para 6).



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### **1417. Nuisance or disturbance on premises of further or higher education institutions.**

The Further and Higher Education Act 1992<sup>1</sup> makes provision in relation to nuisance and disturbance on premises<sup>2</sup>, including playing fields and other premises for outdoor recreation, of: (1) any institution other than a school<sup>3</sup> which is maintained by a local education authority<sup>4</sup> and which provides further education<sup>5</sup> or higher education<sup>6</sup> or both<sup>7</sup>; and (2) any institution within the further education sector<sup>8</sup>.

Any person who without lawful authority is present on such premises and causes or permits nuisance or disturbance to the annoyance of persons who lawfully use those premises, whether or not any such persons are present at the time, is guilty of an offence<sup>9</sup>. Where a police constable<sup>10</sup>, or a person whom the appropriate authority<sup>11</sup> has authorised to exercise this power, has reasonable cause to suspect that any person is committing or has committed such an offence, he may remove him from the premises in question<sup>12</sup>.

Proceedings for such an offence may not be brought by any person other than a police constable or an authorised person<sup>13</sup>.

<sup>1</sup> The Further and Higher Education Act 1992 s 85A (added by the Education Act 2002 s 206, Sch 20 para 2).

<sup>2</sup> As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (amended by the Education Act 1996 s 582(1), Sch 37 para 115(3); and the School Standards and Framework Act 1998 s 140(1), Sch 30 para 46(b)).

<sup>3</sup> For the meaning of 'school' see PARA 81 ante; definition applied by virtue of the Further and Higher Education Act 1992 s 90(5) (as amended: see note 2 supra).

<sup>4</sup> As to local education authorities see PARA 20 ante.

<sup>5</sup> For the meaning of 'further education' see PARA 18 ante; definition applied by the Further and Higher Education Act 1992 s 90(1) (definition added by the Education Act 1996 s 582(1), Sch 37 para 115(2)).

<sup>6</sup> For the meaning of 'higher education' see PARA 19 ante; definition applied by the Further and Higher Education Act 1992 s 90(1).

<sup>7</sup> Ibid s 85A(2)(a) (as added: see note 1 supra).

<sup>8</sup> Ibid s 85A(2)(b) (as added: see note 1 supra). For the meaning of 'institution within the further education sector' see PARA 579 ante.

<sup>9</sup> Ibid s 85A(1) (as added: see note 1 supra). A person guilty of an offence under s 85A(1) (as added) is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 85A(1) (as so added). As to the standard scale see PARA 481 note 4 ante.

<sup>10</sup> As to the office of constable see POLICE vol 36(1) (2007 Reissue) PARA 101 et seq.

<sup>11</sup> For these purposes, 'the appropriate authority' means: (1) in relation to premises of any institution (other than a school) which is maintained by a local education authority and provides further education or higher education (or both), a local education authority; or (2) in relation to premises of an institution within the further education sector, the governing body: Further and Higher Education Act 1992 s 85A(2)(a), (4) (as added: see note 1 supra). For the meaning of 'governing body' in relation to an educational institution see PARA 584 note 5 ante.

12 Ibid s 85A(3) (as added: see note 1 supra).

13 Ibid s 85A(5) (as added: see note 1 supra). For these purposes, 'authorised person' means: (1) in relation to an offence committed on premises of any institution (other than a school) which is maintained by a local education authority and provides further education or higher education (or both), a local education authority; (2) in relation to an offence committed on premises of an institution within the further education sector, a person whom the governing body has authorised to bring such proceedings: s 85A(2)(a), (6) (as so added).

## **UPDATE**

### **1417 Nuisance or disturbance on premises of further or higher education institutions**

TEXT AND NOTES--As to the power to search further education students for weapons and to use reasonable force against further education students see PARAS 1417A, 1417B.

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#### **1417A. Power to search further education students for weapons.**

The following provisions are in force in relation to England: SI 2007/858.

A member of staff<sup>1</sup> of an institution within the further education sector who has reasonable grounds for suspecting that a student at the institution may have with him or in his possessions<sup>2</sup> (1) an article to which the Criminal Justice Act 1988<sup>3</sup> applies (knives and blades etc), or (2) an offensive weapon<sup>4</sup>, may search that student or his possessions for such articles and weapons<sup>5</sup>. A search under these provisions may be carried out only where (a) the member of staff and the student are on the premises of the institution; or (b) they are elsewhere and the member of staff has lawful control or charge of the student<sup>6</sup>. A person may carry out a search under these provisions only if (i) he is the principal of the institution; or (ii) he has been authorised by the principal to carry out the search<sup>7</sup>. A person who carries out a search of a student under these provisions (A) may not require the student to remove any clothing other than outer clothing<sup>8</sup>; (B) must be of the same sex as the student; and (C) may carry out the search only in the presence of another member of staff who is also of the same sex as the student<sup>9</sup>. A student's possessions may not be searched under these provisions except in his presence and in the presence of another member of staff<sup>10</sup>. If, in the course of a search, the person carrying out the search finds anything which he has reasonable grounds for suspecting falls within head (1) or (2) above, or any other thing which he has reasonable grounds for suspecting is evidence in relation to an offence, he may seize and retain it<sup>11</sup>. A person who exercises a power under these provisions may use such force as is reasonable in the circumstances for exercising that power<sup>12</sup>. The Police (Property) Act 1897 (disposal of property in the possession of the police) applies to property which has come into the possession of a police constable under these provisions as it applies to property which has come into the possession of the police in the circumstances mentioned in the Police (Property) Act 1897<sup>13</sup>.

The powers conferred by the above provisions are in addition to any powers exercisable by the member of staff in question apart from the above provisions and are not to be construed as restricting such powers<sup>14</sup>.

1 In the Further and Higher Education Act 1992 s 85B 'member of staff', in relation to an institution within the further education sector, means any person who works at that institution whether or not as its employee: s 85B(11) (added by Violent Crime Reduction Act 2006 s 46).

2 In the 1992 Act s 85B 'possessions', in relation to a student of an institution within the further education sector, includes any goods over which he has or appears to have control: s 85B(11).

3 In the Criminal Justice Act 1988 s 139.

4 Within the meaning of the Prevention of Crime Act 1953.

5 Further and Higher Education Act 1992 s 85B(1).

6 Ibid s 85B(2).

7 Ibid s 85B(3). An authorisation for the purposes of head (ii) in the text may be given either in relation to a particular search or generally in relation to searches under these provisions or to a particular description of such searches: s 85B(10).

8 'Outer clothing' means (1) any item of clothing that is being worn otherwise than wholly next to the skin or immediately over a garment being worn as underwear; or (2) a hat, shoes, boots, gloves or a scarf: *ibid* s 85B(11).

9 *Ibid* s 85B(4).

10 *Ibid* s 85B(5).

11 *Ibid* s 85B(6). A person who seizes anything under s 85B(6) must deliver it to a police constable as soon as reasonably practicable: s 85B(8).

12 *Ibid* s 85B(7).

13 *Ibid* s 85B(9).

14 *Ibid* s 85B(12).

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**1417B. Power of members of staff of further education institutions to use force.**

The following provisions are in force in relation to England: SI 2007/935.

A member of the staff<sup>1</sup> of an institution within the further education sector may use such force as is reasonable in the circumstances for the purpose of preventing a student at the institution from doing, or continuing to do, any of the following: (1) committing any offence<sup>2</sup>; (2) causing personal injury to, or damage to the property of, any person (including the student himself)<sup>3</sup>; or (3) prejudicing the maintenance of good order and discipline at the institution or among any of its students, whether during a teaching session or otherwise<sup>4</sup>. These powers may be exercised only where (a) the member of the staff and the student are on the premises of the institution<sup>5</sup>; or (b) they are elsewhere and the member of the staff has lawful control or charge of the student<sup>6</sup>.

1 In the Further and Higher Education Act 1992 s 85C 'member of staff', in relation to an institution within the further education sector, means any person who works at that institution whether or not as its employee: s 85C(5) (s 85C added by the Education and Inspections Act 2006 s 165).

2 1992 Act s 85C(1)(a).

3 Ibid s 85C(1)(b).

4 Ibid s 85C(1)(c). Section 85C(1) does not authorise anything to be done in relation to a student which constitutes the giving of corporal punishment within the meaning of the Education Act 1996 s 548 (see PARA 577): 1992 Act s 85(3). The powers conferred by s 85C(1) are in addition to any powers exercisable apart from s 85C and are not to be construed as restricting what may lawfully be done apart from s 85C: s 85C(4).

5 Ibid s 85C(2)(a).

6 Ibid s 85C(2)(b).

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#### **(iv) Health and Safety**

##### **1418. Health and safety.**

The statutory duties imposed by the Health and Safety at Work etc Act 1974 on employers are applicable in relation to schools and further and higher education institutions<sup>1</sup>. The duties owed are not just to employees<sup>2</sup>, but also to other persons<sup>3</sup>. An employer has the duty to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees<sup>4</sup>. The duty to ensure the health, safety and welfare at work extends to include in particular<sup>5</sup>:

- 2639 (1) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health<sup>6</sup>;
- 2640 (2) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances<sup>7</sup>;
- 2641 (3) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees<sup>8</sup>;
- 2642 (4) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks<sup>9</sup>;
- 2643 (5) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work<sup>10</sup>.

It is the duty of every employee while at work<sup>11</sup> to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work<sup>12</sup> and, as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with<sup>13</sup>.

1 See the Health and Safety at Work etc Act 1974 s 2(1); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 420, 421.

2 See *ibid* s 2 (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 421.

3 See *ibid* s 3 (conduct of employer's undertaking: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 422) and s 4 (duties of persons concerned with premises: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 423). As to the duties imposed by s 4 in relation to commercially operated play centres see *Moualem v Carlisle City Council* [1995] ELR 22, (1994) 158 JP 1110.

4 Health and Safety at Work etc Act 1974 s 2(1).

5 See *ibid* s 2(2); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 421.

6 *Ibid* s 2(2)(a).

7 *Ibid* s 2(2)(b).

- 8 Ibid s 2(2)(c).
- 9 Ibid s 2(2)(d).
- 10 Ibid s 2(2)(e).
- 11 As to the general duties of employees at work see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 446.
- 12 Health and Safety at Work etc Act 1974 s 7(a).
- 13 Ibid s 7(b).

## **UPDATE**

### **1418 Health and safety**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

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## **(v) Occupiers' Liability**

### **1419. Occupiers' liability.**

In relation to the duty owed to visitors in respect of dangers due to the state of the premises or things done or omitted to be done on them, occupiers of educational premises have the same statutory liability as occupiers of other premises<sup>1</sup>. This is also true of the duty owed to persons other than visitors<sup>2</sup>. There is a common law duty of care to ensure that young children are not permitted to stray from school premises<sup>3</sup>.

1 See the Occupiers' Liability Act 1957 s 1(1); and NEGLIGENCE vol 78 (2010) PARAS 29-38. In general an occupier owes the same common duty of care to all his visitors: see s 2(1); and NEGLIGENCE vol 78 (2010) PARAS 32, 38. See also *Griffiths v Smith* [1941] AC 170, [1941] 1 All ER 66, HL. He must be prepared for children to be less careful than adults: see the Occupiers' Liability Act 1957 s 2(3)(a); and NEGLIGENCE vol 78 (2010) PARA 32. The duty of care extends to the state and condition of the school premises: *Lyes v Middlesex County Council* (1962) 61 LGR 443. Cases in which specific defects of premises were considered include: *Morris v Carnarvon County Council* [1910] 1 KB 840, CA (unsuitable heavy swing door); *Jackson v LCC* (1912) 76 JP 217, CA (dangerous materials left in playground); *Smerkinich v Newport Corpn* (1912) 76 JP 454 (unguarded machine); *Fryer v Salford Corpn* [1937] 1 All ER 617, CA (unguarded gas cooker); *Gillmore v LCC* [1938] 4 All ER 331 (slippery floor); *Ralph v LCC* (1947) 111 JP 548, CA (fragile glass partitions); *Rich v LCC* [1953] 2 All ER 376, [1953] 1 WLR 395, CA (coke in playground); *Jefferey v LCC* (1954) 119 JP 45 (fragile glass roof accessible by way of drainpipe); *Lyes v Middlesex County Council* supra (dangerous door); *Reffell v Surrey County Council* [1964] 1 All ER 743, [1964] 1 WLR 358 (dangerous door); *Martin v Middlesbrough Corpn* (1965) 109 Sol Jo 576, 63 LGR 365, CA (broken glass in playground); *Butt v Inner London Education Authority* (1968) 66 LGR 379, CA (unguarded machine); *Ward v Hertfordshire County Council* [1970] 1 All ER 535, [1970] 1 WLR 356, CA (playground wall with jagged flints); *Mays v Essex County Council* (1975) Times, 11 October (ice slide in playground); *Smart v Gwent County Council* (25 April 1991) Lexis, CA (thumb in a door); *G v Upshire Primary School* (2 February 2001, unreported), QBD (stair rail used as a slide). As to occupiers' liability in relation to children and holiday camps see *Perry v Butlins Holiday World (t/a Butlins Ltd)* [1997] EGCS 171, CA. However, the Occupiers' Liability Act 1957 has been held not to apply to gymnastics on a mat in a youth house sports room as the accident did not arise out of the unsafe condition of the premises themselves: see *Fowles v Bedfordshire County Council* [1996] ELR 51, [1995] PIQR P380, CA.

2 See the Occupiers' Liability Act 1984 s 1 (as amended); and NEGLIGENCE vol 78 (2010) PARA 40. See also *Ratcliff v Harper Adams Agricultural College* [1999] Ed CR 523.

3 See *Carmarthenshire County Council v Lewis* [1955] AC 549, [1955] 1 All ER 565, HL; *Nwabudike v Southwark London Borough Council* [1997] ELR 35, (1996) 140 Sol Jo LB 128; *Wilson v Governors of Sacred Heart Roman Catholic School* [1998] 1 FLR 663, [1998] ELR 637, CA; *Jenney (A Minor) v North Lincolnshire County Council* [2000] LGR 269, sub nom *J v North Lincolnshire County Council* [2000] ELR 245, CA.



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## **(5) CONTROL OF USE OF SCHOOL PREMISES BY GOVERNING BODIES**

### **1420. Control of school premises by governing bodies.**

The following provisions have effect until a day to be appointed<sup>1</sup>. Provision is made<sup>2</sup> for the control by the governing body of a maintained school<sup>3</sup> of the occupation and use of school premises<sup>4</sup>. However, the power of governing bodies to control the occupation and use of premises is subject to any arrangements made under or by virtue of agreements or determinations under the Education Reform Act 1988 or under the Further and Higher Education Act 1992<sup>5</sup>.

As from a day to be appointed<sup>6</sup>, regulations under the Education Act 2002<sup>7</sup> may make provision relating to the control by the governing body of a maintained school<sup>8</sup> of the occupation and use of school premises<sup>9</sup>.

<sup>1</sup> The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See further the text and notes 6-9 *infra*.

<sup>2</sup> See the School Standards and Framework Act 1998 Sch 13 (prospectively repealed); and PARAS 1421-1427 *post*.

<sup>3</sup> As to the governing body of a maintained school, in relation to England, see PARA 203 *et seq ante*; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 *et seq ante*. For the meaning of 'maintained school' see PARA 94 *ante*.

<sup>4</sup> School Standards and Framework Act 1998 s 40. See note 1 *supra*. As to the meaning of 'premises' see PARA 1352 note 3 *ante*; definition applied by virtue of s 142(8).

<sup>5</sup> The power of the governing body of a maintained school to control the occupation and use of the premises of the school is subject to any arrangements made under or by virtue of: (1) an agreement made under the Education Reform Act 1988 s 198(2) (as substituted), Sch 10 para 1 (as substituted; modified for certain purposes) (see PARA 1389 *ante*) or Sch 10 para 2 (as substituted; modified for certain purposes) (see PARA 1390 *ante*) or a determination made in accordance with the Further and Higher Education Act 1992 s 93, Sch 8 paras 62, 63 (repealed); or (2) an agreement made under s 36(3), Sch 5 paras 1, 2 (as amended; modified for certain purposes) (see PARA 1398 *ante*) or a determination made in accordance with Sch 5 paras 3, 4 (as amended; modified for certain purposes) (see PARA 1398 *ante*): School Standards and Framework Act 1998 Sch 13 para 8. See note 1 *supra*.

<sup>6</sup> The Education Act 2002 s 31 is to come into force as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed.

<sup>7</sup> 'Regulations' means regulations made under the Education Act 2002 by the Secretary of State (in relation to England) or the National Assembly for Wales (in relation to Wales): s 212(1). For the meaning of 'England' see PARA 52 note 11 *ante*; and for the meaning of 'Wales' see PARA 52 note 13 *ante*. As to the Secretary of State see PARA 52 *ante*; and as to the National Assembly for Wales see PARA 53 *ante*. As to the making of regulations under the Education Act 2002 generally see PARA 79 note 2 *ante*. At the date at which this volume states the law, no regulations had been made under the Education Act 2002 s 31 (not yet in force).

<sup>8</sup> For the meaning of 'maintained school' for these purposes see PARA 98 note 3 *ante*.

<sup>9</sup> Education Act 2002 s 31. See note 6 *supra*. As to the meaning of 'premises' see PARA 1352 note 3 *ante*; definition applied by virtue of s 212(2), (3).

**UPDATE**

**1420-1427 Control of Use of School Premises by Governing Bodies**

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.

**1420 Control of school premises by governing bodies**

NOTE 6--Day appointed in relation to Wales for purpose of making regulations: SI 2007/3611.

TEXT AND NOTES 7-9--The Control of School Premises (Wales) Regulations 2008, SI 2008/136, have been made under the Education Act 2002 s 31.

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### **1421. Occupation and use of premises of community and community special schools.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The occupation and use of the premises<sup>2</sup> of a community or community special school<sup>3</sup>, both during and outside school hours<sup>4</sup>, is under the control of the governing body<sup>5</sup>, subject to: (1) any directions given by the local education authority<sup>6</sup>; (2) any transfer of control agreement entered into by the governing body<sup>7</sup>; and (3) any requirements of an enactment other than the School Standards and Framework Act 1998 or regulations made under it<sup>8</sup>. The local education authority may give such directions as to the occupation and use of the premises of a community or community special school as it thinks fit<sup>9</sup>. In exercising control of the occupation and use of the premises of the school outside school hours, the governing body must have regard to the desirability of those premises being made available for community use<sup>10</sup>.

1 The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 1420 ante.

2 As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid Sch 13 para 1(1). See note 1 supra. As to community and community special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

4 For these purposes, 'school hours' means any time during a school session or during a break between sessions on the same day: ibid Sch 13 para 9. For these purposes, 'school session', in relation to any school, means a school session beginning and ending at such times as may from time to time be determined for that school in accordance with s 41 (repealed) (see PARA 532 ante): Sch 13 para 9. See note 1 supra.

5 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

6 School Standards and Framework Act 1998 Sch 13 para 1(2)(a). See note 1 supra. The reference in the text to directions is a reference to directions under Sch 13 para 1(3) (prospectively repealed): see the text to note 9 infra. As to local education authorities see PARA 20 ante.

7 Ibid Sch 13 para 1(2)(b). See note 1 supra. The reference in the text to an agreement is a reference to an agreement entered into under Sch 13 para 2 (prospectively repealed): see PARA 1422 post.

8 Ibid Sch 13 para 1(2)(c). See note 1 supra.

9 Ibid Sch 13 para 1(3). See note 1 supra.

10 Ibid Sch 13 para 1(4). For these purposes, 'community use' means the use of school premises (when not required by or in connection with the school) by members of the local community: Sch 13 para 9. See note 1 supra.

## **UPDATE**

### **1420-1427 Control of Use of School Premises by Governing Bodies**

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.

**1421 Occupation and use of premises of community and community special schools**

TEXT AND NOTES--See the Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007, SI 2007/2979, regs 1, 3, Sch 1 para 10.

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#### **1422. Transfer of control agreements for community or community special schools.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The governing body<sup>2</sup> of a community or community special school<sup>3</sup> may enter into a transfer of control agreement<sup>4</sup> with any body or person if its purpose, or one of its purposes, in doing so is to promote community use<sup>5</sup> of the whole or any part of the school premises<sup>6</sup>. However, the governing body must not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours<sup>7</sup> unless it has first obtained the local education authority's<sup>8</sup> consent to the agreement in so far as it makes such provision<sup>9</sup>. A transfer of control agreement is taken to include the following terms, namely:

2644 (1) that the governing body must notify the controlling body<sup>10</sup> of any directions given to the governing body<sup>11</sup>;

2645 (2) that the controlling body, in exercising control of the use of any premises subject to the agreement:

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4. (a) must do so in accordance with any directions from time to time notified to that body in pursuance of head (1) above<sup>12</sup>; and

5. (b) must have regard to the desirability of the premises being made available for community use<sup>13</sup>; and

9

2646 (3) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then:

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6. (a) the use of the specified premises at those times must be under the control of the governing body<sup>14</sup>; and

7. (b) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice<sup>15</sup>,

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2647 even though their use at those times would otherwise be under the control of the controlling body<sup>16</sup>.

<sup>1</sup> The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 1420 ante.

<sup>2</sup> As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

<sup>3</sup> As to community and community special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

<sup>4</sup> For these purposes, 'transfer of control agreement' means an agreement which (subject to the School Standards and Framework Act 1998 Sch 13 para 2(3) (prospectively repealed) (see the text and notes 10-16 infra)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified: Sch 13 para

2(7). See note 1 supra. As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of s 142(8).

5 For the meaning of 'community use' see PARA 1421 note 9 ante.

6 School Standards and Framework Act 1998 Sch 13 para 2(1). See note 1 supra. As to savings and transitional provisions relating to the transfer of control agreements see the School Standards and Framework Act 1998 (Commencement No 7 and Saving and Transitional Provisions) Order 1999, SI 1999/2323, art 2, Sch 5. As to the use of school premises for community purposes see *Islwyn Borough Council and Gwent County Council v Newport Borough Council* [1994] ELR 141, 6 Admin LR 386, CA.

7 For the meaning of 'school hours' see PARA 1421 note 4 ante.

8 As to local education authorities see PARA 20 ante.

9 School Standards and Framework Act 1998 Sch 13 para 2(2). See note 1 supra.

10 For these purposes, 'the controlling body' means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question: *ibid* Sch 13 para 2(7). See note 1 supra.

11 *Ibid* Sch 13 para 2(3)(a). See note 1 supra. The reference in the text to directions is a reference to directions given under Sch 13 para 1(3) (prospectively repealed): see PARA 1421 ante.

Where the governing body enters into a transfer of control agreement, it must, so far as reasonably practicable, secure that the controlling body exercises control in accordance with any such directions as are notified to that body in pursuance of Sch 13 para 2(3)(a): Sch 13 para 2(6).

12 *Ibid* Sch 13 para 2(3)(b)(i). See note 1 supra.

13 *Ibid* Sch 13 para 2(3)(b)(ii). See note 1 supra.

14 *Ibid* Sch 13 para 2(3)(c)(i). See note 1 supra.

15 *Ibid* Sch 13 para 2(3)(c)(ii). See note 1 supra.

16 *Ibid* Sch 13 para 2(3)(c). Where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement, Sch 13 para 2(3)(c) (prospectively repealed) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of Sch 13 para 2(3)(c) (prospectively repealed): Sch 13 para 2(4), (5). See note 1 supra.

## UPDATE

### 1420-1427 Control of Use of School Premises by Governing Bodies

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.

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### **1423. Occupation and use of foundation and foundation special schools.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The occupation and use of the premises<sup>2</sup> of a foundation or foundation special school<sup>3</sup>, both during and outside school hours<sup>4</sup>, is under the control of the governing body<sup>5</sup>, subject to: (1) any transfer of control agreement<sup>6</sup> entered into by the governing body<sup>7</sup>; and (2) any requirements of an enactment other than the School Standards and Framework Act 1998 or regulations made under it<sup>8</sup>. In exercising control of the occupation and use of the premises of the school outside school hours, the governing body must have regard to the desirability of those premises being made available for community use<sup>9</sup>.

1 The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 1420 ante.

2 As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid Sch 13 para 3(1). See note 1 supra. As to foundation and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

4 For the meaning of 'school hours' see PARA 1421 note 4 ante.

5 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. Where the school has a trust deed which provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that, disregarding any transfer of control agreement made under the School Standards and Framework Act 1998 Sch 13 para 4 (prospectively repealed) (see PARA 1424 post), the use of those premises is or would be under the control of such a person, Sch 13 para 3 (prospectively repealed) and Sch 13 para 4 (prospectively repealed) have effect in relation to the school with the substitution of references to that person for references to the governing body: Sch 13 para 3(4). See note 1 supra. As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of s 142(8).

6 As to the meaning of 'transfer of control agreement' see PARA 1424 note 4 post.

7 School Standards and Framework Act 1998 Sch 13 para 3(2)(a). See note 1 supra.

8 Ibid Sch 13 para 3(2)(b). See note 1 supra.

9 Ibid Sch 13 para 3(3). See note 1 supra. For the meaning of 'community use' see PARA 1421 note 9 ante.

## **UPDATE**

### **1420-1427 Control of Use of School Premises by Governing Bodies**

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(5) CONTROL OF USE OF SCHOOL PREMISES BY GOVERNING BODIES/1424. Transfer of control agreements for foundation or foundation special schools.

#### **1424. Transfer of control agreements for foundation or foundation special schools.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The governing body<sup>2</sup> of any foundation or foundation special school<sup>3</sup> has power to enter into a transfer of control agreement<sup>4</sup> with any body or person if its purpose, or one of its purposes, in doing so is to promote community use<sup>5</sup> of the whole or any part of the school premises<sup>6</sup>. It may do so even though the school has a trust deed<sup>7</sup> that would otherwise expressly or impliedly preclude it from entering into such an agreement with that body or person or from conferring control on the controlling body<sup>8</sup> in question<sup>9</sup>, but it must not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by any such trust deed as would apply if control were being exercised by the governing body<sup>10</sup>. However, the governing body must not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours<sup>11</sup> unless it has first obtained the Secretary of State's<sup>12</sup> consent to the agreement in so far as it makes such provision<sup>13</sup>. A transfer of control agreement is taken to include the following terms, namely:

2648 (1) that the controlling body, in exercising control of the use of any premises subject to the agreement, must have regard to the desirability of the premises being made available for community use<sup>14</sup>; and

2649 (2) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then:

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8. (a) the use of the specified premises at those times must be under the control of the governing body<sup>15</sup>; and

9. (b) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice<sup>16</sup>,

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2650 even though their use at those times would otherwise be under the control of the controlling body<sup>17</sup>.

<sup>1</sup> The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 1420 ante.

<sup>2</sup> As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

<sup>3</sup> As to foundation and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

<sup>4</sup> For these purposes, 'transfer of control agreement' means an agreement which (subject to the School Standards and Framework Act 1998 Sch 13 para 4(3) (prospectively repealed) (see the text and notes 14-17 infra)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified: Sch 13 para



4(6). See note 1 supra. As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of s 142(8).

5 For the meaning of 'community use' see PARA 1421 note 9 ante.

6 School Standards and Framework Act 1998 Sch 13 para 4(1). See note 1 supra.

7 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of *ibid* s 142(8).

8 For these purposes, 'the controlling body' means the body or person (other than the governing body) which has control of the use of the whole or any part of the school premises under the transfer of control agreement in question: *ibid* Sch 13 para 4(6). See note 1 supra.

9 *Ibid* Sch 13 para 4(1)(a). See note 1 supra. As to savings and transitional provisions relating to transfer of control agreements see the School Standards and Framework Act 1998 (Commencement No 7 and Saving and Transitional Provisions) Order 1999, SI 1999/2323, art 2, Sch 5.

10 School Standards and Framework Act 1998 Sch 13 para 4(1)(b). See note 1 supra.

11 For the meaning of 'school hours' see PARA 1421 note 4 ante.

12 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

13 School Standards and Framework Act 1998 Sch 13 para 4(2). See note 1 supra.

14 *Ibid* Sch 13 para 4(3)(a). See note 1 supra.

15 *Ibid* Sch 13 para 4(3)(b)(i). See note 1 supra.

16 *Ibid* Sch 13 para 4(3)(b)(ii). See note 1 supra.

17 *Ibid* Sch 13 para 4(3)(b). Where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement, Sch 13 para 4(3)(b) (prospectively repealed) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of Sch 13 para 4(3)(b) (prospectively repealed): Sch 13 para 4(4), (5). See note 1 supra.

## **UPDATE**

### **1420-1427 Control of Use of School Premises by Governing Bodies**

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(5) CONTROL OF USE OF SCHOOL PREMISES BY GOVERNING BODIES/1425. Occupation and use of premises of voluntary schools.

### **1425. Occupation and use of premises of voluntary schools.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The occupation and use of the premises<sup>2</sup> of a voluntary school<sup>3</sup> both during and outside school hours<sup>4</sup>, is under the control of the governing body<sup>5</sup>, subject to: (1) any directions given by the local education authority<sup>6</sup>; (2) any transfer of control agreement entered into by the governing body<sup>7</sup>; and (3) any requirements of an enactment other than the School Standards and Framework Act 1998 or regulations made under it<sup>8</sup>. However, the local education authority may<sup>9</sup> give such directions as to the occupation and use of the premises of a voluntary controlled school as it thinks fit<sup>10</sup>.

1 The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 1420 ante.

2 As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 Ibid Sch 13 para 5(1). See note 1 supra. As to voluntary schools see PARA 102 et seq ante.

4 For the meaning of 'school hours' see PARA 1421 note 4 ante.

5 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante. Where the trust deed for a voluntary school provides for any person other than the governing body to be entitled to control the occupation and use of the school premises to any extent, then, if and to the extent that, disregarding any transfer of control agreement made under the School Standards and Framework Act 1998 Sch 13 para 6 (prospectively repealed) (see PARA 1426 post), the use of those premises is or would be under the control of such a person, Sch 13 para 5 (prospectively repealed) and Sch 13 para 6 (prospectively repealed) and Sch 13 para 7 (prospectively repealed) (see PARA 1427 post) have effect in relation to the school with the substitution of references to that person for references to the governing body: Sch 13 para 5(4). See note 1 supra. As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of s 142(8).

6 Ibid Sch 13 para 5(2)(a). See note 1 supra. The reference in the text to directions is a reference, in the case of a voluntary controlled school, to directions under Sch 13 para 5(3) (prospectively repealed) (see the text and notes 8-9 infra), or, in the case of a voluntary aided school, to directions under Sch 13 para 7(3) (prospectively repealed) (see PARA 1427 post): Sch 13 para 5(2)(a). As to local education authorities see PARA 20 ante.

7 Ibid Sch 13 para 5(2)(b). See note 1 supra. The reference in the text to an agreement is a reference to an agreement under Sch 13 para 6 (prospectively repealed): see PARA 1426 post.

8 Ibid Sch 13 para 5(2)(c). See note 1 supra.

9 Ie subject to ibid Sch 13 para 7(1), (2) (prospectively repealed): see PARA 1427 post.

10 Ibid Sch 13 para 5(3). See note 1 supra.

## **UPDATE**

### **1420-1427 Control of Use of School Premises by Governing Bodies**

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(5) CONTROL OF USE OF SCHOOL PREMISES BY GOVERNING BODIES/1426. Transfer of control agreements for voluntary schools.

#### **1426. Transfer of control agreements for voluntary schools.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The governing body<sup>2</sup> of any voluntary school<sup>3</sup> has power to enter into a transfer of control agreement<sup>4</sup> with any body or person if the governing body's purpose, or one of its purposes, in doing so is to promote community use<sup>5</sup> of the whole or any part of the school premises<sup>6</sup>. It may do so even though the trust deed<sup>7</sup> for the school would otherwise expressly or impliedly preclude it from entering into such an agreement with that body or person or from conferring control on the controlling body<sup>8</sup> in question<sup>9</sup>, but it must not enter into a transfer of control agreement unless the use to which the premises may be put under the agreement is in all other respects in conformity with any such requirements, prohibitions or restrictions imposed by the trust deed as would apply if control were being exercised by the governing body<sup>10</sup>. However, the governing body must not enter into any transfer of control agreement which makes or includes provision for the use of the whole or any part of the school premises during school hours<sup>11</sup> unless it has first obtained the consent of the local education authority<sup>12</sup> to the agreement in so far as it makes such provision<sup>13</sup>. A transfer of control agreement is taken to include the following terms, namely:

2651 (1) that the governing body must notify the controlling body of any directions given to the governing body<sup>14</sup> and any determination made by the foundation governors<sup>15</sup>;

2652 (2) that the controlling body, in exercising control of the use of any premises subject to the agreement, must do so in accordance with any directions or determinations from time to time notified to that body in pursuance of head (1) above<sup>16</sup>, and must have regard to the desirability of the premises being made available for community use<sup>17</sup>; and

2653 (3) that, if reasonable notice is given in writing by the governing body to the controlling body that such of the premises subject to the agreement as may be specified in the notice are reasonably required for use by or in connection with the school at such times as may be so specified, then:

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10. (a) the use of the specified premises at those times must be under the control of the governing body<sup>18</sup>; and

11. (b) accordingly, those premises may be used at those times by or in connection with the school for such purposes as may be specified in the notice<sup>19</sup>,

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2654 even though their use at those times would otherwise be under the control of the controlling body<sup>20</sup>.

1 The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 1420 ante.

2 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

3 As to voluntary schools see PARA 102 et seq ante.

4 For these purposes, 'transfer of control agreement' means an agreement which (subject to the School Standards and Framework Act 1998 Sch 13 para 6(3) (prospectively repealed) (see the text and notes 14-20 infra)) provides for the use of so much of the school premises as may be specified in the agreement to be under the control, at such times as may be so specified, of such body or person as may be so specified: Sch 13 para 6(7). See note 1 supra. As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of s 142(8).

5 For the meaning of 'community use' see PARA 1421 note 9 ante.

6 School Standards and Framework Act 1998 Sch 13 para 6(1). See note 1 supra.

7 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of *ibid* s 142(8).

8 For these purposes, 'the controlling body' means the body or person (other than the governing body) who has control of the use of the whole or any part of the school premises under the transfer of control agreement in question: *ibid* Sch 13 para 6(7). See note 1 supra.

9 *Ibid* Sch 13 para 6(1)(a). See note 1 supra. As to savings and transitional provisions relating to transfer of control agreements see the School Standards and Framework Act 1998 (Commencement No 7 and Saving and Transitional Provisions) Order 1999, SI 1999/2323, art 2, Sch 5.

10 School Standards and Framework Act 1998 Sch 13 para 6(1)(b). See note 1 supra.

11 For the meaning of 'school hours' see PARA 1421 note 4 ante.

12 As to local education authorities see PARA 20 ante.

13 School Standards and Framework Act 1998 Sch 13 para 6(2). See note 1 supra.

14 *Ibid* Sch 13 para 6(3)(a)(i). See note 1 supra. The reference in the text to directions is a reference, in the case of a voluntary controlled school, to directions under Sch 13 para 5(3) (prospectively repealed) (see PARA 1425 ante), or, in the case of a voluntary aided school, to directions under Sch 13 para 7(3) (prospectively repealed) (see PARA 1427 post): Sch 13 para 6(3)(a)(i).

15 *Ibid* Sch 13 para 6(3)(a)(ii). See note 1 supra. The reference in the text to a determination is a reference, in the case of a voluntary controlled school, to a determination made under Sch 13 para 7(2) (prospectively repealed): see PARA 1427 post. For the meaning of 'foundation governor' see PARA 104 note 6 ante.

Where the governing body enters into a transfer of control agreement, it must, so far as reasonably practicable, secure that the controlling body exercises control in accordance with any such directions or determinations as are notified to that body in pursuance of Sch 13 para 6(3)(a) (prospectively repealed): Sch 13 para 6(6).

16 *Ibid* Sch 13 para 6(3)(b)(i). See note 1 supra.

17 *Ibid* Sch 13 para 6(3)(b)(ii). See note 1 supra.

18 *Ibid* Sch 13 para 6(3)(c)(i). See note 1 supra.

19 *Ibid* Sch 13 para 6(3)(c)(ii). See note 1 supra.

20 *Ibid* Sch 13 para 6(3)(c). Where a transfer of control agreement makes express provision for the use of any school premises which are subject to the agreement to be occasionally under the control of the governing body, instead of the controlling body, in such circumstances, at such times or for such purposes as may be provided by or under the agreement, Sch 13 para 6(3)(c) (prospectively repealed) does not have effect in relation to the transfer of control agreement if, at the time of entering into it, the governing body was of the opinion that the express provision would be more favourable to the interests of the school than the term that would otherwise be included by virtue of Sch 13 para 6(3)(c): Sch 13 para 6(4), (5). See note 1 supra.

## UPDATE

### 1420-1427 Control of Use of School Premises by Governing Bodies

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(5) CONTROL OF USE OF SCHOOL PREMISES BY GOVERNING BODIES/1427. Control of use of premises of voluntary school outside school hours.

#### **1427. Control of use of premises of voluntary school outside school hours.**

The following provisions have effect until a day to be appointed<sup>1</sup>.

The governing body<sup>2</sup> may determine the use to which the premises<sup>3</sup> of a voluntary controlled school<sup>4</sup>, or any part of them, are put on Saturdays when not required<sup>5</sup> for the purposes of the school<sup>6</sup>, or for any purpose connected with education or with the welfare of the young for which the local education authority<sup>7</sup> desires to provide accommodation on the premises, or on the part in question<sup>8</sup>.

The foundation governors<sup>9</sup> may determine the use to which the premises of a voluntary controlled school, or any part of them, are put on Sundays<sup>10</sup>.

Where the local education authority desires to provide accommodation for any purpose connected with education or with the welfare of the young<sup>11</sup>, and is satisfied that there is no suitable alternative accommodation in its area for that purpose<sup>12</sup>, it may direct the governing body of a voluntary aided school to provide accommodation free of charge for that purpose on the school premises, or any part of them, on any weekday when not needed for the purposes of the school<sup>13</sup>.

In exercising control of the occupation and use of the premises of a voluntary school outside school hours the governing body must have regard to the desirability of those premises being made available for community use<sup>14</sup>.

1 The provisions of the School Standards and Framework Act 1998 s 40, Sch 13 are repealed by the Education Act 2002 s 215(2), Sch 22 Pt 3, as from a day to be appointed under s 216(4). At the date at which this volume states the law, no such day had been appointed. See PARA 1420 ante.

2 As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

3 As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

4 As to voluntary schools see PARA 102 et seq ante.

5 School Standards and Framework Act 1998 Sch 13 para 7(1). See note 1 supra.

6 Ibid Sch 13 para 7(1)(a). See note 1 supra.

7 As to local education authorities see PARA 20 ante.

8 School Standards and Framework Act 1998 Sch 13 para 7(1)(b). See note 1 supra.

9 For the meaning of 'foundation governor' see PARA 104 note 6 ante.

10 School Standards and Framework Act 1998 Sch 13 para 7(2). See note 1 supra.

11 Ibid Sch 13 para 7(3)(a). See note 1 supra.

12 Ibid Sch 13 para 7(3)(b). See note 1 supra.

13 Ibid Sch 13 para 7(3). The local education authority must not exercise its power under Sch 13 para 7(3) (prospectively repealed) so as to direct the governing body to provide accommodation on more than three days in any week: Sch 13 para 7(4). See note 1 supra.

14 Ibid Sch 13 para 7(5). See note 1 supra. For the meaning of 'community use' see PARA 1421 note 9 ante.

## **UPDATE**

### **1420-1427 Control of Use of School Premises by Governing Bodies**

Repeal of School Standards and Framework Act 1998 s 40, Sch 13 in force in relation to Wales 31 March 2008: SI 2006/3611.



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/12. LAND AND PREMISES/(6) RATING/1428. Rating of educational premises generally.

## **(6) RATING**

### **1428. Rating of educational premises generally.**

Educational premises are classified as non-domestic hereditaments for the purposes of rating<sup>1</sup>, and, therefore, a local education authority is rateable for its schools<sup>2</sup>.

Where an employee of an educational institution is required to occupy a hereditament in order to carry out the purposes of his employer's business, or to secure the better performance of his duties, the occupation for rating purposes is that of the employer<sup>3</sup>.

1 See the Local Government Finance Act 1988 Pt III (ss 41-67) (as amended). As to the system of non-domestic rating see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 7 et seq. However, a building used by university students of a particular religious denomination for recreation or social purposes has been held to be exempted from non-domestic rates: see *Mageean v Valuation Comr* [1960] NI 141, NI CA; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 41.

2 See *West Bromwich School Board v West Bromwich Overseers* (1884) 13 QBD 929, CA; *R v London School Board* (1886) 17 QBD 738, CA; *Laughlin v Saffron-Hill Overseers* (1865) 12 LT 542; *London School Board v Wandsworth and Clapham Unions Assessment Committee* (1900) 16 TLR 137, DC; and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 23. As to the rating of maintained schools see PARA 1429 post.

3 See *Northern Ireland Comr of Valuation v Fermanagh Protestant Board of Education* [1969] 3 All ER 352, [1969] 1 WLR 1708, HL (house owned by school and used as schoolmasters' residences); *Hirst v Sargent* (1966) 65 LGR 127, [1966] RA 605, DC (house owned by school and occupied by school groundsman who was able to prevent trespass and damage to playing fields from the hereditament); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 18.

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### **1429. Rating of maintained schools.**

For the purposes of the statutory provisions relating to non-domestic rating<sup>1</sup>, the occupier of any hereditament so far as consisting of the premises<sup>2</sup> of a maintained school<sup>3</sup> is taken to be the local education authority<sup>4</sup>, where it is a community, voluntary controlled or community special school<sup>5</sup>, or the governing body<sup>6</sup>, where it is a foundation, voluntary aided or foundation special school<sup>7</sup>.

1     I.e. the Local Government Finance Act 1988 Pt III (ss 41-67) (as amended). As to the system of non-domestic rating see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 7 et seq. As to the rating of educational premises see generally para 1428 ante.

2     As to the meaning of 'premises' see PARA 1352 note 3 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3     For the meaning of 'maintained school' see PARA 94 ante.

4     As to local education authorities see PARA 20 ante.

5     School Standards and Framework Act 1998 s 78(a). As to community and voluntary schools and community special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 et seq ante.

6     As to the governing body of a maintained school, in relation to England, see PARA 203 et seq ante; and as to the governing body of a maintained school, in relation to Wales, see PARA 251 et seq ante.

7     School Standards and Framework Act 1998 s 78(b). As to foundation schools and foundation special schools see PARA 102 et seq ante.

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## 13. EDUCATIONAL TRUSTS

### 1430. Trusts for the advancement of education.

Not every object which is beneficial to the community is charitable<sup>1</sup>. However, the advancement of education is one of the four recognised types of charitable purposes. Charitable purposes, in the legal sense, derived from the ancient statute of Elizabeth I<sup>2</sup>, and have been classified into four principal divisions<sup>3</sup>: (1) the relief of poverty<sup>4</sup>; (2) the advancement of education<sup>5</sup>; (3) the advancement of religion<sup>6</sup>; and (4) other purposes beneficial to the community not falling under any of the preceding heads<sup>7</sup>. In addition, certain purposes are declared to be charitable by the Recreational Charities Act 1958<sup>8</sup>; these may be regarded as forming part of the fourth category. All claims to bring a purpose under the head of charity must assert that it comes within one or more of these four divisions<sup>9</sup>. Many purposes which fall to be considered under the division of charitable purposes for the advancement of education may also be considered under the fourth head<sup>10</sup>, and may be accepted as falling under either or both of these heads<sup>11</sup>.

1 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 41, [1947] 2 All ER 217 at 220, HL, per Lord Wright.

2 43 Eliz 1 c 4 (1601) (now wholly repealed: see CHARITIES vol 8 (2010) PARA 1); and see CHARITIES vol 8 (2010) PARA 46.

3 This is the so-called Pemsel classification: see *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 583, HL, per Lord Macnaghten. The classification was taken from the argument of Sir Samuel Romilly in *Morice v Bishop of Durham* (1805) 10 Ves 522 at 532 per Lord Eldon LC. See also *Re Macduff, Macduff v Macduff* [1896] 2 Ch 451 at 466, CA, per Lindley LJ. As to the four divisions of charity see further CHARITIES vol 8 (2010) PARA 46.

4 See CHARITIES vol 8 (2010) PARAS 14-21.

5 See CHARITIES vol 8 (2010) PARAS 22-27.

6 See CHARITIES vol 8 (2010) PARAS 28-34.

7 See CHARITIES vol 8 (2010) PARAS 35-58.

8 See CHARITIES vol 8 (2010) PARAS 52-55.

9 *National Anti-Vivisection Society v IRC* [1948] AC 31 at 52, [1947] 2 All ER 217 at 226, HL, per Lord Porter. Many charitable purposes do not fit neatly within a single category: *Re Hopkins' Will Trusts*, *Naish v Francis Bacon Society Inc* [1965] Ch 669 at 678, [1964] 3 All ER 46 at 51 per Wilberforce J; cf *Trustees of City of Belfast YMCA v Northern Ireland Valuation Comr* [1969] NI 3, CA.

10 Ie other purposes beneficial to the community: see CHARITIES vol 8 (2010) PARA 35 et seq.

11 See eg *Re Shakespeare Memorial Trust*, *Earl of Lytton v A-G* [1923] 2 Ch 398; *Re Hopkins' Will Trusts*, *Naish v Francis Bacon Society Inc* [1965] Ch 669, [1964] 3 All ER 46; *Construction Industry Training Board v A-G* [1971] 3 All ER 449, [1971] 1 WLR 1303 (affd without dealing with this point [1973] Ch 173, [1972] 2 All ER 1339, CA); *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73, [1971] 3 All ER 1029, CA.

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**1431. Extent of local authorities' powers relating to trusts for charitable purposes.**

A local education authority has no locus standi to institute legal proceedings for the construction of a will purporting to create a charitable trust<sup>1</sup>. However, a local authority which is not a local education authority may help with education matters by establishing a trust fund to provide free or assisted places at independent schools<sup>2</sup>.

1 *Re Belling, Enfield London Borough Council v Public Trustee* [1967] Ch 425, [1967] 1 All ER 105.

2 *Manchester City Council v Greater Manchester Metropolitan County Council* (1980) 78 LGR 560, HL. As to independent schools see PARA 465 et seq ante.

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### **1432. Local education authorities' powers to accept gifts for educational purposes.**

A local education authority<sup>1</sup> is empowered to accept, hold and administer any property on trust for purposes connected with education<sup>2</sup>, as appears to it to be necessary or expedient in connection with the operation of any provision of the School Standards and Framework Act 1998, the Learning and Skills Act 2000 or the Education Act 2002, or anything done under or for the purposes of any such provision. Any intention on the part of the authority that a school, other than a nursery school<sup>3</sup> or a special school<sup>4</sup>, should be vested in the authority as trustees is treated<sup>5</sup> as an intention to establish a new community school<sup>6</sup>. Accordingly proposals for that purpose must be published in accordance with the relevant statutory provisions<sup>7</sup>. Any school which is so vested in a local education authority as trustees<sup>8</sup> is a community school<sup>9</sup>.

1 As to local education authorities see PARA 20 ante.

2 Education Act 1996 s 529(1). As to the application of an endowment of an existing school transferred to the local education authority see *Re Poplar and Blackwall Free School* (1878) 8 ChD 543.

3 As to nursery education see PARA 85 et seq ante.

4 As to special schools see PARA 1027 ante.

5 Ie treated for the purposes of the School Standards and Framework Act 1998 s 28 (as amended; prospectively amended) (see PARA 132 ante): Education Act 1996 s 529(2) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 145(a)).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b), the reference in the Education Act 1996 s 529(2) (as amended) to the School Standards and Framework Act 1998 s 28 (as amended) will be replaced by references to the School Standards and Framework Act 1998 s 28 (as amended; prospectively amended), s 28A (as added; not yet in force) (see PARA 133 ante) and the Education Act 2005 s 66 (not yet in force) (see PARA 158 ante): see the Education Act 1996 s 529(2) (as so amended; and prospectively amended by the Education Act 2005 s 72, Sch 12 para 2). At the date at which this volume states the law, no such day had been appointed.

6 Education Act 1996 s 529(2) (as amended: see note 5 supra). As to community schools see PARA 102 et seq ante.

7 Ibid s 529(2) (as amended: see note 5 supra). Such proposals are published as required by the School Standards and Framework Act 1998 s 28 (as amended; prospectively amended) (see PARA 132 ante); and Sch 6 (as amended; prospectively amended) (statutory proposals: procedure and implementation: see PARA 137 et seq ante) applies accordingly: Education Act 1996 s 529(2) (as so amended).

As from a day to be appointed under the Education Act 2005 ss 125(4), 126(1), (3)(b), the reference in the Education Act 1996 s 529(2) (as amended) to proposals being published as required by the School Standards and Framework Act 1998 s 28 (as amended) will be replaced by references to proposals being published as required by the School Standards and Framework Act 1998 s 28 (as amended), s 28A (as added; not yet in force) (see PARA 133 ante) and the Education Act 2005 s 66 (not yet in force) (see PARA 158 ante); and the reference to the School Standards and Framework Act 1998 Sch 6 (as amended) will be replaced by a reference to Sch 6 (as amended) and the Education Act 2005 s 66(12), Sch 10 (not yet in force) (see PARA 159 et seq ante): see the Education Act 1996 s 529(2) (as amended (see note 5 supra); and prospectively amended by the Education Act 2005 s 72, Sch 12 para 2). At the date at which this volume states the law, no such day had been appointed.

8 Ie in accordance with the Education Act 1996 s 529(2) (as amended): see the text and notes 3-7 supra.

9 Ibid s 529(3) (amended by the School Standards and Framework Act 1998 Sch 30 para 145(b)).

### **UPDATE**

**1432 Local education authorities' powers to accept gifts for educational purposes**

TEXT AND NOTES--Prospective amendments repealed; 1996 Act s 529(1A) added, s 529(2), (3) amended: Education and Inspections Act 2006 Sch 3 para 10, Sch 18 Pt 3.

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**1433. Powers of central government in relation to the modification of educational trust instruments.**

The Secretary of State<sup>1</sup> may by order make such modifications of any trust deed<sup>2</sup> or other instrument relating to: (1) a school which is a foundation, voluntary or foundation special school<sup>3</sup>; or (2) property held on trust for the purposes of such a school<sup>4</sup>, as appear to him to be necessary or expedient in connection with the operation of any provision of the School Standards and Framework Act 1998, the Learning and Skills Act 2000 or the Education Act 2002, or anything done under or for the purposes of any such provision. Such an order may be made so as to have permanent effect or to have effect for such period as is specified in the order<sup>5</sup>.

The Secretary of State may also by order make such modifications of any trust deed or other instrument relating to or regulating any institution that provides or is concerned in the provision of educational services, or is concerned in educational research, as, after consultation with the persons responsible for the management of the institution, appear to him to be requisite to enable them to fulfil any condition or meet any requirement imposed by regulations<sup>6</sup>. Any modification made by such an order may be made to have permanent effect or to have effect for such period as may be specified in the order<sup>7</sup>.

1 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

2 As to the meaning of 'trust deed' see PARA 104 note 6 ante; definition applied by virtue of the School Standards and Framework Act 1998 s 142(8).

3 See *ibid* s 82(1)(a); and PARA 117 ante. As to foundation, voluntary and foundation special schools see PARA 102 et seq ante; and as to special schools generally see PARA 1027 ante.

4 See *ibid* s 82(1)(b); and PARA 117 ante.

5 See *ibid* s 82(3); and PARA 117 ante.

6 See the Education Act 1996 s 489(3); and PARA 74 ante. The text refers to regulations under s 485 (grants in aid of educational services or research: see PARA 69 ante).

7 See *ibid* s 489(4); and PARA 74 ante.

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#### **1434. Schemes under the Endowed Schools Acts.**

Where under any provision, however expressed, of a scheme made under the Endowed Schools Acts 1869 to 1948<sup>1</sup> the power of the trustees under the scheme to apply any property to which the scheme relates for purposes authorised by the scheme is subject to the approval or order of any other person, the scheme has effect as if no such approval or order was required<sup>2</sup>. The Secretary of State<sup>3</sup> may, on the application of any person whose approval or order would otherwise be required under such a scheme, direct that the requirement is to continue to have effect<sup>4</sup>, but no liability<sup>5</sup> is to be taken to have been incurred in respect of any failure before the making of such a direction to obtain any such approval or order<sup>6</sup>.

1   Ie the Endowed Schools Act 1869; the Endowed Schools Act 1873; and the Education (Miscellaneous Provisions) Act 1948 s 2, Sch 1 Pt II (all repealed).

2   Education Act 1996 s 553(1). Where, under any scheme made before 18 August 1918 (ie the date on which the Education Act 1918 was passed) relating to an educational charity, the approval of the Board of Education was required for the exercise by the trustees under the scheme of a power of appointing new trustees, the scheme has effect as if no such approval were required: s 47 (amended by the Education Act 1973 s 1(4), Sch 2 Pt I). As to the Board of Education see PARA 52 ante.

3   As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

4   Ie despite the Education Act 1996 s 553(1): see the text and notes 1-2 supra.

5   'Liability' includes obligation: *ibid* s 579(1).

6   *Ibid* s 553(2).



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### **1435. Powers of central government in relation to trusts for religious education.**

Where in relation to any time before 1 September 1999<sup>1</sup>, the premises of a voluntary or grant-maintained school<sup>2</sup> have ceased to be used for such a school<sup>3</sup>, or in relation to any time on or after 1 September 1999<sup>4</sup>: (1) the premises of a foundation<sup>5</sup> or voluntary school have ceased to be used for such a school<sup>6</sup>; or (2) in the opinion of the Secretary of State<sup>7</sup> it is likely such premises will cease to be so used<sup>8</sup>, he may by order<sup>9</sup> made by statutory instrument make new provision as to the use of any endowment<sup>10</sup> if it is shown<sup>11</sup> either<sup>12</sup>:

- 2655 (a) that the endowment is or has been held wholly or partly for or in connection with the provision at the school of religious education in accordance with the tenets of a particular religion or religious denomination<sup>13</sup>; or
- 2656 (b) that the endowment is or has been used wholly or partly for or in connection with the provision at the school of such religious education and that the following requirements are fulfilled<sup>14</sup>, namely:
  - 16
  - 12. (i) that the school was or has been maintained as a voluntary or grant-maintained school or as a foundation or voluntary school since 1 April 1945<sup>15</sup>; and
  - 13. (ii) that religious education in accordance with the tenets of the religion or denomination concerned is, and from that date has been, provided at the school or, where the premises have ceased to be used for the purposes of the school, was provided at the school from that date until immediately before the premises ceased to be so used<sup>16</sup>.
- 17

Such an order may require or authorise the disposal by sale or otherwise of any land<sup>17</sup> or other property forming part of an endowment<sup>18</sup> affected by the order, including the premises of the school and any teacher's dwelling-house<sup>19</sup>, and may consolidate any endowments to be dealt with by the scheme<sup>20</sup>. Subject to this, and to any statutory provision affecting the endowments, such an order must establish and give effect, with a view to enabling the religion or denomination concerned to participate more effectively in the administration of the statutory system of public education, to a scheme or schemes<sup>21</sup> for the endowments dealt with by the order to be used<sup>22</sup> for appropriate educational purposes<sup>23</sup>.

Where a scheme so given effect<sup>24</sup> provides for the endowments dealt with by the order or any part of them to be used for the purposes specified in the provision relating to uniform statutory trusts for educational endowments<sup>25</sup>, any such scheme may provide for the endowments thereby dealt with or any part of them to be added to any existing endowment applicable for those purposes (whether it is so applicable by virtue of a scheme so given effect or otherwise)<sup>26</sup>. Any such order has effect despite any Act of Parliament (other than a public general Act), letters patent or other instrument relating to, or trust affecting, the endowments dealt with by the order<sup>27</sup>.

1    le the appointed day (see PARA 102 note 3 ante); definition applied by the Education Act 1996 s 554(1) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 168(1), (2)).

2    As to voluntary schools see PARA 102 et seq ante. As to grant-maintained schools see PARA 102 note 16 ante.

3 Education Act 1996 s 554(1)(a) (as substituted: see note 1 supra). Section 554 (as amended) applies where the premises of a non-provided public elementary school ceased before 1 April 1945 to be used for such a school as it applies where the premises of a voluntary school have ceased to be used for such a school: s 554(6).

4 Ibid s 554(1)(b) (as substituted: see note 1 supra).

5 As to foundation schools see PARA 102 et seq ante.

6 Education Act 1996 s 554(1)(b)(i) (as substituted: see note 1 supra).

7 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

8 Education Act 1996 s 554(1)(b)(ii) (as substituted: see note 1 supra).

9 The order may be made only on the application of the persons appearing to the Secretary of State to be the appropriate authority of the denomination concerned: *ibid* s 555(1). The Secretary of State must, not less than one month before making the order give notice of the proposed order and of the right of persons interested to make representations on it: s 555(2). The Secretary of State must take into account any representations that may be made to him by any person interested in it before the order is made: s 555(4). The notice must be given: (1) by giving to any persons appearing to the Secretary of State to be trustees of an endowment affected by the proposed order a notice of the proposal to make it, together with a draft or summary of the provisions proposed to be included; and (2) by publishing, in such manner as the Secretary of State thinks sufficient for informing any other persons interested, a notice of the proposal to make the order and of the place where any person interested may, during a period of not less than a month, inspect such a draft or summary, and by keeping a draft or summary available for inspection in accordance with the notice: s 555(3). A statutory instrument containing any order made under s 554 (as amended) is not subject to annulment in pursuance of a resolution of either House of Parliament: see s 568(3); and PARA 15 note 6 ante.

Section 568(5) (as amended) (general provision as to orders: see PARA 15 note 6 ante) does not apply to an order under s 554 (as amended), but such an order may include such incidental or supplementary provisions as appear to the Secretary of State to be necessary or expedient either for the bringing into force or for the operation of any scheme established by it, including in particular provisions: (a) for the appointment and powers of trustees of the property comprised in the scheme or, if the property is not all applicable for the same purposes, of any part of that property (s 556(6)(a)); and (b) for the property or any part of it to vest by virtue of the scheme in the first trustees under the scheme or trustees of any endowment to which it is to be added or, if not so vested, to be transferred to them (s 556(6)(b)).

10 'Endowment' includes property not subject to any restriction on the expenditure of capital: *ibid* s 554(5).

11 'Shown' means shown to the satisfaction of the Secretary of State: *ibid* s 554(5).

12 *Ibid* s 554(2). This is expressed to be subject to s 555 (see note 9 supra) and s 556(1), (2) (as amended) (see the text and notes 17-23 *infra*).

13 *Ibid* s 554(2)(a).

14 *Ibid* s 554(2)(b). This is expressed to be subject to s 554(4) (as amended) (see note 16 *infra*).

15 *Ibid* s 554(3)(a) (substituted by the School Standards and Framework Act 1998 Sch 30 para 168(3)(a)). The text refers to the date on which the Education Act 1944 Pt II (ss 6-69) (now repealed) came into force.

16 Education Act 1996 s 554(3)(b). 'Used' in this context means used in pursuance of ss 377-378, 380-381 (all repealed) (or any corresponding earlier enactment), or the School Standards and Framework Act 1998 Sch 19 para 3 (see PARA 953 ante) or Sch 19 para 4 (see PARA 954 ante): Education Act 1996 s 554(3)(b) (amended by the School Standards and Framework Act 1998 Sch 30 para 168(3)(b)). Where in the case of any school falling within head (b)(i) in the text it is shown that religious education in accordance with the tenets of a particular religion or denomination is provided at the school, or if the premises have ceased to be used for the purposes of the school, such religious education was so provided immediately before the premises ceased to be so used, such religious education is taken to have been provided at the school from 1 April 1945, unless the contrary is shown: Education Act 1996 s 554(4)(a). Where religious education in accordance with such tenets is shown to have been given to any pupils at: (1) a controlled school; (2) a grant-maintained school which was a controlled school immediately before it became a grant-maintained school; or (3) a foundation or voluntary controlled school with a religious character, the religious education is taken to have been given to them at the request of their parents, unless the contrary is shown: s 554(4)(b) (substituted by the School Standards and Framework Act 1998 Sch 30 para 168(4)).

As to the adoption of uniform statutory trusts as the trusts on which endowments regulated by an order under the Education Act 1996 s 554 (as amended) are to be held see s 557 (as amended), Sch 36 (as amended in relation to England; prospectively amended in relation to Wales) (uniform statutory trusts for educational endowments); and PARA 1436 post.

17 As to the meaning of 'land' see PARA 1352 note 9 ante.

18 As to the meaning of 'endowment' see note 10 supra; definition applied by the Education Act 1996 s 556(8).

19 Ibid s 556(1)(a).

20 Ibid s 556(1)(b).

21 Such a scheme: (1) may provide for the retention of the capital of any endowment and the application of the accruing income; or (2) may authorise the application or expenditure of capital to such extent and subject to such conditions as may be determined by or in accordance with the scheme, and any such scheme may provide for the endowments dealt with by the scheme or any part of them to be added to any existing endowment applicable for any such purpose as is authorised for the scheme by *ibid* s 556(2) (as amended) (see the text and notes 22-23 *infra*): s 556(4).

22 *Ie* either in connection with schools which are foundation schools or voluntary schools or partly in connection with such schools (or either description of such schools) and partly in other ways related to the locality served by the school at the premises referred to in *ibid* s 554(1) (as substituted) (see the text and notes 1-8 *supra*): s 556(2) (amended by the School Standards and Framework Act 1998 Sch 30 para 169(a), (b)).

23 Education Act 1996 s 556(2). 'Use for appropriate educational purposes' means use for educational purposes in connection with the provision of religious education in accordance with the tenets of the religion or denomination concerned (including use for any purpose specified in Sch 36 (as amended in relation to England; prospectively amended in relation to Wales) (uniform statutory trusts for educational endowments: see PARA 1436 post): s 556(3).

24 *Ie* given effect under *ibid* s 554 (as amended): see the text and notes 1-16 *supra*.

25 *Ie* for purposes specified in *ibid* Sch 36 (as amended in relation to England; prospectively amended in relation to Wales) (uniform statutory trusts for educational endowments: see PARA 1436 post).

26 Ibid s 556(5).

27 Ibid s 556(7).

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### **1436. Adoption of statutory trusts.**

The trustees of any endowments<sup>1</sup> may by resolution<sup>2</sup> adopt the uniform statutory trusts<sup>3</sup> as the trusts on which those endowments are to be held<sup>4</sup>. On the adoption by trustees of the uniform statutory trusts in respect of any endowments the scheme or order which regulates the endowments has effect as if the uniform statutory trusts were incorporated in the scheme or order to the exclusion of the corresponding provisions of the scheme or order<sup>5</sup>. The trustees of two or more endowments which are held on the uniform statutory trusts may, by resolution<sup>6</sup>, consolidate all or any of those endowments and, where they do so, the endowments must be treated, for all purposes, as held for the purposes of a single charity<sup>7</sup>.

The trustees may, after payment of any expenses incurred in connection with the administration of the trust, apply the capital and income of the relevant trust assets<sup>8</sup> for any of the following purposes:

- 2657 (1) in or towards the purchase of a site for, or the erection, improvement or enlargement of, the premises of any relevant school<sup>9</sup> in the area<sup>10</sup>;
- 2658 (2) for the maintenance of any relevant school in the area<sup>11</sup>;
- 2659 (3) in or towards the purchase of a site for, or the erection, improvement or enlargement of, the premises of a teacher's house for use in connection with any relevant school in the area<sup>12</sup>; and
- 2660 (4) for the maintenance of a teacher's house for use in connection with any relevant school in the area<sup>13</sup>.

The trustees may also, after payment of any expenses incurred in connection with the administration of the trust, apply the income of the relevant trust assets for any of the following purposes:

- 2661 (a) in or towards the provision of advice, guidance and resources (including materials) in connection with any matter related to the management of, or education provided at, any relevant school in the area<sup>14</sup>;
- 2662 (b) the provision of services for the carrying out of any inspection of any relevant school in the area required by Part I of the Education Act 2005<sup>15</sup>; and
- 2663 (c) to defraying the cost of employing or engaging staff in connection with<sup>16</sup>:
- 18
- 14. (i) the application of income of the relevant trust assets for either of the purposes referred to in heads (a) and (b) above<sup>17</sup>; or
- 15. (ii) the application of capital or income of the relevant trust assets for any of the purposes referred to in heads (1) to (4) above<sup>18</sup>.
- 19

1 As to the meaning of 'endowment' see PARA 1435 note 10 ante; definition applied by the Education Act 1996 s 557(9). Section 557 (as amended) applies to endowments which are:

124 (1) regulated by a qualifying scheme under the Endowed Schools Acts 1869 to 1948 (repealed) as applied by the Education Act 1944 s 86(1) (repealed) or by an order under the Education Act 1996 s 554 (as amended) (see PARA 1435 ante) or the Education Act 1973 s 2 (repealed) (Education Act 1996 s 557(1)(a)); and

- 125 (2) held under any such scheme or order on trusts which provide for capital or income or both to be applicable for or in connection with:
7. (a) the provision of religious education at relevant schools, or relevant schools of any description (but not only at a particular school or schools) in a diocese or other geographical area (s 557(1)(b)(i)); or  
7
  8. (b) the provision of premises for relevant schools, or relevant schools of any description (but not only at a particular school or schools) at which religious education is or is to be provided in a diocese or other geographical area (s 557(1)(b)(ii)),  
8

126 but s 557 (as amended) does not apply to an endowment if or in so far as it constitutes a religious education fund: s 557(1)(b).

'Qualifying scheme' means a scheme in force on 1 January 1994 (the date when the Education Act 1993 s 287 (repealed: see now the Education Act 1996 s 557) came into force): Education Act 1996 s 557(9). 'Religious education' means religious education in accordance with the tenets of a particular religion or religious denomination: s 557(9). 'Relevant school' means a foundation or voluntary school: s 557(9) (amended by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 170). 'Provision', in relation to premises, means provision by the purchase of a site, the erection of premises or the maintenance, improvement or enlargement of premises: Education Act 1996 s 557(9). As to the meaning of 'premises' see PARA 1352 note 3 ante. 'Religious education fund' includes a Sunday school fund: s 557(9). As to the meaning of 'enlargement' of any school premises see PARA 132 note 8 ante.

2 The resolution must be passed by a simple majority of the trustees or, if the trustees are a body corporate or a company, by a simple majority of the members of the body corporate or an ordinary resolution of the company, and it must be recorded in the records of the decisions of the trustees affecting the endowments of the trust: *ibid* s 557(6). 'Company' means a company formed under the Companies Acts (see COMPANIES vol 14 (2009) PARA 1 et seq): Education Act 1996 s 557(9). 'The Companies Acts' means the Companies Act 1985, the Companies Act 1948 (repealed) or any Act repealed by the Companies Act 1948: Education Act 1996 s 557(9). As to the Companies Acts see COMPANIES vol 14 (2009) PARA 14.

3 The uniform statutory trusts are those set out in the Education Act 1996 Sch 36 (as amended in relation to England; prospectively amended in relation to Wales): s 557(3).

4 *Ibid* s 557(2). Where trustees pass a resolution under s 557(2), it is their duty to send a copy of the resolution to the Secretary of State: s 577(7). As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

The uniform statutory trusts applicable to endowments to which s 577 (as amended) applies do not affect:

127 (1) the rights of any person under the School Sites Act 1841 s 2 proviso 3 (see PARA 1354 ante), under the Education Act 1944 s 86(3) (repealed) or under the Reverter of Sites Act 1987 s 1 (as amended) (rights replacing certain reversionary interests in land: see PARA 1354 ante; and CHARITIES vol 8 (2010) PARA 70) (Education Act 1996 s 557(8)(a)); or

128 (2) the rights of any local education authority which have arisen under the Education Act 1946 Sch 1 para 7 (repealed) or Sch 1 para 8 (repealed) (rights in relation to school sites provided by such authorities) or which may arise under the Education Act 1996 s 60(4) (repealed) or s 62(2) (repealed) (s 557(8)(b)),

except in so far as any right falling within s 557(8)(a) is or has been extinguished by an order under s 554 (as amended) (see PARA 1435 ante) or the Education Act 1973 s 2 (repealed) made by virtue of the Reverter of Sites Act 1987 s 5 (as amended): Education Act 1996 s 557(8). See *R v Secretary of State for Education and Employment, ex p Rochdale Metropolitan Borough Council* [2000] ELR 709. As to local education authorities see PARA 20 ante.

5 Education Act 1996 s 557(4).

6 *Ie* complying with *ibid* s 557(6): see note 2 *supra*.

7 *Ibid* s 557(5).

8 For the purposes of *ibid* s 557, Sch 36 (as amended in relation to England; prospectively amended in relation to Wales), as incorporated in any scheme or order, 'the relevant trust assets' means the endowments in respect of which the trustees have adopted the uniform statutory trusts, including the income derived from them: s 557(10).

9 For the purposes of *ibid* Sch 36 (as amended in relation to England; prospectively amended in relation to Wales), as incorporated in any scheme or order, 'relevant school' means a relevant school, academy, city technology college or city college for the technology of the arts, at which the religious education provided for in the scheme or order, as the case may be, is or is to be provided: s 557(10) (amended by the Education Act 2002 s 69). As to academies, city technology colleges and city colleges for the technology of the arts see *PARA* 496 *ante*.

10 Education Act 1996 Sch 36 para 1(a). In Sch 36 (as amended in relation to England; prospectively amended in relation to Wales), as incorporated in any scheme or order, 'the area' means the diocese or other geographical area within which the trust assets may be applied under the scheme or order, as the case may be: s 557(10).

11 *Ibid* Sch 36 para 1(b).

12 *Ibid* Sch 36 para 1(c).

13 *Ibid* Sch 36 para 1(d).

14 *Ibid* Sch 36 para 2(a).

15 *Ibid* Sch 36 para 2(b) (amended by the Education Act 2005 s 61, Sch 9 para 10). The text refers to the Education Act 2005 Pt I (ss 1-63) (see *PARA* 1168 *et seq ante*). The amendment made by Sch 9 para 10 comes into force as from a day to be appointed under ss 125(4), 126(1), (2)(c). In relation to England, that day is 1 September 2005 (see the Education Act 2005 (Commencement No 1 and Savings and Transitional Provisions) Order 2005, SI 2005/2034, art 4) but, at the date at which this volume states the law, no such day had been appointed in relation to Wales. Until a day is appointed in relation to Wales, the reference to the Education Act 2005 Pt I should be read as a reference to the School Inspections Act 1996 Pt I (ss 1-25) (as amended) (see *PARA* 1187 *et seq ante*).

16 Education Act 1996 Sch 36 para 2(c).

17 *Ibid* Sch 36 para 2(c)(i).

18 *Ibid* Sch 36 para 2(c)(ii).

## **UPDATE**

### **1436 Adoption of statutory trusts**

NOTE 2--'Company' means a company as defined in the Companies Act 2006 s 1(1) (see *COMPANIES* vol 14 (2009) *PARA* 24): Education Act 1996 s 557(9) (definition substituted by SI 2009/1941). Definition of 'the Companies Acts' omitted: SI 2009/1941.

NOTE 15--Day now appointed in relation to Wales: SI 2006/1338.

Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/13. EDUCATIONAL TRUSTS/1437. Sex discrimination: application by trustees to remove or modify restriction.

**1437. Sex discrimination: application by trustees to remove or modify restriction.**

Where a trust deed or other instrument concerns property available for or in connection with the provision of education in certain establishments<sup>1</sup> and in any way restricts the benefits available under the instrument to persons of one sex<sup>2</sup>, the trustees or the responsible body<sup>3</sup> may apply to the Secretary of State<sup>4</sup> for the removal or modification of the restriction<sup>5</sup>. If, on such an application, the Secretary of State is satisfied that the removal or modification of the restriction would conduce to the advancement of education without sex discrimination, he may by order make such modifications of the instrument as appear to him expedient for removing or modifying the restriction, and for any supplemental or incidental purposes<sup>6</sup>. If the trust was created by gift or bequest, no such order may be made until 25 years after the date on which the gift or bequest took effect, unless the donor or his personal representatives, or the personal representatives of the testator, have consented in writing to the making of the application for the order<sup>7</sup>.

The Secretary of State must require the applicant to publish a notice: (1) containing particulars of the proposed order<sup>8</sup>; and (2) stating that representations may be made to the Secretary of State within a period specified in the notice<sup>9</sup>. The applicant must publish the notice in such manner as may be specified by the Secretary of State, and the cost of any publication of the notice may be defrayed out of the property of the trust<sup>10</sup>. Before making the order the Secretary of State must take into account any representations duly made in accordance with the notice<sup>11</sup>.

1 Sex Discrimination Act 1975 s 78(1)(a). The establishments mentioned in the text are any of the following establishments: (1) an educational establishment maintained by a local education authority; (2) an independent school not being a special school; (3) a special school not maintained by a local education authority; (4) an institution within the further education sector; (5) a university; (6) an institution, other than a university, within the higher education sector; (7) an establishment (not falling within heads (1)-(6) supra) providing full-time or part-time education, being an establishment designated under the Sex Discrimination Act 1975 s 24(1) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 378): ss 22, 78(1)(a), Table (amended by the Education Act 1980 s 1(3), Sch 1 para 27; the Further and Higher Education Act 1992 s 93(1), Sch 8 Pt II paras 75, 76; and the School Standards and Framework Act 1998 s 140(3), Sch 31). 'Proprietor' in relation to a school has the meaning given by the Education Act 1996 s 579 (see PARA 60 note 7 ante): Sex Discrimination Act 1975 s 82(1) (definition amended by the Education Act 1996 s 582(1), Sch 37 para 36(d)). 'Further education' has the meaning given by the Education Act 1996 s 2 (as amended) (see PARA 18 ante): Sex Discrimination Act 1975 s 82(1). As to references to institutions within the further education sector see PARA 579 ante; and as to references to institutions within the higher education sector see PARA 646 ante.

2 Ibid s 78(1)(b). As to sex discrimination generally see DISCRIMINATION vol 13 (2007 Reissue) PARA 337 et seq.

3 The 'responsible body' is, in respect of the establishment specified in note 1 head (1) supra, the local education authority or governors, according to which of them has the function in question; in respect of the establishments specified in note 1 heads (2)-(3) supra, the proprietor; and, in respect of the establishments specified in note 1 heads (4)-(7) supra, the governing body: ibid s 22, Table (as amended: see note 1 supra).

4 As to the Secretary of State see PARA 52 ante. As to the transfer of certain functions of the Secretary of State, so far as exercisable in relation to Wales, to the National Assembly for Wales see PARA 53 ante.

5 Sex Discrimination Act 1975 s 78(2).

6 Ibid s 78(2).

7 Ibid s 78(3).

8 Ibid s 78(4)(a).

9 Ibid s 78(4)(b). That period must be not less than one month from the date of the notice: s 78(5).

10 Ibid s 78(6).

<sup>11</sup> Ibid s 78(7).



Halsbury's Laws of England/EDUCATION (VOLUME 15(1) (2006 REISSUE) PARAS 1-578; VOLUME 15(2) (2006 REISSUE) PARAS 579-1437)/1. INTRODUCTION AND GENERAL FRAMEWORK/(4) THE SECRETARY OF STATE AND THE NATIONAL ASSEMBLY FOR WALES/(iii) Provision for New Legal Frameworks for Schools/B. EXEMPTIONS RELATED TO SCHOOL PERFORMANCE/80. Removal of exemptions.

## **80. Removal of exemptions.**

As from a day to be appointed, the following provisions have effect<sup>1</sup>.

Where the Secretary of State<sup>2</sup> or the National Assembly for Wales<sup>3</sup> has made an exemption order<sup>4</sup> in relation to a school<sup>5</sup>, and, since the making of the exemption order, the school has ceased to be a qualifying school<sup>6</sup>, the Secretary of State or the Assembly may, without any application by the governing body<sup>7</sup>, make an order<sup>8</sup> which revokes the exemption order or varies the exemption order so as to restrict any exemption conferred by it<sup>9</sup>.

1 The Education Act 2002 Pt 1 Ch 2 (ss 6-10) is to be brought into force by order made, in relation to England, by the Secretary of State or, in relation to Wales, by the National Assembly for Wales under s 216(4) as from a day to be appointed. At the date at which this volume states the law, no such day had been appointed.

2 As to the Secretary of State see PARA 52 ante.

3 As to the National Assembly for Wales see PARA 53 ante.

4 I.e. an order under the Education Act 2002 s 7(2) (not yet in force): see PARA 79 ante.

5 Ibid s 9(a). See note 1 supra. For the meaning of 'school' see PARA 81 post; definition applied by virtue of s 212(2), (3).

6 Ibid s 9(b). See note 1 supra. For the meaning of 'qualifying school' see PARA 79 note 10 ante.

7 As to the governing bodies of maintained schools see PARA 203 et seq post.

8 See note 4 supra.

<sup>9</sup> Education Act 2002 s 9. See note 1.